

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
MONDAY, SEPTEMBER 23, 2002

The Board consisted of:

Mark A. Kablack, Chairman
Patrick J. Delaney III, Clerk
Thomas W.H. Phelps
Jonathan G. Gossels
Stephen M. Richmond

The public hearing was reconvened by the Chairman, Mr. Kablack who summarized the events of the last hearing, the end result being a continuance to allow Mr. Muldoon to meet with the neighbors and report back if there was a further revision of the plan.

Mr. Muldoon said at the moment he was in a holding pattern. Since the last hearing, he said he had his property surveyed and it turns out the lot lines are not consistent with the current plot plan. Therefore he is having a certified plot plan drawn up. He was requesting a further continuance to allow for receipt of the plan in order to present a proper plan to the Board.

Mr. Kablack asked why Mr. Muldoon felt there was a discrepancy.

Mr. Muldoon said the plot plan on file with the town indicates approximately 31 feet from the edge of his house to the back property line. The survey came out with 44 feet.

Mr. Kablack asked whether the plan was being drawn by a registered land surveyor.

Mr. Muldoon said it was.

Mr. Kablack said he asked the question because it would have to be more than what people typically refer to as a plot plan; that Mr. Muldoon was in fact trying to reconcile or correct information that has been in place for a number of years. Therefore, he would caution Mr. Muldoon to look into exactly what his surveyor was preparing.

Mr. Kablack asked what affect would there be on the project should it turn out the property is deeper than was previously thought.

Mr. Muldoon said it could modify the shape; he may or may not have a setback problem, which is why he was requesting a continuance.

Mr. Kablack suggested the possibility of withdrawing without prejudice and then resubmitting when the property bounds are known and exactly what project is proposed. He

explained that his tenure on this Board is ending and if this hearing is continued, this Board will have to be kept intact to do so. Whereas if the petition is withdrawn and then resubmitted, it gives flexibility to have a Board with whoever is available.

Mr. Kablack further explained that withdrawal would be without prejudice to Mr. Muldoon, and Board usually waives its filing fee for resubmittals in such situations. Also, if after looking at the finalized survey, it is decided that no relief is needed, no further action would have to be taken.

Mr. Muldoon was agreeable to Mr. Kablack's suggestion and requested he be allowed to withdraw his application without prejudice.

The following motion was placed and seconded:

MOTION: "To accept the applicant's request to withdraw Petition 02-32 without prejudice."

VOTED: In favor: 5 (unanimous) Opposed: 0

Mark A. Kablack, Chairman

Patrick J. Delaney III, Clerk

Thomas W.H. Phelps

Jonathan G. Gossels

Stephen M. Richmond

MARK & DONNA SHAW
65 Lakewood Drive
02-39

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
MONDAY, SEPTEMBER 2, 2002

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Richard L. Burpee, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels
Melinda M. Berman, Alternate

The public hearing for Case 02-39 was reconvened by the Acting Chairman, Mr. Delaney, who noted that the purpose of the continuance was to obtain clarification from the Conservation Commission with regard to a Notice of Violation which was sent to Mr. Shaw, but never received by him.

Mark Shaw was present to explain that he had contacted the Commission. He learned that the violation notice was sent to the wrong address.

Following his discussions with the Conservation Coordinator, Mr. Shaw said agreement was reached with regard to resolving the violation issue. The area of the violation was not where the proposed farmer's porch was to be located. This was also confirmed by the ZBA Secretary who also spoke with the Conservation Coordinator.

There were no further questions from the Board. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Mark & Donna Shaw, owners of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to alter and enlarge a nonconforming structure by constructing an 8X32 foot farmer's porch which will result in a side yard setback deficiency of 11 feet \pm , property located at 65 Lakewood Drive, Residential Zone A."

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioners require a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed construction, which will result in a side yard setback deficiency, will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The proposed farmer's porch will be aesthetically compatible with the existing architecture and will enhance the appearance of the structure. In addition, several abutters were present at the public hearing to voice their support of the petition.

MARK & DONNA SHAW
65 Lakewood Drive
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Patrick J. Delaney III, Acting Chairman

Richard L. Burpee, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels

Melinda M. Berman, Alternate

THOMAS & FAITH CHEN
170 Hudson Road
02-40

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
MONDAY, SEPTEMBER 23, 2002

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Richard L. Burpee, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels
Stephen M. Richmond

Notice was published in the Sudbury Town Crier on September 5 and 12, 2002, posted, mailed and read at this hearing.

Mr. Delaney, Acting Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Faith Chen was present to represent a petition for renewal of Special Permit 00-28 to conduct an antique business in a barn on the property at 170 Hudson Road. Ms. Chen was requesting renewal under the same condition as the previous permit. She said there have been no complaints from abutters with regard to the business.

There were no questions from the Board. No abutters were present to oppose renewal. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Thomas M. & Faith A. Chen, owners of property, renewal of Special Permit 00-28, under the provisions of Section 2340 of the Zoning Bylaws, to conduct a Home Business, specifically the sale of antiques in a barn on the property located at 170 Hudson Road, Residential Zone A, provided that:

1. There will be no permanent outside displays except for temporary display next to the barn during business hours only.
2. A sign in conformance with the Bylaw will be allowed.
3. No flags or banners relating to the business shall be displayed on the premises.

THOMAS A. & FAITH CHEN
170 Hudson Road
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4. Hours of operation shall be from 9AM-5PM, seven days a week.
5. No more than one person other than residents of the property will be regularly employed.
6. The sale of antiques shall be confined to the partitioned area of the barn separate from the main barn.
7. No parking will be allowed on Hudson Road.
8. This permit is non-transferable and will expire in two (2) years on September 23, 2004, and the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioners require a special permit to conduct an antique business. The business has been operating without incident since 1999. The Board finds this business to be incidental and secondary to the use of the premises as a residence. It is in harmony with the general intent and purpose of the Bylaw, in an appropriate location and does not by its presence significantly alter the character of the zoning district. The Board notes that no abutters were present to oppose renewal and finds a two-year renewal period to be appropriate.

Patrick J. Delaney III, Acting Chairman

Richard L. Burpee, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels

Stephen M. Richmond

ERIC & JENNIFER GOORNO
41 Candy Hill Lane
02-41

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
MONDAY, SEPTEMBER 23, 2002

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Richard L. Burpee, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels
Stephen M. Richmond

Notice was published in the Sudbury Town Crier on September 5 and 12, 2002, posted, mailed and read at this hearing.

Mr. Delaney, Acting Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Eric Goorno was present to represent a petition for Special Permit to allow demolition of an existing residence and construction of a new residence on a non-conforming lot. The property comprises 3.64 acres. It is nonconforming because the frontage of 172.23 feet is less than the required 210 feet in Residence Zone C. It is proposed to construct a house not to exceed 5,200 which will conform to all the setback requirements.

The Board reviewed the plans which were submitted with the application.

Mr. Delaney asked whether the house as shown on the plan is the actual location and whether Mr. Goorno would be occupying the new residence.

Mr. Goorno replied in the affirmative to both questions. He said he has done some perc tests which allow for the house to be in the proposed location. He would also like to live in the old structure while the new one is being constructed.

Mr. Delaney pointed out that in an attempt to achieve a timely construction and demolition period, the Board has established guidelines in the form of conditions which are placed on Special Permits.

Mr. Goorno had no objection to a condition being placed on a Special Permit.

There were no further questions. No abutters were present. The hearing was closed.

ERIC & JENNIFER GOORNO
41 Candy Hill Lane
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After deliberation the following motion was placed and seconded.

MOTION: "To grant Eric B. & Jennifer L. Goorno, owners of property, a Special Permit under the provisions of Section 2460 of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence not to exceed 5,200 s.f., on a nonconforming lot, which will exceed the area of the original nonconforming structure, said residence to conform to all zoning setback requirements, property located at 41 Candy Hill Lane, Residence Zone C, subject to the following:

1. The new dwelling will be completed within twelve (12) months from issuance of a Building Permit, and the old structure will be demolished within six (6) weeks from the issuance of a Certificate of Occupancy for the new residence."

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioners require a special permit due to the nonconforming nature of the property. The Board finds that the proposed construction of a new residence, which will exceed the area of the original nonconforming structure, will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The proposed structure will conform to all setback requirements and is consistent with other houses in the neighborhood which have been constructed or upgraded.

Patrick J. Delaney III, Acting Chairman

Richard L. Burpee, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels

Stephen M. Richmond

TAMSEN & VINCENT QUIRK
Lot 4B – New Bridge Road
02-42

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
MONDAY, SEPTEMBER 23, 2002

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Richard L. Burpee, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels
Stephen M. Richmond

Notice was published in the Sudbury Town Crier on September 5 and 12, 2002, posted, mailed and read at this hearing.

Mr. Delaney, Acting Chairman, explained the requirements necessary to substantiate the granting of a variance. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Vincent Quirk was present to represent a petition for a Variance to construct a single-family dwelling which will result in a rear yard setback deficiency. The property contains 105,802 s.f. in an area with 180 feet of frontage.

Referring the Board to Drawing #1 submitted with the application, Mr. Quirk said that although this is a large lot a portion of it is bordered by a brook. There are issues inasmuch as there is a 200-foot buffer zone which precludes any construction in that area without permission from the Conservation Commission. He said the riverfront area severely limits the options for placement of the house.

Because of the resulting small building envelope, Mr. Quirk said he was forced to turn the house sideways. This is shown on Drawing #2 which depicts the house conforming to the setback requirements. The front of the house faces the right property line, the garage doors face the closest neighbor and the right side of the house faces the rear property line. With this proposal there will be 5 feet between the driveway and the rear property line of Lot 3B if the house was required to be built within the allowed setbacks. Moving the house back 10 feet will create a setback deficiency. However, it will provide more space between the driveway and Lot 3B.

Mr. Phelps asked whether the driveway has been partially constructed. Mr. Quirk replied that it has been constructed up to Lot 4B. Mr. Phelps commented that there are wetlands issues associated with access to the lot.

TAMSEN & VINCENT QUIRK
Lot 4B New Bridge Road
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Mr. Quirk said all the neighbors have voiced their support of this proposal as it will provide more screening between the lots and New Bridge Road. He added that by moving the house back further, even though it encroaches on the rear lot line, that property is owned by the Dept. of the Interior and will present no problem to that agency.

With regard to hardship, Mr. Quirk said a literal enforcement would result in a rear yard setback being applied to what is clearly the side of the house.

The Board reviewed Drawing #2 further. There were some concerns as to whether the house could be turned to face forward and still fit within the setbacks. Mr. Quirk said this could not be done as he would then have to go to the Conservation Commission. He said although it is a large lot, much of it is not buildable.

With regard to hardship, Mr. Delaney pointed out that although the orientation of the house was such that the side faced the rear property line, it does not change the fact that as far as the Bylaws are concerned, it is still a rear lot line.

Mr. Phelps noted that he has noticed houses which are built in the most peculiar locations and look like no planning was done with regard to siting or lot configuration. He said the reasons for some of them may be because someone created situations like this where the only way a house could be built was to skew it.

The Board was not convinced that the house could not be built facing front. While there is much area that is not buildable, it appears that there might be a better way to orient the house to the neighborhood.

Mr. Gossels asked whether the applicant would be willing to consider a continuance and look at an alternative location consistent with the other houses in the neighborhood. Mr. Quirk said he was not inclined to do so as he has put considerable time into this project and this would put his timetable back 2-3 months.

Mr. Phelps said it appears that a house can be built without the need for a variance.

Mr. Quirk agreed; however, he felt the resulting house with the driveway close to the abutting property would create a hardship for that abutter.

Mr. Richmond asked whether the house, if built as proposed, would be visible from the street. Mr. Quirk said it was possible from a certain angle from the driveway.

The Board agreed to hear the remaining petition and continue this hearing to the deliberation process.

TAMSEN & VINCENT QUIRK
Lot 4B New Bridge Road
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Continuing this hearing, the discussion focused on alternate locations. Mr. Phelps said although the neighbors were in favor of the petition, there were no alternatives proposed to weigh in on.

From the plan provided, Mr. Gossels said he did not have a sense that this proposal was the better location.

Before closing the hearing, Mr. Richmond asked if Mr. Quirk would rethink a continuance.

Mr. Quirk reiterated that he would prefer not to for the reasons stated earlier.

There being no further input, the hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Tamsen & Vincent Quirk, applicants, Pantry Brook Farm Corporation, owner of property, a Variance from Section 2600, Appendix B, of the Zoning Bylaws, to construct a single-family dwelling which will result in a rear yard setback deficiency of 10 feet ± property shown on Town Map G10 as Parcel 604, Lot B, New Bridge Road, Residential Zone A."

VOTED: In favor: 3 (Phelps, Richmond, Burpee) Opposed: 2 (Delaney, Gossels)

PETITION DENIED

REASONS: The Board found that the application did not meet any of the four conditions prescribed for a Variance required by the Zoning Enabling Act, Chapter 40A.

Special Conditions

The property shape is not a condition which affects the property in question and is similar to that of other properties in the district. The Board recognizes the limited front access due to wetlands and the need for access through a right of way, but finds that this characteristic is unrelated to the requested variance since a building of significant dimensions can be legally constructed without infringing on setback requirements.

Hardship

The applicant maintains that the setback required under the present zoning will result in a driveway which is close to an adjoining lot line and is a hardship for the owner of a neighboring property. The Board concluded that the hardship threshold established by statute applies to the

applicant and not to third parties. During the public hearing, the applicant testified that the building could easily be built without relief from zoning. Taking the applicant at his word, the Board finds that no hardship exists.

TAMSEN & VINCENT QUIRK
Lot 4B New Bridge Road
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Detriment

The Board finds that the applicant failed to prove that a substantial detriment to the public good would result from the construction of the structure within the required setback.

Derogation

The Board finds that the proposed building location would nullify or substantially derogate from the intent and purpose of the Bylaw in that a main thrust of the setback bylaw is to provide significant separation between structures and lot lines. While the granting of the variance would have increased the separation between a driveway and a neighboring lot line, driveways are not structures as defined in the Bylaw. Buildings are structures as defined in the Bylaw, and the effect of granting the variance would have been to decrease separation between a building and a lot line. This is clearly opposite to the intent of the Bylaw.

Patrick J. Delaney III, Acting Chairman

Richard L. Burpee, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels

Stephen M. Richmond

VERRILL ET AL
Northwood Properties
138 North Road
02-43

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
MONDAY, SEPTEMBER 23, 2002

The Board consisted of:
Patrick J. Delaney III, Acting Chairman

Richard L. Burpee, Acting Clerk
Thomas W.H. Phelps
Jonathan G. Gossels
Stephen M. Richmond

Notice was published in the Sudbury Town Crier on September 5 and 12, 2002, posted, mailed and read at this hearing.

This petition is an appeal by Messrs. Verrill, Wagner and Tyler of a decision of the Building Inspector not to revoke Building Permit #00-150 for the revised Northwood At Sudbury Activities Center, located at 138 North Road, owned by Northwood Properties LLC.

Ralph Tyler said this is something the Board has never been discussed before in previous appeals. He said the changes made to the activities building occurred subsequent to the Board of Appeals' Decision relative to the activities building in the previous appeal.

He said this appeal is a procedural issue and the issue before the Board is that the Selectmen issued a site plan special permit for the Northwood activities center. In that decision they specified a specific design, and that if the design were to be changed, it requires approval of the Selectmen.

Mr. Tyler said the developer took it upon himself to completely revise the building. He went to the Building Inspector and got a revision to their building permit. They never went through the Selectmen and Mr. Tyler believed this was a violation of the terms of approval of the site plan.

The issue is that there was no approval by the Selectmen. Mr. Tyler was asking the Board to say that when Board's issue decisions and impose conditions, they should be followed. He said the procedure involved in the change of the design as specified in the Selectmen's Site Plan Rules & Regulations requires the calling of a public hearing where the applicant speaks to his request for change and why it should be allowed, and it affords the input from the public.

Mr. Tyler provided an overview of the exhibits which were submitted with this appeal. Exhibit A reflects the plans that were initially approved by the Selectmen. Exhibit B reflects the revised plans. Exhibit A contains the signed approval by Building Inspector Hepting on August
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2, 1999. Exhibit B contains a note from Building Inspector Kelly dated January 15, 2002 that these plans have been changed and the new plans have been approved. The old plan (Exhibit A) for the activities center was a building that included a finished basement of 5,340 s.f. The revised plan (Exhibit B) contains a note by Building Inspector Kelly that the basement is unfinished.

Exhibit A shows the first floor containing 9,499 s.f. divided into several areas. Exhibit B shows 7,200 s.f. in an entirely different configuration. No dining room or function room.

Exhibit A shows the third story of 3,357 s.f. In their Site Plan Approval, the Selectmen approved an 18,152 s.f. building. The builder decided to build a 13,000 s.f. building – went to the Building Inspector – didn't go to the Selectmen to get approval – the Building Inspector probably not realizing that the condition of approval approved it since it met the building code.

Mr. Tyler referred to Attachment C which highlights a summary of the major changes to the plan.

It was Mr. Tyler's understanding, from the Norwood website, that the unfinished basement would be turned into storage closets for the residents. In the original plan the basement was to be primarily a fitness area for the residents, including locker area, showers and associates amenities.

The original first floor plan contains a dining room/function room and a fairly large kitchen which would be able to provide meal service on a 3-meal-a-day basis to any resident who wanted it.

The revised plan shows 10' X 9' 11" kitchen. Mr. Tyler felt that when this gets to the Selectmen they may have some questions about whether this change was wise and consistent with their understanding of what a residential care facility is. Mr. Tyler gave a brief description of the division of the remaining rooms on the revised plan and which is listed on Attachment C. He said the issue before the Board of Appeals is that there was no approval by the Selectmen.

The third floor, which contained some of the rooms which are now listed as being on the first floor, are non-existent in the new plan. Mr. Tyler believed these plans have demonstrated that what was approved is now an entirely new building. He said looking at the Selectmen's Decision and that supplemental memo he provided which contain excerpts from that Decision, there were three very specific references to the need to get approval of the Selectmen: The vote itself (page 16 of the Decision) says ".....together with five sheets of Elevations and Floor Plans dated August 11, 1997, must comply...." The next reference is Condition 9 (page 17) "final approval by the Selectmen of an accurate architectural rendering of the proposed building or change showing the front and side features as they will appear from the public way or private

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access." The third reference is Condition 25 (page 20) "Submission of an "as built" site plan. Any change in the physical condition of the site, including changes in the location or design of structures or systems, following approval of the site plan, will require approval of the Board of Selectmen and Building Inspector."

Mr. Tyler said Northwood hasn't gone through the first step. Therefore there has been no opportunity for public input.

Condition 27 says that no occupancy permits are to be issued until certain items noted and specified by the Board are complied with. This includes Condition 25. If Northwood was going to make changes, they needed approval of both the Selectmen and the Building Inspector before occupancy permits were to be issued. Mr. Tyler was requesting the Board of Appeals to order the Building Inspector to require that Northwood go to the Selectmen and get their approval for these changes. In the meantime, before they get approval, no more occupancy permits either for the activities building or any other units should be issued.

In summary, Mr. Tyler said this is a new issue. These changes were initiated by the developer subsequent to the previous appeal of the activities building.

Mr. Delaney said it has been difficult to follow the series of appeals. He asked whether this is the first appeal filed for the activities building.

Mr. Tyler said it was not. He said the first, and only, plan was filed against the original plan for the activities building because of all the problems and the contention that it was not a residential care facility. It had nothing to do with the revised plan. This change happened after the appeal.

Mr. Delaney asked whether this appeal is completely independent of the previous decision on the activities building.

Mr. Tyler replied that it was; it is for changes made subsequent to the previous Decision by the ZBA.

Mr. Delaney said he was asking these questions because the Board does not want to get into a situation where it gets into issues that were previously discussed, decided, and further appealed.

Mr. Tyler said the only issue before this Board is whether or not there is a Site Plan Decision that requires the applicant who wants to make changes to come before the Selectmen or whether they are free to ignore that part of the conditions of the permit and do whatever they

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want to do. He felt this has more implications for every Board in town because if the developers are sent the message that if a decision is issued, it means something – that they have to follow it. Mr. Tyler did not believe this was the Building Inspector's responsibility - it is the developer's responsibility.

Assuming the Board of Appeals has responsibility, once an appeal is filed, for enforcement of the conditions, Mr. Delaney referred to Condition 25, which requires submission of as built plans and changes to be reviewed by both the Selectmen and Building Inspector. He said it says as built site plan, which is fairly common because structures are not always built in conformance with the actual site plan. In Condition 25 there is no time frame. He asked Mr. Tyler why is it that he felt that the Selectmen and the Building Inspector cannot approve these changes at some point in the future prior to occupancy.

Mr. Tyler replied that in the footnote where he referred to the Selectmen's Rules & Regulations - this refers to Section 8 and says before implementing such changes, the applicant shall submit Form SP-4 entitled "Request for Modification".

Mr. Richmond asked what Mr. Tyler was requesting this Board to do.

Mr. Tyler said he read Condition 25 as something required before any change. He said this is not a minor modification. Northwood went to the Building Inspector and substituted one set of plans for another. He said the Board of Appeals should be able to tell the Building Inspector that he should not have agreed to change that building permit without approval from the Board of Selectmen, in accordance with the Decision. The Board's Rules are issued under a provision of the Zoning Bylaw and they are an integral part of that Bylaw.

Carrying it one step further, Mr. Delaney asked whether it was not true that at least one half of the two offices have approved the change. He said he has a letter from the Building Inspector.

Mr. Tyler said this building is an integral part of why Northwood is supposed to be a residential care facility and not just a luxury condominium for those 55 and over.

Mr. Richmond said while the Board may agree, he asked why Mr. Tyler was before this Board and not the Selectmen.

Mr. Tyler replied that the Board of Appeals is his recourse. He said he told the Building Inspector that he was incorrect in issuing a building permit before the Selectmen reviewed it, because the process under Section 8 of the Rules & Regulations, is that before changes are made, the applicant is supposed to submit form SP-4 and go through a hearing process. The public is

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supposed to be involved. Then, if the Selectmen like it, they approve it. He said the idea that major changes like this would be on some sort of an after-the-fact basis of approval – if that's standard operating procedure, the town will absolutely lose control of what site plan approval means.

Mr. Richmond said this Board is not in the business of enforcing the Selectmen's regulations.

Mr. Tyler said if those conditions are not being met, it is a violation of the Zoning Bylaw because the Site Plan Rules & Regulations are part of the Zoning Bylaws.

Mr. Tyler added that arguably someone could say we're going to add a window here or some other such change – that's not what he was talking about. He said this is a conscious deliberate scaling back of the property initiated without going through the approval process.

It seemed to Mr. Delaney that Condition 27 is a lot clearer because it requires a specific action on the part of the Building Inspector. He could see that if changes such as these are made and the Building Inspector issues an occupancy permit there's an obvious position to appeal.

Mr. Tyler said he does know that Northwood, since they made this change, has sold several units. He was not saying that those occupancy permits should be denied. He was saying no more until there is approval, and don't issue the occupancy permit for the activities building.

Mr. Gossels said he didn't read Condition 27 as saying that occupancy permits for units cannot be issued.

Mr. Tyler said the main issue is to get this before the Selectmen for approval to see if it's what they think is appropriate. He personally felt that there should be a moratorium as this is an integral issue of residential care vs. luxury condominiums.

To summarize, Mr. Delaney asked whether it was Mr. Tyler's position that the current plans reflect for the most part several cases of smaller amount of floor space for particular activities which are being readjusted for a purpose which is not in compliance with two conditions. And, as a result the Building Inspector should not have issued the building permit.

Mr. Tyler said the issue is whether someone can take a 3-story building, with 2 stories and a finished basement of 18,000 s.f., cut off the top story, leave an unfinished basement and compact it down to 6,000 or 7,000 s.f. of finished space.

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Mr. Delaney said in other words make it significantly smaller. That as a result it doesn't meet the conditions of the site plan approval and the Building Inspector should not have issued the building permit.

Mr. Tyler agreed.

Attorney Richard McCarthy, was present representing Northwood Properties. He said all Northwood did is take one story out of the building; the footprint remains the same. In the Selectmen's Site Plan Decision, what the Selectmen approved was a site – 5 buildings on the site, the location of those buildings, the ways, driveways, parking lot. If you look at that building when it's complete it will be substantially similar to what was presented for site plan approval.

Attorney McCarthy said the Selectmen do not approve the interior design of the building – what they approve is the location of the building. That has not been changed at all. The Building Inspector did have an opportunity to pass on this and it was called to his attention by Mr. Tyler that the Selectmen should first pass on it, and he disagreed and issued the building permit.

Attorney McCarthy would suggest that he did it because he saw it as substantially the same building without one story on top of it.

Attorney McCarthy said the irony here is that all along Mr. Tyler, Mr. Wagner & Mr. Verrill have been complaining that the project is too large and puts too much strain on the septic system.

This change would reduce the project and reduce whatever affect it would have to which they have complained and they are still complaining. He would suggest that if Northwood had built it in accordance with the original site plan they would still be here on some other issue.

Going through the list of changes that were submitted to the Board by Mr. Tyler, Attorney McCarthy said the exercise room was reduced from 12,000 s.f. to 375 s.f. – there is still an exercise room. The kitchen has been reduced from 225 s.f. to 110 s.f. The dining/function room has been reduced from 1,150 s.f. to 975 s.f. There are still two craft rooms. The conference room has not been eliminated, it's just smaller. The two offices are there as is the store and vending machines. Most importantly the swimming pool and the locker rooms are still there. What really motivated the changes were discussions with the occupants who were displeased with the fact that the locker rooms were in the basement. The idea was to get them on one floor and to meet other suggested changes.

Attorney McCarthy said this issue is distinction without a difference. The site plan that was submitted for the site is exactly the same. There is one building with one less floor. It

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makes no difference whatsoever to anybody. The conditions that must be met by Northwood in terms of what programs it provides are spelled out in the master deed which is on record. Those services and programs are still in effect and still will be provided. If they are not provided they can be enforced by the Selectmen. The facility that will be built will be able to provide all of

those programs and services for the residents as was originally planned. I suggest that there is no need to put this before the Selectmen because it is a minor change. We're talking about the site, what does it look like, how does it blend in- that has not changed.

Attorney McCarthy asked whether the existing approved site plan shows the old design and the new.

Attorney McCarthy did not know. He did know that the old plan shows the buildings, height and dimensions. He didn't know whether it shows what's in the buildings.

Mr. Tyler displayed plans which showed what would have been the activity building elevations. He said the condition of approval included this elevation plan. He said the Selectmen approved this elevation.

Mr. Burpee asked what efforts, if any, are being made to bring this to the attention of the Board of Selectmen, and is this Board necessary to get to the Board of Selectmen.

Mr. Tyler believed that because the building permit was issued, and he believed it should not have been issued without the Selectmen weighing in, he felt it was inappropriate for the Building Inspector to say we (Tyler) brought it to his attention, that he should revoke it and we told him why, and he refused. Mr. Tyler said he sent a letter to the Selectmen as well as to the Design Review Board (DRB) and asked that they provide input at this hearing. He had anticipated that he would have heard from them; however, the Selectmen's meeting was subsequently canceled.

Mr. Tyler said he spoke with Chairman O'Brien two or three times who said he was researching it. His absence tonight suggests that they believe that it's in capable hands with this Board.

Frank Riepe, DRB Chairman, said Mr. Tyler has spoken to him. He said the Design Review Board has not seen all of the documents submitted through the process of this development and his personal recollection is that the DRB only had one meeting with the original developer of this project. He said the DRB never saw the working drawings such as he saw this evening. It was Mr. Riepe's feeling that what has been built there does not conform to the original drawings that the DRB saw; however, more to the point, the question is does it conform to what the Selectmen approved. Mr. Riepe said he could not speak to that. He could make the assertion that when architectural drawings are approved by the Selectmen as part of site

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plan approval, typically it is the product of some of the recommendations of the DRB. He said that's the design that's approved, and looking at those drawings of the building if you can see a difference, then there's a marked deviation from the approval. Mr. Riepe would

recommend to the Selectmen that there be a time out – that this is subject to further review. Further, it was Mr. Riepe’s opinion that Mr. Tyler has a basis for an argument and believed there is a problem with this development and the problem seems to grow as time goes by.

It was Attorney McCarthy’s opinion that the absence of the Selectmen if they had notice is significant.

William Wagner commented the deviations he has seen here suggest a total disregard for the rule of law.

There being no further input, the hearing was closed.

The Board began deliberations. It was felt that if the response by the Building Department had been more substantive there might have been more of a basis for a reaching decision. It was agreed to continue deliberations and to contact the Selectmen, giving them copies of the minutes of this hearing, to provide them with an opportunity for review and comment.

Deliberation and vote was schedule for October 29, 2002.

Patrick J. Delaney III, Acting Chairman

Richard L. Burpee, Acting Clerk

Thomas W.H. Phelps

Jonathan G. Gossels

Stephen M. Richmond

