

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Tuesday, January 03, 2017

6:30 PM

Council Chambers

Members Present:

Nathaniel Stout, Chair Pro-Tem
Louise Zerba, Alternate
Jeffrey Stevens
Elena Brander
Josh Gorman

Staff Present:

Gary Schneider, Plans Examiner

Members Not Present:

John Rab, Alternate

1) Introduction of Board Members

Mrs. Zerba called the meeting to order at 6:30 PM and introduced the Board members. The Board voted Mr. Stout as Chair Pro-Tem for the meeting since Mrs. Zerba is now an alternate and the Vice Chair has resigned.

2) Minutes of the Previous Meeting-December 7, 2016

Mrs. Zerba suggested two corrections to the minutes of December 7, 2016. First, on page 4 of 18, first paragraph, "Chair Zerba said this was the section left blank on the application last time and has sense", the word "sense" should be corrected to "since". Additionally, on page 8 of 19 on top of the page "Chair Public Zerba" should read "Chair Zerba".

Chair Pro-Tem Stout noted a correction on page 6 of 18, bottom paragraph "Mr. Strout" should be corrected to "Mr. Stout".

Mr. Stevens made a motion to approve the minutes of December 7, 2016 as amended. Mrs. Zerba seconded the motion, which carried unanimously.

3) Unfinished Business

None at this time

4) Hearings

ZBA 17-01:/ Petitioner, Prospect-Woodward Home of 361 Court Street, Keene, NH, requests a Variance for property located at 0 Wyman Road, Keene, Tax Map Parcel # 919-08-003, which is in the Rural District and owned by Kendall W. and Molly B. Lane of 99 Wyman Road, Keene. The Petitioner requests a Variance to permit a building up to four stories and up to 56 feet in height above grade plane on a lot in the Rural District where a maximum of two stories and 35 feet in height is permitted. The Zoning Board previously granted a Variance to allow the Health Care Building to be 45 feet and three stories.

Chair Pro-Tem Stout recognized attorney Thomas Hanna of 41 School Street, Keene, NH that represented The Prospect-Woodward Home. Attorney Hanna said that the petitioner had been before the Board and wanted to explain the reason why the petitioner was present again preconstruction and post approval of a previous comprehensive application. He said they received multiple approvals for Variances including the Variance on the Health Care Center to be 45 feet and three stories. Attorney Hanna said subsequently that Variance was in November 2015 and then in November 2016 they received a site plan approval. For the record, Attorney Hanna said he wanted to give the Board the minutes for the 2015 ZBA meeting and also the Notice of Decision from the Planning Board to show where they had been. Chair Pro-Tem Stout said the minutes have been available and did not have any objection to Attorney Hanna providing this information to the Board. Attorney Hanna distributed the minutes to the Board.

Attorney Hanna noted that it had been more than a year and due to the magnitude of the project there had been more refinement and identification of needs. One need identified was for an additional 15 assisted living beds. Currently, there were 27 assisted living beds that had been planned and approved. Attorney Hanna said he would explain the reason the need was unforeseen but first wanted to give the Board some background information. He said The Prospect-Woodward Home was a merger of two Court Street homes that had cared for community seniors for well over 100 years and were merged in order to meet modern day standards and community needs. The intention was to accommodate and to care for any residents that were in The Prospect-Woodward Home and move them, if necessary, to the new facility. Attorney Hanna said from an actuarial standpoint they did not consider by the time the new facility opened that there would be many residents. He continued stating that in the process of making that realization the Board of Directors hoped there would be some endowment available to actually care for and to meet their current mission. The mission was to care for people who needed assisted living in the community that could not afford the current assisted living rates.

Attorney Hanna said the 27 assisted living beds were determined to be necessary to accommodate roughly 200 independent residents that will be housed in 141 independent

units. He continued the continuum care of a retirement community allows and accommodates any people who would be living at the Hillside Village project with an option to move to short term or long term nursing, assisted living or a member unit. Attorney Hanna said those options are the big attraction because a spouse that may need to go into assisted living gives the other spouse the option to remain in independent living. Hopefully, Mr. Hanna said there will be residents in the current Court Street facility who will want to go to Hillside Village. Attorney Hanna said the objective was to continue the mission by having space for assisted living with the realization that residents from the Court Street facility may want to go to Hillside Village. At that time, Attorney Hanna stated it was obvious of the need for the additional assisted living beds. He continued it was equally obvious these additional beds should be approved before construction and done at the same time as the rest of the construction for two reasons. First reason, costs would increase and Attorney Hanna said most importantly adding a fourth floor would be disruptive to the residents. Attorney Hanna concluded by stating that was the reason for the Variance request and asked the Board if they had any questions.

Mrs. Zerba asked if there was a formula that continuing care facilities used to determine the number of units as it related to assisted living. Attorney Hanna said there was but he unaware of the formula. Dr. Kimball Temple of 114 Jordan Road, Keene, approached the Board to answer Mrs. Zerba's question. He said the formula was developed by a national actuarial firm called CCRC Actuaries. Dr. Temple said the formula had to do with the age of the residents, health and other variables. He noted that was the reason for the size of the original project. Mrs. Zerba asked if the reason for the Variance was due to the fact they were now taking the residents from The Prospect-Woodward Home into consideration. Dr. Temple replied yes. He continued stating they planned these residents would move into Hillside Village but they were not planning after these resident died to replace them. Dr. Temple said as planning had continued it looked like there were funds available to extend their mission. Attorney Hanna noted Dr. Temple is the Chairman of Board of Directors of The Prospect-Woodward Home.

Jim Phippard of Brickstone Land Use Consultants LLC of 185 Winchester Street, Keene, NH approached the Board. Mr. Phippard said he wanted to go over the background information that led to the new site for the Hillside Village project, design of the project and the reason for the Variances for height.

Mr. Phippard revealed a map of the land to the Board members and pointed out two tracts of land. One tract of land was 0 Wyman Road and the other was 99 Wyman Road and both of properties were owned by the Lane's. Mr. Phippard said there was an existing single family home with a small shed on 99 Wyman Road and across the street at 0 Wyman Road there was a very large barn with three separate outbuildings. He continued showing the Board where the Wyman Road was located on his map.

Mr. Phippard said his firm was retained in 2011 to do the initial site search to assist Prospect Place in identifying potential properties for the development of a continuing care retirement community. He continued stating his firm identified information on over 200 properties in the City of Keene. Mr. Phippard noted they were looking for properties that had good access to road and highway systems and City utilities such as water and sewer for large buildings and specifically fire protection. He continued saying they wanted a property that was in a unique setting that would be a good place to live and close to downtown Keene. Mr. Phippard said the land would also need to be a large enough area in case of expansion. Those requirements then narrowed down the list of properties to a couple dozen. Mr. Phippard said they visited the sites and researched topography, wetlands, soils, vegetation, road access and distance to utilities. He said the list was then narrowed down to four specific properties and they developed concept plans for those sites. After looking at those sites Mr. Phippard said they ended up with two sites that the petitioner tried to purchase. Mr. Phippard noted the petitioner was unable to purchase those properties. He continued stating that there was a short time period when there was no site available. Mr. Phippard said that was when the two sites on the Wyman Road became available and his firm then conducted the same exercises as done on the other properties. He continued saying that several of the features that existed on the properties on the Wyman Road created site constraints that limited the design on the property. Mr. Phippard said the original design consisted of 26 cottages that were separate buildings. He continued to explain that the cottages would be a part of the independent living units as well as a larger community building that would house administrative offices and support services. Mr. Phippard said that design was not possible on the site and showed the Board the steep slopes on the map. He continued stating that on the bottom of the steep slope they found wetland areas because of the water running downhill. Mr. Phippard noted this caused a limitation as to what they were able to do on one side of the road without some significant environmental impact. He said on the east side of the road there were also some areas of steep slopes and an expansive flat area. A large portion of the flat area described by Mr. Phippard was a beautiful open field and a large forested wetland area. He noted the area was not a wetland year round. Mr. Phippard said in the field there was an area that had thick deposits of peat which was unsuitable for building.

Mr. Phippard said during the time period of 2011-2016 the City adopted more ordinances that further restricted development. He continued showing the area of land on the Wyman Road that the Keene Zoning Ordinances considered as prohibitive slopes and restricted alteration. Mr. Phippard showed the areas of precautionary slopes and limited disturbance that were permitted in those areas. He continued two of the previous Variances that were approved by the Board were related to the impacts of a small area of prohibitive slopes and additional areas in precautionary slopes. He noted there was a limit on the contiguous area that could be disturbed on a precautionary slope.

Mr. Phippard showed the Board an enlarged copy of the site plan that was approved by the Planning Board. On the site plan Mr. Phippard showed the Community Building that houses 117 individual apartments for independent living, administrative offices, common areas, dining rooms, recreational areas and an indoor pool.

The second building Mr. Phippard displayed was called Woodland Apartments that was to have 24 units of independent living. Mr. Phippard said the original design of 26 separate cottages was abandoned due to site constraints and the disturbance to steep slopes that would impact the wetlands. He said the Woodland Apartments was then designed in place of the original design.

Mr. Phippard said the second Variance the Board granted was to allow the height requirement to exceed the normal 35 foot height requirement for the Woodland Apartment building. He continued showing the Board that across the road at 0 Wyman Road was the Health Care Building. Mr. Phippard said the petitioner was asking for another height Variance to allow for a fourth floor on the portion that would exceed the height requirement of the Health Care Building. Mr. Phippard said this was a building that was designed to be built into the slope in that particular area. He continued stating that area has a naturally sloping terrain that went down the steep hill that slopes down to the north which drains to a wetland area to a small existing pond. Mr. Phippard explained that area was recognized in the site plan design and the new site plan was designed accordingly to maintain the drainage pattern. He continued in order to reduce the impact on the wetland and steep slope the petitioner asks for a Variance and to receive a Variance to exceed the height requirement to build up instead of out. Chair Pro-Tem Stout asked if the footprint would stay the same. Mr. Phippard replied that the footprint would stay the same. He continued, showing the Board the location of the retaining walls on the westerly side of the Health Care Building. Mr. Phippard said they would physically cut into the ground at that location and tests were conducted for the cutting to make sure it was done safely. He explained the retaining walls allowed to keep the profile of the building lower compared to what it would be if the building was on the existing surface. Mr. Phippard said they would cut ten feet into the ground at that location. He noted they were also stepping the building downgrade as it goes to the north and following the natural terrain and adding the floors down instead of up. The end result Mr. Phippard said was that the north face of the building would appear to be four floors.

Mr. Phippard continued showing the Board the elevations brought last year to this Board and the Planning Board. He noted everything was approved to that point. Mr. Phippard explained if someone drove along the south elevation point of the Wyman Road the face of the building would appear as a two story building facing the roadway. He explained that was designed intentionally to respect the character of the neighborhood and to reflect a building design that was compatible to other neighborhood buildings. Mr. Phippard said if someone drove by the property continuing northerly along Wyman Road they would

see the easterly elevation of the building to some degree. He continued showing the area of the east elevation that was a covered area. Mr. Phippard said that covered area represented a drop off area for the residents at the front of the building so the residents would not need to go out into the weather. Mr. Phippard showed the location of the main entrance of the building and showed the two story section. He noted how one could see how the height was held and continued through the back of the building fitting their design of a three story building very well. Mr. Phippard said as the terrain dropped down to the north they followed the terrain that allowed them to develop the three story profile.

He continued stating the request before the Board is to allow an additional story along the northerly end and easterly side of the Health Care Building. The south elevation will remain as a two story profile. Mr. Phippard noted the difference was the roof in the background that was extended to the back of the building to accommodate the additional floor. The additional height is the requested Variance of 56 feet. Chair Pro-Tem Stout asked about the ghosted windows on the site plan. Mr. Phippard replied that was the structure behind the retaining wall in the courtyard area. He continued showing the retaining wall on the site plan that went around the "courtyard well" that was approximately ten feet wide that allowed occupants to come out on that level and up a stair to the courtyard. He explained that was ghosted on the site plan to show the extent of where the units were located and how residents would gain access. Mrs. Zerba asked where someone would be on Wyman Road to see the facility. Mr. Phippard replied by showing a photograph he had taken out in the parking lot of Miracles in Motion. He showed the location of Miracles in Motion and then looking south to the existing barn on the site plan to see the scale of the buildings located next to one another. He noted the existing barn is close to the road and also very tall. Mr. Phippard said he took the photograph to show the setting of the location of the building. He showed the sloping terrain down to the existing wetland area and the background of the tall trees. Mr. Phippard noted these trees are not as tall as they appeared because they are growing on the steep slope. He continued by putting the building in that location and cutting into hillside would help to diminish the appearance of the height of the building. Mr. Phippard said all trees along the roadway of both sides will remain and will be a filtered view through the trees.

Mr. Gorman asked Mr. Phippard to go back to the revised drawing to see the view of the building straight on. He continued asking if that was a gable end shown on the fourth floor and would in no way look like a two story building in the front. Mr. Phippard replied the gable was set back 80 feet from the front lineage with a street view of a two story building.

Chair Pro-Tem Stout asked where the HVAC systems were located. Mr. Phippard said the HVAC systems were cut into the roof lines on the roof pockets. He noted the HVAC units were on the west side of the ridgeline on the Health Care Building and located in

the roof pockets so they were not visible. Mr. Phippard said the architect did a good job in recognizing the site constraints and sensitivity to the design of the neighborhood but also put in features which would diminish the façade of the long building.

Mr. Phippard continued showing the Community Building that also had the two story façade along the Wyman Road. He continued stating that the petitioner received a Variance on the backside of the Community Building to go to 62 feet in height above grade plane. Mr. Phippard said that allowed four levels of residential units and parking under the building. He noted that there were actually five levels at this location and that was approved. Chair Pro-Tem Stout asked if the Variance if approved was an increase to height above grade plane. Mr. Phippard replied yes. Chair Pro-Tem Stout said the height above grade plane means that the overall average height of the building may be higher than 56 feet in some locations. Mr. Phippard replied yes at the most extreme point.

Mr. Phippard continued explaining there were concerns from Miracles in Motion. He said they were concerned that the height of the building would have an effect on their property value. Mr. Phippard said he understood that reaction and how it would sound like a tall looming structure hanging over property. He continued they determined the height of the existing barn and shot the elevation. Mr. Phippard said that the elevation came in at 612 feet in elevation and the elevation of Wyman Road that existed in front of the barn only 15 feet away was at an elevation of 564 feet. He noted the height of the building was 610 feet and was two feet lower than the existing barn. On site plan Mr. Phippard showed the existing barn at the closest point to Miracles in Motion was measured at 340 feet away. He noted the Health Care Building at its closest point was measured at 320 feet from Miracles in Motion. Mr. Phippard said even though it was 20 feet closer it was 2 feet lower in height than the existing barn.

Mr. Phippard said based on his experience as a land consultant improving the roadway and extending water and sewer will help enhance the property values next door. Chair Pro-Tem Stout stated it seemed the three phase power would not go all the way out to the property. Mr. Phippard showed where the three phase power would end and stated it was a very short extension to get the power out to Miracles in Motion. Mrs. Zerba asked Mr. Phippard if he would have to go back to the Planning Board for the addition. Mr. Phippard replied yes because it was a modification to the site plan. Mrs. Zerba asked Mr. Phippard if he anticipated additional trees as a buffer. Mr. Phippard replied it was difficult to screen with trees when the terrain is dropping down in grade.

Attorney Hanna came forward to review the five criteria:

- Granting the Variance would not be contrary to the public interest because there was a great need for this facility in Keene. Attorney Hanna continued it was important from a general perspective that the purpose of the height going up was to reduce the footprint scope on the impact of wetlands and steep slopes. Attorney

Hanna said virtually any site encountered for a project of this size would have impacts to environmental conditions. He continued these impacts are addressed based on the site. Attorney Hanna acknowledged this was a large project but will also be a wonderful place to live because of the site itself. He continued the architectural goal was to have the façade that would be most visible as a two story façade more consistent to the neighborhood and area. Attorney Hanna said they believed it was in the public's interest to have a taller building on the site to limit the footprint and on the particular project there will be no expansion on the approved footprint. He continued stating the proposed is incrementally a small change compared to what had already been approved.

- The general purpose of the height requirement was regulated to maintain characteristics of light and air. Attorney Hanna said they believed this location given the distance from neighboring properties that the light and air qualities were maintained from the proposal. The effort to maintain rural character was from a combination of both the articulation of the structure and design by looking from north and south with the façade of two stories.
- Attorney Hanna said granting the Variance would do substantial justice because the 15 additional assisted living beds are essential to support the estimated 200 residents in the 141 units. He continued stating that the nonprofit mission was to serve the community as best as possible and to continue the mission by accommodating elderly people that needed assisted living directly from whatever circumstance the resident may have faced. The balancing aspect they believed was the need and requirement of the facility to have the additional 15 spaces when compared to those benefits of the project owner with the loss that the public would endure by having the Variance denied. Attorney Hanna said by looking at the balancing test that was laid out in the application the Board would find in favor of the Variance.
- Mr. Hanna said if the Variance were granted the surrounding properties values would not be diminished. He continued they have discussed the articulation, the steep slope and also submitted with the application an opinion letter from Powers, Smith & Associates Real Estate Appraisers & Consultants. Attorney Hanna gave the Board copies of the letter and then read the letter that was dated January 3, 2017. The letter stated it was the opinion of Susan Tierney with Powers, Smith & Associates that allowing the expansion of the Health Care Center from three stories to four as proposed, would have no measurable impact on the market values of the abutting and nearby properties. Attorney Hanna reiterated it was the articulation of the building and the fact that the building will be no higher than the existing barn and more importantly the building will be to the west of the barn into the steep slope. He continued based on this information it minimized the impact by looking incrementally at what was originally designed to be at the location.

- Attorney Hanna said the unnecessary hardship special conditions referred to the uniqueness of the property with the topography, wetlands and steep slopes that clearly distinguished it from other properties. He noted it was a magnificent property for a retirement community with respect to the vistas that looked toward Mt. Monadnock.
- Attorney Hanna said there was no fair and substantial relationship that existed between the general public purpose of the ordinance provision and the specific application. He asked the Board to consider the incremental change from the prior approvals. Attorney Hanna said the main purpose of the Zoning Ordinance as it related to height was to maintain the character of the rural areas as well as the light and air of the surrounding areas. He said the petitioner had met all of those tests.
- Attorney Hanna said the proposed use is a reasonable one in several respects. He said one was that Miracles in Motion was an institution and there should have been some approvals as it related to the institutions character. He continued no one objected to Miracles in Motion going to that location. Attorney Hanna said Miracles in Motion was a great facility for the City but said it had the characteristics of an institution by looking at the definition of institutional use. He said it was reasonable to have two institutional uses near one another and that Hillside Village is hopeful in its interest to have a symbiotic relationship with Miracles in Motion.

Chair Pro-Tem Stout opened the public hearing.

Chair Pro-Tem Stout recognized Karla Hostetler, Executive Director of Miracles in Motion, 118 Wyman Road, Keene, NH. Ms. Hostetler said she came into the process fairly late but wanted to give the background of Miracles in Motion. She said they serve about 200 people every year so there had been a lot of talk of Hillside Village and it seemed there had been a lot of weight given to the importance of its residents. Ms. Hostetler said that was true and they had seen the importance of Hillside Village project. She stated Miracles in Motion was a facility that many people in the community had invested in for 19 years and had been located at their current location for 15 years. Ms. Hostetler said they purchased the property for \$350,000 because of the beautiful valley. She said Miracles in Motion is an institution but is also an equine facility. She continued stating that the facility consisted of an indoor arena, horse turnout, outdoor ring and an area for summer camps. She noted this area that consisted of a string of apple trees with picnic tables was their only outdoor area. Ms. Hostetler said they have listened through this process and things that are meant to protect their property and investment are kind of waived aside. She continued saying that they have tried to see the importance of the Hillside Village project as well the benefits offered to Miracles in Motion and the community. Ms. Hostetler said it should be acknowledged that more people for Miracles in Motion are not necessarily better. She continued that their riders are people with severe mobility limitations, PTSD, autism and there are concerns. The concerns stated were of an increase of traffic on the street, people walking onto the property to pet the horses, people touching the electric fences and all of these things will bring a cost in order to manage their liability and safety of people.

Ms. Hostetler said they have tried to think about how they could create an education so people will understand the importance of the work at Miracles in Motion. She noted how they have really tried to be good neighbors. Ms. Hostetler said there needed to be a point in the process where their interests have to be heard. She continued that they understood how another story added to the Hillside Village project would be of interest to create the additional 15 rooms. For Miracles in Motion, she said this was a pretty big deal for them and this additional story was in their direct line of sight and everything in their parking lot comes in that area. She noted their entrance looked out on the Hillside Village Building and their camps and picnic are visible from that location. Ms. Hostetler said the site plan could depict the Hillside Village project being further away than the actual distance. She referenced the short distance of a pond between the Miracles in Motion Building and the Hillside Village Building.

Ms. Hostetler said they have discussed if they could afford to sell the property and move Miracles in Motion. She asked who would buy their land. Ms. Hostetler reiterated they wanted to be good neighbors and said the project was bad news for them. She continued it was arguable whether the Hillside Village project detracts from their property value. Ms. Hostetler thanked the Board for their time.

Mr. Hanna responded to the concerns of Ms. Hostetler and said the request was for 15 beds for assisted living patients. He continued the impact other than visual impact stated by Ms. Hostetler had been addressed extensively. Attorney Hanna said the impact from the incremental change requested in terms of noise and traffic was negligible. He said the incremental change requested would not make a big of a difference of what was previously approved. Mrs. Zerba asked Attorney Hanna if he had been in constant contact with Miracles in Motion to accommodate the change. Attorney Hanna replied yes and had tried to be as transparent as possible throughout the process.

Mrs. Zerba said she assumed as the project progressed they would continue talking with Miracles in Motion if an issue occurred. Attorney Hanna replied yes and that the developer as well as the contractor will have meetings with them during construction. He noted if there are trees that could be planted Hillside Village would look into that option. Attorney Hanna said he had seen in other areas where trees had to be planted on the abutter's property. He continued stating that they would certainly discuss this with Miracles in Motion as an option in order to be effective.

Mr. Stevens asked Attorney Hanna to address the concern of people walking on to the property of Miracles in Motion. Attorney Hanna replied he did not think there would be walkers from that area of the facility. He continued if there were walkers their orientation would be toward the east or to the south. Mr. Stevens asked if there were any pathways planned. Attorney Hanna replied that there are pathways planned for the area referred to as the "peat area" on the east side of the project where Black Brook went through. He continued they had proposed with the Heritage Commission, EPA and Department of Environmental Services their desire to install a mile trail on both sides of Black Brook.

Ms. Brander asked Attorney Hanna what was directly to the west of the Health Care Building. Attorney Hanna replied that was a steep slope and on the other side was

Corporate Park. Mr. Phippard came forward to the Board locating this area on the map for Ms. Brander.

With no members of the public chose to speak at this time, Chair Pro-Tem Stout closed the public hearing.

Chair Pro-Tem Stout explained the process of discussing the application amongst the Board to Ms. Brander.

Chair Pro-Tem Stout began the discussion on the possibility of planting trees as a buffer to Miracles in Motion. He asked the Board if they wanted to consider this as a condition that if trees were planted they were planted as a screen. Mr. Gorman said based on Mr. Phippard's statements about the elevation the tree would have to be quite large. Chair Pro-Tem Stout said he was ultimately concerned with some screening. Mrs. Zerba said she believed the two parties will talk and come to a mutual decision that was acceptable to both parties. She continued saying that she did not see a condition was necessary. Mr. Stevens said if it was a concern there would be nothing on paper to prevent this from not happening. Ms. Brander said it would not be nice to the residents of Hillside Village to have trees up against their windows. Mr. Gorman said given the lay of the land there was plenty of distance between the two properties so that if both parties agreed to a natural vegetative buffer to create some acoustical barriers.

Chair Pro-Tem Stout stated perhaps the Board should put some language regarding the planting of trees to be determined administratively for appropriateness. Mr. Schneider said the petitioner would need to go back to the Planning Board and that this Board could make a request to have the Planning Board consider the particular subject. Chair Pro-Tem Stout said it was probably a better issue for the Planning Board. Mr. Schneider said if the Board put parameters on the landscaping it could go against what the Planning Board could configure. Chair Pro-Tem Stout said a recommendation to the Planning Board was a good idea as opposed to a condition.

Chair Pro-Tem Stout asked the Board to discuss each criterion with a motion.

Granting the Variance would not be contrary to the public interest:

Mrs. Zerba said no, she realized that it was adding another large story and every effort had been made to give the appearance of two stories. She continued by putting the fourth floor into the slope did diminish the size of the building. Mrs. Zerba said by increasing the floor level would have a less environmental impact and kept at a minimum. Mr. Stevens said he agreed with Mrs. Zerba and that it was a large building. He continued stating that the Board was looking at the addition of one floor and not adding a whole building. Mr. Stevens said the building was already approved and what had been proposed is not an enormous difference and is not contrary to public interest. Mr. Gorman said that it was necessary to point out that the situation had already been granted a Variance in terms of the building and would now make it an even greater nonconforming situation. He continued saying that he did not think one could put a lot of credence on the fact that a Variance was already approved and the situation was important because a

Variance was already needed to be approved. Mr. Gorman said it did have more of an impact on top of an already impactful situation.

Ms. Brander agreed that this did not seem contrary to the public interest and there is a need in the area for this institution. Chair Pro-Tem Stout said there were two things that stood out to him. The first, Chair Pro-Tem Stout said the building itself would not be silhouetted. Secondly, he said the general height of the original structure (existing barn) being in one location is taller than the proposed building to be built.

If the Variance were granted, the spirit of the Ordinance would be observed:

Mrs. Zerba said every effort had been made to keep the front façade so it appeared there were only two stories. She said it would not create a threat to the public health, welfare and safety. Mrs. Zerba said they have reconfigured the road to improve the line of sight and will also improve public safety. She said the spirit of the ordinance would be observed. Mr. Stevens said he agreed with Mrs. Zerba and was in favor of the first application last year and the addition had not changed his mind. Chair Pro-Tem Stout agreed with Mr. Stevens.

Granting the Variance would do substantial justice:

Mrs. Zerba said she would agree the Variance would do justice because the loss of not permitting the additional floor would be much greater to the applicant as detriment to the community and general public. She continued without the additional 15 assisted beds she believed it could put the entire project in jeopardy. Chair Pro-Tem Stout said he did not take lightly the reference to the increase of 15 beds to be essential and did not doubt the nature of that language.

If the Variance were granted, the values of the surrounding properties would not be diminished:

Mrs. Zerba said the additional floor would not diminish the surrounding properties. Mr. Stevens agreed and referenced the letter from Powers, Smith & Associates. Mr. Stevens said based on that letter he felt comfortable standing by their reasons discussed in the letter.

Unnecessary Hardship

E. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

ix. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property:

Mr. Stevens said because of the way the property is situated with the hills clearly demonstrated going further backward is not possible and expanding into the hillside is also not possible. He continued bringing things closer to the property line of Miracles in Motion was a worse solution. Mr. Stevens said going up was the reasonable step to take. Mrs. Zerba agreed and said to allow this Variance not to occur would cause an unnecessary hardship.

x. The proposed use is a reasonable one:

Ms. Brander said based on what was presented earlier in the meeting was fairly reasonable considering the quasi institutional business and quiet nature of the building. Mr. Gorman said ultimately the use has already been granted. Chair Pro-Tem Stout said he would agree that the Variance was already established and that the proposed use was a fair and reasonable one.

Mrs. Zerba made motion to approve ZBA 17-01 to a permit a building up to four stories and up to 56 feet in height above grade plane on a lot in the Rural District where a maximum of two stories and 35 feet in height is permitted and conditioned on a possible vegetative screening be reviewed administratively by the Planning Department. The motion was carried unanimously by the Board.

Chair Pro-Tem went over the Findings of Fact:

Granting the Variance would not be contrary to the public interest: Granted -5-0

If the Variance were granted, the spirit of the Ordinance would be observed: Granted 4-1, Mr. Gorman opposed.

Granting the Variance would do substantial justice: Granted 5-0.

If the Variance were granted, the values of the surrounding properties would not be diminished: Granted 4-1, Mr. Gorman opposed.

Unnecessary Hardship

E. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

ix. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property: Granted 5-0.

x. The proposed use is a reasonable one: Granted 5-0.

On a vote of 4-1, The Zoning Board of Adjustment approved ZBA 17-01.

5) New Business

No new business was discussed. The Board held introductions with the new Board member, Ms. Brander.

6) Communication and Miscellaneous

7) Non Public Session (if required)

8) Adjournment

Hearing no further business, Chair Pro-Tem Stout adjourned the meeting at 8:11 PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker