

SPECIAL MEETING  
TOWN OF WAYNESVILLE  
BOARD OF ADJUSTMENT  
JUNE 28, 2007  
THURSDAY - 5:30 P. M.  
TOWN HALL

The Board of Adjustment held a special meeting Thursday, June 28, 2007. Members present were Jack Suddath, Gail Cross, Mike Erwin, Boyd Medford and Stephanie Welch Strickland. Also present at the meeting were Land Development Administrator Byron Hickox and Deputy Town Clerk Freida Rhinehart. Chairperson Mike Erwin called the meeting to order at 5:30 p.m.

Approval of Minutes of May 1, 2007

Gail Cross moved, seconded by Jack Suddath to approve the minutes of May 1, 2007 as presented. The motion carried unanimously.

Conditional Use Permit - Glen Meadows- David Damereau - Pigeon Street Neighborhood District (PS-ND)

Byron Hickox presented the conditions recommended by the Planning Board and the guidelines from the Land Development Plan the Board of Adjustment should follow when making their decisions.

The conditions for approval based on the Planning Board's recommendations are as follows:

1. The parcel identification number references for the subject property are incorrect. Buildings need to be numbered for reference on the site plan.
2. Parking space counts need to be provided for multi-family building and clearly indicated on the site plan, as per 154.306(B).
3. Street style entrances to the multi-family building's underground parking are not permitted – redesign to driveway style entrances, as per 154.302(C)(3).
4. Grade level entrances to multi-family buildings require sidewalks with front door connections to each unit. Entryways must be elevated at least 18" above sidewalks, as per 154.122(B)(8)(a).
5. A sidewalk must be provided along Thomas Park Drive from Pigeon Street to Community Housing Corporation property line as per 154.122(B)(6)(a).
6. Streets need to be named and indicated as public or private 154.309(2).
7. Driveway separations between 18 units (4-5, 8-9, 14-15, 18-19, 20-21, 22-23, 25-26, 27-28, 32-33, 34-35, 36-37, 39-40, 42-43, 45-46, 49-50, 51-52, 54-55 and 55-56) do not meet the minimum separation of 25' as per 154.122(B)(6)(c)(2).
8. The driveways for units 1, 40 and 42 do not meet the minimum separation of 70' from street intersections as per 154.122(B)(6)(c).
9. The front of building 47 is within the 20' setback from the internal lane. 154.122(B)(3).
10. Common open spaces need to be clearly labeled as such on the site plan, 154.219(C).
11. Open space covenants must be recorded providing for reservation and maintenance of open space, 154.219(C).
12. Sidewalks along Pigeon Street must be a minimum of 8' wide, 154.307(B)(2). The street tree planting strip along Pigeon Street must be a minimum of 11' wide. The street tree planting strip along Thomas Park Drive must be a minimum of 8' wide as per 154.309(D), Table VII-3.

13. The townhouse unit elevations need complete material information, only the roofing is specified. Vinyl or metal siding is discouraged on facades facing public streets, 154.122(B)(8)(c)7.
14. The multi-family building elevations need to specify facade materials and color, there is no information on either.
15. A scale plan with the locations of lighting fixtures and a point-by-point footcandle array is required. Detailed information on lighting fixtures is also required.

Mr. Hickox pointed out that the original list was longer but some things changed with the ordinance amendments approved by the Board of Aldermen.

Patrick Bradshaw of Bradshaw Engineering indicated that he had been working with Mr. Damereau for some time now. He reviewed the list of conditions with updates.

1. The property identification number has been corrected and the buildings are numbered.
  2. Parking space counts have been done.
  3. Street style entrances have been corrected.
  4. Grade level entrances – these are served internally in the multi-family units. The sidewalks have been turned toward the three primary entrances. Parking is under the building.
  5. This has not been specifically addressed. There was some question at Community Appearance meeting and Planning Board.
  6. Streets have been named as private.
  7. That item has not been addressed as that was a pending amendment issue.
  8. This item has not been addressed.
  9. There has been a building removed so this item does not apply.
  10. Common open spaces have been labeled.
  11. (Not addressed)
  12. Sidewalks will be left to this Board's discretion.
- 13, 14, and 15 were delivered by Mr. Damereau.

Items 5 and 12 are sidewalk issues. Items 7 and 8 are driveway separations.

Byron pointed out that the issues that have been corrected have not yet been reviewed by staff. If the permit is approved subject to the meeting of conditions, it still needs to be subject to these 15 conditions. Mr. Hickox just wanted to make this clear.

Mike Erwin asked how some of these issues might be resolved such as driveways. Mr. Bradshaw replied some of the driveway separation issues might be eliminated with shared driveways or possible shifting of buildings.

Mr. Hickox said that Item #12 needs to be resolved. He asked Mr. Bradshaw to explain about the alternate pedestrian plan that has been proposed. Mr. Hickox instructed the Board the ordinance is purposely vague in order to allow for alternative pedestrian pathways to be provided in lieu of normally required sidewalks. It is the staff's feeling that this alternative is not a good alternative. Town staff prefers to see a sidewalk along the toe of the slope adjoining Pigeon Street rather than the alternative.

Mr. Damereau explained that he prefers to bring the sidewalk into the development, through the development and back on to Pigeon Street. There would be a treescape along Pigeon. Mr. Damereau said that because of safety issues and where the sidewalk would be located Community Appearance Commission and Planning Board both unanimously endorsed the alternative pedestrian plan through the development. He said this plan was voted for twice—both when the previous plan was submitted and then again with the current proposal. Mr. Damereau continued regarding staff wanting a sidewalk behind the units. He asked the Board members if they were buyers, would they want people walking in their back yard looking in the window. Mr. Damereau contended that both the Community Appearance Commission and Planning Board saw the sense of bringing the sidewalk back in front of the units since that is such a shallow area to put the sidewalk and trees in along Pigeon Street.

Mr. Kersten said the idea of taking the sidewalk away from Pigeon Street was approved both by Community Appearance and the Planning Board despite what Town Staff recommended. Town staff is actually proposing double sets of sidewalks—one in front of the houses and one behind the houses only a few feet from residents' windows. Mr. Kersten reiterated that both Community Appearance and Planning Board said “no” to the idea of the sidewalk behind the homes regardless of town staff recommendations. Mr. Kersten called town staff's plan “duplicious and unnecessary”.

Jack Suddath asked if there would be no sidewalk along Pigeon Street. Mr. Kersten said the sidewalk would run through the development and then back into Pigeon Street. Mr. Suddath asked if Mr. Kersten were saying that there would be no longer be a sidewalk required for Hwy. 276 (Pigeon Street). Mr. Kersten replied correct.

Fred Baker, Public Works Director, said he felt there should be a sidewalk along Pigeon Street (US 276). Mr. Baker said when there is development on any street sidewalk must be constructed in order to bring that street up to standards. Without curb and gutter an 8' minimum tree space is required in addition to the sidewalk. Mr. Baker said town staff asked for a sidewalk, not for Mr. Damereau's benefit because he chose to turn his units away from the community, but as a means of passing the frontage of this project without a driver's license or vehicle.

Gail Cross asked if people would be walking through the community in front of the homes rather than behind. Mr. Damereau said that the original plan was to gate this community, but due to the town's requirements for connectivity, they decided to put in trails and even a public park and run the sidewalk through the development. Mr. Damereau said that the plan for running the sidewalk through the development was approved as a part of the previous plan but now it is an issue to run the sidewalk along Pigeon Street. Mr. Damereau contended that there is just not enough room to put a sidewalk and trees along Pigeon Street. Mr. Damereau also claimed that this will decrease his ability to sell the units. Mr. Damereau continued that if the buildings were turned facing Pigeon Street, the topography of the site would not lend itself to be able to access it looking straight down the hill. Therefore, they added the connectivity and created a true street where people can come in and through. They also granted an easement to the adjoining property which might be developed later to be able to access through this property. Mr. Damereau said they thought they had done everything they need to comply with connectivity requirements. The buffer will be maintained along Pigeon with the same types of trees.

Gail Cross asked if there was access to the minutes of the Planning Board. Mr. Hickox said that their decision should not affect the Board of Adjustment's decision. The Board of Adjustment's decision should be based on the evidence presented. Ms. Cross said that she would like to see the minutes. She was given a copy.

Mr. Damereau argued that they thought they were correct and they feel this is as far as the developers can go to make the project work.

Mike Erwin asked if the sidewalk would be along Pigeon Street or down behind the units. Mr. Baker said that would be up to Mr. Damereau to decide. Mr. Baker continued that Mr. Damereau has no approval to substitute the sidewalk through the community for a sidewalk along the street. Pigeon Street is a major thoroughfare in and out of town. Mr. Baker added it would be a mistake not to allow people to travel this thoroughfare without driving. Mr. Damereau is required to put a sidewalk along at least one side the lane inside the development anyway. This is not an alternative to street sidewalks since the sidewalk that has to be there to comply with the ordinance. There are several alternatives to provide a pedestrian way that would get someone from the intersection of Hillside to the next frontage. Mr. Baker does not have a problem with the pedestrian path indicated on the plan but the fact that one has to walk down a private lane to get past the development is an inadequate pedestrian plan. Mr. Baker's preference would be to locate a sidewalk along Pigeon Street with an 8' minimum shoulder that would put it over on an embankment but with the use of some retaining block and some grading it would be possible. It would be cheaper and easier to place it at the toe of the slope. If this is not satisfactory with Mr. Damereau, the sidewalk could be moved up on the elevation and more separation from it beside the street. Across the street is a cemetery. That property will never be developed, thus a sidewalk of that side of the street is not feasible since a right of way could not be obtained. As a condition of our Land Development Standards, Mr. Damereau is required to upgrade to frontage of Pigeon Street to the minimum standards which is an 8' tree zone and concrete sidewalk. Alternative compliance is allowed, but he does not agree that Mr. Damereau's proposal is adequate. If Mr. Damereau chooses not to put the sidewalk along Pigeon Street, it could be placed at the middle of the slope or the bottom of the slope.

Mr. Erwin asked if the trees would be next to the street or behind the sidewalk. Mr. Baker replied that there is some conflict between DOT rules and our ordinance. DOT has a greater street tree separation of 12' at that speed limit which would be enforced. Therefore, street trees would be behind the sidewalk.

Mr. Kersten referred to the minutes of the Planning Board of May 21, 2007. He said the Planning Board left the recommendation of the Community Appearance Commission unchanged. Mr. Hickox replied that the sidewalk issue was not a part of the motion by the Planning Board to be recommended to the Board of Adjustment. Mr. Damereau argued that Planning Board agreed unanimously to allow the sidewalk to go through the development. Mr. Kersten agreed and said that every person on the Planning Board agreed the sidewalk should go through the development. Mr. Hickox pointed out that the Planning Board is an advisory body and the ultimate decision lies with the Board of Adjustment.

Patrick Bradshaw stated that the sidewalk issue was brought up at Community Appearance. They made a recommendation that went to Planning Board which stated that the alternative sidewalk proposal by Mr. Damereau was an acceptable alternative to the sidewalk on Pigeon Street. Mr. Bradshaw believes that the Board of Adjustment Minutes

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Planning Board endorsed Community Appearance's recommendation along with the other three stipulations that they noted specifically.

Gail Cross asked if there were concerns about people walking behind someone's back yard, would their not be similar concerns about people from the community walking in front yards of residents. Mr. Damereau responded that the pedestrians will walk on the sidewalk. He stated that when they had initially planned to gate the community, the Aldermen asked that it not be separated from the rest of the community so that connectivity would be encouraged. There is a right of way for a walking trail and right of way provided to the property next door.

Mr. Damereau continued that the reason the townhouses were not built two years ago was that he felt the market was not quite right. He now feels the market has matured enough for the townhouses to sell. He referred to the project on South Main Street which conforms strictly to Town ordinances. None of the units have sold. Mr. Damereau feels that this connectivity will allow his units to sell.

Jack Suddath asked if sidewalk through the community would connect to town sidewalks. Mr. Damereau replied that they would.

Mr. Damereau also pointed out the units will feature hardi-plank facades rather than vinyl siding. Other materials have been upgraded as well.

Mike Erwin pointed out on behalf of town staff that these issues should not be personal. Staff's job is to enforce town ordinances.

Mr. Kersten replied that twice materials have been dropped off and town staff is "too busy" for five weeks to look at these materials. Also, he stated that he has been furnished a list of items that are to be discussed at meetings and when he shows up at the meeting, there is an entirely different list that no one has ever seen. He and Mr. Damereau went on that plans have been "lost" or "forgotten" that need to be discussed. Mr. Damereau feels that he has been treated very unfairly by town staff. Mr. Damereau also said that aldermen and Paul Benson told him that since his plan was approved previously, there should be no problem receiving approval again.

Mr. Erwin pointed out there are still 15 issues that have not been resolved. Mr. Damereau responded that they should not have to go through the total process again but he is willing to go ahead with the project.

Mr. Kersten said plans have been illegally destroyed and other things have happened that should not have. He feels that the issue is personal. Mr. Damereau just wants to complete his project.

Gail Cross said that the Planning Board minutes are not clear as to what their decision was. Ms. Cross also had a question about the approval of the conditional use permit since all the conditions have not been met. One of these issues is the driveway issue. Mr. Kersten explained that this issue came before the Aldermen on Tuesday June 26, 2007. They declined to change the driveway separations as stated in the ordinance which states that the driveway separation should be 25' feet apart measured edge to edge. Mr. Damereau

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has not decided at this point what he will do. Some of the units may have to be made more narrow. He feels that there should be more flexibility with the driveways.

Mr. Hickox reminded th Board that they can be more restrictive than the ordinance but cannot be more lenient than the ordinance.

Gail Cross asked about Item # 8 – distance of 70 ft. of driveways from street. Mr. Damereau said that the Public Works Director Fred Baker has discretion to reduce that distance by 50%. Item # 7 must be reviewed by Mr. Bradshaw and Mr. Damereau to see what has to be done to meet town ordinances. Mr. Bradshaw and Mr. Damereau said both #7 and #8 will have to be reviewed.

Mike Erwin asked Mr. Hickox about the origin of the 15 items on the list of conditions. Mr. Hickox replied that it was a combination of all the items still needed and submitted by Mr. Baker, Mr. Benson and Mr. Hickox. The only reason # 8 is in there is that it does not meet the letter of the ordinance. This does not mean Mr. Baker will not use his discretion to eliminate this item.

Mr. Hickox did explain the staff report goes out to Community Appearance and Planning Board prior to the meeting as findings of requirements necessary to meet the ordinance. This is not the same thing as the minutes of the meeting which reflect what was actually discussed at the meeting.

Mr. Kersten stated that it is undisputed that Community Appearance, the Planning Board and Board of Adjustment all approved the sidewalk through the development the first time around but town staff wants a sidewalk somewhere besides through the development. Mr. Kersten continued that he has yet to hear a reason why this is a bad thing and now Community Appearance and Planning Board say that the sidewalk should run through the neighborhood, but town staff disagrees. He does not understand why they don't want it through the neighborhood but just that they don't want it.

Mr. Erwin asked about the decision of the Community Appearance Commission. Mr. Hickox said that Community Appearance were all for the sidewalk through the development.

Mr. Kersten asked if the Board of Adjustment members had heard any reason why the sidewalk should not go through the development. He questioned why a sidewalk that will create connectivity, go by a little park that will be developed and wildlife wetlands would not be preferable to a sidewalk along a blind curve on US 276. Mr. Kersten said it is not safe.

Boyd Medford stated that any sidewalk beside a road is not safe.

Mr. Kersten does not understand why Mr. Baker does not like the sidewalk through the neighborhood.

Mr. Erwin said that the Planning Board is to study items presented to the Board of Adjustment. The Board of Adjustment has no indication that this was done.

Mr. Kersten said that he and Mr. Damereau were at the meeting and the Board of Adjustment have their word that it was done. All the Board of Adjustment does not have is good clear minutes which is because

there was not a court reporter present to take down every word. He stated that he does not tell lies for his client or has a selective memory.

Mr. Kersten said the Board of Adjustment's job is to decide whether they want the sidewalk down through the development regardless of whether anyone else likes it or not. He continued that there have been plenty of reasons why it is best and none why it is not.

Mr. Erwin told Mr. Kersten that he keeps trying to argue about something the Board of Adjustment is not concerned about. The Board of Adjustment's job is not to take someone's word for something but to make a decision based on evidence presented.

Stephanie Strickland asked if the final decision rests with them. Mr. Hickox responded that it did, and the Board of Adjustment's decision must rest on how strongly they want to base their decision on what the Planning Board decided.

Mr. Kersten asked if any reason had been presented why the sidewalk should not go through the neighborhood other than Mr. Baker who said he didn't like it. Mr. Kersten said that is not a reason; it is a prejudice.

Jack Suddath said he would like to hear what the Planning Board recommended since it is not clear. Mr. Erwin and Ms. Cross agreed.

Dan Wright, a member of the Planning Board, then spoke. He stated that he is a member of the Planning Board and his recollection of the last meeting is very clear. The Planning Board all agreed that (1) The separation between buildings should go to 10'. Mr. Wright has designed buildings for Black Mountain and Asheville and 10' is a normal separation for planned unit developments. Planned unit developments aren't specifically addressed in detail by the code. The codes are mostly for residential areas. That is why driveway separations make so much sense along a residential street, but they don't make sense for planned unit developments where it is a density issue and different things apply. Mr. Wright stated the night the Planning Board went over this, they spent two hours talking about these issues. The most important issue discussed was the sidewalk along Pigeon Street. He said the Planning Board all agreed that it was ridiculous to even consider putting a sidewalk along Pigeon Street because you couldn't have the separation of a green strip between the pavement where the traffic is traveling and the sidewalk since there is a very narrow flat spot next to the roadway and then it falls off drastically to a point where all the dimensions don't work because you don't have room for an 8' green strip and then have 5' or 8' of sidewalk. So they all said it makes perfect sense to go with the alternative and route people through the community like it is designed. In no way did the Planning Board endorse putting a sidewalk along Pigeon Street since it just is not safe.

After working with Mr. Baker on other projects, Mr. Wright has found that Mr. Baker will work with you. Mr. Wright was involved with a parking lot project in town where there was a similar situation with a steep bank. They made photos of the bank and took them to Mr. Baker and explained that they could not have a planting strip or sidewalk as wide as the one required by the code. Mr. Baker agreed to lessen the dimensions and move the sidewalk to make it work. It was a common sense issue just as planned unit developments are more dense than the average neighborhood in Waynesville. The recommendation that Mr. Wright made was to change spacing between buildings to 10' and the driveway separations since they are not appropriate as written for planned unit developments. There must be allowances for such things. Mr. Wright feels that the land development standards should be a document that is constantly changing to allow for situations that come up where there is not a niche for something. If the planning staff is to have any flexibility to make changes is if the Planning Board and Board of Adjustment suggest changes.

Mr. Hickox agreed and said that so many changes have been made, it is hard to keep up with all of them.

Mr. Kersten asked if it is correct that all the members of the Planning Board verbally and exhaustively discussed this project and unanimously decided that it should be as planned.

Mr. Erwin asked if the Planning Board has met since this meeting. Mr. Wright said that we met in June and the minutes were approved. Mr. Erwin pointed out that Mr. Wright made the second to the motion. Mr. Erwin said that the sidewalk issue was not addressed as a part of the second. Mr. Wright said the motion was to address the two issues of driveway separations and the distance between buildings. There was also a motion to accept the project.

Mr. Erwin read the motion as follows:

“Marty Prevost moved, seconded by Dan Wright, to recommend approval of the Conditional Use Permit for Glen Meadows residential development to the Board of Adjustment on condition that the issues identified in the staff report are resolved by the developer, with the exceptions of the minimum driveway separation issue, (#7 on the staff report), which should be measured from centerline rather than the closest edges, the minimum driveway to intersection separation issue (#8) on the staff report, and the minimum building separation issue, (#12 on the staff report), which should be reduced to 10' rather than 20'. The motion carried unanimously.”

Mr. Wright said that is correct, but it was discussed between everyone on the Planning Board that the sidewalks did not belong along Pigeon because it was dangerous. It was placed where it was placed upon request of staff.

Mr. Damereau if there were a statement that the sidewalk needed to be back up on Pigeon it would have been a part of the minutes but the plan was approved as submitted subject to those revisions. It was approved subject to those three line items.



Mr. Kersten said that the Board of Adjustment has heard from him, Mr. Damereau and Mr. Wright who were all present at the meeting that nobody on the Planning Board wanted the sidewalk on Pigeon. Every member was against it and said they didn't want it. They agreed with Community Appearance. Mr. Kersten said that if the Board of Adjustment wants to go back to the Planning Board and say whoever drew the minutes up drew them up incorrectly—whoever put it down since there was no court reporter didn't do it correctly. But, he insisted that it is the Board of Adjustment's job to decide. He asked how many more people the Board needs to hear from that everybody except Fred Baker wants the sidewalk to go through the development and he has given no reason why it should not.

Dan Wright added that when a motion is made sometimes the language is abbreviated. The appropriate motion would be "I approve this based on acceptance of Items 1, 2, 3 but not 4". It may have been overlooked by the person making the motion to say we all agree that there should be no sidewalk on Pigeon. The issue was discussed at length but just did not get included in the motion. The Planning Board agreed that the sidewalk through the development was the best approach but it was tabled to go on to discuss the other items on the list of conditions. Mr. Damereau said Ms. Prevost who made the motion meant the plan was accepted as submitted and if there were any changes to be made, it would have been part of the motion.

Mr. Wright said he did not think anyone could point to the fact that the minutes are not complete. There is no way that everything that is stated in a meeting like that could be put on paper. It would be a large volume from every meeting.

Mr. Erwin asked if Mr. Hickox attended the Planning Board meeting. Mr. Hickox responded that Paul Benson conducted that meeting but that issue was on the staff report. Mr. Erwin summarized that the sidewalk issue was on the staff report.

Mr. Kersten said that is why it was discussed at such length.

Mr. Erwin pointed out that some issues on the staff report were a part of the motion but the sidewalk issue did not become part of the motion.

Patrick Bradshaw said it is his belief and recollection that the Planning Board adopted the recommendation proposed by the Community Appearance Commission and then added the 3 additional items in the motion. The Planning Board saw the logic and agreed with it and added 3 more items. They were still referencing back to the list of 15 or 16 items.

Mr. Erwin read from the minutes of the Planning Board meeting regarding the discussion of the sidewalk: "One issue has been the sidewalk. Public Works Director Fred Baker would prefer to have the sidewalk along Pigeon Street. Since the site is in a low area below the street level, it would be difficult to put a sidewalk along the street. The developers instead would like to run a sidewalk from Pigeon Street up to the entrance to the development and use the internal sidewalk for connectivity back to Pigeon Road. Community Appearance Commission did make this recommendation. Also, trees would be required along the sidewalk which would be difficult. Board of Adjustment will make the final decision on this matter, but it is up to the Planning Board to recommend such changes. There will also be a sidewalk running from

Thomas Park to the new entrance. Some members of the Planning Board felt it would be better for pedestrians to walk in front of homes on a sidewalk rather than behind the homes.”

Mr. Kersten responded that this was half an hour’s discussion reduced to 30 seconds worth of sentences. Mr. Damereau said that the Planning Board basically said the same thing as Community Appearance. Mr. Kersten said the minutes dismissed the discussion out of hand as not being a good solution. He continued that a member of the Planning Board had just testified under oath that the Planning Board agreed with Community Appearance. Mr. Kersten asked if the Board of Adjustment would like to have members of the Planning Board to come one by one to testify as to what happened at the meeting. He asked if the Board of Adjustment is going to believe a partial, incorrect transcript which reduces 30 minutes of discussion to a couple of sentences or 4 people who testify under oath.

Mr. Damereau stated that this body (Board of Adjustment) will determine about the sidewalk. If the Board of Adjustment agrees with Mr. Baker or not, the decision lies with them. He continued that he did not change the site plan one iota from its first submission. It was approved the first time by all three bodies.

Mr. Kersten again referred to the record keeping of the Town. He said if it is something there is going to be litigation about, the minutes are totally unacceptable since they are worthless as far as recording is concerned because they are only summaries. Minutes are not a verbatim transcription of what occurred. Mr. Kersten said if it is important to know what everybody says, let a court reporter take down every word. He explained that it’s usually not necessary and can become frustrating. He said someone should have reminded the Planning Board to be more clear about giving a specific recommendation about the sidewalk.

Mr. Erwin said that he feels that the sidewalk issue just did not get included as a part of the Planning Board’s motion as an oversight. Mr. Kersten said that he thought they had sufficiently addressed it during their 30 minute discussion but it is not in the minutes and should be. Mr. Kersten asked if minutes were always approved as submitted. Mr. Erwin, Ms. Cross, and Mr. Hickox assured him that they were not. If corrections or additions are necessary, they are made. Mr. Kersten said he had never heard it happen in his 26 years of attending town meetings.

Mr. Damereau expressed his thanks to the Board of Adjustment for hearing this case. He stated that he is looking to build this project and to keep the sidewalk internal. The way Mr. Baker has proposed the sidewalk would involve bringing in 3000-4000 yards of fill to support the sidewalk and trees. Mr. Damereau said topography should take some mention of the way the project is to be designed. He said Mr. Bradshaw would tell you that some flexibility is necessary for design of projects. Mr. Damereau feels that he has done the best he could do with the design of this particular property and if he is required to build the sidewalk on Pigeon Street, he will not build the project at all.

Mr. Suddath said that based on the comments of Mr. Wright who is a member of the Planning Board, he feels the Board of Adjustment can make a decision. Ms. Cross agreed. She asked about the motion. Mr. Hickox said none of the 15 conditions have yet been reviewed by town staff because he was only handed revisions just before the meeting. If there are any conditions to be left off or added, they should be addressed.

Mr. Hickox reminded the Board of Adjustment if they are not prepared to make decision at this time, they are required to make a final decision within 32 days of the day of the public hearing.

Ms. Strickland agreed that she was ready to make a decision as well. She stated that she has no reason to disbelieve any of the testimony given regarding the decision of the Planning Board. Other Board members agreed they are prepared.

Jack Suddath moved, seconded by Stephanie Strickland to approve the granting of the conditional use permit based on compliance with the conditions for approval (Items 1-15) as presented by town staff and to approve the alternative sidewalk plan shown on the submitted plan. This is based on compliance with the general requirements of Section 154.083 Conditional Uses, 154.117 Pigeon Street Neighborhood District and 154.226

Multi-family Dwellings. The motion carried unanimously.

#### Adjournment

With no further business, the meeting was adjourned at 7:35 p.m. by consensus.

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Mike Erwin, Chairman

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Freida Rhinehart, Secretary