

**Dover Zoning Board**  
**Thursday, March 20, 2003**

**MINUTES**

**Members Present:** Bill Colbath, Vice Chair, Rick Callaghan, Doug Cummings,  
Art Corte, Tom Dolbec

**Members Absent:** Dean Trefethen, Chairperson, David Ruoff, Frank Landford, Alternate

**Staff Present:** Tom Clark, Chris Parker, Jamie Nye

Bill Colbath stated that he would have to remove himself from voting on Item # 1 due to a conflict of interest. Colbath explained to the applicant of Item # 1, Mr. Heaphy, that since there were now only 4 members present to vote, he could have the option of waiting for the fifth member, Dave Ruoff to arrive. He stated that a situation could arise that there was a two to two vote, which would result in the denial of his request, as it is required to have a three out of four vote for his request to be approved. Mr. Heaphy decided to wait for the fifth member.

Bill Colbath called the meeting to order at 7:12.

**ITEM #1: NEW BUSINESS**

**Minutes:** Approval of the minutes for the regular meeting of February 20, 2003.

**Motion:** Richard Callahan made the motion to delay approval of the minutes until the April meeting, as they were not made available for review and approval to the board. Tom Dolbec seconded the motion. Vote: U/A

**ITEM #2: OLD BUSINESS**

Clark stated that the Kennel case on Dover Point Road, that was tabled last month, has to be continued to be tabled as the applicant did not get the survey completed in time, adding that it may be on next month's agenda.

Colbath stated that seeing no other old business, the board would move onto case # 2.

**Z 03-4 Millstone Properties, LLC, 8 Back River Road, a/k/a Assessor's Map 16, Lot 15, zoned UMUD, requests a variance from the terms of Article IV, Section 170-12, Table 1, Part A and Article X, Section 179-4.B to move a non-conforming use (three-family dwelling) to a portion of the lot not currently occupied by such use.**

Attorney, Jim Schulte, 660 Central Avenue, was present to speak on behalf of the applicant.

Shulte stated that the property is located just passed Store 24. He stated that the project has been before the Planning Board where they approved a 66-unit apartment building. He stated that the applicant has been working with the Planning Staff to adjust that.

He stated that there is an existing 3-unit wood frame stone foundation apartment building on the lot that was going to be part of the 66-units that were approved.

He stated that last November the applicant came back with a revised site plan where there will be an apartment building housing 31 apartments, 21 townhouse condominiums, and this 3-unit apartment building. He stated that at the same time the Planning Board approved a subdivision of the property so that the townhouse condominiums would be on one lot on the back part of the property, the 31-unit apartment building, which is new construction, would be on a separate part that has some frontage on Back River Road, and the 3-unit apartment building that has been there for many years would be on its separate lot. He stated that the site plan that was approved by the Planning Board, provided that the rear portion, (the building is u shaped where the bottom of the u being closest to the street) that both ends of the u that are furthest from the street were to be removed due to their condition. He stated that when the property owner went in to start that work, it became apparent that the condition of the house was so bad that it was not worth renovating, so he proposed to replace it instead. He stated that when the homeowner went in to get a building permit, he was informed that because this was the UMUD zone, you are not permitted to have single-family, duplexes, or three-unit residences, as it is required to be multi-family. He stated that when the zone was changed to UMUD, the existing 3-unit apartment building became a non-conforming use because of the change in the ordinance.

He stated that new building would be of slightly different configurations, which is how you get what was in the newspaper about moving a non-conforming use to a different part of the lot because technically, we found that the footprint of the replacement building would be slightly different than the existing building. He stated that they are asking for the variance to allow them to build a 3-unit apartment building, where the ordinance would say you couldn't have anything less than 5-units. He stated that they are asking that there be less density, which is consistent with what they have tried to do with the rest of the lot, as they have gone from a total of 66-units to 54-units, increasing the parking in some areas also. He stated that they are seeking a variance to allow less than what the ordinance would otherwise require to be built there. He stated that you could probably put in a 5 or 6-unit building on this lot, by putting a garage underneath but you would have a very tall building, which would be disproportionate to the neighborhood, and certainly to the size of the lot that is there.

He went through the reasons for approval set forth in their application. He stated that they are asking the board to allow them to create a building, which is of less density than the ordinance would require, which is consistent with what they tried to do by being sensitive to the traffic concerns at the intersection. He stated that as part of the development plan, they are contributing to the improvements to that intersection as well. He stated that the hardship is because when the ordinance changed, this unit became non-conforming, adding that if it was hit by lightning, and was burned down, it could be replaced, but because they are proposing that the Fire Department use it as a training exercise. He stated that they now need a variance because the size of the lot, configuration and the zoning is such that they are not permitted to have a 3-unit building or anything less than a 5-unit building. He stated that the variance would result in substantial justice because it allows us to make productive use of the property to replace the current use with the identical use except in a newer structure, which is better for the property and the neighborhood. He stated that it is consistent with the spirit and intent of the zoning ordinance, which as recently amended, is generally striving to promote less density in the community as a whole, which they are trying to accommodate. He stated that the variance would not result in the

diminution of the surrounding properties as they are going to put up a new building, which will be significantly better for the neighborhood than the existing dilapidated building is.

He stated that the variance would not be contrary to the public or private interest because it will promote less density, as it will be a new building with sprinklers, and adequate parking. Colbath asked what the two lots to be produced would have for frontage on Back River Road. Schulte stated that in the UMUD zone, there is no requirement for frontage, so one of the lots does not have frontage, as it has access across the other one, adding that the second unit has frontage of 146-feet.

Parker stated he wanted to make the board aware that the lots have already been created. He asked Schulte if they had considered doing a lot line adjustment with the lot behind it so that they could get the 5-units on it. Schulte stated that even with this lot, by making a taller building they could get the 5-units on it. He stated that that is contrary to the preferences expressed at length by the Planning Board, when we were before them. He stated that it would certainly be possible, and would probably be to the economic advantage to the developer to build a taller building on this site with the parking underneath, but that would not seem to be what is best for the City, and they are willing to accept the fewer units there.

**Motion:** Corte made the motion to accept the application. Cummings seconded the motion. Vote U/A.

### **PUBLIC HEARING OPENED**

Schulte stated that he wanted to add one thing, to address any questions, he stated that because of the topography, going up the hill, there is a retaining wall from the westerly side of the building that runs from Back River Road along that side and along the back and is about 6-8 feet high in some places. He stated that this area of the property is physically separate from the rest of it because of how that has and will be constructed, to answer the question of why we would not have considered expanding the lot.

No one was present to speak for or against the application.

### **PUBLIC HEARING CLOSED**

Parker stated that the staff does not support this application. He stated that they believe the hardship was created when the lot line, which was proposed by the applicant in November, was created, and they do not see the hardship and do not support the request.

Dolbec asked Clark why in the Dimensional Regulations under the UMUD zone, there is a dash for the required frontage, where other zones have zero listed. Clark stated that it is to help promote development the downtown area, which have substandard lots. Parker stated that this is the only UMUD district that is not in the downtown area.

Colbath asked about the parking requirements on this lot. Schulte stated that there are about 5 or 6 spaces on this lot. He went over his plan showing the lots and parking. Colbath questioned how this lot happened to be created, to only support this structure at that point in time, and now you are requesting to tear down this structure and change it to something else. Schulte stated that at the time when they went before the Planning Board, there were tenants in the building, and

they expected they could make repairs, take off the back portion, and adjust it. He stated that they thought they could leave it in place and fix it up, but when the developers went in to do that work, they discovered that the condition of it did not warrant that repair and they decided that it was in too bad a shape. He stated that the Fire Department volunteered to use it for training purposes. He stated that they had every intention of using the 3-unit building that was there, as it would have been less expensive, but it did not work out due to the conditions. Colbath asked what type of conditions warranted the building to be taken down. Schulte stated that it is an old building on a stone foundation in generally bad repair, including termite damage.

Callahan stated that they have a building that they can keep, but it will not look as nice as the building they could replace it with. Colbath stated that he is looking for a hardship, as there are five criteria that they must go through. Colbath stated that the only hardship the applicant has put forth is that they would like to replace the building as it is in bad shape and they would have less density than they are allowed to have. Callahan stated that the hardship almost seems to be on the Zoning Ordinance itself, as we have a building almost falling down. Dolbec asked if the hardship could be that the requirement is too much. Corte questioned, what if it was worded that we were forcing them to maintain an obsolete or dangerous building. Dolbec stated that it has not been condemned so it is not considered dangerous. Colbath asked Clark if since the big change is that they are changing the footprint of the building, if the building remained where it was, then it could be rebuilt at this point. Clark stated that it is a non-conforming structure and use, and if it was destroyed by a fire or a hazard then they could restore it to its current bulk, but they could not expand it, and they would have to still come to the ZBA for a variance to change the footprint.

Clark stated that if the applicant removed the lot line they would not be before the board tonight as a variance would not be required. Callahan asked why the lot line has not been removed. Clark stated that they have not received the answer to that question by the applicant.

Schulte stated that there are two points as to why they have not done that. He stated that if you remove the lot line, you are going to have an identical structure that you are going to have with or without a variance. He stated that the reason they do not want to move the lot line has to do with title issues, financing issues with the bank, and some tax concerns. He stated that there are some financial imperatives that strongly argue against trying to merge those into a single lot, where the result is going to be that you will have the identical physical structures and the identical use for the property however it gets approved. He stated that alternatively, if the variance is denied, because of the financial imperatives, we then have to look at going to build a structure that is conforming, go back to the Planning Board, ask for site review of this lot to put up a bigger building than what is there. He stated that for all of those reasons, it is his opinion that they were better off trying to get approval for the smaller building on the separate lot that was created for good reasons, adding that if you move the lot line, you are just taking a line off of a piece of paper. He stated that that would not change anything in terms of the size or the location of the buildings, the configuration or the parking. He stated that the hardship is that the ordinance requires more than what the lot should accommodate giving that neighborhood. He stated that they are trying to put up a structure that is consistent with the scale of the rest of the neighborhood, adding that there may be another way to do that, but for other reasons which are not the board's problem, as they are not hardships inherent in the land, but they are reasons that dictate that the applicant deal with this property as a separate piece of property. He stated that because they are asking for the opposite of what they usually do, it is hard to shoehorn that into the five requirements. He stated that the size of the building that they could put up on that

property is really not what is right for that property and they are trying to be responsible about that.

**Motion:** Callahan made the motion to move to the Findings of Fact.

### FINDINGS OF FACT

1. It is the Board's **CONCLUSION** that, if the applicant complies with the strict letter of the ordinance, he/she **does not** face an unnecessary hardship. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: All issues appear to be financial in nature.
2. It is the Board's **CONCLUSION** that, if granted, the variance **will** deliver substantial justice. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: The request is for lower density than the ordinance allows.
3. It is the Board's **CONCLUSION** that, if granted, the variance **will** be in harmony with the spirit and intent of the zoning ordinance. The **CONCLUSION** is based on the following **FINDINGS OF FACT**: The density would be lower than the ordinance will allow.
4. It is the Board's **CONCLUSION** that, if granted, the variance **will not** result in a diminution in value of surrounding properties. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: The building improvements would actually enhance property values.
5. It is the Board's **CONCLUSION** that, if granted, the variance **will not** be contrary to the public interest. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: Because the density would be less than allowed. The public would benefit.

**THEREFORE**, based upon the foregoing, **IT IS ORDERED** that the application for the **Z 03-4 Millstone Properties, LLC, 8 Back River Road, a/k/a Assessor's Map 16, Lot 15, zoned UMUD, requests a variance from the terms of Article IV, Section 170-12, Table 1, Part A and Article X, Section 179-4.B to move a non-conforming use (three-family dwelling) to a portion of the lot not currently occupied by such use be DENIED.**

Schulte stated that he will appeal based on whether the board should consider the other lots surrounding the property.

Bill Colbath removed himself from voting due to a conflict of interest. Richard Callahan took the position of Chairperson. Colbath asked Heaphy if he wanted to proceed with his case even though the fifth member, David Ruoff did not arrive at the meeting. Heaphy agreed to proceed.

**Z 03-3 Edward Heaphy, Leighton Road, a/k/a Assessor's Map 8, Lot 25-B, requests a variance from the terms of Article II, Section 170-6, definition of "Lot" to construct/install a second principal building (single family dwelling) on a lot.**

Edward Heaphy, 9 Heaphy Lane, was present to speak on his case. He stated that at this time, Jim Newick has a home on a lot next to his, and he has decided to build a new one this summer. He stated that Jim Newick is going to give him his old house, which they would like to move across the field onto his property. He stated that he already has a house that was built in the 1940s, which is in tough shape, with a tenant residing there; he would like to upgrade that home. He stated that after he moves this house onto his lot, the contractor will go and build Jim Newick's house, come back and finish upgrading his house, and then he will have the temporary house torn down.

Callahan asked Heaphy how long the period of time will be between when his house would be established and when the temporary home would be taken down. Heaphy stated after the foundation was put in, and Jim Newick's house was built, it would probably be about a year.

Clark clarified that at no time will both houses be occupied. Heaphy stated that they should not be, maybe just a small time period. Corte asked the location of the house to be moved. Heaphy stated that it is located in the field in front of the Newick's parking lot near the restaurant sign. Dolbec asked if the lines on the plan were the setbacks. Heaphy said yes. Dolbec asked if the lot lines were surveyed. Parker stated that he put the lot lines on, using a previous subdivision plan.

**Motion:** Dolbec made the motion to accept the application. Cummings seconded the motion. Vote U/A.

#### **PUBLIC HEARING OPENED**

Jack Newick stated that he did not want to destroy a perfectly good house, and would like to enhance the neighborhood, adding that he is in favor of the request. Jim Newick stated that he and his wife plan on living in the home, and they want to start a family, and it will improve the neighborhood. Ed St. Pierre, a neighbor, stated that this will be an improvement to the neighborhood, it will be a better setback, make it safer, and he is in favor of it.

Parker stated that the planning department supports this application, adding that the setbacks will be improved, along with the overall neighborhood. He stated that the fact that it will only be occupied once the current building is ready to be demolished, which was one of their hang-ups, they are satisfied that that will be the case, so they are in favor of it.

#### **PUBLIC HEARING CLOSED**

Cummings asked if they needed to put a time frame on the issue of the certificate of occupancy. Clark stated that if they are approved for a variance to have two houses on one lot, then technically, a certificate of occupancy could be issued before the first house was demolished. Dolbec stated that the board could make the condition of approval that there be only one occupied property on that lot. Callahan asked Heaphy if he had any plans on showing his financial ability to demolish the other house. Clark stated that the financial ability would not be a problem, but if push came to shove, they could take the issue to Superior court, but he does not believe that will be necessary.

## FINDINGS OF FACT

1. It is the Board's **CONCLUSION** that, if the applicant complies with the strict letter of the ordinance, he/she **does** face an unnecessary hardship. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: The Zoning Ordinance provides for permanent change and this request is for a temporary use.
2. It is the Board's **CONCLUSION** that, if granted, the variance **will** deliver substantial justice. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: It will allow the property owner to use his land in a reasonable manor, which will be consistent with zoning.
3. It is the Board's **CONCLUSION** that, if granted, the variance **will** be in harmony with the spirit and intent of the zoning ordinance. The **CONCLUSION** is based on the following **FINDINGS OF FACT**: The spirit and intent is to limit one residence per lot and this application provides for that.
4. It is the Board's **CONCLUSION** that, if granted, the variance **will not** result in a diminution in value of surrounding properties. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: This is only a temporary use and the new/final change will be an improvement.
5. It is the Board's **CONCLUSION** that, if granted, the variance **will not** be contrary to the public interest. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: The new structure will improve the neighborhood appearance.

**THEREFORE**, based upon the foregoing, **IT IS ORDERED** that the application for the **Z 03-3 Edward Heaphy, Leighton Road, a/k/a Assessor's Map 8, Lot 25-B, requests a variance from the terms of Article II, Section 170-6, definition of "Lot" to construct/install a second principal building (single family dwelling) on a lot be GRANTED. Motion:** Corte made the motion for the following conditions: (1) Upon completion and occupancy permit for the relocated house, the original house shall be vacated within 30-days. (2) The original house shall be removed within 6 months of the relocated house occupancy. Cummings seconded the motion. Vote U/A.

8:17 PM, Colbath called for a five-minute recess.

**Z 03-5 Elizabeth and Ronald Pfeiffer, 10 Summer Street, a/k/a Assessor's Map 12, Lot 22, zoned RM-10 requests: 1) a variance from the terms of Article V, Section 170-16 to construct an addition that would result in 42% lot coverage where a maximum of 40% is allowed; and (2) a special exception under the terms of Article VI, Section 170-25.3 to increase the number of residents and bedrooms within an Elderly Assisted Care Home.**

Colbath resumed as Chairperson. Tom Dolbec stepped down due to a conflict of interest.

Attorney Bill Tanguay, of McNeil Taylor and Gallo, was present to speak on behalf of the applicant. He stated that he understands that there are only 4 voting members present to vote on the request, and they wish to proceed with their request. He stated that by proceeding tonight,

the board gets their first opportunity to deal with the newly enacted Elderly Assisted Care portion of the Dover ordinance and the special exception that is contained therein. The applicants own and operate the Wadley house, which is an elderly assisted living facility on Summer Street here in Dover. He stated that there are 12 elderly people living in the house. He stated that the Pfeiffer's have had this house for 7 years and over that time they have come to realize the difficulties of operating this type of facility for elderly assisted living. He stated that when they first came to Dover 7 years ago, there was very little flexibility in the Zoning Ordinance with regard to elderly housing, there was nothing in the ordinance to recognize the unusual characteristics that are required for elderly folk to live. He stated that they are the only facility in Dover that is doing what they are doing. He stated that they are a small assisted living facility, adding that everything else in Dover is much bigger, mentioning the Wentworth Home, and a boxy facility that is outside of town.

He stated that right across the street from this property is the back yard to the Woodman Institute, which for a lot of elderly folk provides them with a great deal of connection to the City and the history of the City. He stated that clearly and appropriately the City appreciated the growing need for elderly assisted housing, and appreciated the difficulties of the existing Zoning Ordinance, which was trying to make one size fit all that just did not work. He stated that a committee was formed out of the Planning Board, which was called the Quality Of Life committee, and that was formed to study that particular need in Dover. Tanguay stated that out of that committee came the amended Zoning Ordinance, which allows through the use of a special exception, to increase the number that would normally be required. He stated that there are 12 elderly people residing at the facility at this time, however, they have been approved by the State for a total of 15 elderly persons. He stated that they are looking to expand to have 18 people in the facility and expand the dining room, and add a new common room. He went through the 3 requirements for a special exception and gave 3 reasons why it should be approved. He stated that this type of housing is desirable and needed. He stated that the residents do not have cars parked on the facility. He stated that this expansion would not overload the public utilities as the elderly take baths and limited showers. He stated that the increase is not detrimental to the surrounding properties. He stated that there is no one present to speak against this request. He stated that another requirement within the ordinance is that it conforms to the parking standard, which it did not until we went before the Planning Board, who granted them relief. He added that part of the way that was worked out was a condition that none of the residents that live there have cars. He stated that the last requirement is that the increase must be contained within or contiguous to the original structure, which it is. He stated that the facility as it currently exists is approved for 15 beds, where the City Ordinance talks about 12 as being the maximum, so in the very short term, the owners need a special exception from the board to allow 15 beds. He stated that they also proposed to add to the property. He handed out 2 sketches to the board, one of the outside of the building, and one of the new construction.

He stated that they would like to expand the facility to 18 beds and they want a special exception in order to do that. He stated that the dining area will be increased, and a great room will be created, as well as a bathroom and a set of stairs with a lift for the elderly residents. He stated that Phil Kindrick is the Architect and is present to answer any questions the board may have. He stated that one of their options is to go up, but they feel that that is not what is appropriate or needed. He stated that the spirit in the change in the ordinance was to help encourage this type

of facility, not to discourage it. He stated that to do this expansion they would be covering 42% of the lot, where the ordinance requires a maximum of 40% coverage. He stated that they do not believe that a variance is necessary, as the special exception ordinance as drafted gives this board the flexibility to do what is necessary in order to promote and encourage this type of housing. He stated that there are special exception standards as set forth, and they believe that if they meet those standards, they don't need a variance, however, he went through the requirements for the variance to be granted. He stated that the variance won't be contrary to the public interest as there is a new ordinance in place, and the purpose of the ordinance is to encourage elderly assisted housing, so in order to do that, they cannot be contrary to public interest.

He stated that the variance will be in harmony with the spirit and intent of the zoning ordinance, as the intent of the ordinance is to encourage this type of housing, and their request is consistent with their efforts to promote this kind of housing that makes sense. He referenced a court case which resulted in a decision which stated: Hence forth applicants for a variance may establish unnecessary hardship by proof that a zoning restriction as applied to their property interferes with their reasonable use of the property considering the unique setting of the property in it's environment.

Tanguay stated that applicant's no longer have to show that they are denied all the reasonable use of their property, but rather the new standard is that the applicant request a reasonable use of their property given what and where it is. He stated that the property blends in with the neighborhood, and will continue to after this is done. He stated that he is asking the board to take the first bite at recognizing and implementing the special exception component of the ordinance to do three things. (1) Grant the special exception for the property as it currently exists to have 15 beds. (2) Grant the special exception for 18 beds with the proposed expansion. (3) He stated that he does not believe that the board needs to grant a variance, but if it is required, they are asking the board to grant that variance for all of the reasons that he has set forth.

Phil Kindrick, Architect, went through the expansion with the board explaining the 2% over the allowed 40% coverage.

Callahan asked how many residents eat in the dining room. Mrs. Pfeiffer stated that they could fit about 14-15 people however it is a little tight. Kindrick stated that with the expansion they would be able to feed all of the 18 residents. Callahan asked what the total square footage of the dining room as expanded would be. Kindrick stated 377 square feet. Mrs. Pfeiffer stated that it is impossible financially for them to continue on with the 12 residents as everything has gone up like staffing and insurances, etc. She stated that they have tried to provide a quality home for people. She stated that their staff members have been there for long periods of time, and they try to give them competitive salaries and offer them insurance and vacation time. She stated that she has been a registered nurse for 35 years, and this is her life's work, and she loves what she does, and she feels that this is a great service to the community.

Parker asked if in the reconfiguration, the room that is currently the living room and the room next to it are going to become bedrooms? Mrs. Pfeiffer stated that that was a possibility. Parker asked if there was going to be new bedrooms on the second floor. Mrs. Pfeiffer stated yes. Parker stated that they understand that they do not want to build up, creating a third floor, but over the current living room, and the room adjacent to it, wouldn't it be possible to put a room on the second floor there? Kindrick stated that the current setback runs right threw the end of the living room. Parker asked if there was any reason why they could not remove the shed, as the

applicant is 180 square feet over the amount allowed, the shed is 73 square feet, so that would bring the amount over down to 41%. He asked if they could remove the shed and shave some off of the new addition. Mrs. Pfeiffer stated that the people that are currently on the second floor are doing pretty good, but there may become a time that they cannot go up the stairs anymore, and what does she tell them, that they have find another home. Parker asked what would happen to the library. Mrs. Pfeiffer stated that it would become a bedroom. Parker asked about the lift, as he did not see it on the plans. Kindrick stated that it is a chair lift that attaches to the chair rail.

Mr. Pfeiffer stated that he has had to turn away 150-200 in the past seven years. He stated that his neighbors are for the expansion. He stated that he is willing to tear the shed down. Corte asked how many parking spaces there were on the property. Tanguay stated that there are 6 spaces according to the Planning Board. Cummings asked what the total number of cars there are between the staff and residents on the average. Mrs. Pfeiffer stated that there are about 3-4 cars at the property daily. She stated that most family members come to visit for maybe an hour or so, or take their family member out to lunch. Tanguay stated that people come to take the residents out, as the residents are not bed ridden, and that St. Joes allows for overflow.

Callahan clarified that they currently have 12 people residing at the property, but they have been approved for 15 residents by the State.

Mrs. Pfeiffer stated that they have been approved by the State office of the Elderly and Adult Services. She stated that they take into consideration the size of the home, square footage etc. Clark went through the three approvals in 1997 and 1998 that the owners have had in the past for the property.

Callahan stated that the occupancy level is still conditional upon the expansion, adding that if the board does not give approval for the variance for the space determination they cannot get approval from the State for additional people. Callahan stated his concern is that if they approve the expansion of this building, which may not be necessary. He stated that if we approve all of this room, we are not really making a better quality of life for these individuals. He stated that what could happen later on down the road is they could say now we have the space, and go to the State for approval for 22 people, and then they come back to us for a variance as they were approved from the State for more residents. Colbath stated that he believes that there is more of a regulation involved rather than the number and size of bedrooms. Callahan stated that he would like to see the regulations on how the number of residents is determined, and the occupancy level as determined by the State with this expansion. Tanguay stated that they are looking for a maximum of 18 residents and they will stipulate that.

**Motion:** Callahan made the motion to accept the case. Corte seconded the motion. Vote: U/A.

### **PUBLIC HEARING OPENED**

There was no one present to speak for or against the case.

### **PUBLIC HEARING CLOSED**

Parker stated that the Planning Department is in favor for the special exception, but not the variance, as they do have second floor options, and they are willing to give up the shed. He stated that the neighborhood is at 23.49 %; they are at 33% now, and asking to go to 42%.

There was some discussion.

They board moved to the Findings of Fact.

### FINDINGS OF FACT

1. It is the Board's **CONCLUSION** that, if the applicant complies with the strict letter of the ordinance, he/she **does** face an unnecessary hardship. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: The Zoning Ordinance provides for permanent change and this request is for a temporary use.
2. It is the Board's **CONCLUSION** that, if granted, the variance **will** deliver substantial justice. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: The ordinance unnecessarily restricts the use of the property to provide a pressing social need.
3. It is the Board's **CONCLUSION** that, if granted, the variance **will** be in harmony with the spirit and intent of the zoning ordinance. The **CONCLUSION** is based on the following **FINDINGS OF FACT**: Allow reasonable expansion for space to accommodate the needs of residents for quality of life.
4. It is the Board's **CONCLUSION** that, if granted, the variance **will not** result in a diminution in value of surrounding properties. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: There was no evidence presented.
5. It is the Board's **CONCLUSION** that, if granted, the variance **will not** be contrary to the public interest. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: This will be a benefit to the public by providing needed service expansion and increased quality of life for residents.

**THEREFORE**, based upon the foregoing, **IT IS ORDERED** that the application for the Z 02-5 Elizabeth and Ronald Pfeiffer, 10 Summer Street, a/k/a Assessor's Map 12, Lot 22, zoned RM-10 requests: 1) v variance from the terms of Article V, Section 170-16 to construct an addition that would result in 42% lot coverage where a maximum of 40% is allowed; and (2) a special exception under the terms of Article VI, Section 170-25.3 to increase the number of residents and bedrooms within an Elderly Assisted Care Home be **GRANTED** with the following conditions: (1) The shed will be removed and not replaced. (2) The number of residents shall never exceed 18. **Vote U/A.**

**Motion:** Callahan made the motion to table the case. Corte seconded the motion.  
Vote U/A.

The board now had to vote on the special exception.

Clark stated that water and sewer was not an issue as the home has an acceptable size service. Colbath stated that the parking has been addressed so that is not an issue. He stated that the health, human services, and City services have been addressed.

**Motion:** Callahan made the motion to approve the Special Exception. Dolbec seconded the motion. Vote U/A. Condition: The number of residents in that facility is limited to 18 forever.

Motion to adjourn at 10:00 by Colbath, and seconded by Mullan. Vote 5-0.

Respectfully submitted,

Jamie Nye

Jamie Nye  
Secretary