

PRESENT: Bayard, Acting Chairman; Finer; Bliss; Flanders; Granfield; Touhey; Kahn; Edgar, Town Planner; Harvey, Clerk

Finer moved, Bliss seconded, THAT THE MINUTES OF JULY 13, 2004, BE APPROVED AS PRESENTED. Voted unanimously.

APPLICATION SUBMISSIONS

1. **TRINITY EPISCOPAL CHURCH** – Proposed Site Plan Amendment to construct a driveway to provide access to a potential Memorial Garden, Tax Map U15, Lot 10A, located at 93 NH Route 25, in the Residential District.

Application and abutters list are on file. Filing fees have been paid. Sketch plan on file for this project awaiting grading plan from Paul Fluet.

Finer moved, Granfield seconded, THAT WE ACCEPT THE SITE PLAN AMENDMENT FOR TRINITY EPISCOPAL CHURCH. Voted unanimously.

Jim Hughes, representing the Trinity Episcopal Church, requested a continuance to August 10, 2004. Voted unanimously.

2. **LATCHKEY CHARITIES** – Architectural Design Review for proposed façade improvements on an existing commercial building, Tax Map U06, Lot 81, located at 92 Main Street in the Central Business District.

Application, elevation drawings and abutters list are on file. Filing fees have been paid. Recommend application be accepted for public hearing this evening.

Bliss moved, Finer seconded, THAT WE ACCEPT THE APPLICATION OF LATCHKEY CHARITIES FOR ARCHITECTURAL DESIGN REVIEW. Voted unanimously.

PUBLIC HEARINGS

3. **GYPSY CAMP TRUST:** (Rep. Carl Johnson, Atty. Ed Hibbard) Compliance Hearing to review the legal documents pertaining to the 3-unit cluster subdivision and condominium pursuant to conditional approval granted on April 27, 2004, Tax Map S07, Lot 5-1, located on Cattle Landing Road in the Shoreline District.

This is a combination of a cluster subdivision as well as a traditional subdivision and the elements comprising a cluster subdivision were subject to a lawsuit by an abutter dealing mainly with some of the provisions of the cluster aspect of it. Between some plan modifications and additional guarantees in the covenants and restrictions to guarantee some of the privacy aspects involved with the lawsuit, the lawsuit with the ZBA has been withdrawn and it is my understanding that all further litigation will be withdrawn. There will no longer be a necessity for a plan note regarding any revisions to the lawsuit aspect of it. The Board had required a limited amount of landscaping between two (2) residential properties. We have essentially added more landscaping to that area as part of the agreement so it's above and beyond what the Board had suggested and approved. We essentially added additional screening between the Meola lot and Unit 1A. We added some additional vegetation or fence screening to block any headlights shining towards the Meola residence and some additional language regarding the location of the dock. Essentially, one of the concerns of Dr. Meola was the location of the dock in the Cove. We now have a line on the plan which says no docking structures westerly of this line with a note that basically says we will construct a dock on Unit 1A at this point or south of this point unless there is a condition such that DES would not approve a dock in that location in which case we would start at this location and move towards Meola if there were a successful application there. Based on what we know about the site, there will probably be no issues regarding location of a dock. That basically gave protection from this point all the way and down along the common boundary line between Meola's and the proposed cluster subdivision. The Covenants and Restrictions previously included some outbuildings to be located on Parcel B which is the 6.7 acre portion of the cluster subdivision on the southerly side of the road. Those two outbuildings have been relocated to the northerly section of the cluster subdivision. Essentially, Parcel B would be a common area, reserved green space with no structures. This would also do away with any additional curb cuts on Cattle Landing Road. Basically, we have Covenants and Restrictions to accommodate limited common areas with outbuildings not to exceed 500 sq. ft. One slight modification to the plan itself deals with the changing of the boundary of Parcel A which is a common area. It was changed and now dog legs out and attaches to Unit 1A. That was a situation where we did not want to have a driveway on somebody else's condominium unit. Previously, a portion of the driveway to Unit 1A was cutting across the corner of Unit 1B. Now both driveways will either be on the common area or on their own unit. It doesn't affect density, lot sizing or the location of the driveway itself, it simply means whereby we are limiting any access across another condominium unit for the benefit of another unit. Some additional notes were added to the plan and most of

the issue tonight is the application of legal documents associated with this plan. One thing that came up today was dealing with an aspect of Parcel B. The question was raised whether or not a limited vegetable garden could be placed on Parcel B. I don't know at the moment if there's an area on Parcel B that somebody could place a vegetable garden without cutting the trees. Right now the covenants restrict cutting of trees on Parcel B, that's to keep it green and woody. My personal opinion is that if a garden were on Parcel B, it would still be green and be used as garden area instead of growing trees. We would like the flexibility of that to occur. Obviously we want to limit the size of the garden somehow. We ask that the Board approve the plan from a compliance standpoint with some tweaking. This is not necessarily the plan that's going to be signed, we do have some additional approvals to do. As part of that approval process, there may be some slight tweaking and modifications of the plan with regard to the septic systems which are currently being designed. If the Board feels uncomfortable with that, then we will strike that possibility altogether and say there will be no garden on Parcel B. Flanders – I still have a concern about that culvert going under the road by the leachfields. In order to design those leachfields, he's got to get that outfall at least 75' away. Johnson – In speaking with the Highway Department about this issue, I specifically noted to them we are designing septic systems and I was assured that when it came time to finish things up, the outfall of that culvert would be directed down Cattle Landing Road away from the area leachfields. The design of the leachfields could not be approved at the State level without that actually happening. Flanders – Then we have the issue of what impact that has on the wetland on Parcel A because that's where that water's going to end up. Johnson -I think that's where the water will end up anyway. That's where it goes now. Flanders – I disagree to some extent. I've been down there and if my memory serves me correctly, the water comes out of that culvert and pretty much goes under the centerline of that utility line and that's all going to end up over here in the wetlands on Parcel A so that's going to somewhat change the characteristics of those wetlands. I can't tell you how much impact it's going to have or if it's going to have enough to worry about, but I think it's a question that needs to be answered. Johnson – Maybe we can answer that question between now and final approval of the plan. I don't think there's anything necessarily in the Covenants and Restrictions that would deal with that. Obviously, if it's something that you believe should be looked at, there has to be, as part of development in this zone, a sediment and erosion control plan prepared by a professional engineer. We could have him look at that issue and determine... I've seen that culvert too. What I'm saying is we'll try to have that water diverted, probably there will be a culvert underneath the proposed driveway. Flanders – But it's going to end up in a different place than where it was before, what's that impact

going to be? Johnson – I would say nothing. Flanders – You may be right but it's a question we need to know the answer to. Johnson – I'm not sure how you want to have that answered. Flanders – A soil scientist or some kind of engineer should be able to take a look at that and calculate the volume that's going down through there and that volume is not going into Parcel A's wetland now, it's going down underneath the utility lines and some of it's ending up on Meola's... if this wetland area that's delineated were expanded because of the actual water going in there, then that's significant because it will change the setbacks and everything. Edgar – May I make a suggestion, Mr. Chairman? Maybe just an overview by the wetland scientist, in this case the applicant who is proposing this project is going to be authorizing the septic designs and is the one who is receiving the water you are speaking of, it couldn't be any further away from their house and septic and so it is relatively small volumes in the big scheme of things. We are not looking at a shopping center across the street, in fact we are restricting the 6.7 acres from any development so you have no runoff coming from that and the 10-acre piece is a single-family home so you have a little bit so it's not a big volume we're talking about, but perhaps the wetland scientist who took a look at that might be able to provide some advice as to whether or not that's an issue. Johnson – I agree with that, Mr. Chairman. I can tell you that this culvert with the exception of this spring when the water level was high and there was additional runoff, it was not functioning very well, that's part of the reason they replaced it, it was crushed. There was a question at one time in speaking to the Highway Department whether or not they were just going to take this culvert out and do the ditch over that runs into this culvert which runs into the wetlands already and for one reason or another, they didn't do that. As John mentioned, if the Board would like an engineer and/or a wetland scientist to analyze that, we would be happy to provide that information to staff and make it part of the conditions of the final approval. We do have final approval conditional upon a certain amount of aspects. One of the conditions was a compliance hearing for the legal documents and that's why we are here tonight. If there's an additional comfort level the Board wants regarding this particular culvert, we'll try to address it the best we can. Bliss – I agree with John that I think we've gone over that before and I really don't want to make the applicant spend any more time or money researching that further. I feel if they direct it down like Carl suggested, especially if the Town had talked about doing that, then it probably would be OK. Like John said, it's going onto the applicant's land so I agree with John on that. Edgar - If you wanted that confirmation from the wetland scientist, perhaps we could handle it administratively and do that in conjunction with septic design approval. I think between the State approving the design and double checking with Mike as to the status of the ditching, the wetland person

having evaluated this could give us some kind of confirmation that this is not a problem. Flanders – I don't have a problem with that, but if the topography lines were shown on this plan, you would see that there's an elevation difference of several feet between under the utility lines and where this driveway is now. When we asked this question before, we were told that culvert was going to get extended down which didn't happen. It would be less than prudent to not have someone take a look at it. If the soil scientist takes a look at it and says it's going to be all right and the State approves the designs, I don't have a problem with that. I'm not trying to spend people's money unnecessarily, but having a culvert dump right where two septic systems are going to be downstream of, it is not a good thing. Johnson – If I had the power to call up the road department and asked them to divert that culvert, I would have done it. Bayard – It sounds to me that we're sort of in agreement that the soil scientist will look at it. Clearly, if he finds some problem, you'll have to bring in an engineer. Assuming it all goes well, I think a soil scientist should be able to give us a level of comfort and we'll go from there as part of the final. Because the lines in the common land are changed slightly, is there any need to review that? Edgar – The changes are minor and the tweaks are being disclosed, but it's so minor that it's not something where we have to start all over again. Basically, one of the negotiated issues had to deal with driveways and how far they could go on one property vs. common property and we have resolved that. As part of resolving that, it made an adjustment between the unit size and common area A and that's what gave rise for 1900 sq. ft. of change. Johnson – 1B got slightly smaller to the benefit of Parcel A. Edgar – So the common area got adjusted a little bit by virtue of that change. If this hearing wasn't required, it probably would not have been brought to your attention. It's that relatively minor. It's a function of the settlement and just like the outbuildings that have been proposed up in back that are up front, we're just making sure you are aware of what the adjustments were as a result of all the detail work. Flanders – I just noticed a plan note regarding that culvert we talked about. The plan note says this culvert to be relocated or redirected by the Town of Meredith as part of Cattle Landing Road reconstruction. The construction of that road is done now and that culvert was not relocated or redirected. I don't think it should be incumbent on the Town of Meredith to do that. Johnson – We've been over this once, Mr. Chairman, and I am going to tell you there is no drainage easement to the benefit of the Town of Meredith on this property and if the Town of Meredith is going to increase by increasing the size of a culvert and redirecting water in a location that it wasn't previously directed and then making the owner of the property bear the burden, I have a problem with that. We are willing to work out a relocation of the drainage coming from that culvert so it neither effects the location or approval of the septic systems or has any negative

effect on the wetlands that are on both Lot 2 and the cluster area. The statement is on the plan because that is what I was told by the Highway Department when I initially approached them about the relocation of the drainage. Flanders – I take exception to your statement that the culvert was relocated. It has not been relocated. Johnson – The drainage has been relocated. The ditch coming from the culvert has been relocated, there was not a ditch there before coming from that culvert and there is a ditch there now. Flanders – The culvert itself is in the same place. Edgar – We will resolve that to the satisfaction of the Highway Department, the soil scientist and the State of New Hampshire prior to final approval. Johnson – I am sure the Gypsy Camp people and/or the owners of the cluster subdivision would be more than happy to issue the Town of Meredith a proper drainage easement. Edgar – If I could, Mr. Chairman, I would like to go first I might be able to simplify this a little bit. One of the main issues we looked at last time that gave rise to this compliance hearing and one of the things that jumps right out is in the Covenants and Restrictions, there was a clause that suggested that in 10 years these Covenants and Restrictions by mutual agreement could be made to go away and that was sort of like the lightning rod issue that everybody said, “How does it make any sense after 10 years two people get together and say, “changed our minds”. That has been eliminated. Edgar – Ed and I have been working through some of the details on these documents. The work that we’ve done is consistent with the generic advice we’ve had from Town Counsel in terms of looking at some things that may be relevant to us in the approval process and not getting hung up or spend any time on the assessment of fees or who has to make sure of what and all that stuff that has to be a function of the homeowners and their work. Relative to some things that tie back to our concerns, there’s an awful lot that’s spelled out in the Covenants and Restrictions so I asked that to be very clearly made part of the Declarations which it has been so by extension, there’s a lot of appendices to the Declarations master document so it now refers to and incorporates the Covenants and Restrictions document. There were a couple of other things that I wanted clarified, more from the perspective that had been represented to you about no further subdivision and some of the concerns that Attorney Fahey had raised relative to that because we have learned through our discussions with Counsel about things like “convertible land”. Maybe we hold some convertible land and someday it could be a three or four unit condominium. We’ve also learned about “withdrawable land”. That declarants can hold back some land for themselves and then all of a sudden within a prescribed period of time, it could be pulled out of the condominium. Those are presumably some of the things that Attorney Fahey had eluded to and understandably so. This has been represented as a 2-unit condominium. I asked Attorney Hibbard to clarify the fact that there is no

“withdrawable land” and there is no “convertibility” beyond the town units that we’ve talked about. The “no further subdivision” stipulation is tightened and consistent with all of the legal documents. So those are some of the kinds of things that we talked about before where I wanted to make sure that what has been represented and what our understanding was is in fact memorialized in these documents. That’s another example of Attorney Hibbard’s willingness to work with us on those clarifications. There is a provision where our attorney has recommended that we look at an across the board comment that we look at pieces of the declarations that should not be amended without Planning Board approval. Section 19-100, Article 19 – The middle of that section reads that no changes may be made to... Attorney Hibbard – The first item that I cited was Article 1, Section 1-114, which is one of the sections that John had highlighted as being important to clarify. That refers to Condominium Rules – John’s concern there was that by adopting new rules, the Board might try to sidestep some of the restrictions in the declarations and what we said there was “No regulation will be adopted that would increase the number of units or amend any other provisions of the Declaration or the Declaration of Covenants which may not be amended without the approval of the Planning Board of Meredith”, so that section cannot be changed unless some future owner comes back to the Board. Edgar – The Declaration refers to a document that does not yet exist. They can’t create a rule that negates any of the other things we have in place. The second one is Article 2, Section 2-100, which describes the land and states that the condominium does not contain any withdrawable land. Article 2, Section 2-602, also indicates that there will be a maximum of two (2) units in the Condominium. There is convertible land because the way the condominium is set up that when the two units are built, actually they go through a process of converting undeveloped land to developed land and in this case the convertibility of the land is a legal mechanism to go from undeveloped to developed for those two units as depicted on the plan. There is potential if it was other than that, that it could be more units and so that’s why we have the clarification under 602 and that’s why that doesn’t get amended without Planning Board approval. I think 2-603 was based on what John and I had discussed which was to make it clear that the units would be restricted to residential use. The next item I cited was 2-801. Flanders – I just read this over quickly and it says each unit shall be occupied and used only for private, residential purposes by the owner or his family or by lessees or guests of the owner and not for any business use, except as provided in the Declaration of Covenants. I have a problem with the thought that there might be some business use down there. Edgar – We will get to that in a minute. It basically talks about a home office. All of the items in the staff review have been incorporated into this version. Attorney Hibbard – We talked about restricted use of Common Area “B” and

Carl raised this issue that came to us at the last minute today about whether or not a garden of limited size would be appropriate on Parcel "B". Bliss – I don't have a problem with it as long as it's for their own private use and they are not going to sell any vegetables or anything. Flanders – I don't have a problem with the garden of limited size, my question is knowing the vegetation down there, if you went in and cut out a few thousand square foot area, is it going to get any sun except at high noon because there's a lot of big trees there. I would suggest we go back and look at the property and see if there's some area that is suitable to John or the Board. Edgar – I have no problem with it but the only caution I throw out for the future is that when a suitable area is found for a garden, then someone is going to want to build a structure to put the tractor in and rotor tiller and all the tools and that's not going to fly. As long as it's clear that the tools be placed in the 500' building on the other side of the road. Bayard – I think that should be noted but a garden is green if it grows right. I don't think a reasonable size garden is a problem. Flanders – I don't have any problem with a reasonable size garden, but I guess I'm in the role of the devil's advocate here tonight. If a substantial amount of vegetation were cut on that section, then that would tend to increase the volume of flow in that culvert we were discussing earlier. I think there needs to be some size limitation on the tree cutting. Many of the restrictions on the trees have been self-imposed by the Trust not so much as the Town and I think that the history of this is pretty well trailed in that the Trust doesn't want to cut too many trees. They've spent a lot of time and money restricting the cutting of the trees. I would say if something could be worked out between the Trust and the potential buyer in terms of the size that probably would be well in keeping with what the Board would consider to be a reasonable amount of cutting. In terms of the drainage, I think that would have to be looked at, although garden space is not impervious surface, it does absorb the natural runoff. It would be more a case of any type of erosion in trying to create a garden in the terrain area that requires some cutting and filling. I don't see that as being a major problem. Bayard – I think there does need to be some limit on the size in terms of nitrogen loading and stuff because you are near the lake. It is probably just wise practice not to put a large one in anyway and I think that can be handled administratively. Flanders – The only comment I would like to make, Carl, is that I would agree with you that the Trust has approached this very conservatively. In the future the Trustees may change so I think we still need to take the same position we've taken on other projects. Even though the applicant we are dealing with now has been very responsible, that's no guarantee in the future that will continue to exist so we still need to have the safeguards. Johnson – I think the position of the garden would be incorporated into the legal documents. In other words if there's a limit to the size and what could be done, that would be cast in stone just like all the

other covenants and restrictions. Flanders – The nature of this garden issue I think is insignificant enough that we could trust staff to deal with that. Common land is not open to public access. The Board of the condominium has the responsibility to inspect the open space to make sure there are no violations and the use is consistent with approvals. The outbuildings have been switched from one common area to the other so they are actually coming out of the 6.7 acre green space and will be on the other side of the road next to the leachfields. Item 6 has been amended to reflect that. The size of the structures which is not our issue increased slightly. The dock deal between the abutter and the applicant has been incorporated in Item 8. Item 10 just restates further subdivision of any property is restricted. This is what I recommend: Section 2 – Dedicate open space; Section 10 which restricts further subdivision; Section 18 which is the part about the duration of the covenants and Section 20 – Enforcement of Covenants. If that is OK with the Board, we will make those final adjustments prior to recording the documents. Marino – If there is any clear cutting in the area of the proposed garden, it makes me wonder about the potential for storage of boats, etc., during the winter time. Edgar – This is one of the restrictions that cannot be amended without Planning Board approval. The common area shall remain in its natural forested state in perpetuity and shall not be developed for residential use. Trees or other vegetation shall not be cut or removed. Trees that have fallen and are beginning to disease would be an exception. Jim Hughes – It was mentioned early on about some problems and potential for the lawsuit and that had been settled and withdrawn. Is there written clarification to these issues? Edgar – In both cases, the ZBA lawsuit and the Planning Board filing, all of those docket markings have been filed with Superior Court. There is no pending litigation. Flanders – As part of that agreement, was there any document from Meola stating that he would not pursue any future actions in regard to this subdivision? Hibbard – In the settlement agreement, there is not a specific statement that they will not bring suit challenging this Board's final decision. If this Board were to make a decision that significantly changed what was understood by the parties, they would have the opportunity to bring suit, but based on what this settlement agreement says and discussions we've had, they seem to be very happy with the settlement and highly unlikely to challenge anything from here on. Edgar – Our Town attorney obviously has been involved in representing the Town through all these pleadings and filings and not negotiating the side deals, but has been involved and aware of all legal documents that have been filed. They have all been reviewed by Laura Spector with Mitchell & Bates prior to anything being settled with the Court. If somebody changes their mind, anybody can sue anybody for any reason reason in terms of the ridiculous, but as a practical matter, there were a lot of concessions that were privately worked out. If we changed something

that deviated away from the initial approval, they would have an issue, but we are working within the framework of a conditional approval, that's what their expectation is that we would be doing tonight. The probability of them after having gone around this entire bush chasing these issues, the likelihood that they would have a change of heart at this point is probably remote. After all the effort that's gone into this approval, it is pretty remote there are any surprises left in the bag. Hearing closed at 8:00 p.m.

Flanders – I would like to make one quick comment. I would like to compliment the applicant on the way they have been willing to be conservative in this project and try to take the long view as far as preserving the waterfront and the lake. I wish all of our applicants were the same. Bayard – I think they were very accommodating it appears in solving the legal issues and all which I think was to everybody's benefit.

Bliss moved, Flanders seconded, I MOVE WE APPROVE THE GYPSY CAMP TRUST COMPLIANCE HEARING AS WRITTEN WITH ALL THE STAFF CHANGES JOHN HAS MADE THAT WE WENT OVER HERE TONIGHT AND ANY OUTSTANDING ISSUES ARE TO BE HANDLED ADMINISTRATIVELY. Voted 7-0 in favor of the motion.

2. **TRINITY EPISCOPAL CHURCH:** Rep. James Hughes

Applicant requested a continuance to August 10, 2004, to allow for the driveway to be engineered.

Finer moved, Granfield seconded, THAT WE CONTINUE THIS HEARING TO AUGUST 10, 2004, TO ALLOW FOR ENGINEERING PLANS TO BE PREPARED FOR A DRIVEWAY TO A PROPOSED MEMORIAL GARDEN. Voted unanimously.

3. **LATCHKEY CHARITIES:** (Rep. Rusty McLear)

The Latchkey Group was formed about 12 years ago. One of the first things that was undertaken by this group approximately 8 or 9 years ago was Community Park and the Latchkey Building on Main Street. We were able to secure a P & S Agreement on the Rust Building which had been vacant for 10 years and a portion of it had burned down and obtain financing for it. We worked out an agreement with the Town where they would end up owning what is now Community Park. A private developer would develop the brick portion of what was the Rust Building at that point. We were able to get an old building that had been vacant and an eyesore for quite a while and get it turned into a Park and a good tax paying building. In this case,

we are in the same kind of scenario, but on a smaller scope as far as ground, but an equally important piece of property. This building has been vacant for a little over 5 years and has a big hole in the roof. It used to be the site of the Town Hall back in the 1860's. It was a restaurant at one time during the 50's and 60's. It was the original home of the Etc. Shoppe which is now on Route 25. It has been offices and also apartments. It is an eyesore so this group decided to try and take this on again and our purpose is to renovate the eyesore, increase the tax revenue, create housing (4 apartment units) and create economic vitality by putting stores back in what was the retail space. We are here to discuss the look of what the building would be or what it is now. Chris Williams is a member of the organization and he and his staff have worked diligently on putting this together. This is a corner building which is very visible when you drive up Main Street. I think it's gotten to be one of those buildings we don't see anymore. You just don't look at it because you've looked at it so long looking like that. The idea is to take the porch and wrap it around the front, create the store space again and four, one-bedroom apartments. This is utilizing the existing structure and it is being gutted out right now. We have had an engineer in there and believe that the structure itself is salvageable and so we'll go with the basic look of the building, but creating a porch and entrance or a visibility to it that as you come up Main Street it really becomes a focal point and an attractive point at the end of the road. We do have people who have called us about being tenants in the building. Certainly the housing is something that the Town needs and people need. There is a deed restriction on the property that it cannot be a restaurant or any food service operation. That's a deed restriction by the neighbor who owned the property. Once Latchkey gets the permits to do this, then we will probably turn it over to the Greater Meredith Program or possibly find a private person to do the development of it. Even if we find somebody for-profit to do it, it would carry the restrictions of what we would want it to look like and what it can be. Edgar – One question that should be in your head if you haven't thought about it is why aren't we looking at a site plan in terms of the use. That's basically been reviewed by Bill and because of the historical uses of the property commercially as long as we weren't going beyond the retail/office uses that have been there over the years and not going beyond the number of apartment units, Bill felt it didn't need to go through a change of use review. That letter had been submitted and gone back and forth between Chris Williams, Bill and you guys were copied on that. This focuses really on the architectural improvements. One thing I want to bring to your attention is the process. The building is on a very small lot and basically non-conforming with respect to lot line setbacks. We haven't seen a detailed plan that shows the footprint of that improvement on the survey plan. It's all in the works. My guess is if you look at ell on the building on the proposed elevation on the

left side, the gambrel, that's an addition. They are going to tear down a two-story addition and go back up to create that roof line and then either between that or bringing the porch around, they very well could be adding new architectural features in the setback. I don't know that for a fact, but my suspicion is that might be the case. The Zoning Ordinance anticipated this scenario where through the architectural review, there could be instances where one might find themselves in the setback and rather than kick all of those kinds of projects over to a conventional variance review by the Zoning Board, the Ordinance was intentionally crafted in such a way that gives you the latitude to provide setback review under certain circumstances. The expansion of this structure into the setbacks, if it goes beyond a certain square footage allowed in the ordinance, the ordinance has a provision whereby you can provide that relief. The criteria are as follows: (a) The request needs to be in writing as part of the initial application or the application can be amended. In this case, Latchkey will need to amend their application if it's found to be necessary. (b) The request and supporting information is reviewed by the Board at a public hearing. (c) If we are exercising this discretion getting a little bit closer to the ROW, the Ordinance requires that these kinds of requests go to the Fire Chief, Code Enforcement Officer and Director of Public Works to make sure we're not creating a maintenance issue, sidewalk hazard, safety hazard or those kinds of things. (d) The Board needs to find that the reduction in setback is necessary to fulfill the purpose and intent of the ordinance and one or more of the elements of the Performance Criteria need to be fulfilled. In that context, the kinds of things that would come into play is the orientation of this building in relation to surrounding areas. When we start looking at the proximity of other projects and other development or historical buildings, that's what they mean by orientation. You look at the streetscape and the setback of some of the older buildings on Main Street. If it's part of this architectural rehab that is one of the things that's being accomplished is that the approval of this building is in keeping with the surrounding area. If we're looking at breaking up the massing of the building, I think you can see a good contrast here. The gambrel is a very massive building with not a lot of detail and then on the right-hand side you see a lot of the detail between dormers, eels, porches and those kinds of things that kind of break up that bulk. They have a really good contrast of showing you what the ordinance speaks to in terms of how you break up massing and looking at architectural features and details towards that. If for any one of those architectural reasons, one would find themselves in the setback if the Board considers the recommendations of the Fire Chief, Code Enforcement Officer and Director of Public Works, you have the latitude of granting that relief without necessitating a zoning variance. Towards that end, there may be a couple different ways to proceed. I don't believe this is time sensitive in a big way

so one scenario is to continue the hearing. That may or may not be necessary. That's a call you folks would make. If you feel a continuance of the hearing is not necessary, we still do need to make these referrals. If the Board's comfort level is sufficient and you can make a preliminary finding, then you could grant a conditional approval subject to these referrals coming in and as long as there's no big yank in getting to final approval. I think you have a couple different ways you can proceed. If you want to take the cautious route, continue it. If your comfort level is sufficient, you can condition it as long as you are clear on the process. Bliss – Mr. Chairman, I have a small problem. I know this is a charity, but Rusty just talked about it possibly being turned over to private individuals to run it. I'm a little upset that we are not seeing a site plan. Any other business that's come in on Main Street, we talk about parking, we talk about all this other stuff, I feel we as a Board are really setting ourselves up to maybe set a precedent down the road. Why do we ask others to do it and all of sudden just because this is a great thing and want to see something done to this building, it seems to me we are pushing this through and I personally would like to see a site plan. Kahn – Was this hearing tonight noticed to the abutters? Edgar - Abutters have been noticed. McLear – I understand your concern and your question. The Town did come down and take a look at what has been there, did the research on it and I don't think it's different than other things that it had been used as and basically it is being used for the same thing again and not having to go through a whole Planning Board route. This has been a commercial building with numerous different kinds of commercial uses and we are proposing, especially with the deed restriction on the restaurant, a lesser use than had been there in the past and less bedrooms also. I feel what Bill and the Town did was appropriate. Flanders – Could we ask John to pass that site plan around so we could see it, not a site plan but the survey plan. McLear – This is the survey and it's really hot off the presses. I was concerned that the building actually may not have been within its boundaries. It is within the boundaries and the setback, this part of it, the porches and things that are up on this level do go right out to the boundary. The porch would come out into the setback. Flanders – Mr. Chairman, I would just like to say I think you've done a good job turning that sow's ear into a silk purse. If I look at the drawings and elevations and stuff, I think that's about as good as you're ever going to get there, short of burning it down and starting over. Edgar – We did have that communication go out to the Board that was between the applicant and Bill when there were historical uses of the property and what the basis was for proceeding in an architectural context. I think Bill's sense of it was that it wasn't a change of use, we have this historical use of the property and we weren't changing it into something beyond the prior uses. Bliss – I guess I was under the impression that we would see not only architectural design review but we

would see some type of site plan that did talk about parking and that aspect of it. I do still think we are setting ourselves up... Finer – The parking on Main Street is limited... Bliss – I know there's none, but we at least have to talk about it. You at least have to say OK, it's like the rest of Main Street. If we don't say anything at all... Finer – Did the previous site plan have waivers for parking? Edgar – There is no site plan, I believe this goes back too far. McLear – There was very little detail on the building and what's been there. As you can see, the building takes up almost 100% of the site. There is no parking, the parking is across the street at the public lot. We have agreed to not have a restaurant use which is important to the neighbor. We are talking about less bedrooms than were there before, a little less retail space because there will be a couple staircases in there and also I do understand that any tenant that would come in would have to get a permit for occupancy. Flanders – I don't have a real problem with the way this is presented. I'm looking at the survey plan and we're not going to be exceeding that 400 sq. ft. that's allowed a non-conforming structure to be expanded in the setback as long as it doesn't exceed 400 sq. ft. in area. And the encroachment does not exceed what already exists and neither one of those cases are going to happen here so I think the use is consistent with what's been there before, parking spaces were not on this site before, there aren't going to be any now. It's no different than a lot of the other spaces on Main Street and I would be comfortable with us going to a conditional approval tonight. Bayard – The 400 sq. ft., is that in reference going from two to four. McLear – No, that's the porch. I am concerned as Pam is that if there were no expansion in the size of the building, I wouldn't have any discomfort. And again, I don't see any problem that will come up that will prevent this from being passed, but on the other hand, we like to try and keep from getting too far out on precedence where the next person will come in and want to add a whole floor to the building or something like that. McLear – From this façade out is included in the 400 sq. ft. Frankly, we might be close. Edgar - Even on the architectural piece even if that's all we are looking at, I think it would be helpful to have the footprint on the survey plan. McLear – If we were to stipulate just simply that it's not over 400 sq. ft., one of the things we've talked about is the apartments and the stores. We have a rough estimate and this isn't a Planning Board purview really, but we do have to look the budget and the bill has come in higher than we hoped it would so we've talked about maybe having to shrink it in scope which would mean that this section wouldn't get built, but if we simply stipulate that the 400 sq. ft. won't be exceeded... Edgar – No, you could exceed the 400 sq. ft. provided that these guys find, as I articulated before, you can tear this thing down if these guys acknowledge there was a legitimate reason to do so. The 400 sq. ft. is a Building Permit issue generally speaking for expansion of non-conforming structures and beyond

that the ordinance kicks in and there are certain pre-conditions that the Board has to find that would give them the latitude to come back with a conditional approval. McLear – I would be willing to stipulate that we would not exceed the 400 sq. ft. limit. Finer – I wouldn't want to do an approval showing a 4-story ell and then have it get built as a 2-story ell without coming back before us because it changes the look of the building. Edgar – Is it time sensitive, Rusty? McLear – Not, time sensitive to the project. It's time sensitive in trying to get people involved. Edgar – The reason I ask is there is always the alternative to continue it. McLear – Now that we have this and it shows that it falls within the lines, I think if we continue it, it will give me the time to place instead of the existing building on this plan, the proposed building on this plan so we can see where the setbacks are with this porch and this addition and will be able to compute whether it's 400 sq. ft. or less. Edgar – And that will also allow you to formally amend the request that we needed and if that's the case it will give us time to get input from Fire, Code and DPW. McLear requested a continuance. Bayard - My inclination is to do it on the 24th if we do it first.

Flanders moved, Granfield seconded, THAT WE CONTINUE THIS HEARING TO AUGUST 24, 2004, AND BECAUSE IT IS CONTINUED TO A DATE SPECIFIC, THERE WON'T BE ANY RENOTIFICATION NECESSARY. Voted unanimously.

Bliss – Mr. Chairman, if I could just make a comment on that because we are continuing, I would like to see something added to the plan regarding parking and that they are at least parking in a public place. McLear – We will put a note to that effect on the plan and if you would like we will put a historical note on it too. Bliss – Is there going to be a dumpster or anything like that on the property? McLear – There isn't now, no. Bliss – Is it intended that it's proposed to put one there? McLear – No. We have proposed a laundry inside and a common area for garbage but not a dumpster. They will be able to take garbage down to the garbage room and it will be taken away from there. That's inside the building, not outside. Bayard – Does ADA kick in on this? Edgar – I will have to defer this to Bill. When you are renovating historic structures, it's not black and white. A lot of it comes down to the degree of renovation and degree of feasibility. If it's retail, it's a "place of public accommodation" so there is at least some responsibility to do what you can but I believe the laws also provide flexibility recognizing certain realities on some older structures so I will bring that to Bill's attention.

TOWN PLANNER'S REPORT

1. Bill asked me to run something by you given this discussion of change of use. We have a technically a proposed change of use, but it's going in the other direction in terms of de-intensification of the site. His sense of it was that it didn't need a site plan amendment because it is completely without merit he wanted me to ask. It used to be Meredith Office Products which is being proposed as a finance company office or professional office. Is that something you feel needs site plan review. Flanders - The back half of that building used to be a CPA firm. It was just recently that that part of it was incorporated into Meredith Office Products. I don't really see any big deal. Bayard – I think the intent was for intensification of use and clearly this is the opposite. Touhey – Was there any indication how many office workers would be in that area? Edgar – No. It was the consensus of the Board to run with it and no site plan amendment is required.

Plan Signatures – Stewart Paquette Subdivision

Hearing closed at 8:55 p.m.

Respectfully submitted,

Mary Lee Harvey
Administrative Assistant
Planning/Zoning Department

These minutes were read and approved at a regular meeting of the Planning Board on _____.

William Bayard, Secretary