

PRESENT: Dever, Chairman; Pelczar, Vice-Chairman, Flanders, Hampton, Clark, Edney, Code Enforcement Officer, Tivnan, Clerk

Clark moved, Pelczar seconded, THAT WE APPROVE THE MINUTES OF DECEMBER 10, 2009. Voted unanimously.

### PUBLIC HEARINGS

**2897. LAMAR RIGGS, TRUSTEE, LWR REVOCABLE TRUST:** An appeal for a VARIANCE (ARTICLE V, SECTION D-4) to replace a non-conforming structure with a front setback from the shoreline of 30' 3", 65' required, and a rear setback of 10', 30' required, Tax Map U19, Lot 23, 61 Pinnacle Park Road in the Shoreline District.

Sonya Misiaszek – The existing building and site are non-conforming. The existing structure is completely within the waterfront buffer area. There is a front setback of 16.2  $\frac{3}{4}$  '. The side setback is 11.6  $\frac{1}{4}$  '. This is a  $\frac{1}{4}$  acre lot. It slopes towards the lake. It is consistent with the abutting properties and a majority of the neighboring buildings are impacting into the front and rear setbacks. The existing structure on the lot cannot feasibly be brought up to existing code standards and a new building that meet all setbacks because the buildable area is so small. (Pointed to plan showing existing structure and proposed new structure.) The overall design of the new structure is more conforming. The proposal does reduce the parking area adjacent to Pinnacle Park Road. This area needs to be improved because the condition of the retaining wall is deteriorating. There will be a new septic system and we do have a NH DES Shoreland permit. The State did suggest we try to push this structure back as far from the lake as we can. The improved dwelling will increase the market value of the abutters. There will be some visual impact to the neighbor that is behind and across the road. It will be an improvement for the side neighbors. We have tried to come up with a plan that works within the Town ordinance, the State, and the neighbors. I believe you have received a letter from Rocco Scenna, the abutter across the street. (Showed elevations.) Lamar Riggs - I have spoken to Rocco twice and met him at his house last Sunday. He is concerned about the impact to his view. I pointed out to him the tree line along the lake is higher than our house. He did say without elevations we can't settle anything, so I went back later and did elevations with a tape and took pictures from his porch. (Passed pictures to the Board) There will be some impact to his view but we feel acceptably so. We did not reach any agreement but had cordial and reasonable conversations. John Scenna – My parents could not be here tonight but my brother and I felt it was important for us to attend. My father has sent a letter so I am here to represent my father. We don't have an objection to the Riggs family improving their property. We don't have an objection to them building. We have an objection to the way it is happening. We have two dwellings on our property. One is owned by us and one by my Uncle. When we built our house we wanted a second floor. We wanted to improve our property but not upset our neighbors. The advice we got was to try and not block anyone's view. My father decided not to have a second floor. Our biggest concern is that it will impact our

view and no one has proved differently. We believe in one thing and they believe in another. A simple solution is to take the elevation of the road, elevation of the deck and project a line of site. No one has proved on paper that our assumption is incorrect. We are not asking to deny their ability to improve their property but maybe to take their existing foundation and go up. I don't think that would be a problem. They are moving the house closer to the street so it is a double hit for us. I know the State has their benefits for moving it back, but by moving it back, even at the same height, the house is getting higher. We are asking that you postpone this until we get the elevations and what impact it will have on our property. I hope you understand our concerns.

Misiaszek –( Presented to the Board a drawing of the elevations that the family is requesting.) There is a ridge height of 557.5', here is the road as they requested and Lamar and Linda did the measuring. The road sits at approximately 536', the deck is approximately 25' back from the edge of the road ,16' high, which puts their deck elevation at 552'. So, yes there is an impact but it is not an impact that is straight in front of their face. The impact is about 75' away. You can see around the side of it and over the top of it. The State told us to pull this back as far as possible. We are trying to work within State regulations, the Town's ordinance and take into consideration the character and setbacks of surrounding properties. Dever – Do you people (Scenna's) have a view easement? Scenna – I'm not sure. I would have to look at the deed. Lamar – There is no view easement. Nick Scenna - When you say the deck elevation, is that the floor, railing? Misiaszek – The floor. I do have a copy of Lamar's deed. Dever – I don't think that is necessary. Hearing closed at 7:35 PM

**2898. MARK FLANDERS FOR EDWARD & HELEN DECELLE:** An appeal for a SPECIAL EXCEPTION (ARTICLE V, SECTION D-9, G.4.a.) to replace the existing structure with a new single-family dwelling within the 50' wetland buffer, 30' from the structure and 20' from the proposed patio, Tax Map U29, Lot 25, 16 Stonedam Island Road, in the Shoreline District.

Brian Flanders stepped down.

Dever – Mark, do you want to continue with a four member Board.

Flanders - Yes. Presented to the Board plans of the existing dwelling with a detached garage. The exact size, location, and quality of the existing leach field are unknown. There are several small pockets of wetlands on the property. They are poorly drained soils. (Pointed to the wetland buffer for the special exception.) It is approximately 3800 sq. ft., a little over the 3000 sq. ft., so it is not exempt. This wetland's primary value is THE storm drainage off the road run downs into the wetland so this wetland provides a filtered buffer before it hits the lake. We had to consider the location for a new septic and well. The reason the house and patio is impacting this buffer is to keep from pushing the leaching field back into a tree area forcing us to cut down some trees. (Showed pictures from different directions approaching the tree area.) We are trying to preserve this area. As you drive up the road it presents a nice streetscape. We would like to preserve that. The abutters have said they would like the Decelle's to maintain the trees. I would like to address some of the concerns that the Conservation

Commission has. They said the site was snow covered at the time of their visit so it was not possible to do a thorough site evaluation as to the value of the wetlands. So their comments and recommendations are based upon limited observation. I believe that is important. I will address that in a minute. The next is, they say the applicant wishes to construct a new and larger home closer to the waters edge, which is true. But closer to the waters edge is approximately 130' from the waters edge. So in this case, it is still a long ways away. They go on to discuss the functions of wetlands and buffers. One is protecting water quality. As with any old lake front property, the septic system is most likely non-existent. By moving the septic system back and putting in a new one, I believe we are helping the water quality. I feel strongly this wetland is mainly fed by the swale along the edge of the property. The proposed structure stays out of that area. All the signs I saw on this property show this wetland is not an area of standing water. In terms of lake front development, this is pretty low impact. The Conservation Commission also talks about aesthetic diversity and recreational value of the wetland. You have pictures showing the wetland. It is not offering any aesthetic diversity or recreational value. I think the impact that we are asking for is minimal and justified by what we feel is important and that is the character of the neighborhood. The total living area of this project is about 4150 sq. ft. (Showed pictures to the Board of neighboring properties with similar sq. footage.) We feel our proposal is reasonable. We feel confident we can control the sediment siltation during construction. We are willing to plant plants between the new proposed patio and the existing wetland in the buffer area to be sure this is re-vegetated. Hampton – Is the existing garage going to be torn down? Flanders – No, It won't. Edney – I think the struggle we have is based on a buffer impact to a very low functioning non-designated wetland versus removal of vegetation in an area that is up and down the road.

## DELIBERATION

### **2897. LAMAR RIGGS, TRUSTEE, LWR REVOCABLE TRUST:**

Clark – I think the applicant has done an outstanding job. My heart goes out to the neighbor whose view will be impacted. I have friends who have property with a beautiful view and yet they don't own the land through which the view goes. They have to face the possibility of trees growing up or neighbors building in that area. The question in front of us is not whether his property will impact the value of the neighbor's property because clearly, the project in my mind will negatively impact the value of the property behind it. The question is whether the variance we grant will have a negative impact. The variance we are talking about is a 30' setback and a completely reasonable alternative for this applicant. There will be no less impact to the view. I don't think there is any way we could deny this application based on the fact that it impacts the view. The project itself impacts the view not the variance. Flanders – I tend to agree with Warren. The State has told them where to put the building. Hampton – My thoughts are much the same as Warren's. I drove up and down the

street and there are a number of homes that have been replaced like this. Dever – It is unfortunate that their view is going to be altered but they don't have an easement.

Flanders moved, Clark seconded, IN CASE # 2897, LAMAR RIGGS, TRUSTEE, LWR REVOCABLE TRUST, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-4) TO REPLACE A NON-CONFORMING STRUCTURE WITH A FRONT SETBACK FROM THE SHORELINE OF 30' 3", 65' REQUIRED, AND A REAR SETBACK OF 10', 30' REQUIRED, TAX MAP U19, LOT 23, 61 PINNACLE PARK ROAD IN THE SHORELINE DISTRICT BE GRANTED, AS IT MEETS THE CRITERIA FOR A VARIANCE. Voted 4-0 in favor.

**2898. MARK FLANDERS FOR EDWARD & HELEN DECELLE:**

(Brian Flanders stepped down)

Clark – This special exception is causing me some issues. We are fortunate to have in this town a group of volunteers who are experts in biology and wetlands, etc. This group is the Conservation Commission. These are the experts. They are recommending against this application. There was a comment made by the applicant that the Conservation Commission could not fully evaluate this proposal. I want to remind the Board that it is the responsibility of the applicant to satisfy the Conservation Commission, not the other way around. If the Conservation Commission couldn't evaluate the site in the winter then clearly nobody else could. You can't say it might be ok. I don't go along with that. We could wait for a more complete evaluation. The other issue is there are alternatives. In the opinion of the Developer and the Code Enforcement Officer, some trees would have to be sacrificed to move this building up further away from that protected wetland. On the other hand, the experts say that these trees from an environmental prospective are not particularly important. Our ordinance doesn't say anything about the character of the neighborhood being a consideration. Some people think the trees are more important. The Conservation Commission doesn't think so. The ordinance doesn't care about the trees. The ordinance says to protect the wetland unless there is no alternative. In our ordinance it says "In granting a Special Exception, the Zoning Board of Adjustment must determine that each of the following conditions have been met and item b. says, alternative proposals have been considered, and that the submitted proposal represents the minimum amount of reasonable, unavoidable environmental impact to wetlands, streams and/or associated buffer areas." So, I am not able to support this application.

Hampton – It appears to me this wetland is more of a runoff collection area. Bill, is that a fair assessment? Edney – Yes it is. It is a vegetative runoff. Clark – Again, I will point out we have experts in this field and I think we need to give that more weight than people who are not recognized as experts. Pelczar- I think they have made a good attempt at this. I can't believe they could not get in there and do their tests and make a better case. Clark – When you said they, do you mean the applicant or the Conservation Commission? Pelczar – I think the applicant made the case but it's not like there is 10' of snow out there. I don't know why the Conservation Commission could not make some of their tests. Clark – I believe the Conservation Commission did

make their evaluation and are saying, had they made it in the spring time, it may have come out differently. I'll stop arguing now.

Pelczar moved, Hampton seconded, IN CASE # 2898 MARK FLANDERS FOR EDWARD & HELEN DECELLE, I MOVE THE APPEAL FOR A SPECIAL EXCEPTION (ARTICLE V, SECTION D-9, G.4.A.) TO REPLACE THE EXISTING STRUCTURE WITH A NEW SINGLE-FAMILY DWELLING WITHIN THE 50' WETLAND BUFFER, 30' FROM THE STRUCTURE AND 20' FROM THE PROPOSED PATIO, TAX MAP U29, LOT 25, 16 STONEDAM ISLAND ROAD, IN THE SHORELINE DISTRICT BE GRANTED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION. Voted 3-1 in favor. Clark voted against.

Meeting adjourned at 8:30 PM

Respectfully submitted,

Christine Tivnan  
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on April 8, 2010.

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Jack Dever - Chairman