

BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090011

Petitioner, Nasir A. Khan, Trustee of First Psychiatric Trust, applied to the Building Commissioner for permission to construct a new, one-story building with basement to serve up to 30 patients relocated from elsewhere on the site at 300 South Street. The application was denied and an appeal was taken to this Board.

On 19 March 2009, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 14 May 2009, at 7:00 p.m. in the Selectmen's Hearing Room, sixth floor, Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his attorney of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 30 April and 7 May 2009 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: NASIR A. KHAN, TRUSTEE OF FIRST PSYCHIATRIC TRUST

Location of Premises: 300 SOUTH ST BRKL

Date of Hearing: 05/14/09

Time of Hearing: 7:10 p.m.

Place of Hearing: Selectmen's Hearing Room, 6th floor

A public hearing will be held for a variance and/or special permit from:

- 1) **4.07; Table of Use Regulations, Use #19. Variance Required.**
- 2) **5.09.2.i; Design Review, Special Permit Required.**
- 3) **8.02.1.a; Alteration or Extension, Special Permit Required.**
- 4) **8.02.1.c; Alteration or Extension, ... increase in volume or area, ... more than 25%..., Variance Required.**
- 5) **8.02.1.d; Alteration or Extension, ...lengthen economic life...longer than a period reasonable..., Variance Required.**
- 6) **BOA Decision # 1782, Modification as required of the Zoning By-Law to construct a new, one story building with basement to serve up to 30 patients relocated from elsewhere on the site at 300 SOUTH ST BRKL.**

Said Premise located in a S-7 (single family) residential district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Enid Starr
Jesse Geller
Robert De Vries**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members, Jonathan Book and Rob De Vries. Attorney Alan Garber of Mason and Martin LLP, 65 William Street, Wellesley MA 02481 presented the case before the Board.

Attorney Garber introduced Dr. Nasir A. Khan, director of the Bournewood Hospital, who described 300 South Street as the site of Bournewood Hospital, a for-profit psychiatric in-patient and out-patient facility. It is located between Intervale and Clearwater Roads in the southeast corner of Brookline, near the Boston City line. Bournewood Hospital moved to its current location in 1895. At the time, the location consisted of three main buildings, which were designed by Boston architect William Ralph Emerson, known for his Queen Anne Victorian shingle style houses. Today, there are six buildings on the Bournewood campus: the Stedman Building (13,564 gsf - administration on the first floor and an adult psychiatric unit on the second floor), the Dodge Building (8,372 gsf - an adult psychiatric unit on the first floor and a child/adolescent unit on the second floor), the Emerson Building (12,460 gsf - an adult dual diagnosis and psychiatric unit on the first floor and an adult dual diagnosis and detox unit on the second floor), the Woodbourne Building (8,066 gsf - an adult partial hospital program, the adolescent partial hospital program, the dual diagnosis acute residential treatment program and administration on the second floor), Intervale House (2,225 gsf - doctor on call) and the Maintenance Building (Barn) (4,492 gsf - maintenance), for a total of 49,204 s.f. or .08 FAR. Dr. Khan stated that if the new building can be constructed, there will be no increase in the existing licensed capacity, no change in the mix of patients who will be admitted to the Hospital and the same programs will continue to be offered. He stated that a new building will allow the Hospital to offer patients treatment in a modern and more efficient environment.

Dr. Khan stated that the Bournewood Hospital is proposing to construct a new inpatient hospital building, with 9,772 square feet on the first floor, and 1,280 s.f. in a partially unfinished basement (reduced from the initially proposed 3,300 square feet). It will house 30 of Bournewood's 90 licensed in-patients. Although Bournewood's patient capacity, as regulated by

the Department of Mental Health and the Commonwealth of Massachusetts, is to remain unchanged, the new building will allow more adequate office space for staff, who now have small cramped spaces or share offices. There will be 3 additional employees working in the new building between 7:00 am to 3:00 pm, 2 additional employees between 3:00 pm to 11:00 pm, and 1 additional employee between the hours of 11:00 pm to 7:00 am.

Daniel L. Meus of Graham/Meus, Inc., the architects who designed the proposed building, said that the campus is approximately 12 acres and slopes approximately 180 feet above sea level from Intervale Road to approximately 146 feet above sea level on Clearwater Road. There are numerous outcroppings of Roxbury Puddingstone and in the northwest and southeast corners is a mature forest of oaks, maples and white pines ranging in size from approximately 8" to 30" in diameter. The western portion of the campus is open lawn. The surrounding neighborhood consists of single family homes, with Putterham Shopping Center and Walnut Hills Cemetery nearby. Mr. Meus stated that the proposed building is as close to the middle of the Bournemouth campus as possible and is equidistant from neighbors. He also noted that the building is tucked into the woods, is barely visible and is functional with the rest of the campus and will be a part of the existing driveway system. Lastly Mr. Meus advised the Board concerning the reasons for the design of the building and described its architectural elements.

Rohn MacNulty, also of Graham/Meus, Inc., said that nine parking spaces will be added along the existing driveway from South Street. He said that the design team has conducted two public meetings with abutters (one on site) to review the new building proposal, and there have been numerous meetings between their team and the Planning and DPW staff to discuss design and drainage issues, including one site visit made by the Planning Board. Modifications to the side and rear elevations of the building, including adding more windows

and dormers, were a result of input from the Community and the Planning Department and the neighborhood. After the site visit, the applicant also agreed to relocate the residential patients from Woodbourne to Dodge House to address complaints by neighbors of weekend noise.

Mr. MacNulty described the new building as one story, having fiber cement siding and trim, and being constructed so that each entrance to the building is separated from the exterior by a locked sally-port. The rear of the building will contain an outdoor patio, which will be enclosed with a non-climbable steel security fence. Windows will be anodized institutional grade aluminum, glazed with 1/2" clear tempered glass. The windows will be single hung and have factory installed security stops to prevent the bottom sash from being opened more than 6". Additionally, the layout of the first floor patient rooms will be designed to maximize staff observation of patient activities through improved sight lines.

Mark Piermarini of Hawley Engineering, Inc. discussed issues concerning stormwater drainage. He stated that the new building will have two retention basins in the rear to collect the roof run-off, which will be directed to the basins and infiltrate into the ground. He also said that the hospital also agreed to install an outlet structure and pipe in an existing depression at the SW corner of the property and to install an oversized retention basin adjacent to the new parking spaces to help capture as much runoff as possible before the water gets to the existing depression. The outlet structure will connect to the Town's drainage system in South Street.

Attorney Garber stated that the question of whether the applicant's proposal is subject to Brookline's Zoning By-Law begins with an analysis of Chapter 40A, Section 6. He reminded the Board that local zoning bylaws do not apply to pre-existing nonconforming uses lawfully begun, but apply only to a change or substantial extension of such use. Therefore, he

stated that the initial step is to determine whether the applicant's proposal represents a change or substantial extension of the Bournewood Hospital's current use as a private psychiatric hospital. Attorney Garber suggested that the Board apply the Powers test to make that determination. He reviewed the components of the Powers test and argued that application of the Powers test established in the case of Powers v. Building Inspector of Barnstable leads to the conclusion that the proposal to construct a new building on the Bournewood campus will not result in a finding that the resulting use will be a change or substantial extension of the current use and therefore the proposed construction remains a protected use under said Chapter 40A, Section 6. Referring to the earlier testimony of Dr. Khan, Mr. Meus and Mr. MacNulty, he stated that the facts presented by these individuals confirm that the proposed use reflects the nature and purpose of the use prevailing when the relevant bylaws took effect, there will be no difference in the quality, character or degree of the use and the current use is not different in kind in its effect on the neighborhood. Attorney Garber referred to established case law that holds that an improved and more modern means of pursuing a nonconforming use is permissible if they are ordinary and reasonably adapted to the original use and do not constitute a change in the original nature and purpose of the undertaking. He cited the recent decision in the case of Broderick v. Zoning Board of Appeals of Winchester, a case presenting a similar fact pattern, to support his belief that the proposed construction of a new building on the Bournewood campus would not represent a change or substantial extension of the current use.

Attorney Garber also addressed Section 8.02(d) of the local Zoning By-Law dealing with lengthening the economic life of a nonconforming use. He directed the Board to a letter dated September 25, 2002 sent by the Attorney General's Office to the Town of Brookline which cautioned the Town that changes that increase the efficiency or modernize a use do not

necessarily result in the use losing its Section 6 protections and suggested that the Town discuss this issue with Town Counsel before applying the provisions of Section 8.02(d), cautioning the Town that Section 8.02(d) must be applied in a manner consistent with the protections afforded pre-existing nonconforming uses under state law. Attorney Garber also stated that the recognized legislative history of Chapter 40A is the Report of the Department of Community Affairs Relative To Proposed Changes And Additions To The Zoning Enabling Act dated January, 1972 and while the Department favored an amortization technique as a reasonable tool to achieve termination of nonconforming uses, the Legislature did not adopt this recommendation. He therefore argued that if the Board applies the local zoning bylaw to the applicant's proposal, that it not apply Section 8.02(d).

Attorney Garber then reviewed four factors that are required for finding in favor of a Special Permit under Section 9.05 of the Zoning By-Law, noting that: the specific location is an appropriate site for the use because the hospital has been there since 1895, the new building will not adversely affect the neighborhood, there will be no serious nuisance to vehicles and pedestrians for reasons previously presented and adequate and appropriate facilities will be provided for the proper operation of the use.

The Chairman asked whether the Board Members had any questions. Mr. DeVries asked Mr. Meus about calculation of the building's square footage. The Town's Building Commissioner, Michael Shepard, concurred with the calculations. Mr. Geller asked Mr. Garber whether he was aware of any case affording the protections under M.G.L. Chapter 40A, Section 6 to new structures as distinct from an addition to an existing structure. Mr. Garber answered in the negative and agreed to review this further.

The Chairman asked whether anyone wished to speak in favor of the proposal. Nobody responded in the affirmative.

The Chairman next asked whether anyone wished to speak in opposition to the application. Regina M. Frawley, a resident of 366 Russett Road and a Town Meeting Member from Precinct 16 inquired about the definition of “pre-existing non-conforming use” and after Chairman Geller explained this concept, Ms. Frawley stated her belief that the hospital had an obligation to the neighborhood considering it previously sold off 18 acres to create the neighborhood.

Joyce E. Stavis-Zak, a resident of 44 Intervale Road, President of the South Brookline Neighborhood Association and a Town Meeting Member from Precinct 16 stated her belief that historically the hospital has been a bad neighbor because of a history of reneging on its promises. Ms. Stavis-Zak recounted instances where security has been a problem and stated that a security analysis conducted about ten years ago recommended the hiring of two security guards. She maintains that the hospital no longer follows this recommendation. She believes the hospital can not be trusted and has offered to move patients further away from the neighborhood only because they now want something.

Joni Bernstein, a resident of 199 South Street, suggested that Dr. Kahn’s motivation was to increase the number of patients at the hospital and noted that the clientele of the hospital has changed over time. She expressed her concern that the hospital now admits referrals from the State and unlike in the past hospital patients now may be criminals or sex offenders. She noted that the hospital does not do CORI checks on its patients. She opined that any increase in the number of patients would adversely affect the neighborhood. She believes there are security

concerns and the need for the police to respond to security issues places an extra burden on the neighborhood.

Alisa G. Jonas, a resident of 333 Russett Road, Vice-President of the South Brookline Neighborhood Association and a Town Meeting Member from Precinct 16, also noted how the clientele of the hospital has changed and that the hospital is receiving an increasing number of patients from correctional facilities or people with criminal records. She stated that the hospital has not increased the level of its security with these changes in the patient population over the years. Ms. Jones made reference to a number of instances in the past in which patients escaped, broke into neighborhood houses and cars and assaulted people. She stated that she was informed by the Brookline police that more than half of the patients have criminal records. She did admit that security at the hospital had improved due to intense pressure from the neighborhood, State Representative Tom Rush and Town officials. Even with those improvements, problems persist. She referred to old newspaper articles that were critical of the hospital's security, including a critical report from a security consultant. She is skeptical that the hospital does not intend to expand its population and wondered if the Department of Mental Health might pressure the hospital to take more patients.

Thomas J. Gallitano, a resident of 146 Bonad Road and a Town Meeting Member from Precinct 16, stated his hope that greater scrutiny will be given to the issue of the number of beds at the hospital.

Polly Selkoe, Assistant Director for Regulatory Planning delivered the findings of the Planning Staff.

Section 4.07 - Table of Use Regulations, Use #19 (Licensed Hospital)

Section.8.02.1.a, c, and d; Alteration or Extension of a Nonconforming Use

A hospital use is not allowed in a single-family district. Therefore, a **variance** is required, unless the extension or alteration does not to exceed 25% of the existing volume or area, or lengthen the economic life longer more than a reasonable period for amortization of the initial investment then a **special permit** may be granted.

Section 5.09.2.i - Design Review

A **special permit** is required for an alteration to a non-residential use in a residential district with more than 5,000 square feet of gross floor area or with 10 or more parking spaces.

Preservation of Landscape:

Approximately 53 existing trees are located within the footprint of the new construction and the applicant proposes to plant approximately 60 new shade and evergreen trees consisting of native evergreen and deciduous plants and shrubs, including eastern white pine, American holly and white spruce. The building has been positioned toward the center of the site and upslope of abutters on Clearwater Road, which will allow screening of the new building with evergreen plantings. In the revised plan, the applicant has added landscaping to screen the new parking spaces from South Street and the mechanical equipment in front of Woodbourne from Intervale Road.

Relation of Building to Environment:

The exterior of the building complements the existing late nineteenth century Queen Anne Victorian architecture of the existing Bournemouth campus nor the surrounding hilly and rocky landscape. Materials used on the exterior consist of fiber cement clapboard siding and trim, a fieldstone veneer base, and a mansard roof with asphalt shingles in front of a rubber roof. The rear of the building contains an outdoor patio, which will be enclosed with a non climbable steel security fence. Windows will be institutional grade, anodized aluminum windows glazed with 3/8" clear tempered glass. The windows will be single hung and will have factory installed security stops which will prevent the bottom sash from being opened more than 6".

Open Space:

Even with the new building, there will be much open and landscaped space left on the campus.

Circulation:

No new access points to public streets are planned for the new building.

Surface Water Drainage:

The new building will not create greater stormwater run-off from the site, because there is a closed drainage system for the driveway and roof, which directs stormwater to retention basins. However, there is an existing drainage problem at the corner of the site at South and Clearwater Streets, which has a large depression. The hospital working with the Director of Transportation/Engineering has agreed to address this problem by adding retention basins under the new parking area and on the southwest corner of the property. These will be oversized to help capture as much runoff as possible before the water gets to the existing corner depression and overflows on to the street. An outlet structure and

pipe will also be installed in the existing depression to connect to the drainage system in South Street. The retention basins have been designed for a 100 year storm event.

Utility Service:

The new building is sited in the middle of the existing Bournemouth campus to minimize its impact on the noise and temperature levels of the immediate environment. New gas, power, telephone, domestic and fire protection water service will be brought to the new building underground. New sanitary waste lines will be connected to the existing underground sewer line on the Bournemouth campus. There will be a transformer and chiller in the rear of the new building which will be screened by native evergreen and deciduous plants and shrubs.

Safety and Security:

Security on the Bournemouth campus will continue to meet, or exceed, the safety and security standards required by the Department of Mental Health. The new building, which will house 30 patients, is to be constructed so that each entrance to the building is separated from the exterior by a locked sallyport containing institutional grade doors with mortise locksets. The rear of the building contains an outdoor patio which will be enclosed with a non-climbable steel security fence. Windows will be anodized aluminum, institutional grade, with 3/8" clear tempered glass. They will be single hung and have factory installed security stops, which will prevent the bottom sash from being opened more than 6". Additionally, the layout of the first floor patient rooms will be designed to have sight lines maximizing staff observation of patient activities.

Heritage:

The new building will not remove any historic, traditional or significant uses, structures or architectural elements but does not complement them.

Energy Efficiency:

The new building will incorporate low VOC Paints, local/regional landscaping, fluorescent light fixtures and gypsum board products with recycled paper faces.

Modification of BOA Decision # 1782 (1973) – denied request of Bournemouth Hospital to convert unfinished portion of second floor (1,400 s.f.) at 43 Intervale Road for four additional doctors' offices and a conference room.

Ms. Selkoe reported that the Planning Board did not support this request for an extension/alteration of this non-conforming hospital use for the following reasons:

1. The design of the building is not complementary to the five existing two-story Victorian buildings on the site, or to the neighborhood in general; the footprint of the building is too large for the site and does not fit with the surrounding natural landscape, which has hilly terrain and numerous rock outcroppings. The applicant has not submitted a storm

water management plan that addresses the site as a whole, and the new facility will exacerbate on-site vehicular circulation and increase parking and service needs. (See Sec. 5.09.4.b and c)

2. The basement space, which is denoted on the floor plan as non-habitable space, should be counted as habitable space, except for the mechanical utilities, because there is large, windowed space which in all likelihood will be used by the hospital. The habitable floor area would then be greater than the allowed 25% by special permit and would require a variance. (See Sec. 2.08)
3. Even if limited to the 25% increase subject to a special permit, the construction of a new state of the art hospital building of 11,000 s.f. is a major addition and increases the life of this non-conforming use. [In 1973, Case # 1782, the Board of Appeals denied a much smaller request for a conversion of 1,400 s.f. of floor space on the second floor of one of the existing buildings from storage space to medical offices, stating that it would: “tend to lengthen the economic life of the non-conformity for a period greater than reasonable for the amortization of the initial investment”.] (See Sec.4.07, 8.02. a-d)
4. The conditions for a special permit under Sec. 9.05.1.a, b, c, and d are also not met. The site is not appropriate for the location of a hospital, as it is a quiet residential area; the use has adversely affected the neighborhood since there have been many complaints about the hospital over the years, including about in-patients who have left the facility without permission and entered homes in the surrounding neighborhood. Adequate and appropriate facilities have not been provided for the proper operation of the use because this private, for-profit hospital relies on the Brookline police to provide its security, evidenced by the record of numerous police calls to the site.

Therefore, she said, the Planning Board unanimously recommended denial of this application and the request for special permits and/or variances under **Sections 4.07, 5.09, 8.02.1.a.c. & d** and modification of Board of Appeals case #1782.

Michael Shepard, Building Commissioner, delivered the comments of the Building Department. He stated that he believes construction of the building constitutes a substantial expansion of the use but that he was comfortable with the modified plans (redesigned basement area) in that the expansion was now at or less than the 25% required in **Section 8.02.1.c** of the Zoning By-Law. Mr. Shepard said that he was aware of the concern expressed by Town Counsel regarding the implications of **Section 8.02.1.d** and opted not to comment on its relevance to subject project. Mr. Shepard stated that he believes this is a pre-existing non-

conforming use and, in response to Mr. Geller's earlier inquiry, that he can find no case decisions under M.G.L. Chapter 40A, Section 6 allowing erection of a new building rather than an addition. Mr. Shepard also answered an inquiry from Board Members Robert De Vries and Jesse Geller regarding the number of required parking spaces by informing them that the applicant had satisfied the parking requirements.

The Chairman concluded the hearing by stating that the evidence was now closed, except for a site visit to be held at 300 South Street on June 2, 2009. The public was invited to attend. The Chairman also invited Attorney Garber to submit a memorandum on the differences in the zoning case law between constructing a new building versus adding an addition to an existing building. A second hearing was scheduled following the site visit for the purpose of applicant rebuttal, Board Member questions, deliberation and decision.

At the commencement of the second hearing on June 18, 2009, the Board afforded Attorney Garber the opportunity to rebut any of the comments made in opposition to the applicant's proposal. The Chairman next inquired whether any of the Board Members had any questions. Board Member Jonathan Book asked whether there would be an increase in the number of patients treated at the hospital if the petition is granted. Dr. Khan again described the different categories of patients served at the hospital and answered there would be no increase in the number of patients served by the hospital nor would the applicant seek an increase in the number of licensed beds. Board Member Robert De Vries asked Assistant Director for Regulatory Planning, Polly Selkoe to comment on the Planning Board's concerns about the design on the proposed new building. Ms. Selkoe reported the Planning Board's concern that the proposed building was one story in height while the existing buildings are two and one-half stories; the new building was not Victorian in style and presented a larger footprint. In response

to a question asked by the Board, Architect Daniel Meus explained that a one story building provides a medically efficient way of handling thirty patients and the design lends itself to providing proper function, better security and good care. He commented that a two story building would be less efficient and would require additional staff. Board Member De Vries stated that he did not find the design of the proposed building to be offensive, that it was shielded from the other buildings that surround the neighborhood and does not create a nuisance under Section 9.05 of the Zoning By-Law. In response from a question from Chairman Geller, Board Member DeVries stated that the application meets the standards of Subsection 4 of Section 5.09 of the Zoning By-Law and he believed that the proposed building was an improvement over a Victorian style building. Mr. DeVries also stated his belief that the proposed building met the standards of the Heritage subsection and the building fit within the context of the site very well.

Chairman Geller inquired of the applicant whether the Department of Mental Health can require the hospital to take in more patients. Dr. Khan responded that the Department could not require the hospital to take in more patients and there was no plan to increase the number of patients or licensed beds.

Board Member DeVries inquired about the precedence of the 1973 application and hearing denying relief. Mr. Book stated that he did not believe the basis for denial in the 1973 application was applicable in this case.

Chairman Geller then asked Attorney Garber about the memorandum he had submitted at the time of the site visit on the issue of whether it made a difference whether the proposed building was an addition to an existing building or was a stand alone building. Attorney Garber responded that there were too few cases decided on this issue to draw any definitive conclusions, but he believed that it was less important under the case law whether the new

building was an addition or a stand alone structure and the more important consideration was whether there would be a change in the existing use. He felt that changes in increased efficiency or modernization of a use do not necessarily result in the loss of Section 6 protections. Mr. Garber acknowledged that he was able to find cases applying M.G.L. 40A, Section 6 to additions to existing structures but was not able to find any cases extending those protections to a new separate building.

Chairman Geller, advised the other Board Members that Town Counsel had informed him that, due to concerns about its enforceability, the Board should disregard the provisions of **Section 8.021.d** of the Zoning By-Law.

Board Member Book expressed his belief that if the Board focuses on the use, it would be clear to him that there is no substantial expansion of the use and therefore the use is protected under Chapter 40A, Section 6. He felt there was no need to address Section 8.02 and if the issue of design review was addressed, he found no increase in the number of patients and thus no expansion of the use. He felt if the applicant wanted to seek an increase in the number of patients in the future, it would trigger a need to bring the applicant back before the Board.

Chairman Geller disagreed with portions of Board Member Book's analysis and stated his belief that the construction of a new building of this scope and scale does, in his opinion, constitute a change or substantial extension of the pre-existing non-conforming use making it subject to the Town's Zoning By-Law. Chairman Geller expressed his belief that the Board would therefore have to analyze each of the Special Permits that would be required and the Design Review requirement, taking into account the report of the Planning Board concerning Design Review.

Mr. Geller asked Mr. DeVries whether he believed the proposed building meets the Community and Environmental Impact and Design Standards of **Section 5.09.4** of the

Zoning By-Law. Mr. DeVries responded in the affirmative. Mr. Geller stated that he was particularly persuaded by Board Member De Vries' comments that it would be difficult to build a two story Victorian building with a smaller footprint yet have the same functionality as the proposed building. He stated that under Section 9.05.1 of the Zoning By-Law, the specific site is an appropriate location for the use, structure or condition. He added that the use is a continuing use and the structure would be centrally located on the site and there would be plenty of landscaping around it. With assurances from the applicant that it will be maintaining the current patient size, he could not see how this would adversely affect the neighborhood compared to what already existed. He felt there would be no nuisance or serious hazard to vehicles or pedestrians since the applicant has plenty of land and has established plenty of parking. He felt that the requirement for adequate and appropriate facilities for the proposed use had also been established. Chairman Geller concluded by stating that the applicant's proposal would not have a significant impact on the supply of housing for low and moderate income people, as this requirement is not applicable.

Board Member De Vries commented that the applicant's agreement to stop using the Woodbourne building for residential patient care would also benefit the neighborhood. Board Member Book agreed, as the proposal would move patients away from the outskirts near the neighborhood and the patients will be more centrally located within the campus.

There followed a lengthy discussion of the applicable Zoning By-Law, Chapter 40A, section 6 and the conditions suggested by the Department of Planning and Community Development. Discussions included the FAR issue concerning the basement, definitions about categories of patients, certificates of occupancy, limitations on the number of patients, use of the Woodbourne building and the advisability of referencing previously submitted plans. On the

question of categories of patients, Chairman Geller wondered whether the hospital should be given an “all in” number of patients or whether the numbers should be limited by the category of patients. He stated his belief that the neighbors would be concerned about an increase in the total number of patients and whether the new building would expand services or the number of people. Board Member Book stated his belief that an increase in the number of any category of patients would constitute a more intensive use and therefore the total number of patients within each category and in total should not increase. Dr. Kahn was asked if he understood and accepted such a restriction and he responded in the affirmative. Further discussions took place about drainage issues, screening along the Woodbourne building and around the new parking area.

Chairman Geller stated that he felt that Special Permit relief was appropriate based on the earlier comments dealing with Zoning By-Law Sections 9.05, 4.07, use # 19, 8.02 and 5.09. Board Members Book and De Vries voiced their agreement.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the requirements of Section 5.09.2.i, Section 8.02.1a, and Section 8.02.1.c of the Zoning By-Law have been satisfied and it is desirable to grant the Special Permits in accordance with the relief requested. The Board makes the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Upon motion made and duly seconded, it was unanimously

VOTED: To approve the special permit relief requested for 300 South Street, BOA #090011, as referenced in the below plans and subject to the following seven conditions:

The Chairman noted that the plans of record are as follows:

T1.1: Title Sheet, dated 6 May 2009
C1.1: Overall Site Plan, dated 15 April 2009
C1.2: Layout & Materials Plan, dated 15 April 2009
L1.2: Construction Traffic Control Plan, dated 15 April 2009
L2.1: Site Planting Overview, dated 6 May 2009
L2.2: Planting Plan, dated 6 May 2009
A1.0: Ground Floor Plan, dated 6 May 2009
A1.1: First Floor Plan, dated 6 May 2009
A2.1: Exterior Elevations dated 6 May 2009
A2.2: Exterior Elevations dated 6 May 2009

- 1. Prior to the issuance of a building permit, final plans, indicating façade design, colors, materials, windows, and rooftop details shall be submitted for the review and approval of the Assistant Director of Regulatory Planning. An on-site mock-up of specific colors and materials shall be approved at a later date by the Assistant Director of Regulatory Planning.**
- 2. Prior to the issuance of a building permit, final site and landscaping plan, indicating site design, landscaping, fencing, lighting, drainage details, and surface parking, shall be submitted for the review and approval of the Assistant Director of Regulatory Planning.**
- 3. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of portable toilets, and a rodent control plan, shall be submitted for review and approval by the Transportation Director, with a copy of the approved plan submitted to the Planning and Community Development Department and posted on the Planning Department's website.**
- 4. Prior to the issuance of a building permit, a drainage plan shall be submitted for the review and approval by the Transportation/Engineering Director. The drainage plan shall include adding retention basins near the new parking area and on the southwest corner of the property, with an outlet structure and pipe connecting to the drainage system in South Street and designed to handle a 100 year storm event.**
- 5. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals**

decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) building elevations and floor plans, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

6. The applicant shall not expand the habitable space in the basement, nor increase the number of licensed inpatients above 90, licensed ambulatory residential patients above 8, and partial hospital day patients above 50, without returning to the Board of Appeals for its review and approval. The applicant shall submit by 1 July of each year, a report certifying compliance with the above maximum occupancy requirements.
7. Within 90 days of the issuance of the Certificate of Occupancy, the applicant shall have relocated its residential patients from Woodbourne to Dodge House. Twenty-four hour patients will not occupy the Woodbourne building in the future.

Unanimous Decision of
The Board of Appeals



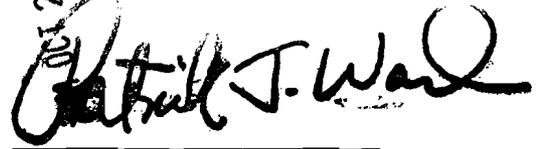
Jesse Geller, Chairman

Filing Date: October 23, 2009

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A True Copy
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Patrick J. Ward
Clerk, Board of Appeals