

PRESENT: Vice-Chair - Hawkins; Dever: Haley; Pelczar; Joslin; Clark;
Tivnan, Clerk

Haley moved, Joslin seconded, THAT WE APPROVE THE MINUTES
OF MAY 10 & MAY 24 2007, AS PRESENTED. Voted unanimously.

DELIBERATION

2779A: On remand from consolidated appeals to the Belknap County Superior Court, Henmor Development, LLC seeks relief from the road frontage and access provisions of RSA 674:41 to allow its proposed construction of a single family home on, and 2-lot subdivision of, Bryant Island, Lake Wicwas, Tax Map R10, Lot 22. Also included in the applicant's development proposal is a separate parcel on Chemung Road, Tax Map R14, Lot 58. Both properties are located in the Shoreline District as defined in the Town of Meredith Zoning Ordinance.

Jack Dever stepped down.

Tim Bates – (Town Attorney) For the record, we have two cases that have both come back down for different paths and different reasons from the Belknap County Superior Court. The ZBA held a public hearing on May 10th, deliberated on the case at the next meeting, and the Board reached a consensus that the applicant, Henmor LLC, had met the burden of showing that they are entitled to the relief from the road frontage and access provisions of RSA 674:41 to allow its proposed construction of a single family home on, and a 2-lot subdivision of, Bryant Island, Lake Wicwas. I was charged with the task of drafting a decision that the Board would then review, discuss, and either adopt or reject it. I emailed that document to Chris Tivnan and it was forwarded to the Board members for review. Hawkins – Let the record show that Jack Dever is stepping down on this case. All members have a copy. In my opinion, this draft encompasses everything that we discussed, and how the Board wanted to move forward with this. Joslin- I agree. It was very comprehensive. Haley – We have met on this for multiple hours. We have covered the water front. I also feel that the Town's attorney has summarized the feelings of each Board member. I would use words from the conclusion. Haley moved, Pelczar seconded, "we find and rule that Henmor has met its burden to show that its proposed development of Bryant Island complies with the requirements set out in RSA 674:41, II. Therefore, Henmor's application for an exception to the road frontage and access provisions of RSA 674:41,II is hereby GRANTED." Bates – I think it is important to adopt the conclusion but if you are happy with the document, and it express's your view, you need to adopt that as well. Not just the last paragraph. Haley – I have no problem with that. I certainly prefer that the entire document be entered into the record. Bates -You would adopt it as your decision. Perhaps it would be a clarification to amend the motion and simply state that the draft be adopted as the

decision of the ZBA. Haley – So moved. Seconded by Pelczar. Voted 4-0 in favor.

In the Matter of the Application of Henmor Development, LLC

ZBA Case No. 2779A

DECISION AND ORDER

On remand from consolidated appeals to the Belknap County Superior Court, Henmor Development, LLC (“Henmor”) seeks relief from the road frontage and access provisions of RSA 674:41 to allow its proposed construction of two single family homes on, and 2-lot residential subdivision of, Bryant Island, Lake Wicwas, Tax Map R10, Lot 22. Also included in the applicant’s development proposal is a separate, mainland parcel on Chemung Road, Tax Map R14, Lot 58, which will be dedicated to providing vehicle parking and boat dockage for access to and from the proposed residential lots on Bryant Island. Both properties are located in the Shoreline District as defined in the Town of Meredith Zoning Ordinance (“MZO”). In light of the evidence adduced at our public hearing on May 10, 2007, the information contained in the application materials, and our members’ individual knowledge of the facts and circumstances pertinent to Bryant Island, Lake Wicwas, and the surrounding area, we find and rule as follows.

For this board to grant its application for relief, Henmor has the burden to demonstrate that its development proposal meets the following criteria that are set out in RSA 674:41, II:

1. that requiring Henmor to comply with the road access and frontage provisions of RSA 674:41 would entail practical difficulty or unnecessary hardship;
2. that the circumstances do not require the development of Bryant Island to be related to existing or proposed streets;
3. that the issuance of the development permits for Bryant Island would not tend to distort the official map;
4. that the issuance of the development permits for Bryant Island would not increase the difficulty of carrying out the town’s master plan;
5. that the proposed development of Bryant Island will not cause hardship to future purchasers of the property, or undue financial burden on the town.

We consider each of the foregoing criteria in turn.

1. Practical Difficulty / Unnecessary Hardship

No bridge connects the approximately 3.6-acre Bryant Island with the mainland, and no public or private road exists on the island itself. For Henmor to comply with the road frontage and access provisions found in RSA 674:41, I would require a road to be constructed on the island to provide frontage and access to each of the two proposed residential lots. Moreover, the existence of such a road would be pointless unless it connected to a road carried to the island by a bridge across Lake Wicwas from the mainland. It is difficult to fully comprehend the enormous practical difficulty that the planning, permitting, funding, and execution of such a bridge/road project would entail. Moreover, such a project is ridiculous in the extreme and, in the unlikely event it were seriously proposed, would immediately be overwhelmed by well-founded opposition from all quarters. In addition to vast practical difficulty, requiring Henmor to comply with the statutory frontage and access provisions would entail unnecessary hardship, because it is simply not necessary to comply with those provisions in order to carry out the reasonable and orderly development of Bryant Island in the same essential manner and with the same essential result that has characterized the development of scores of other islands in Meredith and throughout New Hampshire's Lakes Region. We therefore find and rule that requiring Henmor to comply with RSA 674:41, I would entail both practical difficulty and unnecessary hardship, although we note that the presence of either of those circumstances is sufficient to require us to find in Henmor's favor as to this first statutory criteria.

2. Existing or Proposed Streets

We also find and rule that the circumstances of this case do not require the proposed subdivision, and the construction of two single family homes on Bryant Island, to be related to existing or proposed streets. For many years, it has been the town officials' consistent interpretation that under the applicable provisions of the MZO single family homes may be constructed on island properties like Bryant Island that are accessible only by watercraft, and the land on such islands may be subdivided, without regard to the need for some minimum amount of road frontage that applies to mainland parcels. This sensible approach recognizes that because of the unique circumstances, there is simply no rational basis that would justify the application of mainland road standards to the residential development (typically seasonal) of islands that are accessible only by watercraft. It is evident from the longstanding existence of residential development on scores of other islands in Meredith and throughout New Hampshire's Lakes Region that Henmor's proposed development is not required to be related to existing or proposed streets, and thus we have no difficulty in concluding that Henmor meets the second statutory criterion.

3. Distortion of the Official Map

A municipality's "official map" is not the zoning map, although that is a common misconception, but rather is a specialized instrument described in RSA 674:9 - :12 which indicates "the locations of the lines recommended by the planning board as

the planned or mapped lines of future streets, street extensions, street widening, or street narrowings” in the whole or any portion of the municipality. RSA 674:9. The Town of Meredith does not have an official map. Indeed, upon information and belief, the City of Concord is one of the only municipalities in New Hampshire to have adopted the provisions for an official map. P. Loughlin, 15 N.H.P. Land Use Planning and Zoning, § 31.03. Because there is no official map to distort, we find and rule that Henmor meets the third statutory criterion.

4. Carrying Out the Master Plan

At our public hearing on May 10, some of the opponents of Henmor’s project asserted that the development of Bryant Island will have the “inevitable effect” of increasing the difficulty of carrying out the master plan (i.e., the Meredith Community Plan, 2002; hereinafter “Plan”). In support of that assertion, the opponents cite portions of the text of the fourth paragraph of Chapter 3, “Values And Vision”, pages 10-11 of the Plan, as follows (the portions of the fourth paragraph not cited by the opponents are underlined):

The long standing environmental preservation and conservation ethic within the community will progress to an unparalleled level. Critical natural resources such as significant wetlands, undeveloped shoreline areas, scenic vistas, wildlife corridors, groundwater supplies, large forested areas, and agricultural soils will be conserved through a comprehensive open space strategy. Private landowners (old and new alike) will recognize and welcome their responsibility as land stewards. There will be a high level of participation in incentive programs, consistent offers of gifts of land to local conservation entities and broad support for local initiatives. Natural resource protection efforts will complement economic development and be considered by the public as critical to a balanced growth policy.

Taken as a whole in its context, we find and rule that the “Values And Vision” statement cited by the opponents is merely a hopeful prediction that the town’s environmental preservation and conservation ethic will increase over time, and that areas of critical natural resources will be conserved “through a comprehensive open space strategy.” Further, the statement also predicts that natural resource protection will be viewed by the public as critical and complementary to the town’s economic development. The opponents argue that alleged wetlands violations associated with Henmor’s mainland lot off Chemung Road, the lot dedicated to providing vehicular parking and boat dockage, interfere with the “Values And Vision” statement, and thus increase the difficulty of carrying out the Plan. We disagree. First, whether any wetlands laws or regulations have been violated is a matter of dispute. We believe the allegations were investigated at some point in the recent past by agents of the NH Wetlands Bureau, who found no violation. Second, even if the alleged violations exist at the Chemung Road lot, that fact would raise an enforcement matter that in no way makes it more difficult to realize the aspirational goals of the Meredith Community Plan cited by

the opponents. In sum, we find and rule that Henmor's development plans for Bryant Island will not increase the difficulty of carrying out the "Values And Vision" statement in the Plan.

The opponents also assert that Henmor's proposed use of the Chemung parcel runs afoul of another statement in the Plan, found in Chapter 12, "Land Use", page 101, in the paragraph entitled "Development Pressures on Environmentally Sensitive Land", as follows:

As most of the readily developable land has already been developed, pressures on environmentally sensitive lands will increase. This, if unchecked, could have demonstrably negative impacts on critically important resources such as unfragmented habitat areas, wetlands, streams and small ponds.

The opponents argue that the area around the Chemung parcel has been designated as prime wetlands, and that past and anticipated future impacts associated with the use of the parcel to provide boat dockage for the lots on Bryant Island are contrary to the goals expressed in the Plan. Once again, we note that any past or future violations of the wetlands laws occurring at the site raise an enforcement issue. We cannot reasonably conclude that wetlands violations at the Chemung lot are inevitable or inseparably intertwined with the development proposal put forward by Henmor. We therefore find and rule that Henmor's proposal does not make it more difficult for the town to implement the goal of the quoted section of the Community Plan, which is to modify the town's land use regulations to address the anticipated increase in development pressures on environmentally sensitive land in the town.

Finally, the opponents assert that Henmor's proposed placement of two single family homes on Bryant Island is contrary to another statement in the Plan, also found in Chapter 12, "Land Use", page 101, in the paragraph entitled "Landscape Character", as follows:

. . . the . . . town contains a variety of significant, scenic attributes that collectively help define the visual character of Meredith. Landscape character, like environmentally sensitive land, is a resource that faces the challenge of development pressures."

The opponents argue that the undeveloped Bryant Island is a "key feature" in Meredith's landscape, as it is visible from Route 104, a "key thoroughfare," and that the proposed development will contradict the Community Plan's goal of protecting such scenic features. We disagree. First, the record evidence supports our finding that the two proposed single family homes to be constructed on Bryant Island will hardly be visible to outside observers from any direction, due to the 75-foot natural woodland buffer around the perimeter of the island, and the 32-foot building height limitation, both imposed by the planning board as conditions of subdivision approval. Second, the proposed development of the island does not in any way make it more difficult for the town to put in place land use regulations that will seek to protect Meredith's "landscape character" from

unreasonable development, the goal implied in the “Land Use” section of the Plan.

Based on the foregoing, we find and rule that Henmor’s proposed development of Bryant Island will not in any way increase the difficulty of carrying out the town’s Community Plan.

5. Hardship to Future Purchasers; Undue Financial Burden on Town

Based on the evidence and our knowledge of the Town of Meredith, we find and rule that the proposed development of Bryant Island will not cause hardship to future purchasers of the properties, nor will it place an undue financial burden on the town. Henmor merely proposes the reasonable and orderly development of Bryant Island in the same essential manner and with the same essential result that has characterized the development of scores of other islands in Meredith and throughout New Hampshire’s Lakes Region. Although the opponents argue that shallow water depth at the Chemung Road property may interfere with easy boat access to and from the island, such an occasional annoyance does not rise to the level of posing a hardship to future purchasers within the meaning of RSA 674:41, II. As testimony at our public hearing indicated, people who seek out an island lifestyle are generally well aware of the inconveniences and limitations that come with that experience. Such individuals cherish the relative solitude, remoteness, and closeness to the natural environment that island living provides, and are perfectly willing to put up with those aspects of the experience that are less convenient than mainland living. As well, there is simply no basis for us to conclude that the construction of two single family homes on Bryant Island will impose an undue financial burden on the town. We believe that the scores of island homes that currently exist in Meredith provide a significant net financial benefit to the town, and there is no evidence to suggest that Henmor’s proposed development will be different. In reaching this conclusion, we note the argument advanced by one of the opponents to the effect that it would be error for us to rely on the notice of the limits of the town’s responsibility and liability that must be recorded in the registry of deeds pursuant to condition #9 of the planning board’s subdivision approval, which states that the notice must be “substantially similar to that which may be required by [RSA 674:41, I(c)(3)] for development on Class VI roads.” For the record, our conclusion that Henmor’s proposal will not impose an undue financial burden on the town does not depend in any way on the existence or recording of such a notice, but instead is based upon all of the physical characteristics and features of the development itself.

Conclusion

For all of the foregoing reasons, we find and rule that Henmor has met its burden to show that its proposed development of Bryant Island complies with the requirements set out in RSA 674:41, II. Therefore, Henmor’s application for an exception to the road frontage and access provisions of RSA 674:41, I is hereby **GRANTED**.

So ordered.

Meredith Zoning Board of Adjustment

Date: June 19, 2007

By: _____
Fred Hawkins, Vice-Chair

2759: ASSOCIATED SURVEYORS FOR DONNA & ALBERT DUCHARME: An appeal for a special exception to allow construction of a roadway and utility crossing within a protective buffer and across a non-designated wetland and drainage; and an appeal for a special exception to construct a water impoundment area within the protective buffer and an appeal for a special exception to construct a common driveway within a buffer and across a non-designated stream and associated wetland, Tax Map R30, Lot. No. 3 & 4, located on New Road in the Forestry/Conservation District.

Jack Dever has stepped down.

Tim Bates – (Town Attorney) - This is a slightly different case that has come back from the court. In this case, the Board had granted special exceptions for some minor wetland crossings. The court was not happy with the fact that the opponents of those special exception had filed a written request for the Board to make some findings and the Board had not done that, so the Judge said that I am not sure I disagree with the Board's results but I am sending it back down to the Board and I want them to respond to those requests for findings. So once again, you charged me with the task of drafting a decision. That document is before you tonight. Hawkins - The Board has copies and has had a chance to look it over. In my opinion, it meets the request for findings and rulings that the court asked us to do. How does everyone else feel? We are looking for a motion.

Haley moved, Pelczar seconded, In the case of # 2759, ASSOCIATED SURVEYORS FOR DONNA & ALBERT DUCHARME, PROPERTY LOCATED AT TAX MAP R30, LOT 3 & 4 ON NEW ROAD IN THE FORESTRY CONSERVATION DISTRICT, I would incorporate the whole report as part of the motion but particularly read:

1. the applicants considered alternative proposals and the submitted proposal represents the minimum amount of reasonable, unavoidable impact to the wetlands, stream, and buffer areas involved;

2. the applicants have considered and minimized impacts to abutting and downstream properties and natural resources;
3. the impacts that will occur are insignificant, and pose no threat to the health of the wetland systems either on the site or in the surrounding area.

In the Matter of the Application of Donna & Albert Ducharme

ZBA Case No. 2759

RESPONSE TO PETITIONERS' REQUEST FOR FINDINGS AND RULINGS

By Order dated May 17, 2007 in the case that appealed our decision in this matter (Abear v. Town of Meredith and Ducharme, Docket No. 07-E-010), the Belknap County Superior Court remanded the matter back to us "for the limited purpose of requiring the board to provide a response to the petitioners' request for findings and rulings." Order at 3. Accordingly, our findings and rulings in support of our grant of the special exceptions are set out below.

Scope of Our Review

As a preliminary matter, we note that although the petitioners chose not to appeal the planning board's final approval of the Ducharmes' subdivision application, they have argued to us and to the court that aspects of the proposed residential subdivision will generate negative impacts that require us to deny the applications for special exceptions that will allow the Ducharmes to construct the road, common driveway, and water impoundment area. The subdivision approved by the planning board divided the 210-acre parcel into nine (9) buildable lots. We do not agree that our review of the applications for special exceptions requires or allows us to take into account impacts that allegedly will arise from the development and occupation of the residential subdivision itself. Rather, we believe our task is necessarily limited to the question of whether the proposed road, common driveway, and water impoundment area meet the special exception criteria found in the Meredith Zoning Ordinance ("MZO").

Petitioners' Requests

The petitioners' requests are contained in a Memorandum originally dated September 14, 2006 and corrected by hand to the date of October 12, 2006; a copy of the Memorandum is found at page 44 of our Certified Record to the court. At the outset, we note that the special exceptions sought by the Ducharmes are required under the provisions of the Water Resources Conservation Overlay District found in Article V, Section D-9 of the MZO. Specifically, the Ducharmes sought special exceptions under Section D-9, G to allow a roadway with utilities, a common driveway, and a water impoundment area to be constructed within one

or more combinations of non-designated wetlands, a non-designated stream, and the wetlands buffer, as those environmental features are defined under the MZO. In light of the evidence adduced at our public hearing on October 12, 2006, the information contained in the application materials, and our members' individual knowledge of the facts and circumstances at the site and in the surrounding area, we find and rule as follows:

1. the applicants considered alternative proposals and the submitted proposal represents the minimum amount of reasonable, unavoidable impact to the wetlands, stream, and buffer areas involved;
2. the applicants have considered and minimized impacts to abutting and downstream properties and natural resources;
3. the impacts that will occur are insignificant, and pose no threat to the health of the wetland systems either on the site or in the surrounding area.

In light of the foregoing findings, we find and rule that the applicants proposal meets the criteria set out in Section D-9, H, 5, including the requirement that the proposal be consistent with the list of criteria set out in Section D-9, C (Purpose And Intent) of the Water Resources Conservation Overlay District provisions. Finally, and also based on the foregoing findings, we further find and rule that pursuant to the general special exception criteria found in Article VII, Section A of the MZO the applicants' proposal to minimally impact the wetland areas:

- a. will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and adverse violation of the character or appearance of the neighborhood;
- b. will not be injurious, noxious or offensive and thus will not be detrimental to the neighborhood; and
- c. will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life and property, unsanitary or unhealthful emissions or waste disposal or similar adverse causes or conditions.

So ordered.

Meredith Zoning Board of Adjustment

Date: June 19, 2007

By: _____
Fred Hawkins, Vice- Chair

REHEARING

2766: VLL TRUST: - An appeal for a VARIANCE to allow three (3) residential units on a pre-existing non-conforming lot within the existing dwelling, 10,000 sq. ft. net density per unit required, Tax Map U06, Lot No. 4, located at 147 Main Street in the Central/Business District.

Butch Keniston- I haven't done a re-hearing before but it is my understanding that the evidence allowed to be presented, is actually the motion for the re-hearing. Is that correct? Hawkins – That's right. Keniston- Based upon that, I think it would be appropriate to read the motion into the record. If that is the essence of our presentation, I would like to do that.

John Mack- Chairman
Zoning Board of Adjustment Meredith, NH 03253
1/12/07
Subject property: 147 Main St.
Tax Map U-06 Lot #4

Dear Mr. Mack,

Pursuant to RSA 677:2, As trustee of VLL Trust, owner of property at 147 and 143 Main St., I request a rehearing of case #2766 (VLL Trust: Request for density variance) based upon the following grounds.

The Applicant was not afforded procedural due process when testimony was allowed at the time of the deliberative discussion by the Board and after the close of the Public Hearing which resulted in a vote for denial of the Variance Appeal. This discussion was initiated by one Board member's conclusion that his interpretation of a defeated 2006 Warrant article was somehow a de facto referendum on Zoning Density and therefore should be considered a clearer indicator of the Voters' preferred net dwelling unit density than the existing Zoning Ordinance and Master Plan.

It is very obvious this discussion contributed greatly to the Denial of the Variance. At no time was this information offered up or mentioned in the Public Hearing, so consequently the Applicant was not able to rebut or respond to any of this. If given the chance to respond the argument would have been as follows:

Zoning Ordinance/ Master Plan

I would submit that the "general Purpose" of the Central Business District as stated in Article V Section D-7 is to provide a concentrated area of business and other uses in the downtown area of Meredith.

It goes on to more specifically state: "The use of upper-story space for commercial, residential and other purposes is also encouraged."

To simplify our representations and more clearly state our position we will not differentiate between what is stated in the Ordinance and The Master Plan because they appear to be very consistent.

The property under consideration is an existing 2-story mixed use commercial/residential building located in the Central Business district. The building is about 20 years old. The building lot was previously zoned Business and Industry. The existing building is the same size and configuration today as it was when it was zoned Business and Industry. Other than the net density Variance no other dimensional relief was requested. The second floor space that presently allows a commercial use would become less dense as a one bedroom apartment because two parking spaces are presently allocated and a one bedroom apartment would only require one parking space.

As important as encouraging "concentrated" use in the Central Business District, is the clear Intent in the Ordinance to encourage "mixed" commercial and residential uses as well. The minutes of deliberations indicated Mr. Mack seems to think it would be in the town's best interest for this property to be all residential apartments so that we don't have to come back and bother the Zoning Board any more. If the charge of the Zoning Board of Adjustment is to uphold and interpret the Zoning Ordinance and the Master Plan and to grant relief in certain cases; I'm not sure of the rationale that more of the same of what the Board has denied is somehow better.

Town Vote:

In order to properly address the Issue of the Town Meeting Vote and to try to figure out what it has to do with this property, I read over the following public records, in addition to the Ordinance.

11/13/2005 discussion of proposed zoning⁹ changes (11 pages on line)

2006 Warrant (as reprinted in the 2006 Town Report)

1/3/2006 Public Hearing Proposed Zoning Amendments (36 pages on line)

1/17/2006 2nd Hearing Proposed Zoning Amendments (18 pages on line)

Proposed zoning changes Meredith Planning Board 12/22/2006
(prepared by John Edgar, about 50 pages)

By all reasonable measure, the part of the Proposed Zoning Changes that deals with eliminating the Net Density requirement is so obscure and insignificant I doubt it contributed greatly to the defeat of the Warrant Article. The more logical reason for the defeat might have been the incredible complexity and need to either read or listen for hours just to hear the whole proposal; One time.

For example: From what I have read it looks to me like only the Village District and the Village Residential District were to be exempt from the Net Density Requirement of 10,000 square feet per dwelling unit and according to page 3 of the proposal the Village District would not extend beyond the Humiston Building

on Main Street anyway. This means that 147 Main St. would be in the newly created Village Residential Zone. Whether the zoning district change was accomplished or not it appears everyone involved wanted to see more and not less dwellings on this lot.

The Motion:

The Motion made and Voted on appears to be defective in that the (3) residential units would be in the existing building and not with-in the existing dwelling. Secondly the reason stated is that it does not meet the Variance criteria for Net Density. On the town's Application for a Variance the section "Facts supporting this request" is where the Applicant must list the 5 criteria that need to be met for the ZBA to grant a Variance. None of these criteria were disputed or even discussed during the Public Hearing but were specifically cited in the Motion as the reason for denial.

Again, the Applicant had no opportunity to rebut or respond to the Board's stated position that the supporting criteria presented for requesting the Variance was deficient. Please forgive the length of this request, but it is my understanding that all information supporting the Motion for Rehearing and the applicable arguments must be stated here-in. I would ask that the Board rehear Case #2766 with an open mind and willingness to consider reversing the previous Denial.

Respectfully Submitted,
VLL Trust- Virginia Love {Trustee}
Marvin P. Keniston

Hawkins – Any questions from the Board? Anyone wish to speak in favor of this application? Anyone wish to speak against this application? Keniston – I don't know the sentiments of the Board, but Mrs. Lovett just had a hip replacement so if the Board would act on this now, we would appreciate it. Hawkins – How does the Board feel? Dever – It is fine with me. Hawkins – Public Hearing closed and will re-open after deliberations on this case.

DELIBERATION

2766: VLL TRUST: -

Hawkins- I am looking for the wording on why we granted the rehearing. I thought it was because we wanted to rehear and reword a possible motion. Let us look for a new motion. Dever– In reading over Butch's motion for a rehearing, he has made the same points that he made the last time. I have not changed my mind on granting use variances. I know he cites the Master Plan, but the Master Plan is a tool for the Planning Board to use in order to make proposals to the Town Meeting

for zoning changes. They have not reduced the 10,000 sq. ft. If that was something everyone agreed on, it would have been done. I have not changed my mind on that lot down there. Use variances are not a good idea because it goes against the spirit and intent of the ordinance. Keniston – Point of order. The variance request is not for a use variance but a density variance. Dever – I understand that. Haley – What do you have now, and what are you asking for? Keniston – Looking to change an existing office/retail space to a residential use. Going from a commercial use, to a residential use. Dever – So it is a use. Like I said. Keniston – The use is allowed. We don't need a variance to change the use. We need a variance because of the density. Haley – What floor are we talking about? Keniston – Second floor. Dever – I still think it violates the spirit and intent of the ordinance.

Dever moved, Pelczar seconded, In case # 2766, VLL TRUST, I MOVE THE APPEAL FOR A VARIANCE TO ALLOW THREE (3) RESIDENTIAL UNITS ON A PRE-EXISTING NON-CONFORMING LOT WITHIN THE EXISTING DWELLING, 10,000 SQ. FT. NET DENSITY PER UNIT REQUIRED BE DENIED, BECAUSE IT DOES NOT MEET THE SPIRIT AND INTENT OF THE ORDINANCE. Voted 4-1 in favor.

PUBLIC HEARINGS

2798: K.E. ALEXANDER FOR MARY JO ALEXANDER: An appeal for a VARIANCE to erect a pre-fabricated shed with a side setback of 8', 20' required and a rear setback of 8', 40' required, Tax Map No. U39, Lot No. 1-2, located at 20 Brookhurst Lane in the Shoreline District.

Alexander – I have a plot plan with the lot outlined in yellow. I also have photographs. (Items passed to the Board) I want to put the shed between the existing large trees. This would not interfere with the neighbors. It would be almost invisible to them. There may be other locations to put the shed, but they would be more visible to the neighbors. I picked this size shed as it will fit in between the trees. Hawkins – Where is the septic? Alexander – (The applicant drew the location on his plot plan and showed it to the Board.) Hawkins – As you are facing the house from the street, the tank is in the center of the front of the house, and the leach bed is to the right. Correct? Alexander – Correct. Pelczar – This is a free standing shed? No concrete? Alexander – Yes. Pelczar – What is it's size in comparison to other sheds in the area? Alexander – Good question? The garage on the left is a full garage. The one to the right is not a full size garage but large. Pelczar – So this is smaller than what others have? Alexander – Yes. Hearing closed at 7:40PM

2799: MEREDITH CROSSPOINT SHOPPING CENTER, LLC: An appeal for a SPECIAL EXCEPTION to allow construction of a building and related site

development within the 150' buffer of a prime wetland, Tax Map No. U15, Lot No. 1 & 4, located at 38 NH Rte. 25 in the Central Business District.

2800: MEREDITH CROSSPOINT SHOPPING CENTER, LLC: An appeal for a SPECIAL EXCEPTION to allow related site development within the 50' buffer of a non-designated wetland, Tax Map No. U15, Lot No. 1 & 4, located at 38 NH Rte. 25 in the Central Business District.

Fred Mock – Since we have two applications for special exceptions, would it please the Board to talk about both of these concurrently. Hawkins – That would be alright. We are seeking relief from special exception requirements for both the prime wetland buffer of Hawkins Brook and a wetland buffer of a non-designated wetland. (Pointed areas to Board on the map.) This area is along Route 25 heading easterly. On the north side is Meredith Village Savings Bank. This is an existing shopping center. There are activities at all three buildings. A portion of the largest building is vacant. This is on two parcels. The cinema and the large shopping center are on one parcel. A smaller retail building on the right side is on another parcel. There is a common line between the parcels. We are looking for activities on both properties. We have shown the prime wetland and the 100' setback with the light green line. It traverses through the building, and a portion of the property parking lot. On the westerly side there are some non-designated wetlands also shown on this map. Poorly drained soils are what establish the limit of the non-designated wetland. We have provided plans to you with plan sheets with a report of what our charges are. Several things we are required to do and have accomplished and want to make sure you have them in your file are:

- Notification be given to all abutters and the general public – an abutter's list has been included herein as an attachment to this letter report. Applications for each request are included under separate cover along with the requisite fee.
- Continents from the Conservation_ Commission – under separate cover we have submitted the application to the NH Wetlands Bureau for a Major Permit. Comments from the Conservation Commission will be provided directly by the Commission pending their review.
- Wetlands Assessment Report prepared by a Professional Wetland Scientist- The Wetlands Assessment Report is contained within the following narratives and has been prepared by Ms. Vicki Chase, McFarland-Johnson, Inc., Concord, NH Certified Wetland Scientist, CWS #245.
- Compliance with Conditions of Section II-5, (a through c) – The manner in which these applications meet these conditions is presented in the following narratives.

In addition, Article VII Section A requires:

- That the use will not be detrimental to the character or enjoyment of the neighborhood,

- That the use will not be injurious, noxious or offensive and thus detrimental to the neighborhood
- That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life and property, unsanitary or unhealthful emissions or waste disposal or similar adverse causes or conditions
- Approval of the Site Plan Review by the Planning Board is required to be on file with the Zoning Board of Adjustment.

We do have some elevations of the building. That work has been done by Christopher Williams Architects. Wetlands mapping was completed by a certified wetland scientist, Peter Schauer and then mapped by David Dolan's land surveying firm.

These are several characteristics of Hawkins Brook.

- largest aquifer in Meredith located along Hawkins Brook surrounded with a high density of residential homes and number of commercial developments,
- most narrow and impacted prime wetland in Meredith,
- highest number of road crossings and historic wetland fills
- wetland function if assessed would rank lowest of prime wetlands in wildlife and ecological integrity,
- critical pollution abatement and sediment deposit functions,
- aesthetic backdrop" within a highly developed area, and
- "a large number of natural resources attributes overlap" within / along Hawkins Brook

We did perform a function / value assessment. It did include an assessment of vegetation both in the prime wetland and the non-designated wetland. The wetland is a forested /scrub-shrub wetland. Wildlife is another function that we have assessed. The foodchain productivity/ecological diversity are another function we have looked at. This is the back drop to the water that flows into Lake Winnepesaukee. The soils are poorly drained and the soils in this project area are described as Urban Land. Most of the wetland is dominated by small trees and shrubs hence the forestry characteristic is minimal. The hydrology and water quality are important parts because it is the sink for nutrients and pollutants that occur within the core district. Historical/Archeological/Scientific importance we found to be moderate. Historically, it is important because it has been the centerpiece of Meredith Village for a long time. It has scientific importance in the

sense that it is accessible to someone who wants to canoe in the area or to seek an understanding of wildlife that occur. From a geomorphologic feature it exists as a result of the last ice-age. Our project proposes to expand the existing facility. The outline of the existing retail space is about 41,200 sq. ft. We are proposing to expand northerly for about 9800 sq. ft. Other improvements to the site are minor. One is to improve the parking areas both aesthetically and re-align the parking so it is more functional. We plan to do some plantings and streetscape improvements with minor changes to the surface grade. In net, we have less impervious area, even with the expansion. Improvements will be done to the access points and minor improvements along Route 25 to enhance a turning lane for access to the site. The test for the application is to assure that within the Water Resource Conservation District we have met several thresholds. We think we have. The first is to promote health, safety and welfare of the community. We believe we have done that through improvements to water quality and to storm water runoff prior to discharge into Hawkins Brook and ultimately Lake Winnepesaukee. The improvements to Rte. 25 will increase traffic safety within this corridor. The next one is to prevent degradation of surface and ground water quality. Through an erosion control plan, and the permanent water quality improvements, we believe we have met this test. Another test is to preserve the ability of wetland to provide for water treatment for water quality, filter pollutants, trap sediments, retain & absorb chemicals and nutrients. By reduction of impervious surface areas, sediment controls, and an opportunity for ground water control, we are not adding an additional load to Hawkins Brook, so it will maintain its ability to provide water quality improvements. Another charge is to prevent the destruction of, or significant changes to natural wetlands which provide flood storage. There is no proposed direct impact to Hawkins Brook and its associated wetland with this project. Another charge is to prevent the destruction of habitats for rare or endangered species. Based on work we have done, we have found no habitats of rare unique species within that wetland complex. Another test is to prevent the development of structures and land uses in wetlands and areas adjacent to wetlands and streams, which will contribute to the degradation of surface and/or ground water quality. Because there are no direct impacts, we are not contributing to any degradation of surface or ground water quality. With regard to preservation and enhancement of aesthetic and recreational values, this project proposes no recreational improvements but by making a modest effort to improve water quality which ends up in the lake, we are not adversely impacting anyone's recreational use. We are to protect fish and wildlife habitat and maintain ecological balances as a result of State statute. With our specific storm water management plan as a safeguard against impact to the ecological balances, we feel we have met that test. Another portion is to make sure we have looked at alternatives. All alternatives were discussed with NH Department of Environmental Services and it was felt that this is the least environmentally damaging practical alternative for this property. Another test is that we induce no impacts to abutting or downstream properties and/or natural resources. We believe as a result of no floodway impact and enhancement to water quality that we will provide no adverse impact to abutting properties and/ or

downstream receiving water bodies. Another portion of the Zoning Ordinance requires that we make sure that the use will not be injurious, noxious or offensive and thus detrimental to the neighborhood. The fact that the site is developed, there will be net positive impacts as a result of the proposed project, the proposed lighting plan will reduce the opportunity of night glow, the architectural design of the building and the proposed use is considered a permitted use, we feel we have met the test. We have been attentive to both the historic streetscape, the choice of colors, materials and roof lines. Loading docks and dumpsters will be at the back of the building. The other test is that the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life and property, unsanitary or unhealthful emissions or waste disposal or similar causes. We have met with DOT and they do not believe it needs a full traffic study. Our data shows that level services will not be impacted. One thing they have requested that we do is to provide an expansion of the existing turn lane along Rte. 25. into the property. In closing, we believe we have met the test as outlined in the Zoning Ordinance. Joslin – In the drawing, where is Brooks? Mock- Pointed to map. Haley – The loading docks will be in the rear? Mock -Yes they will. Haley – The back wall will be closer to the brook than it is now? Mock – Yes. I would estimate about 30'. Haley – I have been in the back and it isn't always the cleanest. I hope you will give this consideration. Mock - I am certain this site will have a lot more care than in the past. Haley – Is this a tear down or a remodel? Mock – The easterly side will be removed and new. John Hueber – (Owner) We are hoping to move quickly on this. We are very conscientious about the way we run our properties. Hearing closed at 8:20PM

2801: NEIL AND RENEE FERRARO: An appeal for a VARIANCE to replace an existing single-family dwelling with a front setback of 50', 65' ft. required, Tax Map S16, Lot No.19, located at 79 Bonney Shores road in the Shoreline District.

Ferraro – We have an existing cottage that was built in the late 1970's. It is 1400 sq. ft. house located about 25'-30' from the shore. It is built on pylons and one is a rotting tree stump. Our request is to move it, pull it back as far as we can, which is at the 50' line and install a new septic system and make the building more conforming than what it is. My builder and I met with Bill Edney and this is what he said we had to do. The Waukegan Watershed Study has found that among the top 10 issues impacting current and future water quality are outdated and improperly installed septic systems, exterior uncontained oil tanks and increase runoff from homes close to the lake, all of which this present property has. The property is about ½ acre with 145' of shoreline. The existing septic system is about 150' from the lake. We did consider taking down the existing house and building within the same footprint. The cost of that construction would outweigh the benefit. When you look from the road it looks like I have all the property but the lot line cuts in which makes it difficult to build and there is ledge. That is why we can not pull it back to the 65'. We feel this will be an overall benefit. Haley – It does not look like there is 40' between your proposed side and your neighbors

building? It would have been nice to have it staked out. You do know where the property line is? Ferraro – Yes. Haley - The 20' side includes overhangs. The leaching system has not been installed? Ferraro - We have a permit but not installed. Don Weigel – The amount of ledge out there makes it very difficult to build. I think he has done a very good job. Biron Bedard – My wife and I support this application. Hearing closed at 8:30PM

2802: KENNETH FOLKES (Rep. David Dolan) An appeal for a VARIANCE to replace an existing single-family dwelling with a new residence with a rear setback of 8', 40' required, Tax Map U01, Lot No. 31, located at 9 Anntom Road in the Shoreline District.

Dolan – The plan you have shows the existing dwelling at 9 Anntom Rd. The front setback is highlighted in yellow, the rear in green and the proposed structure in red. The property is about 10,540 sq. ft. in area in the shoreline district. Back in January, Mr. Folkes was granted a variance for relief from the rear setback. A reduction of the setback to 10', and subsequently a house was ordered from Windsor Homes. In surveying the property and including the eaves the house does not fit on the lot so we are back here for a variance for relief of the rear setback to 8'. The new building construction will occur in compliance with the front and side setbacks. Hearing closed at 8:33PM

2803: DONALD LARSON: (Rep. Carl Johnson) An appeal for a SPECIAL EXCEPTION to allow construction of a 24'x 36' boathouse, 20' high, Tax Map U37, Lot No. 1B, located at 140 Veasey Shore Road in the Shoreline District.

Johnson – This property is located on Veasey Shore Road. There is currently an existing dwelling on the front portion of the lot. Mr. Larson also owns the property abutting to the north. The proposal this evening is to construct a boathouse on the lot. The boathouse is to be located approximately central to the parcel. There is about 200 'of frontage. Currently, there is a perched beach area with a deck and dock. The existing docking structure will be removed and a smaller docking structure will be constructed, which will be close to the boathouse. The State of New Hampshire Department of Environmental Services Wetlands Bureau has approved the application. The Town of Meredith's Zoning Ordinance allows boathouses by special exception. There is a special set of provisions in the Zoning Ordinance dealing specifically with special exceptions for boathouses. I would like to go over those.

- The chart is a sliding scale. Boathouses shall be not greater than 32 feet in height as measured from the mean high water mark. – The boathouse approval by the State has a height of 20 '. This is well within the 32' height.

- The maximum overall structure width (along the shore) shall be determined by a chart this in the Zoning Ordinance .

<u>Shoreline Frontage</u>	<u>Maximum Overall Width</u>
○ <75'	(Not Permitted)
○ 75' - 149'	18'
○ 150' - 299'	24'
▪ 300'	36'

The width of the proposed boathouse is 24'.

- Boathouse structures shall have a minimum of 75' of dedicated shoreline frontage. Said dedicated frontage shall not have been previously allocated to satisfy shoreline frontage requirements for other waterfront structures.

We are removing the existing dock structure and incorporating a dock structure to be incorporated

- Boathouses shall have pitched roofs with a minimum pitch of 5/12.-

The plans by Joel Fisher meet that requirement.

- Boathouses shall be designed for the docking of boats or similar craft and shall not be designed or used for any activities usually associated with land, i.e., sunbathing, picnicking, bunkhouse, dwelling unit, helipads, etc

As you can see from the drawings, this is just a boathouse.

- Boathouses shall not encroach upon side yard or watershed protection area.

You can see that the 20' setback is well away from the boathouse and does not encroach upon the watershed protection setbacks.

- Alteration of the natural shoreline shall not cause or increase non-conformity regarding setbacks between the altered shoreline and pre-existing structures and/or septic systems. Waterfront setbacks shall be measured from the inward limit of the altered shoreline area. –

When you create a dug in boathouse, you create a new shoreline. The new shoreline is the inside of the boathouse. The ordinance is saying that by creating that new shoreline you cannot create a non-conformity with a 65' setback. The 65' is from the indie of the boathouse and there are no non-conformities created by that the shoreline.

- There shall be no exterior lighting attached to or providing illumination of the boathouse structure which is offensive or otherwise disruptive to the neighborhood by virtue of light intensity or direction. –

The ordinance is trying to prevent a bunch of spotlights. We have submitted an electrical plan and a picture of a proposed sconce.

- If the construction of a boathouse necessitates physical alteration and/or dredging of the natural shoreline, an Erosion Control Plan shall be prepared by a Licensed Professional Engineer and approved by the Meredith Planning Board or their duly appointed representative. –

The sediment erosion control plan is part of the packet and reviewed by Bill Edney, who is the duly appointed representative.

- Boathouse shall be sited so as to minimize environmental impacts.-

The location of the boathouse on the lot will minimize the alteration of terrain and reduce the impacts to the abutting properties.

- Only one boathouse per lot or parcel of land shall be permitted. –

There is only one boat house permitted on this property.

- Evidence of acceptable surety and site access to guarantee performance associated with site work stabilization shall be required prior to issuance of a Building Permit. –

Mr. Fluet has prepared a unit cost estimate which is the amount of money which would be necessary to account for site stabilization and prior to the issuance of a building permit that amount of money would have to be forwarded to the town in a manner that is acceptable to the Finance Department. The amount of the surety is just over \$5000. There are some portions of the Zoning Ordinance that have to be submitted as part of the application and we have done that. In your packet you have a copy of the Wetlands approval, the proposed dredging plan, exterior electrical plan, construction drawings, and construction plans, In granting a special exception, generally there are four criteria that are necessary to demonstrate.

The first is.

- That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and adverse violation of the character or appearance of the neighborhood.

The proposed boathouse is in keeping with the character of the neighborhood. Today I took a tax map and made a composite (Larson property noted in Yellow)

and marked in orange are boathouses within ½ mile. Some of the ones in orange predate the necessity for getting approval for a boathouse.

- That the use will not be injurious, noxious or offensive and thus detrimental to the neighborhood.

The proposed boathouse does not increase the number of boats able to be docked at the site. The existing docking structure will be removed and a new dock will be installed near the boathouse, farther away from the abutting property. The proposed use is similar in character to other properties in the area. (as noted above)

- That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life and property, unsanitary or unhealthful emissions or waste disposal or similar adverse causes or conditions.

There will be no additional traffic, (vehicular or boat) generated by the proposal. The proposal produces no harmful or unsanitary wastes or emissions.

- As to all uses subject to Site Plan Review by the Meredith Planning Board, this is not subject to Site Plan review, so it is not applicable. Based on the items that I have detailed, I believe we have met the burden of proof for granting the special exception.

DELIBERATIONS

2798: K.E.ALEXANDER FOR MARY JO ALEXANDER:

Haley moved, Pelczar seconded, In case #2798, K.E.ALEXANDER FOR MARY JO ALEXANDER, I MOVE THE APPEAL FOR A VARIANCE TO ERECT A PRE-FABRICATED SHED WITH A SIDE SETBACK OF 8', 20' REQUIRED AND A REAR SETBACK OF 8', 40' REQUIRED BE GRANTED, AS IT MEETS ALL FIVE CRITERIA FOR A VARIANCE. Voted 5-0 in favor.

2799: MEREDITH CROSSPOINT SHOPPING CENTER, LLC:

Hawkins – We heard these together but we need to vote on each one separately. It is nice to see a vacant shopping center being put to good use and improved.

Dever moved, Joslin seconded, In case # 2799, MEREDITH CROSSPOINT SHOPPING CENTER, LLC, I MOVE THE APPEAL FOR A SPECIAL EXCEPTION TO ALLOW CONSTRUCTION OF A BUILDING AND RELATED SITE DEVELOPMENT WITHIN THE 150' BUFFER OF A PRIME WETLAND BE

GRANTED, AS THEY HAVE DEMONSTRATED VERY CLEARLY TO THE BOARD THAT THEY MEET ALL THE REQUIREMENTS AS OUTLINED IN THE ZONING ORDINANCE . Voted 5-0 in favor.

2800: MEREDITH CROSSPOINT SHOPPING CENTER, LLC:

Dever moved, Pelczar seconded, In case # 2800, MEREDITH CROSSPOINT SHOPPING CENTER, LLC, I MOVE THE APPEAL FOR A SPECIAL EXCEPTION TO ALLOW RELATED SITE DEVELOPMENT WITHIN THE 50' BUFFER OF A NON-DESIGNATED WETLAND BE GRANTED, AS THEY HAVE DEMONSTRATED THAT THEY MEET ALL THE REQUIREMENTS AS OUTLINED IN THE ZONING ORDINANCE. Voted 5-0 in favor.

2801: NEIL AND RENEE FERRARO:

Hawkins – This is an improvement. There will be a new septic system and they will be moving it back. Dever – I agree. If granted, we should require a surveyed as-built plan, as it is right on the 50' line. Haley – I though we made that mandatory. Dever – We need to say it every time.

Dever moved, Joslin seconded, In case # 2801, NEIL AND RENEE FERRARO, I MOVE THE APPEAL FOR A VARIANCE TO REPLACE AN EXISTING SINGLE-FAMILY DWELLING WITH A FRONT SETBACK OF 50', 65' FT. REQUIRED BE GRANTED AS IT MEETS ALL FIVE CRITERIA REQUIRED AND ALSO A SURVEYED AS- BUILT PLAN BE PRESENTED BEFORE A CERTIFICATE OF OCCUPANCY MAY BE GRANTED. Voted 5-0 in favor.

2802: KENNETH FOLKES:

Hawkins- They are making it tight on the back but they are meeting the front setback. In the back you have the railroad tracks and then Neal Shore on the other side of that and any houses on Neal Shore are on the lake side and not the track side. I would rather see it this way than centered. Haley – It is such a narrow lot.

Haley moved, Joslin seconded, In case # 2802, KENNETH FOLKES, I MOVE THE APPEAL FOR A VARIANCE TO REPLACE AN EXISTING SINGLE-FAMILY DWELLING WITH A NEW RESIDENCE WITH A REAR SETBACK OF 8', 40' REQUIRED BE GRANTED, AS IT MEETS THE CRITERIA FOR A VARIANCE AND IT WILL IMPROVE THAT SECTION OF THE NEIGHBORHOOD. ALSO, A SURVEYED AS-BUILT PLAN BE PRESENTED BEFORE A CERTIFICATE OF OCCUPANCY MAY BE GRANTED. Voted 5-0 in favor.

2803: DONALD LARSON:

Hawkins – This is fairly straightforward. Haley – The way it is designed it doesn't interfere with his house and quite a distance from his abutters. Pelczar - I believe this will be as attractive as the house he lives in now. Joslin – They are holding that to 20'?

Haley moved, Pelczar seconded, In case # 2803, DONALD LARSON, I MOVE THE APPEAL FOR A SPECIAL EXCEPTION TO ALLOW CONSTRUCTION OF A 24'X 36' BOATHOUSE, 20' HIGH, LOCATED AT 140 VEASEY SHORE ROAD BE GRANTED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION, IT WILL NOT INTERFERE WITH ABUTTERS, IT WILL BE LOW PROFILE AND NOT INTERFERE WITH THE VISUAL FROM THE LAKE. Voted 5-0 in favor.

Meeting adjourned at 9:15 pm

Respectfully submitted,

Christine Tivnan
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on _____, 2007.

Fred Hawkins, Vice-Chair