

**Board of Adjustment
Canterbury, NH
Minutes of Hearing
8 April 201**

Case No. 2013-1 Administrative Appeal and Special Exception

Present were: Chairman Joe Halla, Gary Spaulding, Barbie Tilton, Web Stout and Jim Wieck.

Postpone reading of minutes and move to application before Board tonight. Introduction of Board members. Request by Chairman Halla to turn off all cellphones, etc. due to sound challenges of the room. There is an Administrative Appeal before the Board this evening and a Special Exception request by 367 Shaker Road, LLC. The proposed use for the property, the applicant/owner intends to use the property as a residential treatment facility in accordance with the site plan entitled Odyssey House Foundation, Inc. and Odyssey Family Center as approved by the Canterbury Planning Board on November 15, 1994, recorded with the Merrimack County Registry of Deeds as Plan No. 13197 on January 23, 1995. The Application references the article and section of the zoning ordinance involved and the table of uses 5.3 C. The first thing the Board will hear tonight is an Appeal of Administrative Decision. Chairman Halla advised the order of the conduct of tonight's hearing.

Attorney David LeFevre spoke on behalf of the applicant. He introduced Eric Spofford, owner of the LLC and Bill Simmons who will be the Chief Operating Officer of the facility. Attorney LeFevre gave a brief history of the property from Horizons Edge School to Odyssey. He stated the Canterbury Planning Board approved the site plan for the Odyssey House. He submitted a map to the Board depicting the property boundaries. He stated Odyssey House was in business until about 2009 (not completely certain of date) when a remote kind of college campus occupied the property. If you look at the site plan, the existing development of the property is critically important to the analysis. You have a site plan approved by the Planning Board. It was approved for a residential treatment type facility. He listed the existing buildings on the property. What they are proposing is 100% consistent with its previously approved site plan, a residential treatment style facility. The name of the business will be New Freedom Academy. It will serve adult men between the ages of 18-28. The Odyssey House was used for teens, pregnant and postpartum teens that had drug and alcohol related problems. The only difference between the two is that of gender. There would be no children at this facility. The maximum number of residents would be twenty as they are limited by the facility and the existing physical plant. Obviously, it's a residential facility so it would be manned 24/7. They anticipate approximately twenty-five employees working there. It is an AA faith-based organization. These individuals would be considered disabled for the purposes of the Americans for Disabilities Act. The residents will not be violent criminals. They won't be sex offenders. They won't be people that have mental disabilities, anything like that. These are people that are struggling with alcohol. The screening and the regulations from the state level about what we can do is significant. It is very tight.

When his client purchased this property, he (Attorney LeFevre) reached out to Mr. Snyder. He was very helpful. He took his email(s), his calls, he called him back and they discussed what they were proposing to do. Attorney LeFevre's sense of things is that they had an approved site plan, the property was already developed for exactly the same use and they were good to go. Mr. Snyder sent him an email with an administrative opinion stating they needed a special exception. Attorney LeFevre said he'll correct him if he is speaking out of turn but he felt in theory they were somewhat in agreement. If you have an approved site plan and you are proposing to do exactly what was previously approved, you don't really need to come in and get any additional permits or approvals. But, by the same token, given the nature of the use, maybe it's not exactly... we don't know exactly what it is...what you

wanted....but we felt it would be a good idea to vet this in a public forum in front of the Zoning Board and that is why they are here. His sense of things is they do not need anything beyond their approved site plan. That's why when people go to a Planning Board to get a site plan approval, record it at the Registry of Deeds. The reason you do that is because now you have a vested right, you have a right to make a use of that property... you're grandfathered. That is really their position. When you talk about the criteria for a special exception, they think they satisfy all that criteria. What they are really asking the Zoning Board to do is say, OK, we understand exactly what the use is, it's no different than the former use, you've got approved site plan, and you don't need any other permits. This is what they are asking the Board to do.

Jim Snyder stated he agrees substantially with what Attorney LeFevre said. After they had several discussions about apples and apples, apples and oranges he did send them an email that substantially says that he was requiring them to get a new special exception. He cited three reasons:

1. A considerable amount of time has passed since the similar use was discontinued.
2. While the uses are similar, some differences are apparent and others may become evident during a public hearing.
3. Abutters and the public should have a chance to learn about the project and how it may differ from what was done in the past.

Mr. Snyder stated if he'd done his research a little more thoroughly, under one of the zoning ordinances 8.2, special exceptions A, general conditions, near the end of the first paragraph states, "A permit granted under a special exception shall expire if such use shall cease for more than one year". At the time he wrote to Attorney LeFevre, he had not dug that out yet. It might have made things clearer if he had that at the time. He apologized. This completes the reasons why he required the special exception.

Attorney LeFevre asked if he could go out of order stating he has a question. He wasn't aware that a prior special exception was granted. They pulled the town's file and they looked at it. This property was developed he thinks before the town had a lot of these regulations in place.

Chairman Halla stated there was a file and a special exception granted to Odyssey House. They then went after the special exception for site plan. Attorney LeFevre asked for clarification that there was a special exception that was granted? Chairman Halla concurred. Chairman Halla asked the Board if at this time they had any questions. He asked for clarification from the applicant if this is alcohol or drug treatment. Attorney LeFevre stated it is only alcohol. Mr. Spofford spoke saying it is substance abuse of any kind. Chairman Halla asked if anyone wished to speak in favor of this appeal. No one spoke. He asked if anyone wished to speak against this appeal.

Jim Snyder spoke saying he wished to make certain procedurally that everyone in the room is aware of what is on the table here. Chairman Halla said he would do that. Before we go to those against, he reminded that what we are basically talking about right now is did Jim Snyder make an error in telling the applicant that he had to come to the Zoning Board for a special exception. He thinks the applicant was unaware that there was ever one granted and he thought from what he has heard here, he thought there was nothing more than a site plan that was approved. The ordinance specifically states that if the permit for a special exception shall expire, the use shall cease for more than one year, which it did. So there is no special exception in place for Odyssey House at this point. There was in 1994 until they closed. What we are basically deciding here is did Jim Snyder make an error in telling him that he needed to come to the Zoning Board for a special exception. That is all we are doing at this point.

Hillary Nelson stated she was speaking for the abutters agreeing there was no special exception in place. It's pretty clear in the Canterbury zoning ordinance that once that expires you have to come back. She added it is a substantially different use. A treatment facility for pregnant woman and children is different than what is being applied for. For those two reasons she thinks the administrative appeal should be denied.

Joshua Gordon asked if the other reasons that Mr. Snyder gave to Attorney LeFevre that Mr. Snyder is now saying aren't necessary, he wondered whether they also are independently sufficient to deny the building permit in the absence of the first one. Chairman Halla advised this is something the Board will decide when it is voted upon. He asked if anyone else wished to speak in opposition.

Greg Meeh corrected Attorney LeFevre stating this site was not developed as a health/rehabilitation center. It was developed as a school. His family donated that property to the school when the school opened as a non-profit organization. He personally supervised construction of several of those buildings. It was always a school; it was never considered a drug rehab center. He would agree the applicant needs to apply for a special exception.

Sandy Kenyon asked about the residents and Chairman Halla advised that is not germane to the appeal of the administrative decision.

Teresa Wyman, resident of Shaker Road and part owner of father's property on Shaker Road spoke. She thinks absolutely something that is significant a change must come before the ZBA otherwise how are the people who live in that neighborhood going to know that any significant change is about to take place. If nothing else it's common courtesy that they would be notified. No one else spoke in opposition.

Chairman Halla returned to the applicant and those in favor. Attorney LeFevre stated he read the ordinance and has seen that provision so he knows exactly what you are talking about. He was not aware of the special exception. He stated he is going to give us this for consideration. This is what he means when he says they have a vested right. He referenced a NH Supreme Court case regarding Wentworth By-The-Sea. The Zoning Board had imposed for a variance case, not a special exception, as a condition for approval that if they didn't get the work done, then the variance would lapse. That is what we are talking about here. We are talking about the special exception lapsing. It's not as a condition of approval; it's as a condition that's written into your zoning ordinance. You're saying this thing is going to lapse for non-use. The NH Supreme Court says that condition is fine, until such time as the land owner obtains a vested right. A vested is when you have undertaken to use your property, utilize your property, develop your property in reliance upon local land use approval. Here we have that. If the original approval was as a school, he would say that the Odyssey House approval is a different use. But it was approved by the town; it was sanctioned by the town. If you have a site plan and the property was used in that fashion for the next fifteen years or whatever it was, so.....he thinks it would be an error of law for the Board to consider that this site plan authority has lapsed because it hasn't been used. There is another body of law out there that has to do with what is considered to be a non-conforming use. When there are changes in the law and you get to keep doing what you have done because the law can't stop you from doing that. If you stop engaging in your non-conforming use, then under certain circumstances it can be considered abandoning and lapsing. We don't have that here. We don't have that here at all. We have a special exception that was granted, an approved site plan that was recorded at the Registry of Deeds. His position is that they have a vested right to maintain and use the property in a manner that is consistent with the site plan which is a residential treatment facility. I'll say this to

you folks, this hopefully will tell you where I'm coming from. I've been a municipal lawyer for fifteen years. I've primarily represented my entire legal practice in municipality. I sit on my local Zoning Board of Adjustment. I'm usually on the other side of the fence. I get it, folks, I get it, but I'm here to tell you that these people have a vested right under their existing site plan. Again, Mr. Snyder was very helpful, very pleasant. I completely understand why he is having us come here tonight, but I agree with him, but I think the Board needs to recognize that you don't really need a special exception. Chairman Halla asked if they had anything further because he is returning to anyone wishing to speak in favor for the final time.

Jim Snyder said if he could just clarify something and asked if they are saying the clause in our zoning ordinance that says the special exception lapses is not supported by law? Attorney LeFevre said pretty much that's exactly what he is saying. He stated he cannot recite the case, but there is a recent case in the NH Supreme Court that dealt with a similar type of zoning ordinance provision that had to do with lapsing of grandfathered uses.

Chairman Halla interrupted to state this would not be a grandfathered use if it was approved when there was zoning. This was approved when there was zoning in 1994, so it is not a grandfathered use.

Attorney LeFevre concurred and continued that the body of law that deals with lapsing of uses deals with grandfathered uses. It doesn't deal with uses that were affirmatively permitted and then people undertook to use that property in reliance on those permits. If he could suggest that the zoning ordinance posing as a standard condition of approval that when you stop using it it lapses that "----" is contrary to the NH Supreme Court said in the context of variances which is..... Chairman Halla stated this isn't a variance. Attorney LeFevre continued but it's "for the best of rights to law", it's similar "appearance". If they obtain a vested right, you can't take it away from them. He thinks they obtained a vested right for certain here, but I'm finished. Generically, it's not void on its face because there could be certain circumstances where it's enforceable given the facts in this case.

Jim Snyder stated it's not my business to tell the Board how to operate, but he would ask that when you start considering whether to overturn my decision or not that you do consider all three reasons.

Selectman Bob Steenson asked if this is a conforming use. Chairman Halla advised it is not. Bob asked is this a type of non-conforming use? Chairman Halla stated it's not a use that was granted by right. It was a use that was granted by special exception. Whoever was going to do this had to either get a variance or special exception to be able to do this. It's not listed as something that you can build a house in this zone by right.

Jim Snyder stated the three reasons were first the time consideration. Second, while the uses are similar, some differences are apparent and others may become evident. And abutters and the public should have a chance to learn about the project.

Attorney LeFevre responded this is something he gets a lot which is special exceptions and variances are completely different fish. A use that is permitted by special exception is a permitted use. It is permitted if you meet the criteria. So, in that sense the answer to your question is, it's a permitted use. Chairman Halla stated it's a permitted use by special exception only. Attorney LeFevre advised he is all set. Chairman Halla stated the Board will now hear for the final time from people who wish to speak against this.

Hillary Nelson stated she wanted to respond to what was stated. That special exception was granted to Odyssey Family Center, not Eric Spofford. Odyssey ceased using the property in "2005 to" 2009, that's three years ago. That exception went with them. It's not maintained floating around like a spirit on the property. It's gone. Just because they bought the property doesn't mean the special exception still exists. It is very clear in the zoning ordinance that it is void. There is a reason for that. We need to consider the new cases. She knows from what she has read in a book she references there are discussions at the NH Supreme Court about whether or not something has expired and what they have always said is (and she made reference to Pike Industries switching over from asphalt to making concrete and the neighbors said their special exception expired because they were going to make concrete instead of asphalt. What the judges said was, no, they maintained the property, they continued working there, planning to do something different, but they did not abandon that lease). In this case, the use is clearly different. Odyssey Family Center left and the special exception went with them.

Greg Meeh asked if we don't get a chance to revisit these things, how do we ever correct the mistake.

Teresa Wyman advised she has written a letter to the ZBA and wanted to know if it would be an appropriate time to read it. She submitted it to Chairman Halla if the Board considers a special exception tonight.

Attorney LeFevre asked to respond to the allegation of abandonment. It is his understanding that the Odyssey House closed down because the business failed. They did not have the money to continue to operate their business. That is not abandonment. Abandonment is when you intentionally relinquish your right to engage in the use. That is critical to the analysis. It is a very common ordinance, for example if you have a house that is built too close to the road and the ordinance might say if your house is destroyed by a fire, you have to rebuild it within a year. If you don't, you'll lose it, you can't rebuild on the footprint. You have to build it ----- but the analysis would be why wasn't it rebuilt within a year. Was it not rebuilt within a year because you were fighting with your insurance company to get the money to afford to do it, because you were shipped overseas.....the answer is if you didn't intend to abandon it, it has not been abandoned. That is critically important. So he rejects the allegation..... Chairman Halla stopped him stating he was getting into a legal definition thing here.....

Hillary Nelson stated for the record that Odyssey had no intention of going back to that property. They went bankrupt. They didn't own it anymore. It was owned by their shell company OSA who continued to rent it, but then ceased renting it to other people. The last time it was rented was in 2011. They left in August of 2011 (that was Erasmus Institute) and that was two years ago. It was not being used as a residential, drug treatment facility after Odyssey Family Center left. It was used as something else for a while, which by the way they never came and got permission to use it in that way. So she would definitely say that is not accurate.

At 7:30 PM all testimony regarding the Administrative Appeal was closed.

Board discussion ensued. Gary Spaulding asked if the college came before the Board for a special exception for a change of use from the Odyssey to a college campus so that alone tells him they are not vested there. Plus he agrees that if it has been more than one year he supports Jim Snyder's finding. Web Stout concurred. He thinks also it is maybe not quite exactly the same use. It may be close, but not exactly. Chairman Halla said in general terms you might be able to say it is close. But we are talking about young women with small children that were also if he recalls the minutes properly were going to attend some classes working towards a GED because most of

them didn't have a high school diploma. This use is for young men 18 to 25 or 35 year old men. It's obviously not going to be exactly the same no matter what it was. The argument about being a vested use because there is an approved site plan is nonsense. There are a lot of legal terms here, abandonment, non-abandonment, but the point is that the ordinance specifically says a permit granted under a special exception shall expire if such use shall cease for more than one year and it has. So there is no special exception in place that says Odyssey House or anyone else can do that. He thinks Jim Snyder made the correct decision in all three of those. It's not exactly the same use. The use has expired and it's not something that's allowed by right, so you've got to get a special exception. There would be the further question of whether an almost twenty year old site plan needs to be redone with a different special exception. He also thinks it's important that people who might have been abutters in 1994, there might be new abutters that weren't there in 1994, that didn't even have a chance to talk about Odyssey House that live there now. Chairman Halla asked if anyone wanted to make a motion.

Gary Spaulding made a motion that the Board does not grant the Appeal for Administrative Decision for the following reasons:

1. The use has lapsed for more than a year.
2. The use is significantly different than what they are proposing.
3. The prior owner was in and asked for a change of use in 2010.

There was no further discussion. Barbie Tilton seconded the motion. There was no further discussion. The vote was a unanimous decision to **DENY** the Appeal for Administrative Decision.

Chairman Halla asked the applicant if they would be going forward with an application for a special exception. They concurred. He advised the hearing format would be the same with the exception that Mr. Snyder will not be involved. He will call on the applicant to make his presentation after which those who wishes to speak in favor are allowed to speak. We then go to those in opposition; we go back to the applicant, those in favor, closing with those in opposition. Board members can ask questions at any time. The same rules apply: if you are going to speak state your name, direct your questions through Chairman Halla.

Attorney LeFevre spoke saying he wished to address something he was hearing from the group present tonight. They are proposing a residential, treatment facility. Theirs is fundamentally the same use as that of Odyssey House. He wants to be very, very clear on that. This use is permitted if these criteria are satisfied. In fact, the Zoning Board doesn't have any flexibility like it does with a variance to modify these conditions. He addressed the seven part criteria:

1. Granting the permit is in the public interest. He would represent to the Board there is a demonstrated public need for this service. There are waiting lists for these rehabilitative services.
2. It would not adversely affect the property values. He was up there this afternoon and what caught his attention was the vandalism. He would suggest to the Board that leaving that property vacant has a terrible impact on property values. Getting this facility up and running would not have any adverse effect on property values. He'd also point out the site itself has been developed. It's hard to say it's going to negatively affect property values when it's a pre-existing site with pre-existing structures when the impact associated with that former use with the number of people and traffic. There is not going to be any change from that sort of thing.

3. The site is an appropriate location for the proposed use. You are familiar with the property. The site plan is here. It's a large 14 acre parcel. The way it is situated, it's set back off the road. It's obviously got the physical plant because this is what it was built for. It is the most appropriate site probably in town for this type of use because it's already been developed.
4. The proposed use would not adversely affect the health and safety of the residents or others in the area. These are people who are recovering from substance abuse problems. They are not violent offenders, they are not sex offenders, they are not considered mentally ill. This use is highly regulated at the state level. People are not going to be out late making noise. It's locked down at ten o'clock. There are virtually no health and safety concerns.
5. The proposed use would not constitute a nuisance because of offensive noise, vibration, smoke and dust. That's more into the type of use in the Continental Paving case where you are doing something that creates noise or dust. That simply doesn't apply in this case.
6. The granting of the permit would be in the spirit of the ordinance. He thinks so. It's a residential, treatment facility. You locate them in residential areas because the point is to get these people in this type of setting. In the spirit of the ordinance if these criteria are satisfied.....
7. The last criteria is the proposed use would not constitute a hazard because of traffic. There are no hazards associated with this. The traffic patterns would be the same as the prior use.

He believes all these criteria are satisfied. He stated he is going to throw out a number of other concepts for the Board's consideration.

1. This is a faith based organization. In other jurisdictions, we ---- have a case in NH, but we have Alcoholics Anonymous people that follow that twelve step program just as a faith based organization. If you discriminate against this group, you allow other organizations to come in, if you don't allow them to come in, you are going to be raising some concerns for what's called the Religious ("Land Use and Institutionalized") Persons Act that protects this. Communities cannot discriminate against faith based organizations just because they don't want them in their town.
2. These people qualify for the American with Disabilities Act. Under that we are obligated. You need to be careful you are not going to discriminate against them under that law.
3. There's also the Fair Housing Amendments Act. It's another federal law that is specifically geared with providing this type of opportunity in the zoning district that are residential districts. Be very careful there.

The last argument he would put forth to the Board to consider, he thinks if you deny this type of use on a property that is already developed, you can potentially have a constitutional ----- which means you would be depriving them of the economically viable use of their property as it's been developed. The reason he is doing that now is because my sense is I don't think the people think that they can just say no you can't do it and it's not that easy. There's a lot here. This site is developed. It's got a dormitory; it's got a dining hall, a meeting hall. This property is built for this purpose. I went out there and I was like what else are you going to put there? He thinks these criteria satisfy, but he also thinks there's some overriding criteria you also need to be aware of.

Chairman Halla asked what part of the ordinance they are referring to as far as requesting a special exception as in this ordinance that we work with in the town. Attorney LeFevre replied in the general conditions. Chairman Halla said, no, are you a church, are you an educational facility? You have to be something that's listed that we can grant a special exception under. You haven't stated what that is.

Attorney LeFevre apologized. That was in the administrative opinion they received. Under the administrative opinion it was either under convalescent homes or.....Chairman Halla stopped him stating well no, you have to tell me what you are applying on. Attorney LeFevre replied he is relying on the representation that was made to me by the Code Enforcement Officer that the special exception is under.....Chairman Halla asked if that is what they are applying under. Attorney LeFevre replied yes. Chairman Halla asked, it is? Attorney LeFevre replied, well yes, I mean I don't believe we need a special exception, but they were told.... Chairman Halla said your position is Mr. Snyder told you that's what to do; I would find that hard to believe. Attorney LeFevre stated his position is pretty clear is that when he contacted the zoning administrator, code enforcement officer I wanted to get his opinion because if he tells me I need a special exception I can disagree with it as I have, but if he tells me I need a special exception under this criteria, that's what I'm going to go for. I'm not going to apply for a special exception under another section of the ordinance.

Jim Snyder spoke saying he recalls their conversation accurately. Whenever anyone come to him and says, is this approved under the zoning ordinance, I'll say obviously it fits under this use or he thinks what he may have said in our case is the only place I see this fitting in is either as an educational facility or a convalescent facility. He is assuming that's what the thinking was; he wasn't around when Odyssey House came to the Zoning Board. He's assuming that's what they were looking for a special exception from.

Attorney LeFevre said he could follow up by saying whatever grounds the special exception was granted to the Odyssey House or did in the past unless they were going to change the ordinance since that time for that since 1994 to allow a special exception, he guesses it would be the same.

Chairman Halla said if he reads the minutes from then, that was granted as an educational facility. Is that what you are saying now? Attorney LeFevre replied if that's where it fits in the table of permitted uses, that's where we will go. The way the ordinance is set up, where the table says what uses are permitted. He referred to Mr. Spofford saying it is an educational facility referring to their connection with Southern NH University.

Chairman Halla asked would they actually be attending scholastic classes, not the twelve step program.

Mr. Spofford advised they would be doing onsite GED testing, attending lectures, etc. gearing up to pursue college education.

Chairman Halla asked if there was anyone present who wished to speak in favor of granting the special exception and no one spoke. He advised the hearing would now address anyone who wished to speak in opposition.

Hillary Nelson spoke saying she is the wife of Gregory Meeh, abutter. They have been looking at this pretty closely. They would like to argue that you cannot come in to this by a special exception because mental behavioral treatment facilities are not under the zoning ordinances in the Town of Canterbury or permitted in a rural district even by special exception. If you want to try to grant it as an educational facility as Odyssey Family Center was, if you look at their record, you granted it as a non-traditional educational facility mostly because there were children on the premises and there had been children there before. The Board of Adjustment in New Hampshire, that legal handbook she referenced previously says that the Board is restricted to a literal interpretation of their words. The meaning of the phrase educational facility is not ambiguous-it means a school. The Board should not interpret the

phrase as encompassing a residential addiction rehabilitation facility that may incidentally offer classes such as yoga and woodworking. If you want objective criteria for distinguishing between an educational facility and a mental-behavioral health facility, she can offer it here. The State of New Hampshire has separate statutes for educational facilities and residential mental health facilities. The proposed facility would be covered by Title XI, Hospitals and Sanitaria, schools would be under Title XV, Education.

In the State of New Hampshire, educational facilities, from public elementary schools all the way up to colleges and universities, are administered and licensed by the NH Department of Education. The people who teach in them have to be certified as teachers under the rules by the NHDOE.

In the State of New Hampshire, behavioral and mental health facilities, including all types of drug and alcohol addiction programs, are administered and licensed by the NH Department of Health and Human Services. The administrators, doctors, nurses and counselors who work in these facilities are all certified by NHDHHS.

Mr. Spofford has said that this facility would hold the exact same license as the Residential Treatment and Rehabilitation Center that was there prior to his use. She spoke to Wendy Smigelski who is the Life Safety Code Specialist at NHDHHS. She says that they were licensed as a Residential Treatment and Rehabilitation Facility under Part He-P 807 of the New Hampshire Code of Administrative Rules for Residential and Health Care Facilities. This is not licensing for an educational facility, it is licensing for a health facility.

Educational facilities and Residential Treatment Centers fall under different chapters of the Life Safety Code and the Building Code.

Here is something that is particularly important talking about the ADA, etc. When you are in an addiction treatment and rehabilitation facility, you're protected by the Health Insurance Privacy and Portability Act of 1996 which means that if a resident of a proposed facility is the subject of a criminal investigation, unless presented with a court order, the facility could deny law enforcement officials access to the resident. She believes Chief LaRoche can speak to something that happened at Odyssey House where that was used. She asked Chairman Halla if he could describe how HIPPA was used and then she could jump back in.

Chief John LaRoche advised several times criminal incidents would be called into the police department, they would go out to Odyssey House to check on it and they would deny that such a patient was there either as the victim or the perpetrator. That thwarted the whole concept of justice serving anybody up there.

Hillary stated if you were in school you wouldn't be protected by that law. This clearly was a mental health facility. It sounds like you aren't going to apply as a convalescent facility but if that came up she wanted to say that convalescent facilities are described very differently. Medicare has descriptions of what a convalescent facility is compared to what a crime treatment facility is. Addiction is a crime, problem. It is administered under separate sections of the Medicare Code. Medicare defines a convalescent facility as a place where people are recovering from acute episodes such as a broken bone, an accident, a surgery. They are just there until they are ready to move on. What's important about that is that.....she just wanted to move back under all of that to explain why she thinks the literal interpretation of the Zoning Board is crucial before we do planning in Canterbury.

If we were to allow mental health facilities by special exception they need to write a warrant article and we need to vote on it at Town Meeting. Ad hoc decisions to allow or disallow mental-behavioral health facilities based upon a non-literal interpretation of “educational facility” or “convalescent facility” can cause serious legal and planning problems for the Town of Canterbury.

For example the owners of educational facilities now operating in Canterbury, such as Canterbury Children’s Center, Burnham Brook School and Piggy Toes, could sell their schools to individuals who intend to open mental health facilities. If the new owners applied in less than one year from the school closing to re-open as mental health facilities there’s an argument to be made the special exception for an “educational facility” could carry-over to the new use.

When this Board decided to allow Odyssey Family Center in there were some laws that were just beginning to come into everybody’s perception that you didn’t think about that we have to think about now. The ADA, the American Disabilities Act passed in 1990, but it took a long time for the rules to come down and all the litigation to proceed from that. HIPPA didn’t come into effect until 1996. So you didn’t have to think about either of those things back then, but you have to think about them now because it’s really important. Americans Disabilities Act protects people with mental and behavioral illnesses. If you determine that “educational facilities” and “convalescent facilities” encompass mental-behavioral health facilities, you may find yourself in violation of the ADA should you try to pick and choose what sorts of mental or behavioral illnesses and what kind of individuals the town would allow in such facilities.

These guys can make the argument, for example, that you have to allow men between the ages of 18 and 28 because you had women and you’re discriminating if you decide that educational facilities should for some reason.....At the same time, the proper siting of residential mental-behavioral health facilities is crucial, especially for the health and safety of the individuals residing in the facilities. If the ZBA allows for a non-literal, excessively broad interpretation of “educational or convalescent facility” in the current instance and then at a future date disallows for legitimate reasons a special exception for another similar facility, it could find itself open to litigation under the ADA.

What she is asserting here is these kinds of facilities are tricky. If you want to house them in Canterbury, you need to write a warrant article about it and not kind of stretch what we are and how a special exception to encompass it. We are going to find ourselves in deep trouble.

She also wants to talk briefly about the rural district. You keep referring to the residential district. In fact, this is sited in the rural district. The rural district has a very specific definition and part of that definition is that any development in the rural district should have the character of minimizing costs of additional municipal services. This proposed development will neither minimize the cost of additional services nor will it preserve the character of the community. If tonight the Board cannot agree to come to the conclusion she hopes you will that if you want to consider more evidence that we would ask the applicant to pay for a financial impact study to look at what this is going to cost the town down the road. There obviously could be serious burdens on municipal services. We already know from the evidence from Odyssey House that there were many more calls there to that facility than there were to houses and residents who lived nearby. She has the numbers here and the chief is here tonight and he would like to speak to that. Chief LaRoche would like to speak to that as well. We have a volunteer fire

department, we have a part-time police department, we do not have coverage at night. At night you can wait for an hour for the state troopers to show up. This will wind up costing the town money. To anticipate calls there is totally reasonable. It's reasonable to anticipate that from time to time there are going to be problems up there. People are in crisis and it's estimated (and she has the numbers from the government in her packet) that at least 60% of people who are addicted also have co-morbidity with another mental problem. The woman that she talked with at Health and Human Services said stuff to her like, "I know that building well and you could not secure a violent resident in that building, so your residents better be on their medications and you can't have any violence that's going to require a lot of outside intervention". The staff will have to deescalate the residents which is a frightening back and forth conversation. She asked for Chief Angwin and Chief LaRoche to speak.

Chief Angwin had a couple questions: Have you ever done any impact studies; do you have any other locations in New Hampshire? Is this the only one? Mr. Spofford replied he has never done an impact study. His other occupation is he is the Chief Executive Officer of the -----Granite House. The Granite House is what's known as an extended care program for young adult males. Extended being that after they come through a residential treatment center, they would come to a facility like ours in Derry. Chief Angwin said his concern is what the impact is going to be on the fire and EMS. Chairman Halla asked what the impact from Odyssey House. The chief deferred to Hillary Nelson who he gave the reports to. She stated in 2006 there were 8 EMS calls, 1 fire alarm; 2007 there were no incidents; 2008: 3 service calls, 2 EMS, 6 fire alarms; in the first 8 months of 2009: 3 service calls, 3 EMS, 5 fire alarms (Odyssey Family Center closed in mid-August of 2009). Those were the ones on record. He could not go any further back. They looked up the Granite House in Derry and there were 8 or 9 calls to the Granite House in Derry, this is what the Derry Police Department told them.

Attorney LeFevre spoke saying if the use is the same as the fire use that was approved, it's not going to have any greater impact. He would think they would have less impact because they are not dealing with any kind of children. If you are dealing with the prior approval, any impact will be less than what they were before.

Jim Snyder stated he wished to speak on behalf of the Planning Board. He said he always likes to look for what we can agree on first. He thinks we can all agree on what Attorney LeFevre said in the beginning that these facilities are important. They are needed in our society, that we all hope that we'll never need one. Maybe we can't all agree, but probably most of us. His question here would be, the Planning Board is sort of the keeper of the zoning ordinance. He is concerned about continuing to refer to the prior approval. He wants to say two things. One it's important to distinguish whether we're looking at this as a new look or whether we're looking at it as some sort of an extension or whether the prior approval has any bearing. Secondly, he thinks most of us weren't around when the approval was done for Odyssey House, but he thinks, knowing what he knows now about educational facilities and convalescent facilities, his view would be irrespective of what was done in the past, that what this project needs is not a special exception that doesn't fit the fit the zoning ordinance, but that what is needed is a variance.

Tory Dodge spoke saying she has lived right next to the property for twenty eight years. She has a lot of equity in that property; it is a substantial piece of her retirement income so any impact on its value really worries her. Dwight Keeler is here tonight to talk about the impact on the property values. He lives on Picard Road in Canterbury and is a real estate broker, primarily residential, for the last thirty seven years. He was asked to speak

on behalf of the abutters and he is very impressed with the amount of research that has gone into the subject from both sides of the table. He did notice a noticeable gulp in Attorney LeFevre's voice when he said it won't have an impact on the property values to the neighbors. While it is probably difficult to quantify he does not think there is any question in anyone's mind that this use in a residential neighborhood will have an impact. He reminded those present of the septic lagoon case many years ago here in the center that was debated and whether that was an appropriate use in a residential zone, whether or not that would have an impact on the property values. He thought the outcome was that folks thought that yes it would have though quantifying that was going to be very difficult. The same case exists now. You cannot say that x amount of dollars or percentage of value will be lost and the resale of any residential property in the immediate neighborhood, but he thinks common sense tells you any time you use an attorney that favors his own words, the words "locked down" and "secure facility" next door to your house that it won't have an impact in that value from a buyer who would have ordinarily considered that property. It doesn't take a real estate broker, the ZBA; it really doesn't take a whole lot of reading to recognize that this use is an adverse use. And there are a number of other uses, again not to take issue with Attorney LeFevre. I know what he is trying to do for his client and he can respect that. But to say that this is the best use for the facility...he represented the front section of that facility for OSA prior to it going into foreclosure. We showed not only that but also the campus behind it. The primary use that we came across were groups; several church groups that looked at it as an outreach facility. We also showed it to a couple of companies who were looking to use it for corporate retreats. Either of those would probably have attracted less people to this room than this use. If that's the case, then it does have a negative impact. How much of an impact, he does not think anybody would be able to say, but it certainly does impact the property values and the neighborhood.

Tory Dodge continued they have a neighbor who is trying to sell their house down the road and she is moving because she feels very isolated. There are six single women that live on Shaker Road right now. She has to say that with such a transient population, if you think that 30% of people that go into treatment leave in the beginning, it just doesn't leave her with a feeling of great security knowing that I don't even know who the people, to know that consistent population, or group of people there, they're sort of all coming and going. She knows that even with Odyssey House there were a lot of problems there, with Hillary and Greg having smoking cigarettes in the barn, having sex behind the barn. We had issues with trash being dumped in the easement. It wasn't always as idyllic as you would have thought. As much as she empathizes with populations like this, but as an immediate abutter she feels that it's not something that she can support. She opposes it on the basis of property values.

Teresa Wyman read her letter aloud. See attached.

Greg Meeh spoke saying he has lived at 327 Shaker Road since he was two years old, some sixty plus years ago. He is an abutter of the proposed project; he is intimately familiar with the area and the character of the area. He would like to address Canterbury Zoning Ordinance 8.2 a, condition one that granting the permit would be in the public interest and condition four, health and safety. The following references several studies and articles and while he won't read all the referenced material is listed in the submitted document to the ZBA.

Granting the permit would be in the public interest. The Board cannot assume that all addiction treatment is the same, that all addiction treatment is good, or that all addiction treatment is de facto in the public interest. There are a number of ways that long term for profit residential addiction and when I say that word for profit, we are talking about a faith based organization, but it is a for profit faith based organization. Most faith based organizations he is familiar with are non-profit. There are a number of ways that long-term for-profit residential

addiction treatment as institutions and this one in particular, are not in the public interest. A for-profit residential addiction treatment facility for men between the ages of 18 and 28 is not in the public interest for the average individual living in New Hampshire. The median age in Merrimack County is 39.4 years. For all of New Hampshire, the median age is 48.3 years. Women also outnumber men in this state. The proposed facility, limited to young men, will not serve the majority of people in this state.

In addition, to be to the public benefit, it needs to be affordable, which the Town of Canterbury cannot dictate as a condition for granting the special exception. We know that the proposed facility is organized as a for-profit LLC and many such facilities are quite expensive ranging in price from \$3,000 to \$30,000 a month for just the basics, not including add-ons, such as classes, extra therapy. And according to a review at the applicant's Derry location food is extra.

Even if the proposed facility should turn out to be relatively inexpensive, the Board needs to keep in mind that the special exception for this particular facility, unless it is allowed to expire, will travel with the property. There can be little public benefit if only the wealthy can afford it.

Additional reasons it is not in the public benefit are it could very likely cause the town legal and zoning problems in the future. It violates town zoning ordinances in that it does not meet the criteria for a special exception. It's not a school, a convalescent facility or a nursing home. It would strain municipal services, thereby increasing the cost to the town of those services. And it is not in the character of the community for the rural district. It is likely that the applicant is honest and well intentioned; however, if the ZBA allows this special exception, Canterbury could become a target for others in the for-profit mental health residential facility businesses that are less scrupulous. According to David Sheff, author of *Clean: Overcoming Addiction and Ending America's Greatest Tragedy*, "Some programs are in the exploitation business, which is no surprise in a multi-billion dollar industry (it's projected to have revenues of \$34 billion by 2014)".

Desperate families are willing to become deeply indebted to cover the costs of treatment for their loved ones. Even families who have insurance often discover that it will cover only hospitalization for detoxification, which, according to Wendy Smigelski of NHDHHS, is not a service that can legally be provided at 367 Shaker Road because the facilities were designed as a school and dormitory, are built in a way that they cannot be certified for medical detoxification.

When insurance does cover some part of residential addiction treatment, often it pays for only a small portion of the treatment, not nearly enough for the treatment to be affordable, even for middle class people. If the proposed facility does not accept Medicare (which is a given, because the facility will not serve older people) or Medicaid, then the elderly and the poorest people in New Hampshire, those with the least access to addiction services, will not benefit from its existence.

If patients and their loved ones could buy a sure cure with residential addiction treatment perhaps the cost is worth it. However, according to a 2012 article in *Addiction Professional*, "there is very little evidence to prove that residential treatment does indeed produce better outcomes, a point on which even staunch advocates of residential agree".

Statistically, no more than 39% of patients at a long term residential facility will finish the program. Of patients who successfully complete such a program, half of them will relapse within one year. There are many other less expensive interventions that are at least as successful at treating addiction as long term residential treatment. Thus, a cost-benefit analysis indicates that long term residential treatment facilities may not be the best use of health care dollars, and thus not in the public interest.

Furthermore, many long term residential treatment facilities are actually harmful to their patients; Mr. Sheff's book documents many horror stories of mistreatment and even death because of such facilities. Some facilities have poorly trained and abusive staff, others espouse treatment philosophies that are outdated and don't work. While we expect that the applicant has no intention running such a facility, the Board must take into consideration the fact that if the special exception were granted, and mental-health facilities were allowed in Canterbury, we would have very little control over the quality of care of treatment in our community, and that is not in the public interest. The proposed use is not in the public interest and does not comply with condition one of our zoning ordinance.

Health and Safety: the fourth condition that must be met for the Board to approve a special exception, that the proposed use would not adversely affect the health and safety of the residents and others in the area and would not be detrimental to the use and development of adjacent or neighboring properties. The importance of rapid emergency response: There is ample scientific data to support that the more quickly the right type and number of resources can be brought to bear on an emergency incident, generally speaking, the better the outcome. Police, fire, rescue and other municipal and safe services in the vicinity of 367 Shaker Road are limited to the town and state finances, infrastructure problems and the rural nature of the area. Furthermore, there is no public transportation available in the Town of Canterbury. The limits on town services are clearly stated in the zoning ordinance, page 7, section 2.8E: "The Town has limited police and public protection resources". One purpose of our zoning ordinances is to ensure that facilities that require the most services are sited in places where those services are most readily available. The proposed use of 367 Shaker Road as a 90 day residential treatment center for men between the ages of 18 to 28 who suffer from substance abuse and addiction will require for the health and safety of the residents of that facility and employees faster, more reliable access to municipal and safe services than is currently available in the area. The proposed use does not minimize the cost of additional municipal services.

Police coverage: The police department tries to cover 16 hours a day but sometimes the coverage falls short of 16 hours on weekends and holidays. The Town does not have coverage by town police at all during the night time hours. Response to emergency calls can be slow. During the 16 hours covered by Canterbury Police, response time to East Canterbury can be long, as the majority of calls are on the west side of Town. At night and on uncovered shifts, the Town relies on the State Police and the Sheriff's department to respond to emergencies, at which time it can take an hour for assistance to arrive. At Town Meeting last month a resident asked why there is no longer police presence at the elementary school during morning arrival and afternoon dismissal. The answer, we have had to cut back policing them when we have only one officer on duty.

I think most of us realize there are increased health risks associated with alcohol and drug abuse. I think we are less aware of the mental health problems. Several people have mentioned those numbers.....a recent study published in Psychiatric Times showed the incidents of suicide attempts for this population is almost 6 times that of those without substance use disorder. Patients with co-occurring disorders often exhibit more severe

symptoms than those caused by either disorder alone. The same study shows up to 75% of those who begin addiction treatment report having engaged in violent behavior: physical assault, mugging, attacking others with a weapon. It is reasonable to anticipate that patients in a residential mental health facility and treatment for substance addiction may sometimes fall physically ill or sustain an injury and require emergency medical treatment or that they may have a serious psychological crisis and require emergency medical treatment that may also require law enforcement participation.

Canterbury Fire and Rescue volunteer EMT Geoff Hubble reports he has had to wait as long as half an hour before going into an emergency call while waiting for police back-up to arrive. Shaker Road is sometimes impassable during winter storms, trees, power lines downed by ice, wet snow and thunderstorms, periods of flooding, it is subject to closures. This winter Shaker Road was closed for most of a day due to a utility pole snapped by a storm and power lines in the road. There are additional access uses for emergency services for much of the weekend when there are NASCAR races. The town relies on a volunteer fire and rescue squad. Ambulance service to East Canterbury comes from Belmont or Loudon. The town pays for these calls and increased calls result in higher costs to the town.

Health and Human Services Rule No. 807 for a Residential Treatment and Rehabilitation Facility states a client may refuse all care and services. Studies show that 31% of clients drop out and 9% of clients are terminated. It is reasonable to expect that a large number of those who leave the facility will be in crisis. It is reasonable to expect that many of them will be angry or frustrated or desperate. It is reasonable to expect that some will refuse further assistance from the facility. NH law RSA 165.1, "Whenever a person in any town is poor and unable to support himself, he shall be relieved and maintained by the overseers of public welfare in such town (and this is important) whether or not he has residence there". Canterbury currently pays Boscawen for the care of indigents. The applicant's facility does not meet the health and safety portion of this clause. It also does not meet the not to exceed----detrimental to the use or development of adjacent or neighboring properties portion.

Effective securing of agricultural sheds, equipment, sugar houses, and barns would make normal home owner agricultural and property maintenance much more difficult and time consuming. Posting property would make the current use by towns' people and visitors for hiking, hunting and fishing, cross-country skiing, snowshoeing and nature walking....

The applicant's facility is not in the Canterbury Zoning Ordinance 5.3 a 2: "The Purpose of Rural District to reserve from most intensive development those elements served primarily by gravel roads, thus minimizing the cost of additional municipal services and preserving the character of the community". The NH Department of Health and Human Services and the New Hampshire Department of Safety have undergone severe budget cuts in the past several years. Neither department has the number of staff that it did when Odyssey Family Center was in operation. In fact, New Hampshire Department of Safety no longer maintains control of life and safety inspections for residential treatment facilities, but has turned that responsibility over to NHDHHS. This means the Town of Canterbury will have to provide even more municipal oversight to make up for the minimal state and federal oversight the facility will receive putting more strain on the town's administrative resources and our part-time and volunteer fire, health and building codes personnel. Should this special exception be allowed, it would be the responsibility of officials from the Town of Canterbury to be fully cognizant of all the complex life safety, building and health codes that govern residential treatment and rehabilitation centers. Our Fire Chief, Building Inspector

and Health Officer will have to inspect the facility and sign that it meets all applicable codes as a requirement for the Health and Human Services application.

As far as our personal experience living next to a drug and alcohol treatment facility: We were good in welcoming neighbors to the women, children and babies at the Odyssey House. On their daily outings walking on Shaker Road they would stop in our barnyard to visit the animals. Unfortunately, the neighborliness was not returned either by the women attending the program or management. It was disturbing to find one of the women having sex on our property on visiting day and we repeatedly discovered woman smoking in our barn. We asked the women directly to stay out of the buildings and we asked management at Odyssey House to have them stay out. Although the women in management told us it would not happen again, the only change was that the women who crossed into the field went to our property from behind the tree line where we could not see them. We continued to find cigarette butts in the hay and shavings. This was certainly not safe for the livestock or an acceptable property risk. Our personal experience is that neither clients nor management could be trusted with the control of this risk. If this is approved we will need to protect our property. I do not see a way of doing this that will not substantially change the character of our neighborhood. It will require securing an outflow of buildings that is not the current practice for most of the rural zone and it is likely to require posting much of our property against trespassing which is not the character of this neighborhood either. Unfortunately, posting will also affect many residents and visitors who currently use our property for hiking, fishing, hunting, cross-country skiing and snowshoeing. This is not the intent of the conservation partnership we entered with the state, the town and the taxpayers who made the conservation become possible.

Chairman Halla asked if anyone else wished to speak in opposition asking that testimony be limited to five minutes or so. Jill McCullough resident of 341 Shaker Road with her husband Tim spoke to say we are farmers. She stated she is addressing number 7: The proposed use will constitute a traffic hazard. As farmers we use the road a lot both as pedestrians and with farm equipment. The driveway at 367 Shaker Road is not well suited for the traffic load necessary to run a facility that requires more traffic than a private driveway. When exiting the driveway, to the north there is an immediate rise, which creates a blind spot. This rise blocks all view of approaching south-bound traffic.

Traffic approaching from the north also has a long, downhill, straight stretch which causes cars to come over the hill at sometimes a more rapid speed than intended. A car crests the hill and just below is the 367 Shaker Road driveway, where someone could be pulling out without previous warning to the oncoming driver.

There was a fatal accident just south of the 367 Shaker Road driveway where it was thought that the car had become air born and hit a tree. It was estimated that the speed of the car must have been in the vicinity of 70 mph as it came over that rise.

Shaker Road to the south of the driveway dips down; so long distance visibility of traffic approaching from the south is limited. Too, in the southerly direction, the road is straight for quite a distance and people regularly speed 20 or miles over the posted speed limit of 30 mph as they head toward 367. These drivers are particularly dangerous when they hit the curving section of Shaker Road, especially to cars pulling out onto Shaker Road and to pedestrians that are hidden by the curves in the road.

When Odyssey Family Center was in operation, there was a lot of pedestrian traffic from the residents of the facility walking on the road. There are no sidewalks in this area and pedestrians are hidden by dips and curves in the road. It is also very shady in this section, so at dawn and dusk it is very difficult to see people in the road.

Chairman Halla asked if anyone else wished to speak in opposition. Tim Meeh said he lives at 341 Shaker Road. He stated that Greg and his parents built the Horizons Edge School. Greg and I on our summer school vacations often worked there. After Horizons Edge School closed and Odyssey House moved in we tried to be good neighbors and be friendly. Unfortunately, there wasn't very much reciprocated. They dumped trash on our land and when I brought it to their attention, somehow it was my fault and I should move it. We were told we were not welcome on their property and they posted it. But they felt free to use our property and trails. I don't have any reason to believe this new outfit would be any better. I don't know, maybe it would. He thinks we should learn from our past what he thinks were mistakes with Odyssey there and I hope you don't grant the special exception.

He would speak to number 3: The specific location is not an appropriate site for the proposed use. The area abutting 367 Shaker Road is a quiet rural neighborhood consisting of single homes, farms with unsecured outbuildings and historic Shaker Village. If a treatment facility such as the one proposed here were introduced into this neighborhood, the community would have to attempt to secure outbuildings – a process that anyone who owns an agricultural building knows is difficult. Furthermore, many of these buildings are in remote areas of the property and cannot be watched 24/7. Canterbury Shaker Village closes for several months of the year and there is often no one at all on the property. They rely on neighbors to keep an eye on things. Even when buildings are secured, if they are out of sight, it is easy to break into them.

This proposed treatment facility would be located in the middle of around 1,600 acres of conservation easement land. This is where the town and the state and the local landowners went into partnership to preserve the land for farm and forestry only and recreation, except for a few small parcels where the residential houses were. And the purposes of that easement were to assure that the property will be retained in its undeveloped state and open space condition and to prevent any use that will impair with the conservation value of the property. To preserve the agricultural, forestry and recreational uses of the property by eliminating pressures for building. To promote land-based, community scale agricultural and forestry. To preserve open spaces particularly farm and forest land....consistent with the clearly delineated Town of Canterbury's conservation policy in the "Plan For Tomorrow"....to preserve natural beauty, landscape, rural character, natural resources and high quality of life in the area....locating the large treatment facility in the middle of this conservation area is not consistent with the taxpayers and the Town of Canterbury's investment in conservation easements and planned use for the area.

Also, number six of the general guidelines: The proposed use would not be in the spirit of the ordinance. Hillary in her initial comments this evening covered that quite well he thinks.

There are certain home businesses allowed in this rural zone where you can have up to two non-family employees. Here we are considering a facility that would have considerably more than two non-family employees there. He speaks against granting the special exception.

Chairman Halla asked if anyone else wished to speak. Geoff Hubble advised he is on the Canterbury Fire and Rescue and he is an EMT. He lives at 325 Hackleboro and if I get a call at night and I am at home I oftentimes go direct to the scene. I've been to Odyssey House a number of times for medical calls. I have concern for my safety

with that population that I would be reluctant one to even respond to calls and that I would probably require and want to have policed back up and you cannot know how long that would take. I have concern for my own safety, the other rescue people and also the safety of the residents who may have delayed medical aid.

Chairman Halla asked if anyone else wished to speak. Jim Snyder said he wanted to have a point of clarification. He'd like to know whether before the Board closes and deliberates whether you're considering this project in isolation or what's been done in the past will be taken into consideration. Chairman Halla responded, each case is heard on its own merits. The relationship to Odyssey House which is almost twenty years ago, the Board is going to consider this case on the evidence presented tonight by them, the testimony, etc. The relevance to Odyssey House minimal at best.

Chairman Halla referred back to the applicant and questions from Board members. He asked if they would answer a couple of questions he has. This is a for profit facility, how do these people get there? How do you accept them? Where do they come from? Mr. Spofford responded there are levels of care and he described three stops they take. First is a medical evaluation, second is in residential treatment, then on to his facility like the one in Derry. They are referred by medical agencies within the state. Chairman Halla asked who pays for these people to go. Insurance companies. Part of what they are doing to get local approvals is so they can be licensed by the state, by the health facilities administration. He has heard you talk of for profit, cost and things like that, there is in the scale, just like anything else really, the level of services. Whereas the Odyssey House as you know was a state funded program. It dealt with an indigent population, although a necessary service....a really, really tough demographic. That goes all the way to high end facilities across the country that are six figures. We are neither of those. We are a middle class facility, what the Granite House is. Most of the finances would come from third party payments, their insurance. Your experience with the Odyssey House, that must have been horrible to have people on your land, disrespecting places that you walk and creating lifelong bad memories. We are asking that you not judge the integrity of the organization that we are trying to put together based on the actions of people that they never even met. Just because they are in the same field, doesn't mean a reflection of all of us. There are a lot of good and bad restaurants. They pride themselves with being top notch providers in this industry. This gentleman over here quoted a professional magazine. He was published in the magazine last year. It's a national authority on the treatment of substance abuse.

Jim Wieck said he just wanted to be clear, is this an educational facility or a convalescent facility? Chairman Halla interjected stating a huge amount of your drift is because Odyssey House was there; we should allow you to be there. You know I'm sure and I'm talking to legal mind, that you have to meet specific conditions for a special exception, but the special exception has to be stated in the ordinance. So, he guesses his question and my question is what are you proposing? An educational facility, a convalescent facility, neither of the two or is your point that because in 1994 a board in this town granted something to Odyssey House we ought to automatically grant a similar thing to you based on I'm not hearing how many people, what the staff is or even what you are applying under.

Attorney LeFevre spoke to the categories: are you talking about the categories in your table of permitted uses? Chairman Halla concurred. You're asking which one applies? Yes. We applied based on the assumption from the Code Enforcement Officer that it would be permitted under one of the sections in the convalescent exception. If the Board determines that it's not permitted under that, we would ask that you consider whether it's permitted

under the educational exception or any other exception. Chairman Halla stated that is for you to present to us, not for us to find for you, you know that. Attorney LeFevre continued, and if the Zoning Board is of the opinion that nowhere in this town is this type of facility permitted by special exception, I would specifically request that you make that factual finding. Chairman Halla responded we are not talking about anywhere in this town we're talking about the site that you'd applied for. We're not going to get into generalities of would we allow this anywhere in town. That's not apropos. Attorney LeFevre responded we've got a Table of Permitted Uses and based on his review there's two possible places that it's in there. One of the things that towns have to do whether they like it or not, is they need to be of some assistance. So, if the applicant shows up and he's under the mistaken belief that it's allowed as a special exception under one category, but that's wrong because the Code Enforcement Officer maybe misspoke, but it would be allowed under another category, it's not the applicant's job to fight with the town. It's the town's job to say you checked the box under A, that was wrong, you should have checked the box under B....Chairman Halla said, we are not talking about checking the box under A or B, we're talking about a situation where you want us to decide how you should apply and if we tell you that and you are denied, you're going to say they told us how to do it and then we denied them. I'm asking you to present your case as best you can in terms of this ordinance and then we can make a decision. Attorney LeFevre responded their presentation to the Board is this use is permitted as a special exception in the rural zone under any of the categories that the special exception permitted in the rural zone and that is their position.

Mr. Spofford spoke saying there are quite a few really legitimate questions. One was if there is a methadone clinic, there is no methadone clinic, there's no narcotic medications allowed whatsoever. It's an abstinence based program. The other was about the number of residents. It would be a maximum number of twenty. The health facilities administration has one set of licensing regulations so they are able to take insurance and be qualified for reimbursement. It requires a full team with a ratio of six to one at a minimum of licensed alcohol and drug counselors as well as 24 hour nursing which is not required by the state in order to be recognized and reimbursed by BC/BS, Cigna, Etna as well as residential technicians who are 24 hour staff. He supposed under the educational use it would make more sense. A residential treatment center by the very nature of what it is is educational. What we do over a period of 90 days after these guys have been medically cleared is give them a very structured, supervised setting. We educate them about the tools to live without addictive behaviors. Our niche is our work with the young, adult male demographic. More than half of our population goes back to school of some kind. We have case managers that work with these guys and the admissions offices of local colleges. It is our objective to teach them how to stay sober how to recreate their lives, give them a skill set that they can leave with, to be recommended on to aftercare. The majority of them will go to Granite House or to other respective facilities elsewhere and have this transition of going to school, getting an education, being of service. Being a rural town, he is sure every one of you has known each other since first grade. He grew up in north Salem, New Hampshire, third generation so he grew up in a similar neighborhood. He understands where you are coming from, especially after a negative experience with the previous occupant in a similar field. The truth is right now the times are changing. Healthcare and not that this is in front of your eyes, but it's in front of mine, this is what I do and perhaps some of you will have children that at some time have issues with substance abuse, maybe some of their friends did, nephews, nieces, relatives, friends that are affected by this. The truth is as people in the helping profession, as we try to develop these programs and create more availability for resources which is really a life changing and saving resource, the stories are just horrific where in meetings just like this where everyone is opposed to it and so as a result of that, the availability of services has gone down dramatically as well as the lack of funding. In 2008-2009 the reason that Odyssey House closed the State of NH took its budget from just over \$7

million for the treatment of substance abuse and cut it down to 3.2. He was a volunteer at a facility in Nashua when this happened and people were trying to place those women all over the place. So as we are in this meeting right now discussing the potential future acceptance of this facility into your neighborhoods, there are kids out there abusing drugs and alcohol, wasting their lives, dying...please...we chose a rural location because it's perfect location. If you look at treatment centers nationally, they are all in locations just like 367 Shaker Road. It's the industry standard to not put these facilities in inner cities. The differences between a state funded non-profit facility and the quality of care provided is a big difference in what we're proposing. The guys, under our watch are guaranteed not to be smoking in the barns, etc.

Chairman Halla returned to the same question: are you now saying you are applying as an educational facility...the previous statement was...Attorney LeFevre responded if it's permitted as a special exception as either a church or educational facility or under the category of nursing home or a convalescent facilities, agriculture special exception because they'll be gardening, multi-family special exception, permitted use in that zone, any of those categories....Chairman Halla asked one more time: you need to tell me how you are applying. We do not need you to read the entire ordinance. That serves absolutely no purpose whatsoever. Attorney LeFevre replied, we're going to go with educational, this is also under church and we're also going to fly under what the Code Enforcement Officer told us which was nursing home, convalescent facilities. Chairman asked those too? Yes.

Jim Snyder asked if he could just have a moment of clarification. He thinks what he told them was that he believed that's what the Odyssey House, what they sort of cobbled together, a combination of convalescent and educational and that those were the only ways that he could see of them coming, if it had any relationship to it at all, not that he thought that's where you should go.

Attorney LeFevre responded, well we would like the Zoning Board to cobble it together in the same fashion it was cobbled together for the Odyssey House. However, that's what we're asking. Chairman Halla asked, you realize that was a decision made 20 years ago, based on someone making a presentation. The Board didn't cobble anything together. We listened to a presentation that was very specific and we made a decision. What you are saying is do whatever you have to to approve this. Attorney LeFevre replied, no I'm not saying that. Chairman Halla asked, you're not? Attorney LeFevre said, I'm saying that we satisfy all of the criteria for a special exception. Chairman Halla said he understands that point. His question is you do realize the special exception has to be clearly stated in the ordinance, the use for the special exception. I'm asking you which use are you under? Attorney LeFevre stated I'm going under both of those uses because his understanding from speaking with the Code Enforcement Officer, that's the way it's been in the past. Now, to be clear, if what you are telling me is that nowhere in this ordinance is it permitted, this use permitted by special exception, I am requesting that you make that factual finding. Chairman Halla asked, why? There is no reason to make a factual finding. You can read the ordinance, does it specifically say rehab unit anywhere in the ordinance? No. That's why I'm asking you how are you....Attorney LeFevre stated in didn't say it back in 1990. Chairman Halla said it didn't in 1874 either. We are not talking about that. That was Odyssey House, you're not Odyssey House. So what I'm asking you is just to be clear with what we're going to vote on. If you're saying pick anything in the ordinance, you're basically saying you don't know what you're doing, so tell me what you're doing. So tell me what you're doing, that's all I'm asking.

Attorney LeFevre stated you understand my position, I think I've been pretty clear with it, you disagree with it. Chairman Halla stated he disagrees with the fact that you're not coming in with a specific request. You're saying I

want "a" special exception to do what we want. Now I'm looking at your ordinance and I don't really want to pick anything that's listed even though you have to. So you read me a list of agriculture, let's hear it under agriculture, is that what you'd like to do? No, now come on. Attorney LeFevre responded his understanding from reviewing your ordinance and speaking with your Code Enforcement Officer is that this use would be potentially permitted under special exception under either the nursing, convalescent home exception or the educational, church exceptions. That's my client's position. Chairman Halla said, ok, but you're basing that saying that he led you down that road. Attorney LeFevre replied and if he's wrong and it's the opinion of the Board that those two exceptions don't fly, please let us know. Chairman Halla said you'll know in our decision.

Chairman Halla asked if anyone else wished to speak in favor. Teresa Wyman asked if it were to be granted as a church, what would their tax impact be. She asked don't churches not pay taxes? Chairman Halla said that's true, but he doesn't think they are applying as a church. Bob Drew said he is curious and would like a clarification about a couple of things: What makes them say they are a faith based organization? It would be helpful for him not understanding this population to hear a short walk through of what a 12 hour day would be like for a client. That would help him understand the education, convalescent portion.

Chairman Halla restated so typically what would they do in a 12 hour day? What is the faith, the church you are associated with?

Mr. Spofford stated he supposes it's national case law that talks about twelve step processes being faith based. Chairman Halla asked so the AA twelve step program is your religion thing? But it's not a formal religion. So your faith based thing is the faith in the AA twelve step program. Yes. What would they do in a 12 hour day, is there an educational process in terms of reading, writing, arithmetic, you need to get a degree, you need to do this, you need to do that or is it going to an AA meeting and listening to people talk? Mr. Spofford said life skills training every day, psycho-educational groups run by licensed counselors.

Web Stout asked the patients, are they just from New Hampshire or are they from New England. Mr. Spofford replied mostly from New Hampshire, some from Vermont, this region. Web asked is this the first facility that you are proposing in New Hampshire other than this one down in Derry. Yes, the first licensed residential facility in New Hampshire.

Sandy Kenyon asked if they are court ordered or are they here on their own. Mr. Spofford responded, no they are all willing participants and their initiative is to change their lives. Chairman Halla asked what percentages have alcohol problems and what percentages have drug problems, roughly. It is really hard to speak to what percentage. A lot of what we see mostly is prescription drug abuse. They recognize the truth in the abutters concerns about mental illness. They don't accept severe mental health diagnosed clients. Their clients might exhibit anxiety, depression, and more personality disorders. When you take someone who has drank themselves into the ground and has trouble with all their interpersonal relationships and perhaps has financial problems as a result of their substance abuse, it's easy to say they have depression, anxiety, his life is a mess and he doesn't have too much to be happy about. But as far as severe mental illness, we are not a facility that has or ever will treat that population. Sandy asked what it costs to come to the facility. \$7,000.00 per month.

Barbie Tilton said he was saying that they have staff on site, counselors and then at night there's some other type of person that could be there for security. He talked about this educational thing and you talked about some programs getting back to the education and school things. Do you have educational staff, someone who is certified in education that is working there every day during these 12 hours to ensure that this is an educational thing? Mr. Spofford responded not educational staff; we have licensed counselors as well as the case managers. They will be bringing in GED training aides. The professionals they have on site would be prevention.

Jim Wieck asked if someone arrives at the facility do they have the ability to leave at any time or are they required to stay.

Gray Spaulding asked how many people do you have in the evening hours after 10 o'clock, staff. Three. It's 24 hours a day, 365 days a year and there will be nursing staff on the site as well as a minimum of two residential aides.

Jim Wieck asked what sort of insurance do you have to carry to cover say an instance where someone leaves the facility without permission and does some damage. Are you required to carry insurance for that or who is liable? Mr. Spofford replied they are required to carry all insurance policies on site and the insurance that covers licensed counselors. Jim said he understood that but in the event there is an event and a match, a cigarette, a barn burned down...he is curious, are you required to carry anything to cover that. Mr. Spofford did not think it would be possible to take out an insurance policy to cover that. Jim restated he is just wondering who would be liable to cover that damage. The homeowners would have to be insured.

Greg Meeh stated you say the clients are locked down there so HeP807, Rules for Residential Treatment, a client may refuse all apparent services. That does not apply to you? Mr. Spofford stated we spoke out of turn with the term lockdown. Greg said, but you said they couldn't leave. Mr. Spofford stated that's the rules. You are not allowed to speed on this road out here either. Greg clarified so they can leave any time they want. Mr. Spofford, I've had enough, I want to go home, the policy around that is absolutely they can leave at any time and we would give them transportation to Manchester or home. Greg says these are your rules, but the law says that if they want to leave, they can leave. Mr. Spofford restated, they can leave at any time, but if they make a decision to leave, they are then discharged from the program. Greg said and then you have no further liability in whatever they do with our property. Mr. Spofford said we would provide them with transportation....it would be the logical thing not to be stuck in the middle of Canterbury. Greg said if they are in crisis or frustrated.....

Bob Drew asked if they have free time during the 12 hour days. Mr. Spofford answered during the day they are supervised and accounted for from the moment they wake up till we have what we call lights out. They are under supervision, have a daily schedule, even free time is involved in rec time and they are supervised as well. Mr. Spofford described the facility's dormitory wings, common rooms, staff rooms. Though they would never be locked the doors are alarmed and there will be video cameras.

Gary asked if you find someone is missing, what's your procedure. Mr. Spofford replied I suppose we would look for them. Gary asked if it's 9 PM at night, it's dark, it's the middle of wintertime, someone is missing are you calling the police department, do you have your own people going out looking for him, are you letting the neighbors know, what's happening? What would be the protocol? Mr. Spofford responded they haven't written that policy yet. They would like to know what the town would like us to do. Quite honestly, that is a really rare

situation. This is not prison; this isn't guys sent here that want to leave. For these guys it's an opportunity and they are eager to come here. And the second that attitude deteriorates from you want to be here, you want to work to change your life, you're engaged, do you want to do this. We're not in the business of convincing anyone. I'll ask them to leave. I'll put you in the car and drive you to the bus station because you clearly no longer want to be here. Every residential treatment facility in the state has a four to six week waiting list.

Bill Simmons, Chief Operations Officer, also a licensed drug counselor pointed out the state licensing requirements...so, hypothetically with this agreement we would not be in business tomorrow. They are still six months to a year out because they have to get licensed by the state which is far stricter than anything the Zoning Board in Canterbury could require of us. They have what is called the policies and procedures manual. The licensing board will help facilities applying with two parts: one is clinical and one is life safety. They will abide by the guidelines for licensing. They have an audit for all of your policies and procedures. There is a written procedure for everything. It is their objective that they want to help people. They want to work with the community. They want to work together. He quoted a recent statistic that for every one person killed overseas fighting in a war, there has been 52 accidental drug overdoses. We have kids dying everywhere. These are not inner city kids, God bless them, and they need help too. The guys that we cater to are middle class, they come from working families. If any of you have children and they get messed up on drugs, where do they go? Who's going to help them? This is not a matter of choice, this is the disease of addiction and this has happened to your loved one and you're sitting here thinking about all these facilities that don't exist because of meetings like this, because they are discriminating because no one wants to help these people, no one wants to compromise. We need to band together as a community for a population that so many have turned their back on.

Chairman Halla asked if Hillary Nelson was speaking in favor. She asked can we get to the against part, because she really needs to answer this. She is hoping we will get there soon.

Ty Miller spoke saying he thinks there is a lot of fear in this room, that these are possibly rapists, felons, possibly have committed assaults. Can you speak to that fear? Is that a demographic, a large demographic of your group? Mr. Spofford said he'd really like the opportunity to address that in great detail. That is absolutely not the guys that they work with. Everyone who comes to any of our facilities, the one we currently have are moving forward to future endeavors, one you have faxed over from a referring agency (it could be a medical facility) a bio-psych --- which is a document that is about an inch thick. That's from intensive, individual treatment, mental health assessments, and a complete history on this patient. They will go over literally everything as to where they grew up, family dynamics, violence in the home at a young age, criminal history, substance abuse history, mental health history. They are just exhausting to read these bio-psych socials. That is the first step in this screening. In his experience of the thousands of clients we've worked with, not one has gotten through with a history of violence. We don't specifically deal with anyone with sexual crimes of any sort. That's immediately not a candidate for any of our programs. Anyone with violent tendencies is not a candidate for our programs. The standard for getting into any one of our programs is extremely high. These guys have got to be pretty well functioning, stable, highly motivated young men that wish to change their lives. These are college students who have a bright future. Our guys come from families that are hard workers, shop keepers, lawyers, they just have a range of middle class employment and these are their children. They grew up, fell off track and they're trying to get their lives together. I understand the stigma, NIMBY (not in my back yard). There is a stigma that comes along with drug addicts. This defies everything you think an alcoholic or drug addict is. When you hear those words you think homeless, under the bridge, probably bad, criminal, sexual deviant. If these guys walked in here you would

think they are nice, young men. You would never know. They are literally just nice, middle class young men that fell off track with substance abuse, partied a little too much, it grabbed ahold of them and they fell off the wheel. It would be hard for us to show me a handful of any people in any community that don't know guys like this, that know somebody that at some time needed a hand, needed a little bit of help. And shame on us as a community for not providing more services for these people.

Tythese life skills you talked about and education. The life skills you talk about are what they are learning, these skills what if they have a desire to shoot up or something you teach them how to think of something else or replace that? Talk a little more about the education that they're getting as far as training. Mr. Spofford said this kind of separates into different areas. The twelve step process, the underlying spiritual program that we have that drives the program, is the twelve step program. The twelve step program is a set of actions that we take and he quoted the twelve steps. The premise is not that these guys are going to want to shoot up. The reason that the twelve steps will work is what's identified as the three parts of alcoholism and drug addiction. An alcoholic or drug addicts' body is sickened by what's called the phenomenon of craving which means that when you take a drink, if you take a drug, it's also ----an allergy. Whereas if you have an allergy, it's an abnormal reaction. If you've ever known an alcoholic or drug addict, you know this to be true. If they put one of anything in their body, it's beyond their control. In the absence of that because they've already been in detox, they've been separated and suffered from what's called the spiritual malady which ----anxiety and things of that nature which means life as well as the obsessional use----that straightens it out is to deal outside of those spectrums. To speak to the educational piece, the life skills is in addition to, it's cooking classes, employment application training, how to get a job, shopping all those things that normal everyday folks take for granted....

Mr. Simmons jumped in to add his opinion. He stated he is an international, certified alcohol addiction counselor for the last ten years. The young men we are talking about here will be pre-screened as determined by the State of New Hampshire. This he described in detail reviewing what has been previously described. The guys that will be coming to them will be looking for that next future whether it's getting back on track with education, going back to school. A lot of times schools will send them to these facilities for a semester and they'll say ok this is what was going on for you, you have to go to a treatment center and you can come at the end of your stay there when you are stable. Other educational things are psycho-educational groups that address so many different topics.

Gary Spaulding said you mentioned the connection with Southern NH University, what is that connection? Mr. Spofford said they have a liberal admissions policy. They have a counselor assigned to work with them as a facility in getting our guys enrolled in classes there. It's a good university; they are a leading provider of online classes nationally. Gary asked if they offer online courses at your facility or would you have their professors come to your facility. Yes, this is how they do it in Derry.

Galen Beale asked what provisions are made for these men's families. Do you invite the families overnight? Mr. Spofford said they do. They are a huge believer in families participating. Especially for addicts and alcoholics to get better, everyone needs to get better. They would be holding regular family meeting with licensed family counselors. They would contacting local hotels to get a room rate for out of town families that cannot drive back and forth. This is not a huge facility and they do not have housing on site for families so they would stay in a hotel, attend classes, meetings, psycho-educational sessions, family therapy over the course of their loved ones' treatment.

Greg Meeh asked if these guys enroll at Southern NH University. Is that part of the \$7,000.00 per month or is that separate? Mr. Spofford advised they do not pay for their education. Chairman Halla asked if there were any questions from Board members at this time. He asked Mr. Spofford if he has any plans for expansion. You stated you were going to have twenty people. Is that the maximum? It is. In order to put a licensing application together for the State of NH, policy and procedures on your application you have to have your local zoning ordinance sign off, public health as well as fire. Beyond that the number of occupants is determined by the square footage of bedrooms. They would be limited to twenty or less.

Gary said the number of employees, you said is twenty five. Is that twelve or how many are there at one time? Is it shifts we are talking, three shifts? So, aides.... Mr. Spofford replied 8 to 10.

Chairman Halla asked the applicants if they had anything further to add. They did not.

Chairman Halla went to those who wished to speak in opposition. Hillary Nelson stated she wanted to make it clear that this community is not here to talk about keeping people who have addiction problems out of Canterbury. Her father died of alcoholism, she has a brother who is an alcoholic, it rages in her family. She has seen the devastation of alcoholism. She is very interested in seeing addicts get the kind of help they need. What she thinks we are here about is a zoning ordinance. Our zoning ordinance is pretty clear about what is allowed in the rural district. And something that uses a lot of municipal services and changes the character of the community is not allowed in the rural district. This is not like what has been there before. She would just like to say again that an educational facility is a school. You are describing a mental health behavioral facility even though you have classes in it. That is how mental health behavioral facilities work. If we in this town want to have mental health behavioral facilities, we need to write a warrant and vote on it. We are going to get ourselves in a heap of trouble if we start stretching out the meaning of the word educational to cover mental health facilities and to stretch out the word convalescent to cover mental health facilities. There will be a target on this town and there will be a lot of these here very soon because it is a hugely growing industry. It's going to be 34 billion dollars by 2014 where people are looking for places like this. If you doubt me, you can go look at the literature at communities where all of a sudden they have sixteen facilities like this in the town because they didn't protect their zoning ordinances.

Chairman Halla asked if anyone else wished to speak in opposition. Greg Meeh spoke saying the statement was made saying the folks there would have more incentive to stay than the ladies at Odyssey House. He would point out the ladies at Odyssey House were going back to jail if they left and they were leaving their babies behind. Many times we saw ladies walking, running down the road, crying with a bag under their arm. So he would say leaving your baby and going back to jail are pretty strong reasons to stay. He'd also dispute the point that all of these facilities are in rural areas. I know of one in Malibu right on the beach on the highway and I know of another one right on 48th Street right in the middle of New York City.

Chairman Halla asked if anyone else wished to speak in opposition, final time. The testimony part of this hearing was closed at 9:40 PM. He advised the Board will attempt to reach a decision. No more testimony will be taken. He further stated before it is formally closed he has two letters that were submitted from David Booth and Melora Rush and Karen Buchanan-Parker. They are both in complete opposition and will not be read because everything they wrote in their letters has already been stated in previous testimony. Copies of the letters will be in the ZBA file. The testimony portion was formally closed.

Jim Wieck said regardless of the conditions for a special exception, getting past this initial point and whether or not we even should get past this initial point of the educational versus convalescent, should we, have they actually presented us with something that we can rule. Chairman Halla responded they want to be considered either/or, so is the Board convinced that this is an educational facility. Is the Board convinced that it's a convalescent facility. Gary Spaulding said he is not convinced that it's a convalescent facility. His concern on the educational facility is really what's the legal definition of an educational facility. Would it be an educational facility as some type of degree program, certificate program, but does that cover that the state definition of an educational facility, something other than what I may be thinking. Jim Wieck said he thinks no matter what it's primarily a treatment facility and any education is whatever is apparent in that. He is not convinced it's an educational facility at all. Gary concurred, saying he doesn't know what it is yet. Jim responded he is not sure and they haven't come to us and presented a case for either one. Web Stout said he is thinking along the same lines. Is it educational? There is some education in there... Chairman Halla stated it depends on whether you look at the traditional definition of an educational facility would be a school teaching some form of academics. Or you can go completely the other way and say Matt Bonner's basketball camp is an educational facility because he's teaching something. He does not think that's where this ordinance is. He thinks pretty much what's referring to is schools rather than saying any educational facility which would encompass anything. He asked if anybody is convinced that it's a convalescent facility. No one was. He suggested the Board take a look at the seven criteria:

Do we think that granting the permit would be in the public interest? He has always interpreted that to be the public interest of Canterbury rather than the public interest of the world. The proposed use would not adversely affect the property values. Do we think that it will or it wouldn't? Jim said he would have to quantify that by the presence of the folks here that speaks to that. If we were going to go that route he would want to have an objective opinion on that one point. Is the specific site an appropriate location for the proposed use? The questions that have been brought up about that are the isolation factor out there, the fact that it takes so long to get police in the middle of the night services, etc. There was some concern the proposal would adversely affect the health and safety of residents and others in the area. It would not be detrimental to the use or development of adjacent neighboring properties. I have to say part of that was based on the Odyssey House, whether you can carry that forward to this, who knows till it happens. He does not think that five applies, the proposed use would constitute a nuisance because of noise, vibration, smoke, dust, odors, heat, glare or unsightliness, I don't think that applies. The granting of this permit would not be in the spirit of the ordinance if we can't say that it's either an educational or convalescent facility because a special exception as opposed to a use variance has to be specifically stated in the zoning ordinance. We are certainly not going to go with one time they were saying well, fit it in anywhere you can. That's not the Board's job. So he does not particularly think that it would be in the spirit of the ordinance because if we don't feel that it's an educational facility or a convalescent facility we can't approve it. Because a special exception as he said rather than a use variance has to be specifically stated. There were some concerns about traffic on that road and the fact that people speed on Shaker Road which they do and people walking up and down and so on....that's an issue of some kind. He does not think that's an overwhelming issue. He thinks the question is would it be in the public interest, property values certainly is a thing, do we need to, is there one item here that is totally hanging us up? They have to meet all of these seven things. Web concurred, if they don't get one, they don't get it. Jim asked do we need to discuss that, discussion is good, but is really the issue the question of what is it and what has been presented. Chairman Halla said there is no question about that, but he thinks in that context, you have to address these seven items and say it would not be in the public interest because it is not a convalescent facility or a school. Chairman Halla asked if there was any other discussion. Do we

need to get stronger evidence on any of these things like property values? There is a strong feeling with the people that are abutters that it's going to affect the property values. Web said that's pretty evident by the number of the people that are here. Jim said we could get another opinion before we provide an objective answer to that. Is it unreasonable to ask them for that if we're not going to do it for some other importance that's going to hang it up? He thinks if that was the only point, he would want to have that addressed. Web concurred. Chairman Halla asked if the Board needed to talk any more. He asked if somebody wanted to make a motion other than him.

Jim Wieck made a motion that we deny Case No. 2013-1 relative to the special exception on the ground that:

1. Granting the permit would not be in the public interest: relative to the community of Canterbury and the health and safety not only to the residents of Canterbury but of the residents of the facility, issues relative to the applicability of either an educational or convalescent facility that is being proposed to the Board.
2. The proposed use may affect the property values in the district. The concerns expressed during this hearing are suggestive of that.
3. The specific site is an appropriate location for the proposed use. It does not appear to be an appropriate use based upon the Plan for Canterbury as a residential, rural area. Also concern relative to fire, health and safety access due to the remote location and response times.
4. The proposed use would not adversely affect the health and safety of the residents and others in the area and would not be detrimental to the use or development of adjacent or neighboring properties. Again, the response time issue and concern for the residents of the facility.
5. The proposed use would not constitute a nuisance because of offensive noise, vibration, smoke, dust, odors, heat, glare or unsightliness. It is not a concern in this case.
6. The granting of the permit would not be in the spirit of the ordinance given that the use as proposed to the Board does not appear to fit under one of the categories allowable in the Special Exception.
7. The proposed use would not constitute a hazard because of traffic, hazardous materials, or other conditions. That is not a major concern although there are issues along the road in general regarding traffic safety.

Chairman Halla called for a second to the motion. Gary Spaulding seconded the motion. There was no discussion. The Board vote was a unanimous decision to **DENY** the application for the special exception. Chairman Halla described the thirty-day appeal process.

Respectfully submitted,

Lisa Carlson, Clerk
Board of Adjustment

