



43 Chairman Harten apologized for keeping the audience waiting in the hall  
44 while the closed session was held and delayed the start of the meeting.  
45 He then opened the meeting at 7:40 PM stating that the hearings are held  
46 in accordance with the Town of Milford Zoning Ordinance and the  
47 applicable NH State Statutes. He informed everyone of the procedure of  
48 the hearings.  
49

50 L. Harten then felt that the order of the cases should reflect a change;  
51 Case #05-05 being heard first. It probably makes more sense to discuss  
52 the third case first, because if it is not granted, the other two will  
53 become a moot issue. A motion was made by B. Levenson, seconded by K.  
54 Maher and unanimously voted to discuss #05-05 first.  
55

56 The notice of hearing/abutter list was read into the record.  
57 Present - Gerry Tanguay of T&R; Jeff Kevan of TFM; Fred Murphy and  
58 Edward Dockman of Ledgewood Estates Association; Alan Naber; Donald &  
59 Michel Everett; Steven Trecartin and Joan Dargie.  
60

61 An abutter questioned the abutter notification policy as some of his  
62 neighbors didn't get notified. This was explained by both L. Harten and  
63 J. Kevan to everyone's satisfaction.  
64

65 Chuck Hammonds of South Bay Partners, LTD of Dallas explained that his  
66 company is the developer of the proposed construction. It is a 100-unit  
67 assisted living facility. Our company has been in business for  
68 approximately 10 years. We are not only in the developer rolls but also  
69 ownership rolls and have a vested interest in the project. He  
70 introduced Charles Hall, contractor and J. Kevan. Mr. Hammonds presented  
71 the Board with a booklet regarding the proposed project and also  
72 information as to his company.  
73

74 J. Kevan then presented the proposal

75 1. Currently there is an approved plan on both parcels i.e. it is an  
76 assisted care facility to include a gated, enclosed Alzheimer wing on  
77 the first floor only.

78 3. Proposed footprint area is 25,330 SF; the approved plan has 38,000 SF  
79 so there will be about 30% less building footprint.

80 4. Sixty parking spaces are being proposed based on a need in other  
81 facilities that the company runs.

82 5. Our open space goes up ½ acre, which is about 33% more pavement on  
83 the approved plan versus the proposed. There is less pavement and  
84 building on the proposed assisted care facility.

85 6. The proposed building is set further back from all property lines.  
86 The approved site is 30' from the right-of-way of Ledgewood Drive and  
87 the proposed is 78' with the main building being 107'. There is a  
88 significant difference as far as setback is concerned.  
89

90 B. Levenson asked for an explanation as to why this facility is being  
91 considered residential and not commercial. Mr. Hammonds responded that  
92 it will be a 24-hour operation facility; nurses will be on staff 24  
93 hours. It operates as a business and people live there 24 hours/day,  
94 monthly and yearly so it is a hybrid of a residence.  
95

96 J. Kevan felt the same way and asked if this falls under the Interim  
97 Growth Management Ordinance (IGMO). This was considered to be a Res. "A"  
98 use. Assisted care facilities are allowed by special exception in Res.  
99 "A" (see 7.027.B). He stated that there will be 100 units, small  
100 kitchenette where a small refrigerator and microwave can be placed, main  
101 dining hall to eat three meals. It is an assisted care facility so they  
102 assist people with their day to day functions, medications and medical  
103 needs, physical therapy, an area for social gatherings and social  
104 activities for the residents, laundry and cleaning service and  
105 transportation. Most of the people that live there would have a small

106 number of vehicles but after they have been there for a while would use  
107 the facility provided transportation.

108 B. Levenson personally feels this is a commercial enterprise, not a  
109 residential enterprise. L. Harten doesn't see it that way. If you are  
110 talking nursing home where there are rooms with a bed but these will be  
111 individual units. J. Kevan stated they are individual units but they  
112 don't have a full kitchen or cook meals.

113  
114 J. Kevan then discussed the setback situation again by indicating same  
115 on the plans. L. Harten clarified the setbacks from Prospect St. i.e.  
116 48' on approved plan and 140' on proposed plan.

117  
118 B. Levenson asked that in typical elderly type housing, how many parking  
119 spaces would be required. Response being 125 spaces, B. Levenson  
120 commented that only 60 spaces are needed for this building.

121  
122 J. Kevan continued speaking to traffic. Information had been taken out  
123 of the ITE (Institute of Transportation Engineers) manual (see file).  
124 When the formula was compared to this site, it was found to be a couple  
125 less trips per day on the proposed site. K. Bauer brought up the fact  
126 that they would have to request a waiver from the Planning Board for  
127 less than the required spaces. J. Kevan was in agreement. C. Hammonds  
128 would like to see more green space rather than concrete. J. Kevan  
129 speaking to the IGMO, the intent is to give the Town more time to get a  
130 handle on residential development. We had the same discussion as to does  
131 this ordinance really apply. The way it is written is that we need to  
132 be before this board. The Town has already approved the same use on this  
133 site with a slight modification. Going from 88 units to 100 units and  
134 50-75% of these would have a couple occupying the apartments and  
135 probably talking about the same 100-110 people occupying either one. We  
136 feel the number of people and traffic will drop slightly or be the same.  
137 We would anticipate 100-110 people in the assisted care facility. The  
138 IGMO was drawn up to control residential, but this is not a strictly  
139 residential development. This is unique in that it is an assisted care  
140 facility to assist people as they age and help them with daily  
141 activities, medical or medication, physical therapy, social activities,  
142 provide meals, laundry and transportation.

143  
144 He then spoke to the criteria for a variance. See file but verbally  
145 expounded on same.

146 **1. The proposed use would not diminish surrounding property values.** He  
147 showed the Board some architectural drawings and it does look similar to  
148 a residential building. The approved plan is three-story the proposed is  
149 2½ stories. The approved buildings are closer to the street. It won't  
150 appear that the building is substantially larger. Because we have  
151 pulled the building away from the property lines, there won't be a  
152 visual impact from anybody surrounding it. There is a Conservation  
153 Easement and it will remain in a natural forested tree state. They plan  
154 on planting trees wherever needed in the buffer. There will be 30  
155 employees total on three shifts, 8 - 12 people at a time.

156 **2. Granting the variance would not be contrary to the public interest.**  
157 This will create jobs; provide a tax base; no increase in traffic from  
158 the approved plan (the majority of traffic will be employees); the rest  
159 will be traffic from guests coming/leaving. Don't expect a lot of Police  
160 traffic; Fire & ambulance will probably be the same, there will be some  
161 shifting of people from one facility to another but normally it is done  
162 by scheduled transportation and not anything the Town would provide. If  
163 there is an emergency, an ambulance would be called; private trash  
164 collection; 33% less building and parking and open space increases by 6-  
165 7% about ½ acre. Quality of life, this allows people to stay in the  
166 community they have been living in and have the type of assistance  
167 needed as they age. The Fire, Police or Ambulance - no impact.

168 **3. Hardship - a., b., and c**

169 An existing care use has already been approved on the site and we are  
170 looking to modify the density in a very minor way. The number of people  
171 at the site will be approximately the same. Regarding the uniqueness of  
172 the property, in relationship to the IGMO, this isn't just a residential  
173 use, it is an assisted care facility, there is a medical component, a  
174 mixture between a couple of different uses and would be a strong benefit  
175 to the community. Would not injure private or public rights of others -  
176 it is an assisted care facility and won't put any burden on the Town, it  
177 would add tax benefit and would be in the interest of the community.

178 **4. Granting the variance would do substantial justice.** It would allow  
179 the construction of a 100-unit assisted care facility in the community  
180 and will not put any type of burden on the community add tax base and  
181 also add some jobs in the area.

182 **5. The use is not contrary to the spirit of the ordinance** - We again  
183 question whether an assisted care facility was ever anticipated when the  
184 IGMO was written. It isn't just residential it is a different type of  
185 facility.

186  
187 K. Bauer commented that this is an interesting divergence from our usual  
188 variance. The presentation seems to imply that we are voting on a use  
189 variance, but we are not. This variance is to decide whether we will  
190 grant relief from the IGMO. The questions that need to be answered are  
191 not in tune with the IGMO. If we decide that you are delayed because of  
192 the IGMO, that doesn't mean you can't build the new plan. She wants to  
193 make it clear, or see if the Board agrees, that if this is denied, that  
194 doesn't mean we are voting the use down. It means that you fall under  
195 the IGMO and you will have to be restricted as other people are. J.  
196 Kevan responded that he doesn't think that the IGMO was intended to  
197 capture this type of facility. We could come back in a year, or  
198 whatever, if the IGMO is voted in and apply again. The applicant is not  
199 going to hang on to the P&S for that period of time; you would see the  
200 apartment buildings being constructed. We feel it is a minor  
201 modification - 88 to 100 units and it is 100 - 110 people no matter what  
202 plan is constructed. R. Westergren asked if this is age restrictive and  
203 J. Kevan responded it is 55 and older but the State has other  
204 requirements for assisted care facility. K. Bauer commented that  
205 because this is a new plan except for exceptions by the State for  
206 disabilities it would be 62, not 55. J. Kevan was in agreement. C.  
207 Hammonds stated that 62 is OK, our average age in our facilities is  
208 typically 82. We have an Alzheimer resident in one of our facilities  
209 that is 55. We do comply with the regulations.

210  
211 Abutter's comments -

212 Fred Murphy, 8 Christine Dr., member of the Board of Directors and  
213 Treasurer of the Association. He presented a letter, dated February 16,  
214 2005, to the Board (see file) and read same into the record. He further  
215 commented that he doesn't understand that with 88 residents, 125 parking  
216 spaces are required. You increase the number of residents and cut the  
217 number of parking spaces in half. Currently, we do have a lack of  
218 parking spaces and the Board is attempting to correct this by spending  
219 thousands of \$'s to provide some additional parking. He indicated on a  
220 plan the roads in this entire complex. From Tonella Rd. up to Ledgewood,  
221 which is the main entrance to this facility; opposite the entrance to  
222 Christine Dr. What is to prevent people leaving this facility from  
223 driving on our private roads? J. Kevan explained that Ledgewood Dr. is a  
224 public road which will ultimately be taken over by the Town; Phillips  
225 Way is also a public way. As far as the number of parking spaces, the  
226 difference is the type of use, this is an assisted living facility and  
227 the background knowledge on the part of the operator is what brings us  
228 to the number of spaces i.e. 60. Employees come and go so there are  
229 approximately 10 for the shift that are on; 10-15 spaces are for the  
230 occupants that have vehicles and the balance being for visitors. That  
231 will be worked out with the Planning Board. There isn't anything that  
232 would prevent visitors from going down Christine Dr. and onto Ledgewood

233 but it isn't a logical way of coming/going. Ledgewood Dr. is the clean  
234 path in/out. If there is a issue with egress and an issue with private  
235 drives that would be the same issue for both the approved or proposed  
236 plan; this also applies to construction vehicles. Construction could  
237 stretch out over a year; we feel it would be better to build the  
238 buildings, get in and get out. K. Bauer asked if anyone knows when the  
239 Town will take over the roads as it could go on for many months. G.  
240 Tanguay, owner of T&R stated that B. Ruoff, Director of Public Works  
241 agreed to wait on the final wear coat until this year when most of the  
242 heavy construction would be done. The base coat can take more wear/tear  
243 of trucks so we decided to wait. The whole project will be completed  
244 this year. The maintenance of Ledgewood Dr..is being paid by the  
245 developer.

246  
247 Joan Dargie, abutter, Prospect St. asked what the hardship is for the  
248 variance. Also, this will be a three-story building and we don't have  
249 many of these in Town. There are units with kitchenettes, what happens  
250 when someone burns a piece of toast. There is a building filled with  
251 elderly residents that require assisted living that have to be  
252 evacuated. The means to get to that property are very poor, whether  
253 Prospect St. or Ledgewood Dr. is used. Her concern is fire; she expects  
254 to see fire trucks up there at least once a week or more. What is the  
255 plan to evacuate this building? She then asked why the road has to  
256 follow the property line at the back and why can't it just go off the  
257 loop and into the facility? The response was due to a drainage ditch.  
258 Also there is the water tower of which J. Dargie stated that it is going  
259 out of use. J. Kevan explained that even though it is going out of use,  
260 we are still required to provide access to it. J. Dargie proposed that  
261 the access to the water tower won't be required. It has been accessed  
262 for over 40 years from Prospect St. and now it is going away if the  
263 proposal is approved. J. Kevan stated that the Planning Board required  
264 access, so we continued to provide access. J. Dargie stated that one of  
265 our concerns is that we (all the people on Prospect St.)are going to  
266 have a road in our back yards. She assumes that it will be lit, leading  
267 into the parking lot for the people who are driving 24/7 into/out of the  
268 facility. L. Harten explained that the road on the new proposal will be  
269 there as it was on the approved plan. J. Dargie stated that the road was  
270 on the old proposal because of the water tower, and asked why the road  
271 can't go away. J. Kevan stated that it is there to provide access to the  
272 rear of the building. He did point out that they would look at it. It  
273 was stated that is a Planning Board issue and the Chairman didn't care  
274 to get into it at this meeting.

275  
276 J. Kevan continued by stating that the building will have a sprinkler  
277 system and the code allows for a 35' building height and we could have a  
278 three-story building with a flat roof on it. C. Hammonds explained that  
279 fire safety is a very key point in all assisted living buildings. There  
280 is a common form throughout the state that fire code relates to  
281 evacuation. These facilities are allowed to have three stories because  
282 of the above. We follow State and local guidelines.

283  
284 J. Dargie then asked for an explanation of hardship. J. Kevan explained  
285 that requirements for hardship have changed. In this case, it talks  
286 about the reasonable use of the land and that the IGMO interferes with  
287 the reasonable use of the land and would there be any injury to the  
288 public or private use if the variance was granted. This type of use is  
289 already approved on the site and we don't think this proposal creates  
290 any injury to the public/private rights of others. Regarding the unique  
291 setting of the property in relation to the IGMO is that the ordinance is  
292 to restrict or limit residential growth. We don't think this is a  
293 straight residential development. This has an assisted care function  
294 that is very different from a residential development. Chuck Hall,  
295 responsible for managing the design and construction of the facility,  
296 stated we took a lot into consideration on this site regarding the

297 proximity to our neighbors. We worked to center the building at the  
298 center of the site to prevent light pollution into the neighbor's  
299 property; we tried to increase the open space; we will capture all the  
300 water on the site; the architecture of the building will blend in very  
301 well with our neighbors. J. Kevan stated that a lighting plan was  
302 provided and submitted to the Planning Board. It has shown that there  
303 will be no wash off onto the abutting property. The lights will only  
304 kept on as necessary and this issue will be worked out with the Planning  
305 Board.

306  
307 John Griffin, attorney representing G. Tanguay. He speaks to the  
308 hardship in that they are not asking for a use variance but rather a  
309 variance from the terms of the IGMO. He then brought up the Simplex  
310 decision. Regarding hardship, this case asks whether or not there is a  
311 fair and substantial relationship that exists between the general  
312 purpose of the ordinance for which a variance is being sought and the  
313 proposed use. He doesn't think the IGMO is an ordinance designed to  
314 prevent or curtail developments of this nature. This is a less  
315 intensive use in many respects than what has already been approved.  
316 Assisted living is not the type of use that creates a great demand on  
317 municipal services. It is his belief that the IGMO was put into place to  
318 curtail uses that put a demand on residential services and be controlled  
319 for a period of time. He doesn't believe that this use is the type of  
320 use the IGMO is trying to curtail. J. Kevan has made a case for granting  
321 all the criteria with regard to hardship set out in the Simplex case.

322  
323 J. Dargie stated that there is a big difference between assisted care,  
324 which, requires 24/7 care but you are doubling the size of what was  
325 originally planned. This facility would require plows be up there  
326 because the building will have to be cleared; it will have to be  
327 accessible at all times and Prospect St. and Ledgewood Dr. are not good  
328 roads.

329  
330 J. Kevan explained that whether there are 50 or 100 occupants, the  
331 number of employees doesn't change dramatically. Whether there are 50  
332 or 100 occupants the same number of vehicles would be required to clear  
333 the property.

334  
335 Michele Everett, 128 Prospect St., abutter asked how many units will be  
336 provided for the Alzheimer patients with the response being 10 out of  
337 the 100 units and will be on the first floor. M. Everett then asked the  
338 height of the buildings from Prospect St. It was explained that the peak  
339 of the roofs will be 42' compared to the Town ordinance that allows 35'.  
340 We will not be taking any trees down that are on the approved plan. But  
341 they are not planting 60' trees; the situation regarding the views was  
342 again explained based on the fact that the building will be situated  
343 further away from you versus on the approved plan.

344  
345 B. Levenson then brought up the issue of # of bedrooms on the one lot as  
346 both the lots will be combined. What is the allowed bedroom density? J.  
347 Kevan responded 160 if we went with the regulation. K. Lynch then  
348 entered the room and replied 30 bedrooms per acre. J. Kevan responded  
349 that it would be between 100 and 110 bedrooms.

350 J. Dargie asked if there would be any blasting. C. Hammonds responded  
351 in the negative as it will be slope on grade, we may go down 2-3'. If we  
352 have to relocate any utilities, there might be some blasting.

353  
354 Linda Merrill, 8 Ledgewood Dr., abutter, referred to a letter that had  
355 been submitted by the directors that spoke for the whole development and  
356 she knew nothing about it. She feels that there are a lot of people in  
357 the audience that feel that way because the people on Ledgewood Dr.  
358 would be most affected. Christine Dr. and Gerry's Way are one-way  
359 streets so they wouldn't be affected by the traffic. She believes that  
360 there are people that don't agree with the Ledgewood Dr. situation. A

361 resident of Ledgewood Dr. would like to see traffic going both ways in  
362 and out. He would like this to be thought about. C. Hammonds explained  
363 that traffic is an issue regardless of either plan.  
364 No further discussion, the chair declared the hearing closed at 8:50  
365 p.m.

366  
367 B. Levenson states that he is hamstrung by our zoning ordinance because  
368 our ordinance says allows assisted living facilities, (see 7.078  
369 definitions). As much as he is convinced it is a commercial endeavor  
370 and should be before us as a request for a variance from the use  
371 requirement in the zone, he is restricted pushing for that because the  
372 zoning ordinance says that Senior Housing s allowed as an overlay in  
373 Res. "A" and part of what is allowed is an assisted living facility.  
374 They are saying this will be an assisted living facility.

375  
376 The variance criterion was then discussed by each Board member  
377 individually.

378  
379 **1. Could the variance be granted without diminishing the value of**  
380 **abutting property?**

381 B. Levenson stated that a half-size facility had been approved initially  
382 and anyone buying a unit should have known this was coming. The impact  
383 is greater but it is better shielded and protected. Would a larger  
384 facility have an impact he doesn't see a major problem.

385 K. Bauer asked how this question relates to the IGMO; the board agreed  
386 that it doesn't. This is totally not relevant to what they are asking  
387 the variance from. She is reluctant to answer it because it is a use  
388 question. Several members stated that we are voting on a use question.  
389 She then stated that we are not voting that this use be allowed; we are  
390 voting whether or not we are going to give relief from the IGMO. She  
391 isn't concerned with the public interest of this use or hardship. She is  
392 concerned with the intent of the IGMO. If we keep switching back and  
393 forth and giving answers to use which is the prerogative of the Board,  
394 but she feels very reluctant to answer use questions when the use has  
395 already been established and approved by the Planning Board.

396  
397 At this time, the Chair opened up the hearing to allow K. Lynch to  
398 clarify this point. K. Lynch stated that the use was permitted but the  
399 difference is that if they came to the board for 88 units, they wouldn't  
400 be here. Because it is being expanded to 100 units it has to come before  
401 this board for an expansion of that use. At the same time the IGMO comes  
402 into play. J. Kevan then entered the discussion by stating that the  
403 Board is applying it to the IGMO. The question is granting us a variance  
404 from the IGMO, would that diminish the value of abutting property. At  
405 this time, we are talking about just the IGMO and each question applies  
406 to just that. K. Bauer agreed that is the way we should be asking the  
407 question not from the use aspect. She stated that it wouldn't diminish  
408 the value of surrounding property, but it makes less sense to say no  
409 than yes.

410  
411 Chair again closed the hearing.

412 K. Maher responded in the affirmative.

413 R. Westergren also responded in the affirmative and also stated that the  
414 proposed plan is a better one. K. Maher agreed with that.

415 L. Harten also was in agreement, he felt that anyone living on Prospect  
416 St. or in the development would be doing handsprings with this change.  
417 He doesn't think it would diminish property values in view of the IGMO.

418 **2. Would granting the variance be of benefit to the public interest?**

419 K. Maher stated this question has nothing to do with IGMO 12.004 - yes -  
420 this would have less impact on abutting property.

421 R. Westergren felt it was less invasive.

422 K. Bauer speaking to R. Westergren and K. Maher that they are responding  
423 to the use; they agreed. K. Bauer stated that she doesn't think it is  
424 in the public interest to grant relief from the IGMO because she takes

425 the intent of the Planning Board in their whole IGMO. She thinks it  
426 would be in the public interest to uphold the IGMO in this situation for  
427 all the reasons set out in the IGMO. There are a lot of reasons to stop  
428 and take a deep breath and look at what is being proposed for the town  
429 in terms of growth. K. Maher responds that this has already been  
430 approved and 12.004 doesn't affect them whatsoever. K. Bauer responded  
431 that when the plan was approved, it didn't affect them. K. Maher stated  
432 that it still doesn't because it comes under having been approved from  
433 the period of after Dec. 1, 2003 and prior to Dec. 1, 2004. K. Bauer  
434 then stated now the applicant is coming in with a new plan with the IGMO  
435 in place.

436 **B. Levenson** stated that he would agree with K. Bauer except for the fact  
437 that this is an approved plan and in place. We are trading in one for  
438 another; we are not adding any more residences just trading in three  
439 buildings for one building. The traffic issue will continue because  
440 they will build something. In terms of public interest, there is no harm  
441 to be done, therefore he votes in the affirmative.

442 **L. Harten** is in agreement there is nothing contrary to the public  
443 interest. We are not increasing the number of residences, but rather  
444 increasing the number of units but not the number of people that will be  
445 living there. He feels the spirit of the IGMO is a little restrictive in  
446 this case; he doesn't think it was intended to restrict this type of  
447 use.

448 **3. Would denial of the variance result in unnecessary hardship, etc.**  
449 **(Note: the responses will apply individually or to three criteria in**  
450 **total).**

451 **R. Westergren** doesn't think it would be a severe enough impact by going  
452 with the proposed plan but he doesn't know how it would fit with the  
453 IGMO. Yes

454 **K. Bauer**, speaking to (a) is in agreement with R. Westergren in that  
455 these criteria are hard to fit very well as far as relief from the IGMO.  
456 If we deny the variance so that they had to wait for the new plan she  
457 doesn't think it would a hardship.

458 b. Applying this to the IGMO and the restriction that says that  
459 residential is on hold, she thinks there is a fair relationship

460 c. She can't answer - she doesn't think there would be a hardship in  
461 terms of the IGMO.

462 **B. Levenson** felt that both (b) and (c) are yes votes because it is an  
463 existing situation. (a) It isn't a typical criterion to establish as the  
464 IGMO wasn't instituted with assisted living in mind.

465 **K. Maher** is in agreement with B. Levenson.

466 **L. Harten** doesn't have a problem with (b) or (c). No one has addressed  
467 the unique setting but how does that relate back to the IGMO. There  
468 would be a hardship to them if we applied the IGMO because it was not  
469 intended to cover this type of residential living.

470 **4. Would granting the variance do substantial justice?**

471 **K. Maher** referred to the Handbook, pages 16 & 17 which states that any  
472 loss to an individual that is not outweighed by a gain to the general  
473 public is an injustice.

474 **B. Levenson** stated that the zoning ordinance allows assisted living as  
475 an acceptable use.

476 **K. Bauer** reads the criteria as if we give them relief from the IGMO,  
477 would substantial justice be done. She doesn't see how it would be done  
478 - No

479 **R. Westergren** stated that granting the variance would do substantial  
480 justice based on previous discussions- Yes

481 **L. Harten** felt it would be an injustice to not go forward at this time.

482 **5. Could the variance be granted without violating the spirit of the**  
483 **IGMO?**

484 **B. Levenson** stated that for all of the reasons he previously stated it  
485 would not violate the spirit of the ordinance. The # of people would be  
486 about the same.

487 **K. Maher** stated that the IGMO was not drawn up with this type of living  
488 in mind.

489 R. Westergren in agreement.  
490 K. Bauer - refers to the IGMO, Page 2, Letter H Intent of the IGMO. In  
491 this section it says that the Planning Board needs "breathing room" to  
492 develop and propose to the Town a carefully considered and well-designed  
493 growth management policy that will balance community interests and take  
494 regional interests into account. Her understanding is that they want to  
495 stop new plans coming in for discussion, vote, and notification - all  
496 the business of a new plan. This is a new plan that will be put on  
497 their agenda and part of the spirit and intent of this ordinance was to  
498 cut off new plans, let the many plans stand but put off new plans.  
499 Allowing this variance puts a new plan on their docket and everything it  
500 entails. The second proposal is a new plan.  
501 B. Levenson commented that they want to put the brakes on residential,  
502 but they will still be accepting commercial/industrial plans.  
503 L. Harten doesn't believe this type of housing violates the spirit of  
504 the IGMO. He agrees with K. Bauer in that the Planning Board wants to  
505 alleviate new plans, discussions and interruptions so they can actually  
506 do some planning. Where the plan for 88 units has already been approved  
507 and we are looking at an additional 12 units and probably not adding any  
508 more residents, would they have to go through the same amount of work.  
509 He doesn't think violates the spirit of the IGMO.  
510  
511 The question regarding a use or area variance was then discussed. K.  
512 Bauer doesn't feel it is either one.  
513 1. Is the variance requested a variance from a dimensional requirement  
514 of the zoning ordinance?  
515 B. Levenson - No K. Bauer - No K. Maher - No  
516 R. Westergren -No L. Harten - No  
517 2. Is the variance requested a variance from a use restriction  
518 requirement of the zoning ordinance?  
519 B. Levenson - Yes K. Bauer - No K. Maher-Yes  
520 R. Westergren -Yes L. Harten - Yes  
521  
522 Final vote -  
523  
524 1. Could the variance be granted without diminishing the value of  
525 abutting property?  
526 B. Levenson - Yes K. Bauer - Yes K. Maher- Yes  
527 R. Westergren - Yes. L. Harten - Yes  
528 2. Would granting the variance be of benefit to the public interest?  
529 B. Levenson - Yes K. Bauer - No K. Maher- Yes  
530 R. Westergren -Yes L. Harten - Yes  
531 3. Would denial of the variance result in unnecessary hardship, etc  
532 B. Levenson - Yes K. Bauer - No K. Maher Yes  
533 R. Westergren - Yes L. Harten - Yes  
534 4. Would granting the variance do substantial justice?  
535 B. Levenson - Yes K. Bauer - No K. Maher - Yes  
536 R. Westergren - Yes L. Harten - Yes  
537 5. Could the variance be granted without violating the spirit of the  
538 ordinance?  
539 B. Levenson - Yes K. Bauer - No K. Maher Yes  
540 R. Westergren - Yes L. Harten - Yes  
541  
542 A motion was made by B. Levenson, seconded by R. Westergren to grant the  
543 variance. K. Bauer voted against.  
544  
545 The variance was granted by majority vote effective February 17, 2005.  
546  
547 30-day appeal period - March 21, 2005.  
548  
549 The hearing adjourned at 9:30 pm.

MILFORD BOARD OF ADJUSTMENT MINUTES - FEBRUARY 17, 2005

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Present: Len Harten, Chairman  
Rick Westergren, Vice-Chairman  
Kathleen Maher  
Katherine Bauer  
Bob Levenson  
  
Kevin Taylor, Alternate  
Shirley Carl, Recording Secretary

Case #04-05 T&R Development/South Bay Partners, Ltd - Special Exception  
- Article VII, Para. 7.071.k to allow a 100-unit assisted care facility.

Motion to approve \_\_\_\_\_

Seconded \_\_\_\_\_

Signed \_\_\_\_\_  
Chairman/Vice-Chairman

Date \_\_\_\_\_

586 Chairman Harten opened the hearing at 10:05 pm by stating that the  
587 hearings are held in accordance with the Town of Milford and the  
588 applicable State Statutes.  
589

590 Present: Alan Naber and Joan Dargie.  
591

592 Due to the fact that there wasn't anything to present except drawings  
593 that had been previously presented, there was no discussion.  
594

595 Vote as follows:  
596

597 1. Is the exception allowed by the Ordinance?

598 K. Bauer - Yes R. Westergren-Yes K. Maher Yes

599 B. Levenson - Yes L. Harten - Yes  
600

601 2. Are the specified conditions present under which the exception may  
602 be granted?

603 K. Bauer - Yes R. Westergren-Yes K. Maher Yes

604 B. Levenson - Yes L. Harten - Yes  
605

606 A motion was made by K. Maher, seconded by R. Westergren and unanimously  
607 voted to grant the special exception.  
608

609 30 day appeal period - March 21, 2005  
610

611 The hearing was closed at 10:07 pm



650 Chairman Harten opened the hearing at 9:40 pm by stating that the  
651 hearings are held in accordance with the Town of Milford Zoning  
652 Ordinance and the applicable State Statutes. L. Harten waived the  
653 reading of the abutter list.

654  
655 Present - Alan Naber and Joan Dargie  
656

657 J. Kevan requested a special exception to allow the building to be 42'  
658 instead of the allowed 35'. The building was pulled to the center of the  
659 site further away from the abutting property.

660  
661 The elevation was referred to (this was in the booklet that has been  
662 present). A three-story building could be constructed with a flat roof.  
663 We felt the peaked roof was important to the Town of Milford and  
664 incorporated it into the structure.  
665

666 Again, drawings were presented and comparisons were made.  
667

668 Regarding criterion for a special exception - see file  
669 L. Harten commented that by moving the building further to the center,  
670 you are moving it down the hill and asked what effect would it have. C.  
671 Hall responded that from a certain perspective it would be 5'. There  
672 would be a net loss of height even though they are 7' over the allowable  
673 height. Based on the above J. Kevan felt it is similar to those  
674 permitted in this district.  
675

676 R. Westergren asked if they went with a flat roof, would they still need  
677 a special exception? Response being in the affirmative.  
678

679 Alan Naber, abutter - stated that all the discussion with site lines,  
680 buffers all take into effect the views from Ledge wood. His house is next  
681 to Phillips Way and he will be looking up the hill at about 380'. By  
682 moving the building back it will go up to 420' elevation. The building  
683 will be sitting 40' above his house and then add 42' for the building  
684 height on top of that. J. Dargie has the same concern. Everything was  
685 presented visually.  
686

687 J. Dargie asked if the Fire Dept has seen this? K. Lynch has no issue  
688 with fire protection.  
689

690 No further discussion, L. Harten closed the hearing at 10:00 pm  
691

692 Voting as follows:

693 1. Is the exception allowed by the ordinance?  
694 K. Maher -Yes K. Bauer-Yes B. Levenson-Yes  
695 R. Westergren - Yes L. Harten -Yes  
696

697 2. Are the specific conditions present under which the exception may be  
698 granted?  
699 K. Maher -Yes K. Bauer-Yes B. Levenson-Yes  
700 R. Westergren - Yes L. Harten -Yes  
701

702 A motion was made by K. Maher and seconded by B. Levenson, to grant the  
703 request, all in favor. Motion carried.  
704

705 30-day appeal period - March 21, 2005  
706  
707