

**RESOLUTION NO. 99-01-005B
HAMILTON TOWNSHIP
ZONING BOARD OF ADJUSTMENT
DENYING A USE VARIANCE TO CARE ONE AT HAMILTON, LLC TO PERMIT A
62,259 SQUARE FOOT ADDITION TO ITS EXISTING FACILITY ON THE PROPERTY
KNOWN AS MAP 143, SECTION 2167, LOT 416 ON THE TAX MAP OF THE
TOWNSHIP OF HAMILTON**

WHEREAS, Care One at Hamilton, LLC, the owner of property known as Map 143, Section 2167, Lot 416 on the Tax Map of the Township of Hamilton, which property is commonly known as 1660 White Horse-Hamilton Square Road, Hamilton Township, New Jersey has made application to the Zoning Board of Adjustment for a use variance and site plan approval with bulk variances to permit the construction of a two story 62,259 square foot addition to its existing assisted living and related service facility; and

WHEREAS, the application was bifurcated with the consideration of the use variance heard by the Zoning Board of Adjustment prior to the formal action on the preliminary and final site plan and bulk variance aspects of the application; and

WHEREAS, the subject property is located in the REO-5 Zone District; and

WHEREAS, the applicant was represented by Mark M. Roselli, Esq. of the firm Roselli Griegel Lozier & Lazzaro, PC; and

WHEREAS, testimony in support of the application was presented by Roland E. Borglund of Borglund Tyson Architects; Kenneth Keegan, Regional Director of Operations for Southern New Jersey for Care One; David R. Shropshire, of Shropshire Associates, traffic engineer; Gary V. Vecchio of Taylor Wiseman and Taylor, project engineer; Michael K. Mueller, Professional Planner; David Kostinas, Healthcare Consultant; Cecilia Byrne-Schmidt of Taylor Wiseman and Taylor, Landscape Architect; Margaret Calkins, Consultant, of Innovative Designs in

Environments for an Aging Society; Leslie Hendrickson, Long-Term Care Consultant; and

WHEREAS, Gregory Ricciardi, Esq. of the firm of Pepper Hamilton, LLP appeared on behalf of the Board of Society Hill at Hamilton Homeowners Association; and

WHEREAS, R. William Potter, Esq. of the Firm of Potter and Dickson, Esqs. appeared on behalf of Residents for Enforcement of Existing Land Development Codes (REEL DC), a group composed of concerned residents and property owners in the adjacent Society Hill II residential development and other residents of Hamilton and Save Hamilton Open Space, as objectors to the project; and

WHEREAS, witnesses Dennis Hudacsko, Professional Planner; Robert Wells, Certified Tree Expert; Geoffrey M. Goll, Professional Engineer of Princeton Hydro; and Susan Tierney, a representative and concerned residents testified on behalf of the aforesaid REEL DC in opposition to the project; and

WHEREAS, testimony was presented by Robert C. Poppert of the Township Division of Planning; Richard S. Williams, Township Engineer, and Gregory Valesi, and Laura Neumann, Professional Engineers, of CME Associates, regarding Township professional review of the project; and

WHEREAS, hearings on the applicants' request were conducted at regular meetings held on May 27, 2008; June 24, 2008; December 4, 2008; December 18, 2008; January 27, 2009; February 25, 2009; June 2, 2009; and June 9, 2009 at which time other interested members of the public spoke for and against the application; and

WHEREAS, the Zoning Board of Adjustment considered the following documentary evidence:

1. Memorandum prepared by Robert C. Poppert of the Division of Planning dated May 1, 2007 and revised to May 7, 2008.
2. Memorandum prepared by Township Engineer Richard S. Williams, dated May 9, 2007 and last revised to May 21, 2008.
3. Memorandum from Township Engineering Consultant, Gregory R. Valesi, of CME Associates, dated October 5, 2007 and revised to January 21, 2009.
4. Memorandum from Department of Water Pollution Control, dated .
5. Memorandum from Joseph N. Nuzzo, Fire Protection Inspector, revised to March 25, 2009.
6. Preliminary and Final Site Plan, prepared by Taylor Wiseman and Taylor, dated March 30, 2007 and revised August 3, 2007, last revised February 26, 2009.
7. Building Elevations and Floor Plans, prepared by Borglund Tyson LLC, dated March 30, 2007 and revised June 28, 2007, last revised March 28, 2008.
8. Wetlands Permitting Plan, prepared by Taylor Wiseman and Taylor, dated March 19, 2007.
9. Drainage and Detention Calculations, prepared by Taylor Wiseman and Taylor, dated March 30, 2007.
10. Boundary and Topographic Survey prepared by Control Point Associates, Inc., dated November 21, 2006 and last revised February 22, 2007 and June 22, 2007.
11. Historic Fill Investigation – Soil Sample Results, prepared by Taylor Wiseman and Taylor, dated July 20, 2007.
12. Preliminary Estimate of Probable Construction Costs, prepared by Taylor

Wiseman and Taylor, dated July 3, 2007.

13. Detention Facilities Operation and Maintenance Manual, Taylor Wiseman and Taylor, dated June 22, 2007.

14. Revised Traffic Engineering Assessment, prepared by Taylor Wiseman and Taylor, dated June 22, 2007.

15. Revised Traffic Engineering Assessment, prepared by Taylor Wiseman and Taylor, dated July 11, 2007, revised February 1, 2008.

16. Environmental Impact Statement, prepared by Taylor Wiseman and Taylor, dated December 3, 2007.

17. Cross Sections of Berms and Basins, prepared by Taylor Wiseman and Taylor, dated March 30, 2007.

18. Porte Cochere right side elevation (sheet A-1), prepared by Borglund Tyson, dated December 12, 2007.

19. Plan review response letter, prepared by Taylor Wiseman and Taylor, dated February 29, 2008.

20. Exhibit A-1, Agreement.

21. Exhibit A-2, Front Façade Drawing

22. Exhibit A-3, Landscape Plan

23. Exhibit A-4, Side and Rear Façade Drawing

24. Exhibit A-5, Demolition Plan

25. Exhibit A-6, Aerial Photo of Area

26. Exhibit A-7, Wetlands Permit Plan

27. Exhibit A-8, 1999 Resolution of Approval (Use & Bulk Variances)
28. Exhibit A-9, 2005 Resolution of Approval (Use & Bulk Variances)
29. Exhibit A-10, Standards for Planned Retirement Overlay v. REO-5 Zone
30. Exhibit A-11, Schematic View of Site From Society Hill
31. Exhibit A-12, DEP Approval Letter dated November 20, 2008
32. Exhibit A-13, DEP Letter from V. Mazzei to David Roth dated 12/11/08
33. Exhibit A-14, Letter to DEP[T] from John A. Miller of Princeton Hydro dated
6/24/08
34. Exhibit A-15, 3 pages of e-mails between Miller of Princeton Hydro & Guru of
DEP
35. Exhibit A-16, 2 pages of e-mails between Miller of Princeton Hydro & Rebecca
Grice
36. Exhibit A-17, Demographic and needs analysis by Leslie Hendrickson
37. Exhibit A-18, Analysis of Alzheimer's Bed Allocation
38. Exhibit A-19, Sub-Acute Care Testimony
39. Exhibit A-20, Request for Administrative Waiver
40. Exhibit A-21, Landscape Architect's Report
41. Exhibit A-22, Colored Rendering of Site Plan
42. Exhibit A-23, Certificate of Need 4/09/02
43. Exhibit A-24, Certificate of Need 7/15/03
44. Exhibit A-25, Certificate of Need 3/31/04
45. Exhibit A-26, Certificate of Need 10/25/07

46. Exhibit A-27, Certificate of Need 11/09/07
47. Exhibit A-28, Resume of Dr. Calkins
48. Exhibit A-29, Architectural Plans
49. Exhibit A-29A, Architectural Plans
50. Exhibit A-30, Fire Marshall, 3/25/09 Letter Confirming Request for Road Around

Building

51. R-1, Letter of Opposition
52. R-2, Two pages of blow ups of R-1
53. R-3, Cross Section of Rear of Proposed Addition
54. R-4, Photographs of site taken from unit 55, Building 16 of Society Hill
55. R-5, Robert Wells – Arborist Report
56. R-6, Princeton Hydro Report by Geoffrey Goll
57. R-7, Hudacsko Zoning Analysis
58. R-8, NJ DEP Photo of Subject Area
59. R-9, Aerial Close up of Property
60. R-10, Artist Rendering of Care One Building Expansion
61. R-11, Page 29 of Master Plan “Industrial Areas”
62. R-12, Hudacsko Certification.

WHEREAS, the Zoning Board of Adjustment made the following factual findings:

The Application in General

1. The applicant is the owner-operator of an existing assisted living facility with

related health care services and amenities located at the intersection of Whitehorse-Hamilton Square Road and Cypress Lane. The building, as it exists, was not constructed by the applicant which acquired it from the original owner. The application seeks permission to construct a 62,259 square foot addition to the existing facility.

2. The application seeks a use variance to allow the proposed expansion of the facility along with preliminary and final site plan approval; a floor area ratio variance; bulk variances; and design waivers to accommodate the proposed addition; related amenities; and required site improvements. The application also requires a variance from the 150 feet required buffer between commercial and residential zones.

3. The subject property consists of approximately seven acres and presently is developed with a 55,984 square foot building.

4. The proposed expansion of the facility would also require a floor area ratio variance as the existing building has a complying 18.3% floor area ratio whereas the proposed facility would have a 38.7% F.A.R., significantly in excess of the permitted 25%.

5. The property is located in the REO-5 wherein the use is not permitted.

6. At the commencement of the hearing process, it was agreed that the application would be bifurcated with the Board considering the use variance prior to acting on the site plan, bulk variances and waiver requests. The Board recognized that although the application was bifurcated, some testimony would be required to support the use variance request that would otherwise be associated with the site plan aspect of the application.

7. The Board and the applicant recognized that a group of objectors to the plan identified as Residents For Enforcement of Existing Land Development Code (REEL DC) was

represented by counsel and it was agreed that their attorney would be allowed to participate in the cross-examination of witnesses as they appeared in order to provide an orderly flow to the proceedings and avoid the necessity of having specialized witnesses return before the Board to allow cross-examination at a later time.

8. The applicant provided testimony that the existing facility had 87 assisted living residential units that currently houses 123 residents. The proposed facility, after the requested expansion, would have 135 residential units that could house 216 residents.

9. The applicant provided further testimony that the proposed expansion, in addition to providing additional living areas, will satisfy an existing need for large communal space and for additional skilled nursing facilities for both short term, or rehabilitative care, and long term care. The proposal is also intended to address evolving concepts in residential care for Alzheimer's afflicted residents. Lastly, applicant witnesses testified that it will include expanded kitchen and laundry facilities that will be designed to service the enlarged facility.

10. The testimony indicated that at the present time there are 73 delineated parking spaces on site and a total of 81 useable parking spaces to accommodate peak demand. The expanded facility would require 142 spaces pursuant to Township Ordinance and 147 spaces are proposed.

11. There is an existing stormwater detention basin that services the property that will be replaced by a new detention basin facility.

12. The existing building is set back 50.7 feet from the rear property line which abuts the Society Hill II residential development, the nearest residential development to the proposed expansion. The proposed addition would be set back 75 feet from the property line. Testimony

indicated that the closest building in Society Hill to the subject property line is set back approximately 50 feet.

13. The Township Ordinances require a 150 foot buffer between commercial and residential properties, whereas the applicant's proposal will result in a buffer of 15 feet at its smallest width between the subject property and the neighboring Society Hill II residential development property.

14. The original application as filed included an access point from the site to Cypress Lane. During the pre-application review process the proposal was amended to remove that access, partly in response to requests made by the Board of the Society Hill II Condominium Association which entered into a Concession Agreement with the applicant in December, 2007 by which it agreed not to object to the proposal provided the Cypress Lane access was removed from the plan and certain other site plan modifications were made. The access point was removed and the plan modified to include an access drive that looped around the proposed building to provide emergency access to the rear of the building and re-connect with the parking area and drive aisles located at the front of the building.

The Proposed Facility

15. The applicant provided planning testimony to demonstrate that the proposed expansion of the facility constitutes an inherently beneficial use. The applicant's planner, Michael K. Mueller, cited Resolution 99-01-005A originally adopted by the Zoning Board of Adjustment when the facility was created as support for the position. He offered the opinion that the assisted living facility as approved was found to be inherently beneficial and that medical facilities and

nursing homes have similarly been found to be inherently beneficial uses as well.

16. He further testified that the four proposed uses that the expanded facility would accommodate, skilled nursing for acute and long term care; skilled nursing for short term or rehabilitative care; assisted living for dementia-Alzheimer afflicted residents; and general assisted living all in his opinion constituted inherently beneficial uses.

17. Mr. Mueller also testified that the in the original approval for the facility, the Board found that the residential character of the project made it compatible with surrounding residential uses and that the “size, scale and layout of the proposed site improvements are consistent with but less intensive than other permitted development in the REO-5 zoning district”. He went on to testify that in his opinion that finding of fact is supported by the proposal before the Board.

18. The planner’s testimony also indicated that in his opinion the requested variance could be granted without substantial detriment to the public good because of its consistency and compatibility with the adjacent residential and office uses and by what he considered to be the adequacy of the existing and proposed additional buffering.

19. Although Mr. Mueller testified extensively about the overlay zone district in which such uses are permitted, he admitted that the same is not applicable in the REO-5 Zone District and thus the proposed expanded use is not actually consistent with the zone district in which the property is located. He indicated that that testimony was intended only to demonstrate the reasonableness of the proposal for the expansion of the facility that was before the Board.

20. There was some confusion in the applicant’s testimony regarding the actual number of existing residents in the assisted living facility and the total number proposed after the expansion of the facility. It was ultimately determined that the net result of the application was an

increase of 22 assisted living beds, assisted living being defined to include standard assisted living residents and those afflicted with dementia or Alzheimer's. The increase in the number of skilled nursing residents would increase by 61 beds.

21. Despite the fact that the numbers would suggest that the facility was becoming a predominately skilled nursing care facility rather than an assisted living facility, the applicant's planner indicated that in his opinion, the proposed expansion was justified based upon the same inherently beneficial finding made by the Board in its original approval and that the perceived change in the focus of the facility did not change the underlying nature of the facility.

22. The objector's attorney questioned the applicant's architect regarding the size of the proposed facility in comparison to other facilities designed and/or operated by Care One which he indicated appeared to average a total of 120 beds per facility. He questioned the architect about the size of the expansion of the facility at this particular location and also questioned the determination to significantly increase the number of skilled nursing care beds on a site originally approved only for assisted living in 1999.

23. The professional planner for the objectors, Dennis Hudacsko, who was admitted as an expert in planning issues, characterized the application as being for a use variance to allow the use of the facility principally as a nursing home rather than an expansion of the previously approved assisted living facility. He testified that based upon his interpretation of the application, the applicant was required to meet a more stringent test since it could not rely on the prior variance approval to justify the expansion of the facility since there was no lawful establishment of the facility as a nursing home for land use purposes since it was approved as an assisted living facility.

24. Mr. Hudacsko provided an analysis of the use of the facility to the Board that

indicated that although the facility was originally approved only as an assisted living facility it had already had one approved expansion that resulted in the creation of 23 skilled nursing beds and 13 additional assisted living beds. He then addressed the fact that the skilled care beds would be increased to 120 skilled nursing beds by this application with a total of 61 assisted living beds. The remaining 35 beds would be for dementia/Alzheimer afflicted residents, which although characterized as assisted living beds, in his opinion, did not constitute same since those units could not be equipped with locking doors. In summary, he indicated that in his opinion by sheer numbers, the predominant use of this facility was intended to become for skilled nursing care.

25. The witness testified that in his opinion, for the use to remain an assisted living facility as originally approved, the skilled nursing care portion of the facility would need to be subordinate to the assisted living component and primarily be there for use by already existing residents who required greater care due to failing health or conditions that developed after their occupancy in the facility.

26. The objector's planner did, however, agree that all of the uses to be contained in the facility as proposed are inherently beneficial and that there is likely a need for same to some degree in the Township and surrounding area.

27. He went on to state that if the facility were to be re-characterized as a skilled nursing care facility the parking requirements would differ from those that would exist for an assisted living and a dementia/Alzheimer's facility, as each of those types of use would require different employment or client service needs and generate different traffic and thus parking needs.

28. The applicant offered rebuttal testimony from Leslie Hendrickson, a consultant who performed work for the applicant regarding the fact that Alzheimer's units were classified by

the State of New Jersey as assisted living units and therefore those units should not be considered as a use differing from the originally approved use of the property. He further testified that 12 or 13 other states have similarly characterized Alzheimer's units as being assisted living, rather than skilled nursing units.

29. The consultant further testified that assisted living units are really apartment style living, even those for Alzheimer's patients as opposed to skilled nursing care units which are more like hospital room accommodations.

30. Mr. Hendrickson also disputed earlier testimony from the objector's planner regarding his interpretation of the changes in health care classification of the facility by determining that based upon his knowledge of the facility both existing and proposed; as a result of the expansion the facility would go from 48% nursing facility to a 55 ½% nursing facility, a change he did not feel was significant. He felt the concept of a mixed use health care facility was essential in the evolving field. He cited a letter dated September 6, 2001 by which the then Planning Director of the Township, Lloyd Jacobs, granted a waiver to convert the 78 approved assisted living beds to a new total of 92 permitted beds with a revised configuration of 52 assisted living beds and 40 skilled nursing beds. The number of living units was not increased by the waiver but the number of residential beds was.

31. The witness did acknowledge, however, that the majority of the beds in the skilled nursing unit would not likely be utilized to provide for existing residents that needed rehabilitation or more intensive care and that they would be largely used by other individuals who came to the facility specifically for short or long term skilled nursing care.

32. Mr. Hendrickson also confirmed that although classified as assisted living units,

the Alzheimer units would be in a separate locked wing of the facility and not integrated with the other assisted living units; would not have locks on the doors to the individual units; and would not have cooking units of any type although the assisted living units for non-dementia/Alzheimer occupants would.

33. The witness when questioned, also confirmed that in his opinion, there was no fixed number of additional beds that would be required to be beneficial and that in his opinion, any increase in available beds would be beneficial. He indicated, however, that the increase in the number of beds for either skilled nursing care or Alzheimer's units could impact programs and services that could be provided and that while still in his opinion beneficial, a reduction in their number might result in less services being provided to residents.

34. The applicant also offered expert testimony by Mr. David Kostinas regarding the State regulatory process regarding assisted living and nursing care facilities. Mr. Kostinas outlined the process and provided testimony regarding the difference in care requirements for the two types of facilities. He also testified regarding the operator's obligation to obtain a Certificate of Need for such facilities from the State Department of Health and Senior Services before proceeding with the project. He indicated that the Care One facility was licensed as both an assisted living and skilled nursing care facility by the State. In his opinion, the fact that the facility was originally approved for assisted living and now has skilled nursing care capabilities did not change its status as an assisted living facility.

35. Mr. Kostinas testified that Care One had obtained five Certificates of Need for its Hamilton location and that he had assisted it in obtaining them. He reviewed each of the Certificates of Need with the Board and testified as to the evolution of the facility from a purely

assisted living facility to a facility providing both assisted living and skilled nursing care beds. He and counsel for the applicant also conceded that each Certificate of Need was made expressly conditional upon application for and receipt of local zoning approvals.

36. The proposed expansion of the facility followed two Certificates of Need issued to Care One by the State in the fall of 2007. One was for 34 additional assisted living beds and the other was for 58 long term skilled care beds. The witness testified that the skilled nursing bed approval was dependent upon the State approving the transfer of those beds from other older facilities that would no longer be supplying same.

37. When questioned regarding the Township Ordinance definitions, Mr. Kostinas indicated that the definitions used in the Code generally complied with State definitions but pointed out that those definitions were basically for a purpose different than that established in the New Jersey Administrative Code in that the Ordinance definitions were basically used for land use purposes to establish criteria for site improvements, such as parking, required to accommodate the use.

38. Dr. Margaret Calkins, an expert in designing supportive living environments for elderly individuals, particularly those with dementia and/or Alzheimer's, testified as to the basis for the design of the proposed expansion. She set forth the basis for designing such facilities and the various characteristics of such facilities that have evolved with the development of the understanding of the afflictions.

39. Dr. Calkins provided a description of the proposed Alzheimer's wing of the expansion plan and why it included certain elements such as a long hallway, private bedrooms, dedicated common spaces, a secure outdoor space (which on the plan is a courtyard surrounded by

the buildings), and a large congregate area.

40. In response to Board questioning, she also testified that the ability to employ optimum staffing for a complete Alzheimer's program depended in part, upon the ability to house a sufficient number of patients although she would not attempt to quantify a patient to staff ratio due to the need for varying types of staff members.

41. In conclusion, the witness offered the opinion that the proposed addition created an optimum situation for the development of an appropriately sized and designed Alzheimer's living unit.

42. Throughout the testimony regarding the proposed building and its design and functioning; Board members asked questions of the witnesses regarding the need for the building to be of the size requested and the resulting need for a floor area ratio variance.

**Adequacy of the Detention Facility and Stormwater Management
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43. The applicant's engineer provided testimony regarding the stormwater management system proposed for the project which features a newly designed and re-located detention basin intended to accommodate and discharge the runoff generated by the proposed facility and related improvements.

44. Testimony indicated that the applicant had applied for and received a Freshwater Wetlands "General Permit No. 6" (GP6) from the Department of Environmental Protection (DEP) dated November 20, 2008 approving the application to fill a portion of existing freshwater wetlands on the site as part of the proposed detention basin. In response to objections raised by

counsel for REEL DC that the GP6 of November 20, 2008 did not address or constitute DEP review and approval of the applicant's Stormwater Management Plan, the applicant produced two letters from a DEP official, Mr. Vincent Mazzei, dated December 11, and December 19, 2009, in which he asserted that the GP6 also included review and approval of the design of the proposed stormwater management system for the Care One development. Counsel for REEL DC replied that the operative document is the November 20, 2008 GP6 and not the two letters from Mr. Mazzei, and further that the Zoning Board retained authority to determine the adequacy of the applicant's stormwater management plan pursuant to the Hamilton Township stormwater ordinance, Sec. 160-113, and the Municipal Land Use Law, N.J.S.A. 40:55D-93, et seq., notwithstanding DEP approvals.

45. The applicant's engineer testified as to revisions that had been made to the stormwater management plan during the course of the review process, which lasted approximately one year, and in his opinion, validated the plan as had been designed in accordance with current DEP stormwater management regulations.

46. The objectors contended that the plan required review and approval by the Board pursuant to local stormwater regulations as well and that the Board could not merely rely on the determination of the Department of Environmental Protection regarding the adequacy of the system.

47. Geoffrey M. Goll, P.E., a qualified expert in hydrologic engineering testified on behalf of the objectors and provided an analysis of the difference between local and DEP review of stormwater plans. He also questioned the thoroughness of the DEP review of this plan.

48. Mr. Goll introduced copies of correspondence and e-mail between a representative

of his firm and DEP representatives that included comments and responses regarding the basin design and his firm's concerns with the adequacy of same.

49. The objectors argued that the determination of the adequacy of the stormwater system by the Board was essential to any use variance approval since if the system was not adequate to handle the increased runoff generated by the expansion of the facility, the same would have significant adverse impacts on the surrounding area, including nearby properties and contamination of the Pond Run watershed area with untreated or insufficiently treated "non point" water pollution.

50. After hearing voluminous testimony and argument regarding the concerns expressed and the contradictory testimony of the two experts, the Board requested that its consulting engineers re-review the plans and material submitted both supporting and challenging the design of the system as presented.

51. Laura Neumann, a representative of CME Associates, the consulting engineering firm, appeared before the Board and testified that its opinion still was that the system was properly designed for its intended purpose but indicated that if the variance was granted prior to site plan review, additional rate of flow analysis with potential downstream studies should be performed to determine if the rate of discharge could be further reduced; soil testing should be re-done in the area of the basin location; and the walls of the basin should be subject to further review.

52. The Board made the determination that based upon the testimony presented to it by the engineers, particularly the Township Engineer and Township Engineering Consultant, the stormwater system as designed, was appropriate pursuant to the required standards for purposes of the use variance approval. Additional information, as requested by the Township Engineering

Consultant would be provided for confirmation of certain issues at the time of site plan review.

Impacts on the Surrounding Area

53. The objectors' planner, Mr. Hudacsko, testified that in his opinion, in addition to his characterization of the application as seeking a new variance, the design of the project was not sensitive to the constraints that exist on the site. He testified that in his opinion, the design of the building expansion occurred in the sensitive or constrained area of the property that provides buffering as a natural screen for the neighboring residential properties and is a more environmentally sensitive area of the site. He testified that in his opinion, this design and its use of that portion of the site resulted in an adverse impact on the adjacent residential land.

54. The objector's planner also analyzed the conditions that existed on the property at the time of the original approval and testified that the property, prior to any construction, was essentially divided so that a portion of it was open field and the remainder wooded. The existing facility was essentially constructed on the open field portion of the property while the wooded area remained wooded thus providing a natural buffer from Cypress Lane, which is a residential street, and the residences located to the rear of the subject property.

55. The applicant offered testimony regarding the fact that a portion of the wooded area buffer would need to be removed to accommodate the proposed addition although it did propose to provide some replacement plantings. The applicant's landscape architect, Ms. Cecilia Schmidt, testified as to the plan that had been developed after several revisions to the original proposal. In her opinion, the plan as presented was a significant improvement over that originally proposed, and that as a result, the applicant presented a buffer plan that would protect the integrity of the neighboring residential community although it did not comply with the 150 foot requirement of the

ordinance and would not adequately shield the view of the 400 ft. rear wall of the proposed building.

56. The landscape architect testified that earlier testimony offered by the objectors suggested that the site would be a "clear cut" and that there would be virtually none of the existing trees left in the area identified by Mr. Hudacsko as being heavily wooded. She indicated that 80 trees of a diameter of five inches or greater would remain in the buffer area. Of that number there were nine trees that are to be saved with a diameter of 10 inches or greater.

57. She admitted that the buffer that would remain along the property line nearest, or adjacent to the existing building, would be sparse but that the same would be supplemented by a fence and evergreen tree plantings. She indicated that approximately 700 trees will be removed with about 10 to 12% of those presently existing, remaining after the construction of the addition, parking areas and other improvements.

58. In response to questioning, the witness indicated that the length of the property along the common boundary line, inclusive of the aforementioned heavily wooded area, was approximately 700 feet.

59. Ms. Schmidt also testified that her opinion at the time of completion of construction and planting of the trees intended to supplement the remaining natural buffer, approximately one-half of the building would be visible from the abutting residential property. She indicated that in her opinion the parking area and ground level improvements would not be visible.

60. The respective experts for the applicant and objectors disagreed regarding the success the trees planted in the proposed enhanced buffer would have in attaining full maturity. Ms. Schmidt testified that the plans provided adequate protection for both the trees intended to remain

on site and the newly planted trees including a defined area of disturbance and snow fencing intended to delineate those areas of limitation as they related to the trees. Mr. Wells, the objectors' tree expert, was of the opinion that due to the removal of the other trees and the proposed areas of disturbance, the root structure of the remaining trees would be impacted thereby compromising the ability of the trees to survive, and that he did not expect them to live beyond three years.

61. Both sides offered differing opinions about the value of the trees that exist on the residential side of the property line to provide an enhancement of the buffering of the view of the new building. The Board similarly made comments throughout the hearings that suggested that it had differing views on that matter as well.

62. During its presentation of the plan, the applicant provided testimony regarding permitted uses in the REO-5 Zone that it felt could be constructed on the undeveloped portion of the existing property that would have a more detrimental effect on the neighboring properties than the proposed plan and would not require a use variance. The Township Planner in his testimony indicated that in his opinion based upon the location and design of the existing Care One facility on the property it was "highly unlikely" that such development could take place.

63. The Township Planner also testified that he felt that there were additional buffering problems with the proposal as both the current, and expanded facility, would have in regard to the Granville Arms residential development located to the northwest of the subject property. The applicant's engineer testified that the applicant had provided for enhanced buffering along that boundary of the site but would agree to provide further enhancements to the same, subject to Township staff review and approval, at the time of site plan approval.

64. The Township Engineer testified that in his opinion, the access driveway onto

Cypress Lane should not have been removed from the plan and that a second driveway was necessary for the project.

65. The Engineer did not feel that a left turn out of the existing driveway would continue to be appropriate following the expansion of the facility as in his opinion it created a dangerous condition which would only be worsened by increased traffic. He testified that in his opinion, the removal of the Cypress Lane ingress and egress to the site was done to accommodate the concerns of the Society Hill II community rather than for safety reasons, particularly since that driveway would result in the loss of some street parking on Cypress Lane. He indicated that he did not endorse the removal of the second driveway.

66. Individual residents also provided testimony in opposition to the plan based upon their concerns over the loss of buffer area; noise from the site; traffic generation; and the overall physical condition of the land where the expansion was to occur. Most expressed personal observations.

A motion was made and seconded to deny the application for a use variance to allow the expansion of the existing assisted living facility on property known as Map 143, Section 2167, Lot 416 as requested by Care One at Hamilton, LLC. The factual findings and conclusions in support of the motion by those voting in favor of the application are as follows:

Conclusions and Ultimate Findings of Fact

1. The Board finds that the provision of accommodations for assisted living and skilled nursing to be inherently beneficial. The issue of whether either use is the predominant use, however, is secondary to the Board's consideration of the use(s) as proposed for this particular site. The proposed addition of 62,259 square feet to an existing 55,984 square foot facility is too

large for the property to support. As a result of the proposed expansion the Floor Area Ratio of the building would increase from 18.3% to 38% whereas the maximum permitted floor area ratio in the REO-5 Zone is 25%.

2. There is a concern that the parking as proposed will not be adequate following the expansion of the facility and the increase in the number of skilled nursing beds which pursuant to the Township Ordinances creates a different parking requirement than for assisted living which was the use for which the building was originally approved.

3. The proposed expansion of the facility will significantly reduce the size of the existing natural buffering of the site from the nearest residential properties and the Board was not satisfied that a landscape buffer ranging from 15 to 50 feet in width was substantial enough to screen the enlarged facility from those residences, nor otherwise adequate mitigation of the loss of the buffer. Additionally, the Board was not convinced that the applicant adequately attempt[ed] to comply with ordinance requirements to attempt to preserve existing trees on the site nor was it convinced that the replacement buffer as proposed would be nearly adequate to replace the large number of trees that would need to be removed to accommodate the expansion.

4. The original approval of the facility in 1999 included findings that the proposed facility was located so as to preserve the natural woodland. The subsequent expansion of the original building continued to preserve the integrity of the woodland. This application, however, requires significant removal of the existing wooded area, contrary to the basis for the original approvals and the subsequent expansion.

5. The existing facility is visible, particularly in the winter months, from the neighboring residential properties and the Board found that with the tree removal as proposed and

the significant increase in the size of the facility, that situation would only be exacerbated by the expansion of the facility with a height of three stories and removal of trees.

6. The applicant's testimony relied heavily on the provisions and design standards of the senior overlay zone wherein such uses are permitted although, as the applicant conceded, the overlay zone does not apply to the subject property.

7. In order to accommodate the proposed expansion a significant number of bulk variances would be required, which variances generally relate to the impacts the facility would have on the neighboring properties such as required setbacks and buffer areas.

8. The proposed change in emphasis of the use and magnitude of the enlargement of the facility and the inadequacy of proposed mitigating measures, and the resulting impacts on the existing property and the adverse impacts on the facility's relationship to the neighboring properties any public benefit in granting the use variance, FAR variance, and numerous bulk variances at this particular location.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Hamilton that the requested use variance, FAR variance, and bulk and other variances to allow the expansion of the assisted living facility on property known as Map 143, Section 2167, Lot 416 as requested by Care One at Hamilton, LLC is denied.

This is a resolution of memorialization of an action taken by the Zoning Board of Adjustment of the Township of Hamilton at a regular meeting held on June 9, 2009.

MOTION:

SECOND:

ROLL CALL:

AYES:

NAYS:

ABSTAINED:

MOTION CARRIED:

The above is a true copy of a Resolution duly adopted by the Zoning Board of Adjustment of the Township of Hamilton at a regular meeting held on November 16, 2009.

TIMOTHY AMISON
BOARD SECRETARY