

**City of Ellsworth  
Board of Appeals Minutes  
February 26, 2018**

<p>The regular meeting of the Ellsworth Board of Appeals was attended by Members Jeffrey Toothaker, Steve Salsbury, Jeff Clark, Michelle Begin, Bruce Sawyer and Jarad Wilbur. Also in attendance was Attorney Katie Foster.</p>	<p>Call to Order [6:30PM]</p>
<p>1. <b><u>ADOPTION OF MINUTES:</u></b> from the April 25, 2016 meeting. Mr. Toothaker motioned to adopt the minutes as written. Bruce Sawyer seconded the motion. The motion passed with all Members in favor.</p>	<p>Adoption of Minutes</p>
<p>2. <b><u>OLD BUSINESS:</u></b> None</p>	<p>Old Business</p>
<p>3. <b><u>ANNUAL ELECTION:</u></b> Board of Appeals Chairperson and Secretary, per City of Ellsworth Code of Ordinances, Unified Development Ordinance ~ Chapter 56 Article 13 – Board of Appeals.</p> <p>Steve Salsbury motioned to reelect Jeffrey Toothaker as Chairperson. Bruce Sawyer seconded the motion. The motion passed with all Members in favor. Bruce Sawyer motion to reelect Steve Salsbury as Secretary. Jeff Clark seconded the motion. The motion passed with all Members in favor.</p>	<p>Election of Board Members-Elected are: Jeffrey Toothaker - Chairperson Stephen Salsbury - Secretary</p>
<p>4. <b><u>PUBLIC HEARING AND CONSIDERATION:</u></b> Request of Woodlawn Museum, Gardens &amp; Park to appeal the January 25, 2018 decisions of the Historic Preservation Commission; 1. Designation as a historic site, 2. The Commission’s vote on January 25, 2018, was in fact an approval, and 3. Trustees would suffer “financial hardship” maintaining the buildings and would endanger Woodlawn’s long-term sustainability, for the property located at 19 Black House Drive (Tax Map 26 Lot 57), in the (N) Neighborhood Zone.</p> <p>Mr. Toothaker went over items the Board was to given to review then had three questions for the appellant. Mr. Toothaker found the representative for the Historic Preservation Commission had not arrived and adjourned the meeting until Mrs. Ackerman was present. Ms. Michele Gagnon, City Planner, came to the podium but there was no sound.</p> <p>Mr. Toothaker called the meeting to order and confirmed with Mrs. Ackerman that she was representing the Historic Preservation Commission. Mr. Toothaker began to outline items the Board received to review and asked who was here to represent Woodlawn. Mr. Zachary Brandwein introduced himself and indicated they had a presentation for the Board. Mr. Toothaker confirmed that both parties received all appeal documentation. Mr. Toothaker ask whether the Commission had jurisdiction over Woodlawn as an historic Site. Mr. Brandwein indicated he would be happy to answer the question of historic status but wanted to address the denial of the Certificate of Appropriateness (COA) and whether these buildings are a financial hardship on the Trustees. Mr. Toothaker reiterated his question on whether the Commission had the authority to issue a COA and if not, this appeal would not need to be heard. Mr. Brandwein stated the documentation suggests that Woodlawn was never properly designated, proper records were not maintained and therefore they are not subject to the ordinance. Carolyn Ackerman indicated she requested the City Clerk searched for the records and the Commission records minutes are missing and there is no reference of Black House in the Council minutes. She surmised since the Black House and the grounds were listed on the National Register earlier than the Historic Preservation</p>	<p>Woodlawn Museum, Gardens &amp; Park appealing Historic Preservation Commission decisions.</p>

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Commission was formed in Ellsworth. This may be the reason why there isn't as much documentation as other historic sites, because they did not have to apply for the historic designation. It appears in the ordinance with this designation and it has never been questioned. Mr. Toothaker asked if there was anything in the will and Mrs. Ackerman did not think the will would help for a determined. Ms. Foster advised the Board it was not for them to decide whether the Black House is under the Historic Preservation Commission's prevue. Mr. Toothaker asked Mr. Brandwein if he was satisfied with not resolving this issue and he agreed but wanted to reserve the argument if it is determined they do not qualify for a COA.

Mr. Toothaker wanted clarification from Ms. Foster on the Commission's "2-1" vote for acting on the COA and it not passing with what would appear as a favorable vote. Ms Foster clarified the ordinance reads that a vote needs to pass with a majority of Members currently appointed to the Historic Preservation Commission. Mr. Toothaker asked what if the Board kicks it back to the Commission and requires the entire board present to vote on the COA. Ms. Foster indicated the Commission had a quorum to conduct business and needed all three to vote in favor of the application. Ms. Begin asked if the applicant was notified before the meeting the entire Commission was not available to decide on the application. Mr. Brandwein stated they were notified, but again he would like to preserve this issue if the Board does not agree the buildings pose a financial hardship to the organization. He mentioned that Joshua Torrance, Director of Woodlawn was here with compelling evidence on why the buildings pose a hardship on the organization and why they qualify for a COA. After a discussion amongst the Board about setting the two first two issues aside, Mr. Toothaker asked Mr. Brandwein how many witnesses there were for Woodlawn and he said one. Mr. Toothaker asked Mrs. Ackerman how many witnesses there were for the Historic Preservation Commission and she indicated there was none. Ms. Foster stated that findings of fact submitted by the Commission spoke for their argument. Mr. Toothaker confirmed the hearing was du novo. Mr. Sawyer asked Mr. Brandwein if there had been other decisions by the Commission where there had not been at least three votes and he stated he was not sure.

Mr. Toothaker swore in Mr. Torrance. Mr. Torrance stated he was the Executive Director of Woodlawn Gardens & Park known as the Black House and is a post he has had for nearly 18 years. In addition, here tonight are Terri Carlisle, President, Stephen Shea, Vice President and Marilyn Smith, Treasurer. Woodlawn is a 180-acre site, which has been maintained by the Trustees, owned and made available to the public since 1929. George Nixon Black Jr., who wished that the Black House be opened to public visitation and the grounds be used as a public park, gave the property to the Trustees. Tonight, we seek the Board's approval of a COA to remove three structures on the Woodlawn campus. The current carriage Barn, which in 1928 was reduced in size and extensively remodeled, the caretakers shed which was added to the property in the 1930's and the caretaker's house which was constructed in 1969. These structures are a negative asset to the organization for the following reasons: 1. The buildings are physically and functionally obsolete to the needs of the organization today, it's cost prohibitive to retro fit these structures to meet the current needs and because they provide no net income, 2. We have no funds available to maintain these structures in our limited operating budget, 3. Restoring these structures is cost prohibitive and beyond the capacity of this organization, 4. They pose a threat to our unique and irreplaceable collection of carriages and sleighs, 5. As documented by our insurance agent, the condition of the carriage barn is a life safety and fire risk creating a liability for the organization and public access is no longer allowed, 6. Demolishing the buildings is the first step in implementing the project to recreate the carriage barn to its original size and capacity. This project has received broad community support. The funds raised for this project are restricted to the project as described in our case statement. Not completing this project would jeopardize our wellbeing and Woodlawn's very survival, and 7.

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Demolishing these structures would allow us to create the space we need to sustain Woodlawn in the long-term and would be a great public benefit. The new timber-framed construction would be a replica of the original building and not change the view of the Black House property as one drives up the entrance road. The new spaces are estimated to generate \$380,000 in new revenue per year and will have a positive economic impact on our community. The new spaces will alleviate the wear and tear on the Black House. Finally, these new spaces will create year-round learning opportunities and programming for area youth and students of all ages. In summary, Woodlawn runs a small organization with a tiny revenue stream and we are struggling to maintain a very large property with a 180-year old house on it. To survive and grow for another 180-year we need to reconstruct the carriage barn into new spaces that work for new revenue streams. A private foundation has agreed with our needs assessment and has pledged \$4,000,000 and we have matched that with \$2,000,000 in private donations, other foundations and local businesses. A carriage barn, a caretaker's shed, and a caretaker's house hinder the future of Woodlawn. This new development will sustain and meet the functional and financial needs of the institution in the 21<sup>st</sup> century.

Mr. Toothaker had two questions, 1. The findings of fact indicated the appellant did not adequately demonstrate that efforts were made to maintain the carriage barn over the years, assess the cost of restoring the carriage barn, and did not attempt to raise funds to maintain or restore it. Mr. Torrance said that in terms of adequately demonstrating, we had conducted different studies (copies submitted in your packets) and the trustees were unable to determine it was financially feasible to restore and preserve those barns. We also made the case that the cost of restoration of \$2.5 to \$2.75 million was beyond their financial means. Very limited monies were put into maintaining them, as they no longer met the functional needs when they could recreate something that would meet the needs and purpose of the institution. Mr. Brandwein reminded the Board they are hearing this de novo. They are not determining if the Commission got it right or wrong but hearing it for the first time and the Board should make up their own mind about the information presented. Mr. Torrance reiterated to the Board that to repair and maintain the barns is cost prohibitive and they do not add to the needs and purpose of the organization moving forward. We have determined to generate the revenue needed to care for the 180-acres we need spaces that we can make available to the community to rent, having a changing exhibition gallery, and new audiences at the Black House. It is not unusual to hear "I've been to the Black House; I don't need to go again." With changing the exhibitions gives an opportunity for repeat customers. With a compromise of carefully taking the barns down and salvaging what material we can and incorporating some of that material into the new barn, is a reasonable option. Mr. Toothaker ask what will happen if they do not rebuild and Mr. Torrance replied that the future of Woodlawn is very clouded. There are historic sites all over New England that are closing because the business model of historic houses does not work financially. Mr. Torrance is the chair for National Historic Houses for the United States and studies these houses and they can no longer make money by offering tours. We must provide spaces where we can offer changing expositions, weddings, parties to connect with the community as new sources of revenue. Mr. Toothaker asked if this was the Black House's mission and Mr. Torrance replied it was Mr. Black's wishes to maintain the house as a memorial and let people use the grounds as a public park. Mr. Toothaker read from the Commission's findings regarding the \$6,000,000 raised to construct a visitor's center and none was raised to maintain the barns and asked if Mr. Torrance had anything further on this comment. Mr. Torrance stated that early on they struggled to raise a million dollars, which \$600,000 was used to save the Black House and \$400,000 to create a maintenance endowment specifically for the house. This was an amazing feat as recognized by colleagues all over the State, for the little sleepy town of Ellsworth. The trustees were concerned about fundraising for the barns to be rehabilitated because they do not generate revenue. It has always been of great concern and in 1948 they removed the back two-thirds portion of the barn. If John or Nixon Black were to come on the property today

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they would recognize the back two-thirds of the barn, but on the exterior, it is a completely different barn. Mr. Toothaker referred to the findings of fact and reading the Commissions concern about the claim of not demonstrating financial hardship asked Mr. Torrance if he wanted to add anything else. He stated the operating budget is tiny and the funds available go to the preservation of the house, education and maintenance of 180-acres directed by the will of Nixon Black. The Black House now has a backlog of about \$36,000 in maintenance. The earned income is a result of house tours, limited gift shop sales, afternoon teas, along with small fundraising events, and memberships. The budget is between \$300,000 and \$400,000 annually depending on the year. The Trustees do not have the money to put into the barns and they are deteriorating. Mr. Toothaker confirmed the Black House needs new fundraising sources to move forward.

Mr. Toothaker asked Mrs. Ackerman if she would like to comment and stated the Commission would like to rest on the findings of fact.

Ms. Kathleen Rogers owns 10 Surry Road, which is connected historically with Woodlawn, and when I bought this property, it was in horrible condition. I have single-handedly renovated the house and the carriage barn with my contractor Kenny Jordan. It needed a new roof, foundation, carpentry work and painting. Over the course of three summer's he excavated it, built a new foundation and saved it. It cost between \$90,000 to \$100,000 to get the barn in shape, I have been through the Woodlawn barn, and it is not in that bad of condition. Two contractors have estimated renovation to Woodlawn's barn approximately what I have spent and not 2.7 million dollars. I am asking everybody, why the rush. The Historic Commission was not informed of this proposal until the eleventh hour and this is a big decision. I think an event center would be great. If you can raise six million to eight million dollars, why not offset the event center as your source of revenue. Additionally, I have a letter from Chris Closs who is a Field Advisor for the Maine Preservation Society in Augusta, which states that if approved the demolition component of this project will trigger permanent removal of this historic property from the National Register of Historic Places. It can also affect the reputation of the stewards of the property and damper future fundraising efforts. The Trustees should take time and hire two or three people and get professional assessments and find out what it will take because once this property is down, it is neve coming back. It is great to think about an event center, but if it is not successful and does not produce the revenue, it would be a terrible risk to take. I want to ask everyone here tonight if it is a risk you are willing to take to have Woodlawn removed from the National Register.

Mary Morrow living on the Surry Road in Ellsworth. I attended the first public meeting, which was held here to determine whether a COA would be given to the Black House Board of Trustees after learning the carriage house was going to be deconstructed and not reconstructed. Like many people in the area, I misunderstood and have mixed feelings with the lack of transparencies and inconsistencies heard from the Board Members. I am naïve when it comes to a politically motivated agenda, but I do think I understand enough about this information. It was said at the meeting several years ago when the fundraiser was held to restore the carriage house and although \$1,000,000 had been raised; it was needed more for the maintenance of the house because it needed so much work. That was a lost opportunity lost that certainly could and should have ben done for the carriage house. I later read in a local paper about another meeting that said the decision was made a long time ago not to put any more effort to saving the carriage house. Now, I do not know which came first the decision or funding diversion, since I have not seen any meeting notes. This inconsistency is troubling to me for many reasons because I believe it goes against the directives of Mr. Black's final will. I provided the Appeals Board with copies of the will for your consideration. I will share with you a very brief part of the will, which shares my concerns. Item #17 talks about leaving my sincere friend Charles S. Pittman everything he owned in Boston and further, the house

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in Ellsworth Maine given to me by my father called Woodland, all silver, books and papers and any horses and carriages he may choose with the exception of the oldest carriage and sleigh which I want always kept in the carriage house. In previous meetings it has been said unfortunately, Mr. Black's will was not always specific and left room for interpretation. What I have read to you seems quite specific and if nothing else, it deserves further review.

Ms. Gagnon, the City Planner, stated she was involved in preparing the findings of fact and the record. The only activities Woodlawn has proposed, per the ordinance Section 8.1.3, requiring a COA is for demolition. Section 11.2 states the property owner can demonstrate that maintenance of the structure creates a financial hardship. Financial hardship is not defined so it is for the Board to determine and decide the definition. Mr. Toothaker asked if it was the City's position to demolish opposed to repair the structures and Ms. Gagnon indicated it was. She stated the City's attorney was involved and the only item the Board needs to consider is the hardship issue and not the proposal for which they have fundraised eight to ten million dollars.

Mr. Salsbury asked Ms. Foster if there was anything in the ordinance that compels a landowner to maintain a structure. Ms. Foster said the only thing that would compel a landowner would be the later part of the demolition or removal provision. Based on your reading of this section you could argue there is a safeguard allowing for the preservation of structures and not demolition. Mr. Salsbury confirmed that financial hardship is not defined. Ms. Foster agreed and guided the Board to the common definition and if Woodlawn has demonstrated hardship to their satisfaction. She also indicated there is a maintenance provision that states no ordinary maintenance should occur unless a COA is obtained and you will see that in 1993 there was one obtained for balustrades. Ms. Gagnon stated the list in the ordinance shows the Colonel Black House and wanted clarification asking if it was just for the house or if it included the land. Ms Foster said this would be something for the City Council to determine.

Mr. Toothaker asked Mr. Brandwein if the previous comment about proceeding with demolition could delist the Black House from the National Register and would it adversely affect them. Mr. Brandwein responded by saying he did not believe it would be based on what the director indicated being delisted should not influence the Board.

Mr. Toothaker asked if there were any more comments and Terry Weed Cormier, a member of the Historic Preservation Commission, confirmed this must be equally as hard for the Board as it was for the Commission. We love the buildings and we want to see the Black House succeed. We did ask for backup of the financial hardship information and the decision was made because of the lack of evidence to make an informed decision.

Ms Joy Foster, a local resident, who has lived close to the Black House for many years and thinking about its viability and feels what they are trying to do, is keep it alive.

Mr. Sawyer the findings of the Commission mentioned the appearance of the barn but not the caretaker's house or the shed. Mrs. Ackerman stated by the end of their meeting they lumped them together. She said the Commission was not as concerned with the caretaker's house or shed because they are not part of the original estate. The only issue they wrestled with was removing the barn.

Mr. Toothaker asked for closing thoughts from anyone and Jennifer Torrance, wife of Mr. Torrance, said she is very struck by historical cities like Quebec City, which are incorporated into the life of the city as a way of honoring history. When I think about this barn and the façade

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remaining the same when you drive up the driveway you get the same effect, but when you enter the building, the spaces would be modernized. There is a lesson to be learned there on how we can embrace our history opposed to holding it separate. I hope we can make it part of the future and not just the past.

Stephen Shea, Vice President of Hancock County Trustees, was the vice president at the time of fundraising to preserve the house back in the early part of the decade. The money that was raised was to preserve the Black House and there was no representation that the money would be used for anything else. It was called the “envelope project” because the outside of the house was in danger of deteriorating. They raised one million dollars of which \$600,000 was for the envelope and \$400,000 was an endowment to continue to maintain it. It was their interpretation this was the intention of Nixon Black. They did not ignore the barn because several studies were done, and it was determined the money needed to raise the barn was not available. The foundation repairs were \$100,000 and this would not address the powered beetle. Another obstacle was having to bring the barn into compliance with the State adopted building code standards. This would have meant a larger expenditure to bringing the structure into fire and life safety standards for the public to visit. If we could raise an additional \$100,000, we still would not have a facility for the public to use. We attended the Commission meeting and I said exactly to them what I am saying to you tonight. The real dilemma is if someone came along and magically raised the money and put the barn back in good condition, we still would have no money going forward to maintain it.

Ms. Rogers in answering Mr. Shea’s comment the Historic Preservation Committee in Augusta said the National Historic Preservation Commission reviewed the information and Woodlawn is covered under the IEBC, which is incorporated under MUBEC. This code allows for alternative means of construction for historic properties.

Ms. Katie Foster pointed out that Chris Closs is with the Maine Preservation Committee, which is a private entity.

Mr. Toothaker closed the public hearing.

Mr. Toothaker indicated the Board has two contestants; one whose job is preserving historic landmarks and on the other hand we have the Black House who is a non-profit trying to stay alive with a dwindling revenue stream and the property not going forward within the next 20yrs. They have made a proposal to construct a barn and they need money to do so. I think the ordinance lays out very specific criteria and I believe they have met it. The Commission has an ordinance with a list of designated properties and Woodlawn’s evidence is more compelling than the Commission’s. Ms. Katie Foster stated the issues for consideration are if the Commission made a valid vote to deny. The Board can state whether the Commission was within their right to deny the COA. If they no longer wish to be designated historic, they can go before the City Council and this Board is going to decide whether they should be granted a COA.

**Mr. Salsbury motioned to approve the Certificate of Appropriateness. Mr. Toothaker seconded the motion. The motion passed with all Members in favor.**

**Variance Granted**

Mr. Toothaker requests that Rudman Winchell prepare the findings of fact and the City prepare the minutes.

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5. <u>NEW BUSINESS:</u> None	None
6. <u>ADJOURNMENT:</u> [at 8:05 PM] Mr. Toothaker motioned to adjourn. Mr. Salsbury seconded the motion. The motion passed with all Members in favor.	Adjournment
<hr/> <b>Date</b>	<hr/> <b>Steve Salsbury, Secretary Ellsworth Board of Appeals</b>