

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

Alternate: Reichlen

Thorpe moved, Flanders seconded, THAT WE APPROVE THE MINUTES OF JANUARY 13, 2011. Voted unanimously.

### PUBLIC HEARING

**2938: AMES ASSOCIATES FOR SPINDLE POINT REALTY TRUST:** An appeal for a VARIANCE (ARTICLE V, SECTION D-4B) to construct a new single-family dwelling with a front setback of 50', 18.1' existing, 65' required, Tax Map U28 Lot No. 25, located at 91 Old Hubbard Road in the Shoreline District.

Dan Ellis (Ames Associates) – This site is located on Old Hubbard Road at the intersection of Stonedam Island Rd. and Dale Road. This house burned down last year. The house was roughly 18' from the water. The survey plans in your packets show the existing improvements on the lot. Also in your packets is the existing topography of the lot. (Pointed to an area that is steep and over 30%.) This is the limiting factor on this lot as far as placing the house. Our proposal is to place the house behind the 50' setback required by the State. The papers I just handed you show the amount of excavation required to place the house behind the 50' and then again to move it back to the 65'. There would be a substantial increase in excavation and disturbance to the lot. The driveway and parking will be behind the house. We will be excavating behind the house for drainage and aesthetically also. We will have to excavate approximately 1100 yards. Moving it back another 15' would result in a 60% increase in excavation and also an additional 3000 sq.ft. of disturbance on the lot. We do have State approval which includes some improvements for protection of the lake. One of them was to move the house back. The amount of impervious surface on the lot will decrease slightly from 26% to 25.1%. Let me run through the criteria for a variance.

1. Granting the variance would not diminish the values of surrounding properties because the proposed residence will be more conforming than the existing. House of modern construction and of greater value than the prior house and is consistent with the character of the neighborhood.
2. Granting the variance would not be contrary to the public interest because the proposed distance to the public water will be greater than the prior structure, is consistent with other residences in the neighborhood and improvements to the lot are part of this project which will improve the protection of the public water body.
3. Granting the variance would do substantial justice because it will benefit both the public and the applicant as the proposed house will be more conforming and will better

protect the lake. I don't feel there is any public benefit to move it back another 15' and result in increased disturbance and excavation.

4. Granting the variance would observe the spirit of the ordinance because the proposed house will be in a location more conforming and the overall project will be an improvement to the protection to the lake. Any questions?

Dever – What about #5.

Ellis- #5- The primary purpose of the ordinance is to protect the public water body. The unique feature of this lot is the steepness of the area behind the house which makes it difficult to site the house and parking area behind the 65' setback without significant excavation and disturbance. Our goal was to balance the disturbance to the lot and the protection of the public water body. There is no change in the use.

Thorpe- Have you received any estimates from contractors or engineering estimates on what the increased cost would be if you moved it back 65'? Ellis – I have not. Thorpe – Have you considered that the elevation of the house itself at the front corner could be elevated above grade with just a slight increase in a frost wall and therefore fill in the front of the house as well as cut behind the house and that would reduce the amount of excavation. Ellis – We did consider that and there would still be a significant increase in the excavation moving it back to the 65'. Thorpe – We don't know if we are talking a \$1000.00 or \$100,000.00? Ellis – I think it would be over \$10,000.00 but I don't have exact numbers. I think more importantly would be the disturbance to the lot and increased excavation.

Pelczar – You said when you went to the State you just asked for the 50' and not 65'? Ellis – Yes – We designed this in accordance with the State regulations and I feel putting it at the 65' would be approvable at the State level but we felt this was a more balanced alternative. Dever – Are you aware of the fact that possibly before Town Meeting there will be an article on the warrant to reduce the setback from 65' to 50'. Ellis - I have heard the rumor but did not know it was actually a warrant article. Edney – (Inaudible) Dever – The meeting I went to everybody was in favor of it and I didn't know they had any meetings since then. Bill Heffron – I see you have the leach field on part of the tennis court, what are you going to do with the remainder of the tennis court? Ellis – The plan is to keep the remaining portion. I think there may be some basketball hoops on that portion of the court. Heffron – I am in favor of the application because I agree with the topography of the lot and with my home being here (pointed to the plan) I think for them to have a large envelope to put the footprint of the home they would like to build there would be more of an advantage to let them move it around and have less of an impact into the hill for their driveway. Hearing closed at 7:23 PM

**2939: MICHAEL CASEY, ROBERT HOFEMAN AND ROBERT CASEY:** An appeal for a VARIANCE from the density requirement, (ARTICLE V, SECTION D-4B) with a net density of 4.5 +/- acres, 28 acres required, Tax Map U04, Lot No. 16, located at 19 Pollard Shores Road in the Lake Waukegan District. (CONTINUED TO MARCH 10, 2011)

Flanders moved, Thorpe seconded, IN CASE # 2939, MICHAEL CASEY, ROBERT HOFEMAN AND ROBERT CASEY, I MOVE AN APPEAL FOR A VARIANCE FROM THE DENSITY REQUIREMENT, (ARTICLE V, SECTION D-4B) WITH A NET DENSITY OF 4.5 +/- ACRES, 28 ACRES REQUIRED, TAX MAP U04, LOT NO. 16, LOCATED AT 19 POLLARD SHORES ROAD IN THE LAKE WAUKEWAN DISTRICT BE CONTINUED TO MARCH 10, 2011, TO ALLOW THE BOARD TIME TO REVIEW THE DOCUMENTS PRESENTED TONIGHT. Voted 5-0 in favor

**2940: DONOVAN TREE EXPERTS:** An appeal for a SPECIAL EXCEPTION (ARTICLE V, SECTION D-7B) to allow parking within the 30' front setback, Tax Map U12, Lot No. 19, located at 30 Jenness Hill Road, in the Central Business District.

Carl Johnson – We appeared before the Meredith Planning Board and received conditional approval for this site plan. This property is located on Jenness Hill Road. It is currently a vacant piece of property. This is a simple site plan. They are constructing a 50' x 50' building to store their tree maintenance business. There is a single entrance off of Jenness Hill Road and as you can see by the topography on the plan there is a fairly steep banking. So without extensive excavation, this is the only site for the proposed building and parking. We placed the building on the site that would not require any variances for setbacks. There is a limited amount of parking required by this business because of the nature of this business. Most of the tree business takes place off site so there are few people that come to the site. It's basically the employees coming to work with their vehicles. Most of the business vehicles will be stored inside the building at night with a few exceptions. We have four parking spots. A little more than half of each one of those spaces is located within the front setback but it is being buffered by a proposed landscape area on each side of the sign and also because of the nature of the lots and Jenness Hill Road the actual parking spaces are pretty far off the road. In order to get the minimum amount of parking required by the town on this site reasonably, without digging too far into the banking, we thought this application was more reasonable. The criteria for this type of Special Exception is to have the site plan approved by the Planning Board, to demonstrate it is not noxious or offensive to the neighborhood, not detrimental to the neighborhood, and also does not pose any detriment to public safety or public health. I think the fairly inert parking during the business hours is not a threat to those criteria's. We believe we meet the criteria for granting a Special Exception. Hearing closed at 7:10PM

## DELIBERATION

**2938: AMES ASSOCIATES FOR SPINDLE POINT REALTY TRUST:**

Thorpe – I think the applicant has painted a worst case to try and scare us into approving this and I don't think they worked nearly as hard to hit the 65' as they did to hit 50'. I think the 65' is possible without great penalties. Pelczar – Even though I think the Town should adopt the 50', I agree with Mr. Thorpe that the 65' is achievable. Flanders – I don't think I have the hardline the other two have. It is a steep grade back there and this is similar to another case that we had where they are replacing an existing house and

there was an area to push it back. There is some hardship here as far as the mountain behind the house and his neighbor concurred he didn't want to see it back the 65'. I do agree they always come within the 50' but pushing it back farther is just going to drive the cost up and probably make the lot not nearly as useable and not look as good for his neighbor. Dever – One of the things they did when the Supreme Court changed the whole scheme of things is they did leave in the cost thing which was not a consideration before. I agree with what everybody said. There is a cost factor here. I have been to the site and it is possible to move it back but you do have to take the cost into consideration. The house burned and they could have rebuilt with the existing setbacks within a year. Flanders – Has it been a year? I think they are within a year. It was March 2010. Goodheart – I do agree that it would be possible to meet the 65', moving it back to the 50' does satisfy the State, though not the Town but it is a far cry better than the 18.1' that it was before. It is a steep bank and I am sure they considered the cost to excavate it and weigh the difference. There is probably ledge there also. I think the drainage would be better at 50'. It would be shallower at the green area going on the south side. I think they have made some effort and I think the 50' would be fine. Flanders- If you look at the plan, it looks like the one corner of the house pretty much meets the 65'. The open decks are what is hitting the 50' and as you see the 65' line; there is not a huge chunk within that area. It seems like a good compromise between the waterfront and the excess cost of going back. Pelczar - We had a case that was only asking 18". He's talking about putting in the leach field where the tennis court is now so there is going to be excavation to begin with. Maybe flipping the house, playing with the grades or putting the garage on the other side so you don't have to cut in so deep. I still think there are things they can do. I would love to see the 50', but I believe in this case they can meet the 65'.

Dever – Motion?

Flanders moved, IN CASE # 2938, AMES ASSOCIATES FOR SPINDLE POINT REALTY TRUST, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-4B) TO CONSTRUCT A NEW SINGLE-FAMILY DWELLING WITH A FRONT SETBACK OF 50', 18.1' EXISTING, 65' REQUIRED, TAX MAP U28 LOT NO. 25, LOCATED AT 91 OLD HUBBARD ROAD IN THE SHORELINE DISTRICT BE GRANTED AS IT MEETS THE CRITERIA FOR A VARIANCE.

Dever – One thing I didn't do was to go down through the five criteria. Let's hold on a second to the motion until we go through the criteria.

1. Granting the variance would not diminish the values of surrounding properties. The Board agreed it would not.
2. Granting the variance would not be contrary to the public interest: Some said it would not. Thorpe -I think that is up for debate. Pelczar- Agreed with Thorpe.
3. Granting the variance would do substantial justice: To the applicant it would.

4. Granting the variance would observe the spirit of the ordinance: Dever – Obviously it would not. The spirit and intent of the ordinance is to have the 65' setback.
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.

Dever – He chose criteria # 2 under- Owing to special conditions of the property that distinguish it from other properties in the area. The proposed use is a reasonable use. I don't think this property is much more different than surrounding properties.

Flanders – But not all of them have a mountain in the middle of the property. It goes up and then back down to the road. There is a mountain in the middle of his property.

Thorpe - One of the requirements of 5B is that the property cannot be reasonably used in strict conformance with the ordinance. Just some rotation of the building and a change to one deck would put it in conformance without increasing the excavation. As Mike suggested, there are some creative things that can be done here to have a satisfactory project and meet the 65'. Anyone care to second the motion. Thorpe – I will.

Flanders moved, Thorpe seconded, IN CASE # 2938, AMES ASSOCIATES FOR SPINDLE POINT REALTY TRUST, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-4B) TO CONSTRUCT A NEW SINGLE-FAMILY DWELLING WITH A FRONT SETBACK OF 50', 18.1'EXISTING, 65' REQUIRED, TAX MAP U28 LOT NO. 25, LOCATED AT 91 OLD HUBBARD ROAD IN THE SHORELINE DISTRICT BE GRANTED AS IT MEETS THE CRITERIA FOR A VARIANCE. Voted 2-3 in favor.

Thorpe moved, Pelczar seconded, IN CASE # 2938, AMES ASSOCIATES FOR SPINDLE POINT REALTY TRUST, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-4B) TO CONSTRUCT A NEW SINGLE-FAMILY DWELLING WITH A FRONT SETBACK OF 50', 18.1'EXISTING, 65' REQUIRED, TAX MAP U28 LOT NO. 25, LOCATED AT 91 OLD HUBBARD ROAD IN THE SHORELINE DISTRICT BE DENIED BECAUSE THE PROPERTY CAN BE USED IN STRICT CONFORMANCE WITH THE ORDINANCE, THEREFORE, IT DOES NOT MEET 5B. Voted 3-2 in favor.

#### **2940: DONOVAN TREE EXPERTS:**

Thorpe- This seems pretty straightforward. Dever – This is a small lot.

Thorpe moved, Pelczar seconded, IN CASE # 2940, DONOVAN TREE EXPERTS, I MOVE THE APPEAL FOR A SPECIAL EXCEPTION (ARTICLE V, SECTION D-7B) TO ALLOW PARKING WITHIN THE 30' FRONT SETBACK, TAX MAP U12, LOT NO. 19, LOCATED AT 30 JENNESS HILL ROAD, IN THE CENTRAL BUSINESS DISTRICT BE GRANTED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION. Voted 5-0 in favor.

Dever – Remember there is a 30 day appeal period on these applications.

Meeting adjourned at 8:00 PM

Respectfully submitted,

Christine Tivnan  
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on March 10, 2011

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Jack Dever - Chairman