

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

Clark moved, Flanders seconded, THAT WE APPROVE THE MINUTES OF JANUARY 14, 2010 AS AMENDED. Voted unanimously.

### ELECTION OF OFFICERS

Clark moved, Thorpe seconded to elect Jack Dever as Chairman. Voted unanimously. Flanders moved, Dever seconded to elect Mike Pelczar as Vice- Chairman. Voted unanimously.

### PUBLIC HEARINGS

- 2899. WILLIAM FULLER:** An appeal for a VARIANCE (ARTICLE V, SECTION D-7 B) to allow three (3) residential units on a 7,605 sq. ft. lot, 10,000 sq. ft. per unit required, Tax Map U06, Lot 100, located at 16 Lake Street in the Central Business District.

William Fuller - Presented to the Board some updated plans. Clark - What is the difference between these plans and the ones at the office? Fuller – The only difference is the old structure was here and when I replaced the garage, it may have moved over a foot. Also, there are five parking spaces versus six. We are looking for relief from the 10,000 sq. ft. per unit. I occupied that building from 2002 -2007. While I lived there, I remodeled the other side. In the back there was an existing structure that was used as an apartment back when my parents owned the property. There was no one there when I lived there. We tore it down and I built a garage with a loft above it. I thought at the time I could put another living unit above the garage. There was plumbing and sewer that ran to the old structure and it exist there now. From my understanding, it was never recorded through the town that there was a living unit in the back. Dever – Inaudible. Fuller – I am looking to put in a signal bedroom, loft style apartment over the garage. Thorpe – What is the footprint of the garage? Fuller – I believe it is 25' x 25' or 20' x 20'. Thorpe – I have a question about whether this unit is allowed if it is less than 500 sq. ft. As I read the ordinance, single-family detached dwellings in the central business district have to have a 500 sq. ft. minimum. Does this apply? Edney – No. That is strictly for single-family and this is multi-family. Thorpe- This is a question for Bill. It looks like multi-family dwellings in this district require a special exception. Edney – The way the ordinance is written, he goes for the variance for the 10,000 sq. ft., then submits to the Planning Board for a site plan review and then back to the ZBA for a special exception. Dave Dolan – The building is 24' x 24'. Fuller – It is 576 sq. ft. Thorpe – The 500 sq. ft. does not apply. Flanders – So right now

what is up there? Fuller - Open unfinished space. Dever - I am familiar with that old apartment and it was illegal. Fuller - I figured with water and sewer going to it the town knew about it. Flanders - Who parks there now? Fuller - The two tenants that are in the main building. Dever - I am not a fan of violating the 10,000 sq. ft. per unit. I don't like overcrowding. There have been movements in the past to change the density requirements and that has not happened. Fuller - The structure was there with living space and no one seems to know if it was there legally or not. Also, three of my closest abutters all exceed the 10,000 sq. ft as well. I believe 92 Main Street has (5-6) rentals. Flanders - You have (2) units there now? You already exceed the limit. Fuller - The (2) units are two-bedroom units with three floors and it is hard to rent. I don't see a whole lot of apartments in the downtown area and with this only being one bedroom; it will be affordable and beneficial. Flanders - Bill, would he have an option to make a third apartment in the building? Bill- When you move from a (2) unit duplex to a (3) unit, it becomes multi-family and commercial. Flanders - Could he put a business in on the first floor? Edney - Yes, but currently it's residential. Flanders - I know that's not what he is asking for. Dolan - If you went commercial, you would have more restriction on the parking requirements. Clark - How does a unit get connected with water and sewer without the town knowing about it? Edney - There is no connection. The stubs are there. Fuller - It's connected. Edney - Upstairs? Fuller - Not upstairs. Clark - No, I meant in the previous structure. Edney - I can't answer that. Fuller - That's my question also. Dever - Regardless of the history, the unit does not exist and he is here for a variance to add a third unit. We should stick to what he is here for. Clark - Could this have been grandfathered? Dever - No Hearing closed at 7:25 PM

- 2900. PETER & SARAH SHANELARIS FOR MARK & MARIA YOUNG:** An appeal for a VARIANCE (ARTICLE V, SECTION D-5) to allow a Taekwondo Studio in the Business/Industry District, Tax Map S23 Lot 64C, located at 16 Annalee Place (Unit A), in the Business/Industry District.

Peter Shanelaris - Mark Young has 3600 sq. ft. to rent. He would like to split it up so I could have 1800 sq. ft. to teach Taekwondo. I can't see how this would impact the area. It's hard to rent industrial these days. Thorpe - Looking at the ordinance, a dance studio does not appear to be a permitted use or a special exception. Should this be a special exception or do we need both? Dever- No, it needs a variance first because it is not a permitted use within that zone. Then they would have to go to the Planning Board for site plan approval. Shanelaris - Are we looking at a two-step process? Edney - No. Mark Young has site plan approval for (3) units. This is one of the (3) units. When the Planning Board reviewed his property, they review the worst case scenarios for parking and those kinds of things. . He has plenty of parking, so it doesn't rise to that level. He does have a number of things to do to get the site plan signed by the Planning Board. We are not going to allow any additional occupancy until he has signed approval. Dever - I am not a fan of changing the uses that

are allowed in the zone. I feel that should be done by the town. I'm not a fan of spot zoning. Shanelaris – This property is uniquely suited for what I want to do and there aren't a lot of places like this in Meredith. I'm curious on how this harms the community or the property? I don't think it would diminish the value of surrounding properties. I don't see how it would be contrary to the public interest. I think denial does present some hardship to him. Industrial has gone to China and everywhere else. I think it would be reasonably just to allow this. I don't think it is contrary to the spirit of the ordinance. Flanders – Under the list of special exceptions, it allows for a kindergarten or day nursery. I see this use as in the ballpark. Hearing closed at 7:33 PM

**2901. MEREDITH PUBLIC HEALTH NURSING ASSOCIATION FOR REALTY CONCEPTS INC.:** An appeal for a VARIANCE (ARTICLE V, SECTION D-5.A) to allow professional office space in the Business/Industry District, Tax Map S25, Lot 50, located on NH Rte. 104 and Waukewan Street, in the Business/Industry District.

**2902: MEREDITH PUBLIC HEALTH NURSING ASSOCIATION FOR REALTY CONCEPTS INC.:** An appeal for a VARIANCE (ARTICLE V, SECTION D-5) to allow portion of development to be within the required 50' natural or landscaped buffer zone, Tax Map S25, Lot 50, located on NH Rte. 104 and Waukewan Street, in the Business/Industry District.

**2903: MEREDITH PUBLIC HEALTH NURSING ASSOCIATION FOR REALTY CONCEPTS INC.:** An appeal for a VARIANCE (ARTICLE V, SECTION D-5.B.) to allow construction within the 30' front setback (38' proposed, 30' + 50' required) Tax Map S25, Lot. 50, located on NH Rte. 104 and Waukewan Street, in the Business/Industry District.

Carl Johnson – I think most of you are familiar with this property. It has been before the ZBA before. This is a triangular piece of property. It is zoned in the B/I District. It is buffered on the easterly side by private residences, the north by InkWare, and on the south by Vutek. The property is about ½ acre. It is not well suited for industrial development. When this went before the Planning Board for a motorcycle fabrication shop, it was clear there were several issues surrounding this property which makes it unique within the zone, not the least of which is the prominence coming in on Rte.104 as a visual piece of property. The permitted uses in the B/I District generally don't favor very nice looking buildings. There was resistance at the Planning Board regarding the architectural design of the fabrication shop. We need dimensional relief because of the extremely limited buildable portion of the property. This is a modest size building. It is a single story building located 38' from the ROW. We have to go to the Planning Board for site plan approval and then back to the ZBA for a special exception for parking within the setback. Most of the services they provide are off site. The hours of operation are very minimal. Normally in the B/I District, you are buffering something that doesn't look that great.

(Passed an architectural rendering of the building to the Board.) The buffer takes out 50% of the lot. We are proposing the addition of some trees. There will not be a lot of traffic on this site. There will be a single entrance. There will be no trash and no dumpster. They are proposing two signs on the property. One is a single sided sign facing the highway and the other will be double sided at the entrance. We do not believe it would diminish surrounding property values. There are mostly commercial properties surrounding this property. There are many more permitted uses for this property that would be significantly more intense. They would be louder and potentially have a lot more traffic associated with it. That also speaks to not being contrary to the public interest. Substantial justice would be served in that this property has been looked at for at least 20 yrs. and has had approval for different uses but because of the intensity, it met resistance from abutters and the Planning Board. This would allow a much more appropriate use of the property. The spirit of the ordinance would be served in that the lot would be able to be developed in character with the existing neighborhood without detriment to the abutters and the general public. There is an unnecessary hardship because of the special circumstances of the lot, which are its size, location, and proximity to other commercially developed properties which are developed with a greater degree of intensity. We believe this is a reasonable use of this property. We went before the Planning Board for a conceptual and they thought it was a great use of this property. Phyllis Hamblet – Ed Touhey and I spoke to Mr. Kimball who lives next door and he is very happy with the project. Clark – What is the status of the billboard on the property? Dick Harlow – The agreement for the sign is 2014 but my understanding now is the sign will be down by 2011. Johnson – It is the intention of the Meredith Public Health Nursing Association to discontinue the sign as early as the lease allows it to be discontinued. Hearing closed 8:00 PM.

#### DELIBERATION

#### 2899. WILLIAM FULLER:

Pelczar- It looks like the parking is covered in this case. I wish the Planning Board would do something about the density. Clark – I am torn here. This is a great deal of density but this is a highly dense area. It's not as if another building is going to be constructed that will make additional density. There has been movement in the Town to provide work force housing. While that has not been applied to this particular zone, we did recently change the zoning ordinance to allow work force housing and accessory apartments. The Town seemed to think that was a good idea. I'm not sure how this is going to hurt anything. I'm looking at the criteria and I am not sure which one it would violate. Perhaps it's the spirit of the ordinance. Flanders – I am not opposed to a well utilized piece of property but I feel like I am missing some information on the main building. What alternatives there might be? Clark – I am not sure which piece of information we are missing. Flanders – Square footage on the

main building, what alternatives they could do for revenue? Clark – Perhaps you are answering my question and the point that is missing is, there is no hardship. What’s unique about this property that creates a hardship? I am not sure what that hardship would be. I don’t see a hardship. Thorpe – The hardship here is the cubic size of the existing building being only two apartments and that limits revenue. I think if the owner came in and asked to convert the two apartments to four, so to increase his revenue and by the way, now the rental per-unit will go down and not have to develop the garage. I am guessing we would be more in favor of this. I’m sympathetic with that but the density is a big issue. This is not going to be an easy decision. I’m in the middle at this point. I see the hardship but this is not a great way to develop the lot. Flanders – I agree. Clark- I would like to remind my fellow Board members that if we plan to vote against this, we should clearly have in the minutes the particular criteria that is causing us to vote against it. Dever – I hear your argument Dave but unfortunately financial aspects cannot come into variances anymore. Thorpe – Thank-you for that reminder. Dever- Let’s go down the list.

1. Granting the variance would not diminish the values of surrounding properties: All agreed it would not.
2. Granting the variance would not be contrary to the public interest because: Clark – I don’t think it is going to make a difference. From the outside you are going to have the same appearance. Thorpe – It’s not going to force any overflow parking into the street. Clark- I disagree with that. If there are (3) apartments there, it’s not unreasonable to assume that two-people could be in each of those apartments and each of them could have a car. That’s not to say it is contrary to the public interest. Dever – I agree with you on the vehicles. Pelzcar – We have businesses that park on the street hoping they won’t get ticketed. They screw it up way more than (1) apartment. Agreed it would not be.
3. Granting the variance would do substantial justice because: Clark – I agree. It seems to me that it helps the people who own the property more than it hurts anybody else. All agreed w/ Warren.
4. Granting the variance would observe the spirit of the ordinance because: Thorpe – I have to say no on this. This increases the density on an already over dense situation.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. To show unnecessary hardship, you must provide facts that establish either (A) or (B) below:
  - A. Owing to special conditions of the property that distinguish it from other properties in the area:
    1. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

2. The proposed use is a reasonable use.

B. Owing to special conditions of the property that distinguish it from other properties in the area:

1. The property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of:

Clark – I don't think there is anything unique about this property. Pelzcar – I believe this property is too restrictive. Right next to it are two big building that have businesses plus apartments. Dever – In order for this variance to be granted, everyone has to agree that all (5) of the criteria have been met. It has failed the test on one already. Thorpe – I don't believe it passes the test for unnecessary hardship either.

Clark Moved, Thorpe seconded, IN CASE # 2899, WILLIAM FULLER, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-7 B) TO ALLOW THREE (3) RESIDENTIAL UNITS ON A 7,605 SQ. FT. LOT, 10,000 SQ. FT. PER UNIT REQUIRED, TAX MAP U06, LOT 100, LOCATED AT 16 LAKE STREET IN THE CENTRAL BUSINESS DISTRICT BE DENIED, BECAUSE THEIR APPLICATION FAILS TO MEET THE SPIRIT OF THE ZONING ORDINANCE AND THEY FAILED TO DEMONSTRATE A UNIQUE ASPECT OF THE PROPERTY THAT CREATE A HARDSHIP. Voted 4-1 in favor.

**2900. PETER & SARAH SHANELARIS FOR MARK & MARIA YOUNG:**

Clark – This is another tough one. I am looking at some of the uses that are permitted in B/I District by special exception and I see a kindergarten, day nursery, child care and in my mind the zoning ordinance can't cover every possible use. A Taekwondo Studio is a very similar kind of activity to other uses that are permitted by special exception. I'm wondering if it is reasonable to say no to this. Flanders – I agree with that.

1. Granting the variance would not diminish the values of surrounding properties: Clark – I don't think it would diminish the values of surrounding properties. All agreed it would not.
2. Granting the variance would not be contrary to the public interest: All agreed it would not.
3. Granting the variance would do substantial justice because: Clark – I don't see anyone losing out because of this, so the benefit to the applicant is way more than any loss to a group or individuals. All agreed there would be substantial justice.
4. Granting the variance would observe the spirit of the ordinance because: Thorpe – The use is less of an impact than industrial. Clark – Unless the spirit is to promote heavier use. However, the ordinance does permit by special exception other activities which are similar. I would say the spirit of the ordinance has been satisfied. All agreed.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary

hardship. To show unnecessary hardship, you must provide facts that establish either (A) or (B) below:

- A. Owing to special conditions of the property that distinguish it from other properties in the area:
3. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
  4. The proposed use is a reasonable use.

- B. Owing to special conditions of the property that distinguish it from other properties in the area:
2. The property cannot be reasonably used in strict conformance with the ordinance, and
  3. A variance is therefore necessary to enable a reasonable use of it.

Dever – During the presentation it was said they were not able to rent this as any of the allowed uses. As I said before, that no longer comes into play. Clark – I don't see it that way. There is no real substantial reason this property should not be used in the manner proposed. I would not be comfortable voting against this due to the hardship criteria. Flanders – I feel there is more of a hardship to try and find a place in Meredith to do what he is trying to do. Dever – That doesn't meet the criteria of #5 (B). Thorpe – The #5(A) side of this test is hard to say there is a fair relationship between the public use the ordinance requires and the specific application being requested. I think there is not a fair relationship between what is being requested and what the ordinance requires. Therefore, I do think there is a hardship here, so 5 (A) carries in my estimation. Clark – That is what I was feeling.

Clark Moved, Thorpe seconded, IN CASE # 2900, PETER & SARAH SHANELARIS FOR MARK & MARIA YOUNG, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-5) TO ALLOW A TAEKWONDO STUDIO IN THE BUSINESS/INDUSTRY DISTRICT, TAX MAP S, LOT 64C, LOCATED AT 16 ANNALEE PLACE (UNIT A), IN THE BUSINESS/INDUSTRY DISTRICT BE GRANTED, AS IT MEETS THE FIVE CRITERIA FOR A VARIANCE. Voted 4-1 in favor.

**2901. MEREDITH PUBLIC HEALTH NURSING ASSOCIATION FOR REALTY CONCEPTS INC.:**

Dever – The next three are all for the same lot. Although Carl presented all three at the same time, we will need to vote on each one individually. Clark – This is an interesting piece of property because it is in the B/I District but located in an area that is extremely visible. We are fortunate to have this case in front of us. The Town is lucky that this use is being proposed. I can't imagine a better use for this parcel. Pelzcar - This is a tough spot. I think they have done the best they can with it. I agree with Warren, aesthetically it will look great. Flanders – We have seen this way too many times. I think it's a good fit. Clark – I feel as though they have met all of the (5) criteria. Thorpe - I agree.

1. Granting the variances would not diminish the values of surrounding properties: All agreed it would not.
2. Granting the variances would not be contrary to the public interest: All agreed it would not.
3. Granting the variances would do substantial justice: All agreed it would.
4. Granting the variances would observe the spirit of the ordinance because: Clark – I believe the ordinance has made special provisions for that particular area. My understanding is that it is very important to the town to maintain that Rte 104 corridor in as an attractive mode as possible. This building is unusual in the B/I District, because it is so attractive it certainly meets the intent of the zoning ordinance. Thorpe – If the buffer was added to help prevent unsightly buildings then in this case allowing them to encroach in the 50' buffer is appropriate because the building is so attractive. All agreed it would.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. To show unnecessary hardship, you must provide facts that establish either (A) or (B) below:
  - A. Owing to special conditions of the property that distinguish it from other properties in the area:
    5. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
    6. The proposed use is a reasonable use.
  - B. Owing to special conditions of the property that distinguish it from other properties in the area:
    4. The property cannot be reasonably used in strict conformance with the ordinance, and
    5. A variance is therefore necessary to enable a reasonable use of it.

Clark –Just look at the shape of the property. Dever – The shape of this property makes it unique and this would be the best use for this property.

Flanders moved, Pelczar seconded, IN CASE # 2901, MEREDITH PUBLIC HEALTH NURSING ASSOCIATION FOR REALTY CONCEPTS, INC., I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-5A) TO ALLOW PROFESSIONAL OFFICE SPACE IN THE BUSINESS/INDUSTRY DISTRICT, TAX MAP S25, LOT 50, LOCATED ON NH RTE. 104 AND WAUKEWAN STREET, IN THE BUSINESS/INDUSTRY DISTRICT BE GRANTED, AS IT MEETS THE CRITERIA FOR A VARIANCE. Voted 5-0 in favor.

**2902: MEREDITH PUBLIC HEALTH NURSING ASSOCIATION FOR REALTY CONCEPTS INC.:**

Flanders moved, Pelczar seconded, IN CASE # 2902, MEREDITH PUBLIC HEALTH NURSING ASSOCIATION FOR REALTY CONCEPTS, INC., I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-5) TO ALLOW PORTION OF DEVELOPMENT TO BE WITHIN THE REQUIRED 50' NATURAL OR LANDSCAPED BUFFER ZONE, TAX MAP S25, LOT 50, LOCATED ON NH RTE. 104 AND WAUKEWAN STREET, IN THE BUSINESS/INDUSTRY DISTRICT BE GRANTED, AS IT MEETS THE CRITERIA FOR A VARIANCE. Voted 5-0 in favor.

**2903: MEREDITH PUBLIC HEALTH NURSING ASSOCIATION FOR REALTY CONCEPTS INC.:**

Flanders moved, Pelczar seconded, IN CASE # 2903, MEREDITH PUBLIC HEALTH NURSING ASSOCIATION FOR REALTY CONCEPTS, INC., I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-5.B) TO ALLOW CONSTRUCTION WITHIN THE 30' FRONT SETBACK (38' PROPOSED, 30' + 50' REQUIRED), TAX MAP S25, LOT 50, LOCATED ON NH RTE. 104 AND WAUKEWAN STREET, IN THE BUSINESS/INDUSTRY DISTRICT BE GRANTED , AS IT MEETS THE CRITERIA FOR A VARIANCE. Voted 5-0 in favor.

Meeting adjourned at 8:45 PM

Respectfully submitted,

Christine Tivnan  
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on May 13, 2010

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Jack Dever - Chairman