

PRESENT: Mack, Chairman; Hawkins; Dever, Haley; Pelczar; Hommel; Edney, Code Enforcement Officer; Tivnan, Clerk

Haley moved, Hawkins seconded, THAT WE APPROVE THE MINUTES OF SEPTEMBER 8, 2005, AS PRESENTED.

PUBLIC HEARING

2684: MICHAEL CASEY FOR CASEY, CASEY, HOFFMAN DBA/ POLLARD SHORES ASSOCIATES: (Rep. Michael Casey) An appeal for a VARIANCE to construct a storage building with a 28' 5" rear setback, 30' required, Tax Map No. U4, Lot No. 16, located at Pollard Shores Road in the Shoreline District. CONTINUED FROM JULY 14, 2005.

John Mack stepped down. Fred Hawkins acting Chairman. Diane Hommel sat in.

Casey – We received from the Planning Board approval for the construction of 3 units plus a storage building. One of the concerns of the Planning Board was the elimination of trees. This is the plan approved by the Planning Board. The 30" wide pine is delineated on the plan. They wanted this to remain. What happened was in laying out the storage building the form for the slab was moved forward because the tree had large roots above ground and we didn't want the cement to cover them. We measured it and thought we were still within the 30' setback. We feel the contractor in pouring the slab, squared off the forms and pushed the box forward and went over the 30' line. It's still our fault but it was caught after the building was built. The new survey plan shows the storage building is about 5" over the line to the rear. The alternative is to move the building and that would be somewhat destructive to do this. We feel it would ruin some foliage and damage to the 30"pine. The exposed roots would be covered over. We feel it does not distract from the neighborhood. The end of the garage is 42' from the existing gravel roadway. This is a dead end road. Hawkins- In that picture, where is the tree? Casey – On the opposite side of the road. Haley – Is the dumpster on the property now? Casey – Yes. Dever – Do you have a cost for moving the building? Casey – No Dever – Cost for cutting off the end of the building? Casey - We would want to move it before cutting. It would be expensive to cut it off. Dever –You don't have a cost? Casey – No, we don't. Dever- So you don't have a price for either one of those? Casey - No, but we feel it would be cheaper to move it. Dever - It is important to know that, because one of the standards that were changed in granting a variance is if there is any other way you can obtain your goal without having a variance granted, one of the stipulations is, is it to costly to do that. Casey – I wasn't aware of that. Dever - We need some figures. Haley – How far away is the pine tree from the back wall? Casey - I would guess about 8'. Bob Casey – Would it be to his benefit to get more information on cost and the distance from the tree and come back?

Hawkins- The number to the cost may be beneficial to you for your case possibly. It would give us more information to base a decision on. You can continue to next month, November 10th and get some numbers together. Casey – I do want to point out that this is an as built plan showing the tree. It shows one inch = 20'. The tree looks to be about 10' away. Haley – You only have to move the building a foot and a half. Casey – It does have massive roots that come out of the ground. Haley - Your brother has made a key point. Would you like to continue? Casey – Yes, I think we will do that. Haley moved to continue to November 10th to secure figures to (a) cut off the end or (b) move it. Dever – I would like to make a comment before we vote. I doubt the Planning Board would require you to violate the ordinance to save a tree. Casey – The Planning Board members did go out and visit the site and they were concerned with that tree. Dever seconded. Voted unanimously. Hearing closed at 7:20PM

2705: SWAIN ROAD DEVELOPMENT, LLC FOR ROBERT AMBROSE: (Rep. Bob Ambrose) An appeal for a SPECIAL EXCEPTION to allow construction of a driveway and installation of an 18" culvert across a seasonal stream, Tax Map No. R27, Lot No. 3-1, located on Batchelder Hill Road in the Forestry/Rural District.

Fred Hawkins stepped down. John Mack returned as Chairman. Diane Hommel sat in.

Ambrose – This is a piece of property that was part of the Waldren Bay Subdivision. Originally there were 5 lots that were accessed off of Swain Rd. There was 50' of ledge face to get to the lot, so through negotiations, there was a ROW given to the lots from Batchelder Hill Rd. There were 5 approved lots and it made sense to go to a shared driveway or a reduced standard road that would service three lots rather than 5. The road was put in and at the end of the road is a cul de sac with a shared driveway to two of the lots. The culverts that are there now are cross culverts. This request is to put a culvert in across a seasonal stream and to construct a driveway. Dever – This is the least impact? Ambrose– Yes. This is the only way to get to the lots and it is a seasonal stream. Hearing closed at 7:28PM.

2707: FORECO FOR EDWARD AND CAROL MICKUS: (Rep. Tom Hahn) An appeal for a SPECIAL EXCEPTION to create a 3- unit multi-family dwelling, Tax Map No. U08, Lot No. 1A-3, located off Red Gate Lane in the Residential District.

Fred Hawkins returned to the board. Diane Hommel stepped down.

Hahn – We have conditional approval for Site Plan and approval for a Boundary Line Adjustment. The proposal is for a 3-unit multi-family in the Residential Zone. There is ample and excess lot size for net density. All setback distances are met. This is a residential neighborhood. The lot and proposed structure are not viewed from Red Gate Lane. The driveway and a portion of the unit may be

viewed from Red Gate village. The proposed use will not be injurious, noxious or offensive as it is the primary use allowed in this District. The proposed use will not be contrary to public health, safety or welfare. Town sewer will be utilized; there are a few nearby wells to affect water table drawdown; and the single added unit over that allowed would have a minimal impact on increased traffic. Off-street parking is provided. We feel the proposal will have minimum impact to the neighborhood. Mack – What size are the units? One or two bedrooms? Hahn- Two Haley – You said off street parking? Is that the driveway off of the garage or is there other parking? Hahn – In front of each unit is a garage with a parking space and 3 additional spots in front. So outside the garage there are 4 spaces per unit. Dever – The sq. footage of each unit? Hahn – 1100 sq. ft. per unit. Mack – Why three parking spaces plus a garage for a two-bedroom unit? Hahn - The layout of the lot itself allows this. Haley - How far in is this off Red Gate Lane? Hahn – Probably 500'. Haley – Conceptually, this is not much different than the unit at the top of Red Gate Lane. Mickus - We will be further off Red Gate Lane. You won't see this from Red Gate Lane. Pisapio - On a Special Exception, does the applicant have to show hardship? Mack – You do not have to show hardship. We look to see if it meets the spirit and intent of the ordinance and whether it would be injurious to the public. Pisapio - Can this be further developed? Mack – It would be up to the Planning Board for Site Plan approval and the applicant would have to come back to us to add anymore units. Hearing closed at 7:44PM

2708: MARVIN P. KENISTON DBA KENGAR REALTY INC.: (Rep Butch Kenison) An appeal for a VARIANCE for a change of use to create two dwellings, one 3-bedroom apartment and 1 studio apartment on a 13,280 sq. ft. lot, 10,000 sq. ft. per unit required, Tax Map U06, Lot No. 4, located at 147 Main Street in the Central Business District.

Kenison - Kengar Realty Inc. owns two properties on South Main Street. One is a 5-unit apartment building on 143 Main Street and the other is a commercial building at 147 Main Street. The property in question is 147 Main Street. It is currently commercial use. There are office and storage space. The proposal is to turn the vacant space into a couple of apartments. There are no plans to change anything on the exterior except the garage door into windows and windows on the south side of the building. The upstairs apartment will stay the same. This being a combined use, I have to meet the net density. The supporting argument I would have for this is that it is a preexisting lot and condition. This is consistent with the area. The two lots have crossed easements for the shared use of the parking. This seems pretty straightforward to me. The site itself would have to go to the Planning Board. This is probably a better situation than about 90% of the other properties in the Central Business District. We have on site parking, which is somewhat of a rarity, and we are south on Main Street. Dever - What's the sq. ft. of each unit? Kenison – The three-bedroom apartment is about 1200 sq. ft. and the downstairs studio about 700 sq. ft. I have spoken to Bill and I am looking

at the possibility of that being a barrier free apartment. Hearing closed at 7:50PM.

2709: NORMANDIN, CHENEY & O' NEIL, PLLC FOR LAKE WICWAS ASSOCIATION, INC.: (Rep. James W. Kennedy) An appeal of an ADMINISTRATIVE DECISION of the Code Enforcement Officer to issue a Building Permit with conditions to Henmor Development, LLC, Tax Map R10, Lot No. 22, located on Bryant Island in the Shoreline District.

Mack- Before you get going, I would like you to respond to Tim Bates letter. Kennedy- I have provided a response to Town Counsel's concerns. I would like to outline orally what is in that brief memorandum. Under RSA-676: 5 we believe this Board has the jurisdiction to hear this appeal. RSA-675:5 authorizes the Board to hear decisions made by the administrative officers that interpret the Town Zoning Ordinance. We have a decision made by Mr. Edney to issue a conditional permit to Henmor Development LLC. This appeal deals directly with the Town Zoning Ordinance. Upon review of the Meredith Town Zoning Ordinance, there is nowhere in that ordinance that grants the Building Inspector the authority to grant a conditional permit or otherwise a full permit to anyone to build a home on an island lot. It is our contention that the Building Inspector exceeded his authority and misinterpreted the Meredith Town Zoning Ordinance. We believe the Town has the authority to hear this appeal because in the Town of Meredith the Zoning Board has decided to have its Zoning Board of Adjustment serve as the Building Code of Appeals. Under those provisions adopted by the Town of Meredith to have the ZBA serve as the Building Code of Appeals and RSA-676:5, this being a decision made by an Administrative Officer of the Town, this Board has the authority and the jurisdiction to hear this appeal. In a nutshell, there is nothing in the Meredith Town Zoning Ordinance that allows the building inspector to issue a building permit on an island lot without the Town first excepting that island from the provisions outlined in RSA674:41. That is my jurisdictional argument on behalf of Lake Wicwas. Mack-Are you saying we have the right to rule on an RSA which is not part of the Building Code or part of the Meredith Town Zoning Ordinance. Kennedy – No. I am asking the Board to address Mr. Edney's Administrative Decision to grant the building permit, without any express authority in the Meredith Town Zoning Ordinance to do so. Haley- Any island? Kennedy – Any island without meeting the requirements outlined in RSA674: 41. We don't need to get to RSA674: 41. The first thing to do is to determine if the Administrative Officer has the authority to grant the approval that he granted. Mack - Your argument that I read was based on RSA674:41. Now you are saying he doesn't have the authority by RSA674:41? Kennedy – We are saying that we bring RSA674:41 into the equation because the only way the Town can grant a permit for an island lot is to adopt something pursuant to RSA-674:41. The Town can either exempt Bryant Island from the requirements in RSA674:41 or when the Town gets an application for constructing a home on an island lot, the first thing the Building Inspector has to do is to deny it. That puts it on the applicant to appeal that decision to the Zoning Board of Adjustment. It

makes more sense to handle this at the local level. Mack – We have to make sure that we are being proper in making a decision that we are allowed to make. We have to make sure that we have the jurisdiction to make a decision before we make a decision. Kennedy – I understand that and it's a great point that Town Counsel brings, but its an issue that the Town has not adopted, any Zoning Ordinance pursuant to granting building permits on island lots. But the fact of the matter is, there is nothing in the Meredith Town Zoning Ordinance that grants the Building Inspector the authority to grant a conditional permit or otherwise to build on an island lot that does not on its face meet the requirements of the statute. It's our contention that he has exceeded his authority and he has misinterpreted the Zoning Ordinance. Mack – The Zoning Ordinance, not the RSA's? That's the issue I am trying to get at. Haley – For a number of years we have issued permits for Bear Island, Beaver Island, etc. That's the same type of situation. Kennedy – That's correct. It's my opinion that the Town needs to exempt an island from the access provisions outlined in RSA674:41 or require the applicant to show the hardship requirements that are necessary or to show that constructions met. Mack – Do you really believe that was the intent of RSA674:41 to talk about a single lot that's the whole island. Kennedy – There is a Special Exception in RSA674:41 that exempt roads on Islands. Mack – That is discussions of streets, not islands. That's where I am going. Dever – If he violated the Ordinance, then he violated RSA676:17, then he should be prosecuted for that instead of coming here. You're trying to save yourself some money. Kennedy - We are not saying he violated the Ordinance, we are saying he misinterpreted it. We are not showing any criminal intent on behalf of Mr. Edney here. Mack – Your argument about him misinterpreting his authority to issue the permit is all based on RSA674:41 and no other part of the Ordinance of the Town of Meredith? Kennedy – No. There is nothing in the Meredith Town Zoning Ordinance that grants this Building Inspector the authority to grant a building permit to someone who wants to build a home on an island lot. Mack – If it is an existing lot of record, he sure does, unless you are going to say RSA674:41 does not meet the requirement. It is an accepted lot of record. Dever – The ordinance says lots of record can be built upon if it can meet the requirements. Mack – It is my understanding that it meets all the setbacks. Kennedy – What needs to be addressed, is the Zoning Ordinance needs to comply with State Law. Mack – I am trying to make sure the Board is doing things correctly. It makes a big difference to me if you're coming before me saying the only reason that Bill misinterpreted his authority is because of RSA674:41, then I want to hear something a little different tonight, because I don't know if we really have the authority to make a ruling on RSA674:41. We do, if you can tell me there is something else in the ordinance that he violated or think he did, and then we can make a ruling if it is in our Zoning Ordinance. I don't see anywhere in our Zoning Ordinance where RSA674:41 is adopted by reference either. Kennedy – No, it hasn't been. Mack - So therefore it is not part of Meredith Town Zoning Ordinance. Kennedy – RSA674:41 is not part of the Meredith Town Zoning Ordinance but there is also no part of the Meredith Town Zoning Ordinance that allows construction upon island lots. The intent was for

Town's to make such provisions. Mack – RSA674:41 is talking about road frontage and access. Correct? Kennedy - Right. Mack – It's actually titled streets, I believe. Kennedy- There is no road frontage to an island. Mack – Everybody knows that. Kennedy-It's a safety issue. That's my presentation with regards to jurisdiction. Kennedy – There is one provision in the Meredith Town Zoning Ordinance that does address access ways. In Section I, titled Accessways, it says, "accessways shall be adequate and safe for intended use." The argument may be made by inference, that RSA674: 41 was adopted pursuant to that section. Kennedy – Mr. Banker brought something to my attention published by Town Counsel, Tim Bates. It's titled Back to Basics for Planning Boards and ZBAs. On page 59, E. Other Powers 1. Building on Class VI and (Some) Private Roads, it refers to RSA674:41- Provides for an appeal to the ZBA on issues involving whether or not buildings can be erected on lots where the road giving access to the lot does not have proper frontage. Mack- But if you read RSA674:41, that is the applicant denied a permit coming to us for an appeal against the decision of the Board. It specifically says if a permit is denied, you can ask for an appeal with the ZBA but it doesn't say anything about an appeal if the permit is issued. It is a totally different appeal. Kennedy- Right, because the presumption there is that all applications for island lots without proper access will be denied. Dever –Are you saying every island should have a road built on it in front of the lot? Kennedy – Absolutely not. I am saying by a democratic process, the Town of Meredith get together and vote to determine if the island should be exempt. Mack – Are you inferring that RSA674:41 was specifically written to exclude buildings on any island in the whole State without a Town exempting it? Kennedy – The NH Supreme Court has stated that RSA674:41 applies to every lot and that is in my memorandum that I provided on the issue. It applies to lots. Mack – So you are saying that RSA674:41 was written to take every single island and say you can't build on it without a variance or changing the Town Ordinance? Kennedy - Right If you look on page 3 of my memorandum, sent on the 30th, under RSA674:41 Section 1 says " no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed". Then in Section II it says, "Whenever the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship." They are talking about the applicant who then may appeal to the ZBA. Under Section II-a. " Municipalities may except any lot, including island lots for islands served exclusively by boats, from the requirements of paragraph I and II by an affirmative vote of the local legislative body pursuant to and so on and so forth." RSA674:41 is subject to every building application. Tom Schlesinger (Representing Henmor Development) – This Board has the authority to consider decisions on certain questions and that derives from statute. There is nothing in any statute that deals with ZBA's interpreting or to construe State Statutes. The Building Inspector based upon the Meredith Town Zoning Ordinance addressed the application for the building permit. As is pointed out in the letter from Town Counsel, what this ZBA is being asked to do in both of these appeals is to

interpret how the State Statute should be applied. There is simply no statutory authority for the ZBA to undertake such an inquiry. To go forward would be exceeding the ZBA's authority. The purpose of RSA674:41 is to deal with the kind of roads that someone can build on. In Turco vs. Town of Barnstead, it specifically states the purpose of RSA674:41 was to prevent Towns from having to incur excessive costs out of public funds to improve or maintain roads. Mack – You are getting off of the jurisdiction. Schlesinger – The purpose of the statute is to let Town's determine what roads they will be obligated to maintain and improve. In order for this Board to grant the appeal and pull the permit or deny the appeal and let the permit go forward, you are being asked to interpret the State Statute. Mack – Case #2710 - Is there an attorney here for that one? Banker – Not an attorney but an applicant. Mack – Would you like to comment on our jurisdiction. Banker- I will comment on jurisdiction but I don't want that to be part of the application because I have not seen any of the memorandums. What I could add to the ZBA is that you are getting hung up on that it is an island lot. It doesn't matter where it is. Mack – I asked about jurisdiction. Banker – This is a very difficult statute to understand. The local Government Center has written a book and they interpret all the law. They say that RSA674:41 applies to every single lot in the state. It also states that if the ZBA is presented with the issue, it must address RSA674:41. This is on page 116 in this book. Mack – You are getting into a different category. We are talking about our jurisdiction on whether we can rule on RSA674:41. Banker - Mr. Bates states in the NHMA 2003 Back to Basics for Planning Boards and ZBAs that the ZBA must confront issues. If he says you have to deal with it, he is saying you have jurisdiction. Mack – Then why did they give us the right to rule on RSA's? There is nothing in any RSA that says the ZBA has the right to interpret what the RSA means. Banker – Then you should speak to your Representative. They have issued the order. Mack – Government issues orders all the time but not the authority to do anything about it. Banker - Then speak to Town Counsel, because on page 59 of his own Law Lecture, he says you have to do it. Schlesinger - I have not seen what Town Counsel wrote on general issues as it relates to ZBA, but you do have in front of you what Town Counsel wrote to you on this specific issue where he raises questions on whether you have the right to hear these appeals. Keniston – When I sat on the Planning Board it was understood that when a building official issued a building permit, he was issuing it as an agent of the Selectmen. Kennedy - My response to that would be that Meredith has designated the ZBA as its Building Code of Appeals. Mack – We have three possibilities here. 1. Continue and hear the case. 2. Make a decision whether we can hear the case. 3. Postpone till we get more interpretation from our Counsel. Haley – I go with three. Dever – Is that a motion? Haley-Yes. Dever - I second it. Voted unanimously. Mack – Case #2710- Do you want to postpone to the next meeting. Banker – Yes Dexter – I also filed an appeal but too late to get on this agenda. I request that this get folded in with the next deliberations. Mack - Can I make a request as Chairman of the Zoning Board? Why don't you all get together and make one appeal. I will tell you what my plan is. If all three are coming back next month for a hearing, we are going to hear them all at once

and then we will vote on them one at a time. Mack – So case # 2710 has been postponed until Nov. 10th. The appeal stays the building permit. Hearing closed at 8:35PM.

2710: BROOKS BANKER FOR MARY ANN MORSE: An appeal of an ADMINISTRATIVE DECISION of the Code Enforcement Officer to issue a Building Permit with conditions to Henmor Development, LLC, Tax Map R10, Lot No. 22, located on Bryant Island in the Shoreline District. CONTINUED TO NOVEMBER 10, 2005.

DELIBERATIVE SESSION

2705: SWAIN ROAD DEVELOPMENT, LLC FOR ROBERT AMBROSE:

Dever moved, Haley seconded, IN CASE # 2705, SWAIN ROAD DEVELOPMENT, LLC FOR ROBERT AMBROSE, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO ALLOW CONSTRUCTION OF A DRIVEWAY AND INSTALLATION OF AN 18" CULVERT ACROSS A SEASONAL STREAM, TAX MAP NO. R27, LOT NO. 3-1, LOCATED ON BATCHELDER HILL ROAD IN THE FORESTRY/RURAL DISTRICT BE GRANTED AS IT MEETS THE REQUIREMENTS FOR A SPECIAL EXCEPTION. Voted unanimously.

2707: FORECO FOR EDWARD AND CAROL MICKUS:

Haley moved, Hawkins seconded, IN CASE # 2707, FORECO FOR EDWARD AND CAROL MICKUS, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO CREATE A 3- UNIT MULTI-FAMILY DWELLING, TAX MAP NO. U08, LOT NO. 1A-3, LOCATED OFF RED GATE LANE IN THE RESIDENTIAL DISTRICT WHERE TWO UNIT APARTMENTS ARE ELIGIBLE, THIS BEING THREE, REQUIRES A SPECIAL EXCEPTION. THIS PROPERTY IS LOCATED OUT OF LINE OF SITE OFF OF RED GATE LANE ON A MUCH LARGER TRACT THAN IS REQUIRED FOR THE UNIT AND IS SIMILAR IN NATURE AND USE TO A LARGE UNIT THAT IS ACROSS THE OPPOSITE SIDE OF RED GATE LANE BE GRANTED, AS IT MEETS THE REQUIREMENTS OF A SPECIAL EXCEPTION. Voted unanimously.

2708: MARVIN P. KENISTON DBA KENGAR REALTY INC.:

Dever moved, Hawkins seconded, IN CASE # 2708, MARVIN P. KENISTON DBA KENGAR REALTY INC., I MOVE AN APPEAL FOR A VARIANCE FOR A CHANGE OF USE TO CREATE TWO DWELLINGS, ONE 3-BEDROOM APARTMENT AND 1 STUDIO APARTMENT ON A 13,280 SQ. FT. LOT, 10,000

SQ. FT. PER UNIT REQUIRED, TAX MAP U06, LOT NO. 4, LOCATED AT 147 MAIN STREET IN THE CENTRAL BUSINESS DISTRICT BE GRANTED, AS IT MEETS THE REQUIREMENTS FOR A VARIANCE. Voted unanimously.

Mack-I would like to add for the record, that it is in compliance with the Master Plan. This will need Site Plan Review.

Meeting adjourned at 9:00 P.M.

Respectfully submitted,

Christine Tivnan
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on _____, 2005.

John Mack, Chairman