

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

Alternate: Goodheart, Reichlen

Pelczar moved, Flanders seconded, THAT WE APPROVE THE MINUTES OF FEBRUARY 10, 2011. Voted unanimously.

PUBLIC HEARING

2941: AMES ASSOCIATES FOR SYLVIE F.ST. HILAIRE: An appeal for a SPECIAL EXCEPTION (ARTICLE V-D-9) to allow a proposed leach field 56' from a non-designated wetland and 59' from a non-designated stream, 75' required, existing system is approximately 15' from wetland, Tax Map U26, Lot No. 31, located at 104 Cummings Cove Road in the Shoreline District.

Dan Ellis (Ames Associates) Lot 30 has a non-designated stream running through it diagonally behind a small house. Lot 31 next door is vacant and is also owned by the St. Hilaire's. The build ability is limited by the 75' buffer to the non-designated stream. It is in a zone that requires a 40' front setback, 30' side setback and 40' rear setback. There will be an easement. The existing septic system on Lot 30 is located 15' from the wetland. The proposal is to build a new system to serve this residence and put it on the vacant lot next door. There is limited room on Lot 31 for this septic system without impeding future development of the lot. An alternative to this design was considered but placing the new leach field on Lot 30 would place the leach field 20' from the wetland. The proposed system will be 56' from non-designated wetlands and 59' from the stream. The existing system is 15'. This project results in better protection of the wetlands system/stream and minimizes environmental impacts. This will be a modern system. The proposal is consistent with Section C. Thorpe – Is the new leach field intended to be a common one if there is building on Lot 31. Ellis – Not at this time. Thorpe - Is it sized such that it could be used in common? Ellis – No. It is sized for this existing three bedroom residence. Hearing closed at 7:15 PM

2942: 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 54.5', 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. This house burned down last year. The house was roughly 18' from the water. The survey plan shows the existing improvements on the lot. (Showed a plan with the existing improvements along with the topography of the lot.) There is a significant knoll on this property. The side slopes are 30% plus. The proposal is to construct a new single-family dwelling with a front setback of 54.5'. The closest locations are to the decks. In order to accommodate the driveway and parking, there will be 3 retaining walls in a tiered fashion. We have considered alternative proposals. Moving the house 65' from the lake would result in about a 60% increase in excavation. This would result in an additional 3000 sq.ft. of disturbance to the lot. The cost of additional excavation was estimated by

the contractor to be about \$20,000.00. If ledge is encountered, it could be a lot more. Our original proposal was with a front setback of 50'. The current proposal shows the same house moved back from the lake 2' and rotated to achieve the 54'4' setback. We had 31 ½' ft. for the driveway in front of the garage and it is now 28'. We considered moving the garage to the north side of the house. The draw back to that is a portion of the driveway is very steep and it would be difficult to achieve a flat area for parking. As far as raising the house up in elevation, in order for a better balance, a cut into the hill would result in placing fill within the 50' buffer to the lake. In addressing the 5 - criteria.

1. Granting the variance would not diminish the values of surrounding properties because the proposed residence will be more conforming than the existing. The house will be 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 of the house is a great improvement from the existing location of 18' from the lake. The project will also include improvements to the site that will better protect the lake as compared to the existing conditions.
3. Granting the variance would do substantial justice because to deny the variance would cause increased disturbance to the site and unnecessary financial hardship to the applicant with no balancing benefit to public.
4. Granting the variance would observe the spirit of the ordinance because it is to protect the public waterbody.
5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship as the property is unique. There is only a small area between the 65' setback and the steep slope. The cost for extra excavation would be between \$20,000. - \$30,000. There would be extra environmental impacts and extra tree removal. The proposed use is a reasonable one. The proposed use is residential, is the same as existing and is consistent with the neighborhood. The proposed setback of 54.5' for this project would be more consistent with the spirit of the ordinance than strict conformance with the 65' setback. David Ames – I met with one of the abutters, Mr. Heffron. I asked him why he showed up at the last meeting in support of this. He feels if the house is moved further back, it will decrease the value of his house. As we move the house back and it goes up in the air, his view will be affected. There is a letter in your packet stating he is in support of this. Hearing closed at 7:30 PM

2943: RIGHT ANGLE ENGINEERING FOR FOUNDRY AVENUE REALTY TRUST: An appeal for a VARIANCE (ARTICLE III-D-3A) to allow warehousing, light manufacturing, building trade or repair shop and/or equipment and truck repair facility in the Residential District, Tax Map S23, Lot. No.46, located on Foundry Ave. in the Residential District. (Jack Dever stepped down)

TO: Bill Edney, Zoning Administrator

FROM: John Edgar, Community Development Director



DATE: March 10, 2011

RE: **Case # 2943**

The subject parcel is bisected by a zoning boundary which demarks the Residential District and the Business and Industry District. This bisection was the result of a 2009 Boundary Line Adjustment that annexed 4 acres of residentially zoned land to a developed, 1 acre lot in the B/I District. According to the minutes of October 27, 2009, Carl Johnson, Jr. indicated the applicant was investigating the expansion of the existing facility on Foundry Avenue in terms of lot coverage. Additionally, Mr. Johnson acknowledged that they were not allowed to do anything commercial in the residential zone without the benefit of a variance and that they would be allowed to put a residence on the lot per the zoning ordinance if they so desired.

According to the pending ZBA application, the applicant proposes to develop the residentially zoned portion of the lot for uses that are permitted in the adjoining B & I District specifically: (1) warehousing, (2) light manufacturing, (3) building trade or repair shop and/or (4) equipment and truck repair facility. Thus, the applicant seeks a variance to permit the aforementioned industrial uses in a Residential District.

In 2008 the Planning Board and the Zoning Board of Adjustment participated in crafting a zoning amendment addressing circumstances when a property is bisected by a district boundary. The Planning Board took to public hearings (1/13/09 and 1/27/09) a proposal that would curtail the practice of extending zoning district boundaries (and associated uses) thru the annexation of adjoining parcels. This proposal went before the voters in March 2009 and was approved. The

resulting provision is Article V (Establishment of Districts and District Regulations, Section C (District Boundaries), Subsection 5. As indicted in the minutes of the January 13, 2009 public hearing, the intent of the zoning ordinance proposal was in part to "...address zoning creep where lots that were split by a zoning district line were then being used for a district that was beyond what was originally intended..."

Please share this memo with the Board for their information as part of the public hearing process (as opposed to at the time of deliberation). Also, please place a copy in the application file for Case # 2943, Tax Map 23, Lot 46. Thank you.

March 10, 2011

Zoning Board of Adjustment
Town of Meredith, NH
Office of Community Development 41
Main Street
Meredith, NH 03253

To Whom It May Concern;

I am writing this letter as an abutter to Lot 46. I received a notice in my mailbox on Wednesday, March 2, and was able to pick up the letter on Friday, March 4, for a matter that was being discussed on Thursday, March 10. Because of the heavy rain, my schedule, and the extensive snow cover in the woods, I have been unable to visit the property in question. Especially with the almost three inches of rain we received, I would have appreciated more time so I would be able to see where any runoff occurred. I would also have appreciated a view later in the season so I could visit the wetland areas and see the site without snow cover.

Having said that, I have some serious concerns that I feel need to be addressed. I am very aware of the affect of commercial development on the watershed and the quality of the water in Lake Waukegan. In addition, I live at the bottom of the mountain, on Waukegan Street. My property - I live just below the end of Foundry Avenue- and Lake Waukegan now receive extensive damage caused by the storm runoff from the pavement and commercial buildings above me. This is despite the fact that there is a large amount of tree cover that exists from my property to Foundry Avenue. It would be worse but I purposely have no lawn and extensive tree cover to lessen the impact of the rain hitting the ground. However, even then, what used to be trickle on the west side of my property is now a raging stream and a six foot gully bringing whatever types of chemicals and debris above me directly into Lake Waukegan.

That is the reason I can see the potential of extensive damage being caused by the site in question. Therefore, I believe that the impact of the building, the amount of pavement, the encroachment of a commercial enterprise and the chemicals — salt, fluids — that will emanate from such an establishment and affect the watershed and our reservoir should be thought through thoroughly and carefully. I have extensive knowledge about the effects of storm water and some knowledge of storm water management. I therefore believe the affect on the watershed in

general, the property below the land in question, and Lake Waukegan — our town reservoir- must be our number one concern and that there should be no commercial encroachment on a an area of watershed that is so close to our only town reservoir.

Thank you in advance for careful consideration of this matter.

Sincerely,



Erin Darrow - This is an application for a variance for property located at 22 Foundry Ave. We are asking to allow warehousing, light manufacturing, building trade or repair shop and/or equipment and truck repair facility in the Residential District. This neighborhood is solely business and industrial uses. There are no residential developments on Foundry Ave. We are proposing to maintain the spirit of the neighborhood with the further development of the subject property. We show a proposed layout which illustrates the approximate location of a future building. We are going to be impacting a small percentage of the lot, leaving most of the parcel in an undeveloped state. It is significant to know there are 8 abutting properties to this parcel and of the 8, there are 7 landowners. Out of the 7 landowners, we have 4 letters of support of this application. The concern of some of the landowners is the possibility of there being a mixture of residential development in the B/I District. Without the granting of this variance, the most likely projected use would be residences. With the size of the property we could most likely get up to three residential units. These residences could only be accessed through the B/I District. There is no other access. The purposes of this building are intended to be warehousing or a general repair facility for either a garage or for the building in trades. Right now it looks like a good portion of the building will be for warehousing. The uniqueness of this portion of the property is why we decided to go forward with this variance. The fact this property can only be accessed through the B/I District is extremely significant and there are provisions in the zoning ordinance that emphasize the need to separate B/I uses from non complimentary land uses, specifically residential. If this variance is not granted, we will have a mix of residential development in a neighborhood that is heavily business and industry. We could have children playing in the street where there is truck traffic, possibly a need to add a school bus route and other items of consideration. We ask the Board to please keep this in mind. Granting the variance would not diminish the values of surrounding properties. There exists a strong possibility the values of the surrounding properties would diminish if this variance was not granted. There is a concern if there is a small cluster of residential development and the abutting is business and industrial development, what will happen with those properties in the future. That could have a negative affect not only on the building at Lakeside Plumbing and Heating but on Stewarts Ambulance Service and Comstock Industries, both of which are in support of this application. The proposed building will be of new construction. We will take measures that all storm water runoff is appropriately mitigated. We will be taking into careful consideration the proximity to the Lake Waukegan Watershed. We feel confident we will be able to successfully implement storm water management techniques to retain and treat runoff. We will be in

conformance with all State and Federal regulations. Granting this variance will not be contrary to the public interest. By granting the variance it will ensure that future development on the site property is the best use of the land. The proposed uses for this variance are consistent with the character of the Foundry Ave. neighborhood. Granting the variance would do substantial justice as will be a benefit to both the public and applicant. It will allow the highest and best use of the property by preventing the mix of non-complementary land uses and prevent diminishing property values. Granting the variance would observe the spirit of the ordinance because it will allow for a land development pattern consistent with the spirit of the zoning ordinance. It will prevent a small pocket of residential development from occurring in an industrial neighborhood. Article v, Section D-5, paragraph 4 of the Meredith Zoning Ordinance states. " It is intended that the separation of industrial uses from residential and commercial uses will promote a more desirable land use pattern, protects from the influences of other land uses, provide suitable needs for industrial location and expansion, promote stability of industrial and related development and strengthen and protect the Town's net tax base." That quote is from the B/I section of the zoning ordinance, not the residential. Given the proximity of the property and how it is accessed is a direct influence on properties in the B/I District. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. In addressing A. The special conditions of the property distinguish it from other properties in the area. Because, 1. No fair and substantial relationship exists between the general public purposes of the ordinance provisions and the specific application of that provision to the property, and 2. The proposed use is a reasonable use. The proposed use of the property is consistent with uses already existing in this neighborhood. The property has a unique configuration in that it contains land area in two districts. The area in the residential district can only be accessed by crossing through land in the B/I District. It was understood when this annexation occurred we would need to go through this process in order to make this type of development occur. We actually have 4 out of the 6 property owners in favor of this application. We have strong support of this application with some in each district. I would like to address the letters from the abutters that were received today. We understand their concerns with impacts from storm water down stream. If we are granted this variance, we would have to go for a Special Exception for impacts to the wetlands and we would have to go through a review process with the Planning Board for site plan review. We would have to demonstrate we have provisions to mitigate storm water runoff, to insure that there is not going to be any detrimental affects to abutting properties. We are within the building setbacks. If this were to be developed in a residential means, it's very likely we would have a larger footprint, which could result in more storm water runoff. It is important to realize we are not requesting commercial use on this property. Only uses consistent with B/I. That's the purpose of this application. Clark – We know there was a boundary line adjustment. Did the person you represent own this property prior to that? Darrow Yes. Clark – A separate parcel? Darrow – This property was not owned by the owner. He purchased this. Clark – Prior to the time he purchased it, was there a ROW to it? I didn't think we had properties that were inaccessible except by crossing over someone else's property unless there's a ROW. Darrow. - Carl Johnson did the boundary survey. I will let him answer this question. Johnson – The original lot does have frontage on Waukegan Street. There is a wetland

that bisects the property. In order to access the portion that was annexed to Foundry Ave. Realty, you would have to cross the wetland with a driveway. There was no ROW but it was inaccessible in terms of the access without crossing a wetland. The BLA created were the Price's retained the property that had frontage on Waukegan Road and by annexing the property to Foundry Ave. Realty Trust; we created a 5 acre piece of land, a portion which has the existing building on it. The drainage one of the abutters is concerned with happens from a portion of the Foundry Ave. development that is further to the east of this property. That drainage is affected by some of the lots in the Foundry Ave. development that were developed prior to the extensive drainage analysis we now have as part of the Planning Board process. It's quirky when you are applying for a variance. If this were a Special Exception, we are required to go to the Planning Board first, receive conditional site plan approval and then come to the Zoning Board for the Special Exception. For the variance we have to come to the Zoning Board first. The Planning Board process would include all the elements some of the abutters are concerned with in terms of access, drainage, and buffering. Most of the businesses in this area operate during daytime hrs. with a few exceptions. There is not much going on at night and on weekends. Whereas, any type of residential development, child care facility, grocery store under 5,000 sq. ft., those uses would be more intense. You would then have the details of the drainage as well as the control measures for the sediment and erosion. We will do everything we can to keep as much of that development towards the front of the property to allow for extensive buffering to the northwest. If this was a residential use we would not have to go to anybody. You could start cutting, clearing, and you could disturb areas. The ordinance protecting the water source deals only with the density of the subdivision. You would have no review by the Zoning Board or the Planning Board. Goodheart – The way I read this, did you already start the ball rolling on this by asking for the BLA and this is what the town residents voted against? Johnson - With the first part, I was responsible for creating the situation where a portion of the land in the residential zone was annexed to land that was in the B/I zone. The letter John Edgar wrote was regarding the process by which the town used to deal with properties that were bisected by a zoning line and the way they deal with them now. The language prior to the change in the ordinance says that the Boards may consider the land area that is the majority. The operative word was may. So they may or may not. The ordinance is now written that if you are going to do anything other than what is permitted in the zone, you are required to come before the Board for a variance. The great majority of the properties that is intended to deal with, have the case where the expansions of it would be less desirable then the permitted uses in the zone. We have tried to demonstrate here are some permitted uses in the zone that may be more detrimental in terms of drainage and over all lot coverage than what we are proposing. Goodheart – On Foundry Ave. are there any other parcels that could also attempt this? Johnson – Any of the parcels abutted by residential land could do the same thing. Lou Kahn – I can't say I'm against. I am a member of the Planning Board. I am speaking only for myself. It was thought I could supply some context. The two major concerns we have had in zoning is one the development around Lake Waukegan. In 2006 we proposed a Waukegan Watershed Overlay District. We went to 2 acre zoning. We were concerned with residential development. The other concern was zoning district creep, so in 2009 we proposed a zoning amendment that stopped that and it can only be done with your

permission with a variance. The Planning Board gets BLA's all the time. From a Planning Board standpoint, you have no basis for turning them down. You can't speculate what people are up to. There was some indication there might be a future re-adjustment of the zoning. I don't think that ever happened. I do remember there was talk about greater lot coverage being available for the 1 acre commercial lot. You can't turn something down based on speculation. I am neither for nor against, only to inform.

Robert Wenstrup - I live at 1 Wall Street. My concerns are for this portion of the Waukegan Watershed. This past summer after public hearings about water level with DES, I met with a member of DES and the two of us started to look for areas of remediation to reduce pollution in flow to Lake Waukegan. DES made a number of measurements. The measurement we made showed chloride was up 100 times higher than the acceptable level for rural lakes. We are planning a presentation before the Board of Selectmen suggesting that the town join with DES and with the help of the Waukegan Shore Owners Associations we will prepare a grant presentation submitted to DES. I suggest to you this project flies in the face of everything we are trying to do to remediate the water quality for Lake Waukegan from this area. The most highly developed area of Lake Waukegan is the area in question. We need to address the problem of runoff.

Sandy Mucci – I live on Hillrise Lane. The presentation sounds wonderful. My concern is with creep. Every time we turn around, something is else is expanding into the watershed. I am concerned about Lake Waukegan. We need to protect the residential zone. This seems reasonable. This is like a budget. There are things you want to buy but at some point you have to say no

Daniel Leonard (Water & Sewer Superintendent) – I just became aware of this situation this afternoon. I have a brief letter I would like to read.

Dear ZBA Members:

It has come to my attention that the ZBA is taking into consideration a variance allowing the owners of the above referenced parcel to change the use of 4 acres of annexed land from *Residential* to *Business and Industrial*. Allowing this to happen will put 4 new acres of industrial use land into Lake Waukegan's watershed.

Lake Waukegan is the Town's sole source of drinking water for the entire town and already faces a multitude of safety challenges with the existing zoning, drainage structure of the surrounding area, and the recreational use of the Lake. Allowing an increase of industrial zoning into the water shed area not only increases the level of risk to the safety of the water supply but also establishes a hazardous precedent to the future preservation of our water source. It is my opinion as the Water Superintendent for the Town of Meredith that this is not in public's best interest and the variance should not be granted.

Duncan McNeish – I live at 88 Water Street. I am Treasurer for the Waukegan Shore Owners Association. We have about 465 members around the Lake. I think you have to

be very careful. Anything that is going to pose a hazard to the water quality of this lake, we have to be concerned. Chuck Braxton – I live at 96 Winona Shores Road. I am not wise about the logic for granting variances but it struck me when they say this is not as bad as a residential development in this area and gee we would have to pass through a B/I Zone to get to the area, which is what they do to get to Waukegan Village. I think the logic is up on its head. I call upon you to make some sense of it. Cathy Merwin – I live at 64 Waukegan. What I found most disturbing was the implied threat if this variance wasn't granted and because it was zoned residential a bulldozer can come in and simply wipe out trees and dig up the land. To me that sounded like a threat. Johnson – I apologize if I seem threatening. We are required to analyze alternatives when we are requesting a variance. We are not here to discuss if it's developed, we are here to discuss what is proposed to be developed. The Waukegan Watershed Overlay District restricts the density of the property. It does not address any of the other things that happen when a property is developed. In the residential zone, you are allowed 30% impervious lot coverage, for this case that is 52,000 sq. ft. So if this was a permitted use you would not have to come before the Zoning Board, you could disturb 52,000 sq. ft. of this lot for that permitted use. If it were a residential use and you were disturbing 52,000 sq. ft. you would not have to go before the Zoning Board or the Planning Board. This would not be subject to site plan review. There would be no checks and balances for the drainage. They would be in place if you had to go before the Planning Board. Darrow – To add to Carl's statement, any sort of business/industrial development will require a very detailed engineering plan. This will be carefully planned and constructed and the town's controls over the storm water quality in the long term will be much more powerful. They will have much more input with this sort of site development than some of the other alternate permitted uses if the variance is not granted. It is significant to know the property owner is a long term resident of Meredith and he also lives on Lake Waukegan. Hearing closed at 8:35 PM

2944: FOX HOLLOW PROPERTIES: An appeal for a SPECIAL EXCEPTION (ARTICLE V, SECTION D-9 G1a) to allow construction of a wetland crossing for purposes of access or utilities, such as a road, driveway, or sewer line, Tax Map U13, Lot. No.15, located on Bonney Shores Road, in the Shoreline District.

Dan Cornelissen (NHEC) – We (NHEC) have a pole located on Bonney Shores Road. It is actually on a little island. It was installed in 1965 and we are proposing an access road to allow us to access the pole. We would like to replace the pole. There are two large pine trees approximately 150' tall. One of them is dead and the other is close to it. If these trees come down, they will take the line out and break the pole. We are trying to be proactive, because right now we have no access to it. We have the permit from the State. We have a driveway permit from the town. The alternative would be to have 5 additional poles on Bonney Shores and two additional poles on the causeway to Pike Island. We felt from a sightly manner, one pole is better than 5. Once this access is put in, we would woodchip it on both sides, so it won't be visible. It will be approximately 15" above the original grade that is there now. Hearing closed at 8:45 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 FROM FEBRUARY 10, 2011)

.Attorney Alvin Nix – My clients would like to convert this property to a condominium but in order to get there, they have to obtain a variance for the density, which is 4 acres per unit. It may seem a significant request, however; the real issue is the fact this is a pre-existing site. These 7 units were first approved on February 17, 2001. It took a couple years to build them through the permitting process. The only other change to this property was a variance for a garage that was inadvertently built closer to the road than approved. The only thing really changing is the form of ownership. I will go through the 5 criteria for a variance.

1. The question of diminishing values. This property has existed in its current state now for nearly 10 years. All that is changing is the ownership form and that can't affect values.
2. The next question is would it be contrary to the public interest because: Once again, it is pre-existing. Nothing has changed. It would not be contrary to the public interest. On Pleasant Street there are similar cabin colonies that were converted to condominiums, so if you incorporate this into my hardship argument and my Simplex argument there are similar properties within the town with smaller density.
3. Granting the variance would do substantial justice because: Again, it's pre-existing and the use will be similar to other cabin colonies that have been converted to condominiums.
4. Will it violate the spirit of the ordinance: No, because the arguments whether the colony should exist or not was made 10 years ago.
5. Again, as far as the unnecessary hardship is concerned, it's pre-existing, the structures are in place, and nothing is going to change. There is no reason to deny this variance for this conversion of ownership. I did submit some cases for you to review in regards to this type of request. I pointed out to you RSA 356: B:5., which reads that a condominium shall not be treated differently by zoning or land use ordinance which would permit a physically identical project under a different form of ownership. This is what we have. They literally have been granted the density requirement previously in regard to this development. We aren't asking for anything to change.

I gave you three cases to look at; one was Cohen v. Henniker case. In that case they were converting 7 apartment units to a condominium. They had a prior non-conforming use. Here we have a non-conforming site. Henniker had denied the application because the deficient lot size and density. The court came back and said you can't treat them differently because they are converting their ownership. Again, this project is the same. More importantly in that case, the court said that though a municipality may require a variance prior to a conversion and we are here to get a density variance, they said you

can only deny the variance if the conversion would have an actual affect on the use of the land. The form of ownership doesn't affect the use of the land. The form of ownership is the same. The use of the land is the same. If there is no change in the land use, this is what the court said, then you shouldn't deny the variance. The other case was the Town of Rye v. the Rye Board if I recall correctly. The court just reemphasized their positions, which if there are no changes in the land use then you have to grant the variance. Our position is we have an existing site, previously approved, constructed with the proper permits from the town and we are asking the density requirements be waived by a variance. Clark – Are these buildings currently being used as rental cottages or dwelling units, per definitions in our zoning ordinance? Nix – Some are being rented, other are being used by the owners. Clark – My understanding is this property has been operating as rental cottages since before the adoption of the zoning ordinance and therefore they are grandfathered for this use. Is that correct? Nix – For rental, yes. Clark – Originally there were 8 and now there are 7. They are larger than the original cottages and back further from the lake. Is that correct? Nix – If that's the case, wherever they are situated they were approved by the Planning Board. Clark - As rental cottages? Nix – No. That was part of the process in terms of the presentation given to the Planning Board. What I think you are getting at, is.... Clark – I would like to find out if they have been converted from rental cottages to dwelling units. If you could give me a copy of the variance that did that I would be appreciative. Nix – If you read the grant of February 27, 2001 under the Planning Board. Clark – I do have that and I will site the information presented by the applicant during deliberations. Nix – If you read the case of Dovaro v. Clark – Actually, what I am concerned with is not whether this is a condominium or not. I am concerned with, is it a rental or dwelling unit. If it is a dwelling unit, then I would like to know when a variance was granted. If this is going to be used as a rental cottage, I did read your case laws, then this is going to be a change of use. We don't want to be talking about a condominium conversion, but a change of use variance. Nix – My understanding was that was part of that process, I think Mr. Hoffman has resided there for at least 10 yrs. I don't know if there was any condition prohibiting that. I read the conditions on the last page of the approval and I don't see anything that states that. Clark – During deliberation I believe Mr. Hoffman indicated these were going to continue to be used as rental cottages. I think we need to address the question on whether he has gotten a variance. If he has been living there illegally for the last 10 yrs., perhaps some mitigation should be sought. Nix – The two things I have to enter into the record are 1. I have in front of me the approval dated 2/27/2001 and the conditions you are citing were not the grounds for approval. Your conditions are conditions 1-7. Those are the conditions the applicant had to meet at that time, in order to make the conversion. They met those. 2. As I pointed out in the third case, Dovaro, the court said that seasonal to year round does not change or expand a use and therefore not grounds to deny the variance. Clark – First, I believe you are citing a Planning Board decision that allows someone to build a building. It does not change the use of the building. The building is grandfathered as a rental cottage. That is defined in our zoning ordinance. In the minutes from that Planning Board meeting, the applicant stated that these were rental cottages and stated rental will be on a transient basis during winter time and not rented from 9/1/ to 5/5 and in 2005 Dever - says "all these units are rental units, there is no permanent occupancies of any of these units?." Casey "these are rental units". These are in the

minutes of 11/10/2005. So, as of 2005 these units are all rental units thus supporting the notion that as of that time, these have not been converted into dwelling units. These are rental cottages as defined in our zoning ordinance. "Applicant owns 8 rental cottages located on Lake Waukegan" that is a quote. "Rental will be on a transient basis and not rented from 9/1/ " "Applicant will not be renting during the winter time". These are in minutes. In going to the Planning Board the applicant has consistently indicated they are rental cottages. He never applied to the Zoning Board for a conversion. If they are being occupied fulltime by anybody, I suggest a variance is required for that. I think we are talking about the wrong issue here. I think we are talking about a conversion from rental cottages to dwelling units. This is a huge difference. The applicant said the reason they needed to expand the cottages was modern vacationers need a larger facility with better amenities. They never said they were going to be permanent dwelling units. I believe this is completely inappropriate for this particular area. Before we talk about condominium conversion, we need to talk about conversion from rental cottages to single family dwellings. Nix – Even though it was a Planning Board case in 2009, one of the previous cases, where the same RSA was discussed, same portion with respect to the change in the land was a Zoning Board case. The fact is, in 2009, our Supreme Court said, seasonal to year round does not change or expand a use. That is not a consideration. Thorpe – When a tenant is about to rent a unit do they sign a rental agreement? Nix – My understanding is if it is short term, no, if long term yes. Someone could rent a unit for a full year. Thorpe – My point is, if someone is going to rent property, they usually sign some form of an agreement. That agreement limits their use of the property to a level of occupancy, certain days, certain times, parking of recreational vehicles or not. I can't believe these cottages have been rented with no agreements or with some limitation on the use of the cottages. Nix – If they did sign a written agreement how does that change anything? Thorpe – If they sign an agreement that limits the amount of use and if this converts to a private ownership those restrictions go away, therefore the use of the land will change. The density on the waterfront will change, the parking density will probably change, the occupancy of the unit will probably change and therefore the land use is changing. Nix – Every unit has parking, every unit has access to the beaches and every unit has a particular dock. There are no restrictions. Thorpe – However, the point that Mr. Clark was making, if they are rental cottages and they have stated they will not be occupied from September to May, or something like that, then I suspect private ownership would allow occupancy year round. This would be a big change in land use intensity. Nix – They are rental units that can be occupied anytime of the year. They rent to people during fishing derby, to people who boat during the summer, to people who hunt in the fall. Clark – What you just described is what I would expect a rental cottage would be used for. On a transient basis with nobody living there full time. Would your client be willing to stipulate in the deeds they will not be occupied by their owner for more than 14 nights per year, no non- owner individual occupy any unit in the complex for more than 150 days during any 12 month period and non- of these units be used as a primary residence? If these things are retaining their original purpose as rental cottages then your client would be willing to put that in the deed. Then there would not be a change of use. Nix – I think those requests are not consistent with the prior approval of 2001 and not consistent with RSA 356 or the three laws that I cited and therefore I don't think my client would agree to that. Dever – The main concern I have is

they have been before this Board on two different occasions trying to subdivide and they were denied. The only reason you are here now asking for a subdivision is they originally asked for 3 units and now they are asking for 4 more. Things haven't changed that much. Michael Casey – I am one of the owners. They have been used as rental units not cottages. They were permitted for year round use. We do rent out the units. Sometimes for short term, some for a month and even for four-five months. So far we have never rented for 12 months but we are not prohibited from doing so. The only person there on somewhat of a fulltime basis is one of the owners of the property who also manages the property. That is not a violation. We are not asking for a change of use. There is plenty of parking, the use of the lake would not change or any other aspect of the property will change. The only thing to change is the type of ownership. Dever – I disagree with you. It is going to change because right now you control the property. If these units are sold individually that control goes away. There will be a change. Casey – Under the condominium rules you do set out designated parking spots. There will be a Board of Trustees that will have rules for the property. We don't have rental agreements. Fred Ward – I live at 17 Pollard Shores. I am probably the closest neighbor. I am in favor of this. I don't see any change. They maintain the property to the highest standards. I don't see how this would be detrimental. Teresa Ward – My husband is right. They are great neighbors. We are both in favor of this. There will be no changes to the buildings, no changes to the property, and no changes to the land. Doug Hatch – I live on Water Street. I am in favor of the variance. John Mack – I live at 11 Pollard Shores. A couple of points. I have sent a letter to the Board and will read that into the minutes. I have lived on Pollard Shores, since 1999. I have been to every hearing that has involved these cottages. Everything indicated and represented has been these are rental units. There was never a discussion on these not being transient rental units. It's in all the minutes which are part of the approval process. It doesn't matter whether it's written on notes on a plan or not. I would like the Board to remember the 5 criteria for a variance and only one has to not be met which is cause for denial of the variance. I would like to read my letter.

Jack Dever, Chairman
Meredith Zoning Board of Adjustment

Meredith, NH

Re: Case # 2939 Michael Casey, et.al. 19 Pollard Shores Road

Gentlemen,

We are opposed to the granting of this appeal for a variance for the following reasons:

1. Granting this appeal would diminish property values as it would be approving the change of the use from a seasonal non conforming seven unit rental property; mainly occupied during the prime vacation weeks (Mid-June to first of September)

to a potential year round occupancy of seven units therefore increasing the quantity of boats, snowmobiles, etc. stored on the premises (seven families versus rental units). With year round occupancy comes increased year round traffic and density.

2. Granting this appeal would be contrary to the public interest as the public voted several years ago to have a Waukegan overlay district to preserve the water quality of the lake. The requested appeal is requesting a density variance of 23.5 acres (from 28 required to the 4.5 acres requested), and changing the potential density from seven seasonal (three months or less) to seven full time (twelve months or less). Plus reference to cottage colonies on Lake Winnepesaukee is a moot point as the citizens of Meredith specifically voted the overlay district on Lake Waukegan not Lake Winnepesaukee.
3. Granting the appeal will not do substantial justice because there is no limitation imposed on this property as a non conforming use as would be on any other non-conforming use.
4. Granting the appeal would not observe the spirit of the ordinance as there has previously been at least three variances granted on this property with the understanding it was to improve the non-conforming rental units that were to stay seasonal. Granting the appeal flies in the face of the zoning ordinance by allowing the conversion to year round use which is contradictory to the presentation and approvals granted previously.
5. Literal enforcement of the provisions of the ordinance would not result in unnecessary hardship as it is a non-conforming rental cottage use which it was prior to the time of purchase by the present owners. There are no unrealistic restrictions put on this property above and beyond all other properties of this type to operate as a seasonal rental property as it has done for many years.

Sincerely,

John & Patricia Mack 11 Pollard Shores Road, Meredith, NH 03253

Robert Fournier – I have lived on Pollard Shores since 1957. John said just about everything. No need to repeat it. I am just against it. Pat Mack – My husband John read the letter. I would like to comment of couple of points. When they stated these are year round structures it's because they were given a variance for year round structures. At that time they said they would be seasonal. Because they are built to be occupied year round, therefore they should be. The other concern is with seven different owners they will have guests so that will increase traffic. I would trust the cottages are limited on how many people can occupy each cottage. If a cottage can only hold four people for rental but if someone owns the cottage as a resident, they can invite as many people as they want. So to say the use will not change is not true. My understanding is variances are given when you are just shy of meeting the criteria. They are asking for a variance where 28 acres are required and those buildings are currently located on 2.79 acres. Clark – You said variances were granted to expand those buildings. Variances are a very critical word on this side of the table. I'm thinking you meant permission or approval was

granted. Do you acknowledge that variances were granted? Pat Mack – One of the buildings was built in the wrong place. Clark – That one is true. I am talking about the cottage expansions. John Mack – They came before the Board for a variance because they were re-constructing the structures and they were within the setback of the lake. The variance was not for turning them into year round dwellings but to tear down some of the cottages and rebuild them still within the 65' setback of the lake. Clark – I would like to read those because I don't see them in here. Sandy Mucci – I have been on Lake Waukegan since the 60's. If something is allowed because it is grandfathered, well ok. But going from a cottage colony to condominiums with separate owners you start doing school systems, fire etc. there is a whole different use between condominiums and a cottage colony. Grandfathering is one thing, expanding in our watershed is another thing. I am against this. Nix – I hear the objections but I think unfortunately the issue of pressure on the school system, fire, or seven different owners will increase traffic, with the opinions I gave to you, even the 2009 from the Supreme Court, those very issues were raised in those cases but as long as you are not changing the land, they have already had their approval. To say you are going to put 7 units on 2.79 acres when in fact it is 4.5 acres because there is land across the street, the fact of the matter is, it is already there. This is what we have to look at. You could rent these 365 days of the year. In regards to the amount of people that will be on the property, they have to adhere to the fire code. Our position is the change in the form of ownership in and of itself does not constitute the grounds to deny the variance. Dever – There has been enough case law that if the legislature felt towns were abusing the condominiums they would change the laws so they wouldn't have to do anything except go ahead and sell them. By giving the town the right to review these things I think the legislature still wants towns to maintain some control. Pat Mack – The reality is as seasonal rental cottages, people come in on a Saturday, go home on a Saturday. I can tell you after September, the traffic is just about none. Casey – The word seasonal has been mentioned numerous times. These units are not seasonal. They are year round units. They have heating systems. Yes, they are on the lake so common sense says they would be used more in the summer. There is no period of time we are not open for rent. Clark – Do you expect any of the people who purchase the units not to rent them? Casey – I don't know that. Clark - Do you expect any of the people would want to use it as their primary residence? Casey – One of the owners now may decide to stay there permanently. Hearing closed at 8:35PM

DELIBERATION

2941: AMES ASSOCIATES FOR SYLVIE F.ST. HILAIRE:

Thorpe – There is not much more they can do. Dever –They are doing everything they can to protect the wetland and the stream. I feel they meet the criteria. (The Board all agreed)

Clark moved, Thorpe seconded, IN CASE # 2941, AMES ASSOCIATES FOR SYLVIE F.ST. HILAIRE, I MOVE THE APPEAL FOR A SPECIAL EXCEPTION (ARTICLE V-D-9) TO ALLOW A PROPOSED LEACH FIELD 56' FROM A NON-DESIGNATED WETLAND AND 59' FROM A NON-DESIGNATED STREAM, 75' REQUIRED, EXISTING SYSTEM IS APPROXIMATELY 15' FROM WETLAND, TAX MAP U26, LOT NO. 31, LOCATED AT 104 CUMMINGS COVE ROAD IN THE SHORELINE DISTRICT BE GRANTED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION. Voted 5-0 in favor.

2942: AMES ASSOCIATES FOR SPINDLE POINT REALTY TRUST:

Flanders – They moved another 4 ½' back from where they were. How far back into that hill do we want to push them? Clark – The applicant did a good job at considering alternatives. Pelczar – They did come back and answered some questions but 65' is 65'. Do I believe they have the room? Yes. Site work is site work. They are going to bust up the tennis court, still build retaining walls whether they are 3 tiered or 2 tiered. Material being taken out could be used for fill. They did do a better job. Dever – Let's 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: Clark – There is the question when the 65' is not met. I'm willing to listen to Mike's concern that it could go back further. Dever – As far as the 65' go, we put forth to the Planning Board that it might be in the town's best interest to reduce it to 50', which is what the State requires. The Planning Board didn't go forward with it. Flanders – I think we need to consider the abutter. Dever – We talked about flipping the garage to the other side. You can see how steep it would be there. Thorpe – I think the public interest thing is a balance. If they go back further and excavate more and fill there could be a detriment to that and on the other hand not getting the 65' is also a detriment. So, this comes out neutral for me. Clark – Most of the house not meeting the 65' are decks and patios.

3. Granting the variance would do substantial justice: The Board agreed it would.

4. Granting the variance would observe the spirit of the ordinance: Dever –The spirit and intent of the ordinance is to have the 65' setback. Flanders- That is the intent of it, the spirit is what is best to try and achieve the 65'.

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: They used A.

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

Clark - There are special conditions of the property. Thorpe-I understand going for (B) not (A) . Dever – One of the things is there is a slope and the extra cost of \$20,000 for the retaining wall on a million dollar project is not substantial as far as I am concerned. Thorpe – I am ok with 5, I just think it should be (B).

Flanders moved, Clark seconded, IN CASE # 2942, 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 5-0 in favor.

2943: RIGHT ANGLE ENGINEERING FOR FOUNDRY AVENUE REALTY TRUST:

Thorpe- - This is a challenge. I hear all the folks who are concerned with the impacts on Lake Waukegan. I also hear the argument that if left residential, it could be developed in a less controlled way than with a B/I development. You could do what publically appears to be right but in fact to achieve the best results would be to grant the variance. Clark – My take on this is we have zones and we are to follow them. The applicant showed us how a situation exists if this were really B/I versus residential. The reason it would be better is because of the situation they knowingly created. I have a problem with this. I look forward to going through the 5-criteria for this. The business that we cut the property this way so it is no longer suitable for residential, well guess what; you are the ones that made it that way. I think the problems to be solved are problems created by the applicant. Pelczar. – You have 1 acre of residential and 30 acres of business and you stick condos in front of single-family dwellings. Unlike Waukegan Village, there are residential places along that road. It is really not the same thing. You are going into multiple homes. They touched on the water quality. The salt is coming from Rte. 104 because the town doesn't use that much. Dave's idea of having it mitigated and controlled with all the money we are spending and adding new DES and EPA guys they are going to come up with something that will give us something much better. Flanders – I agree with Warren. A little bit of the fact that on the surface, it looks like they created their own situation the way they divide the land. These natural barriers kind of existed before hand. The land lends itself to what they did and now at this point the mitigation will be controlled better from an industry standpoint. That section of land will be accessed from Foundry Ave. The question is, what do we want to see coming off of Foundry Ave.? How are we going to solve the mitigation the best? I think that might be what they proposed. Clark – The other factor to consider is by allowing a repair shops to be placed there, there is a certain risk of having a chemical spill. What's the least disruption to the soil and while I think we should weigh that to some extent, we also have to figure the 5-criteria. Flanders – Again, this would have to go before the Planning Board. All those mitigation issues will be handled through the Planning Board. Goodheart – Coming into this when I got the packet, it seemed fairly cut and dry. We have some boiler plate letters sent out and signed. It sounded like the neighbors wanted them there but when I look at what the town approved as far as curtailing what we are debating right now... Flanders – They said they wanted this to be reviewed by us is what they voted on. Not to just let it happen without being reviewed. Am I wrong? Goodheart – OK. Thorpe - I think that is right. There is to be a review process. Goodheart.- I am just reading and it says "The Planning Board took to public hearings (1/13/09 and 1/27/09) a proposal that would curtail the practice of extending zoning district boundaries (and associated uses) thru the annexation of adjoining parcels. This proposal went before the

voters in March 2009 and was approved” Flanders – That proposal was to bring it to us. Goodheart -They have a tough situation. Whether it’s residential or not, they still have to meet whatever the criteria based on what the land conditions are and they would have to do whatever the Watershed Committee would recommend. Flanders – In a residential situation the Watershed Committee has nothing to say about it. There could be a leaking car in a residential lot. Pelczar – There are more regulations on a commercial building. Let’s go through the 5-criteria.

1. Granting the variance would not diminish the values of surrounding properties: No it would not.

2. Granting the variance would not be contrary to the public interest because: Flanders – I think it might benefit the public interest in the long run. Thorpe – I think it will benefit the public interest because there will be tighter controls on environmental conditions.

3. Granting the variance would do substantial justice because: Thorpe – It allows the land owner to use the land the way he chooses. Pelczar - I think in this case it helps both Fairbrothers and the people he bought the land from. I know Warren is looking at this in another way. Thorpe – Are you saying yes, it would do substantial justice? Pelczar- Yes. The original owners couldn’t use it. It made better sense for him to tie it in. It wasn’t as valuable to him. Clark – The original owner? Pelczar – Yes. Clark – You can say that about any property. Flanders – I am sensitive to creep but I feel like this is never going to end up on Waukegan Street because of that barrier.

4. Granting the variance would observe the spirit of the ordinance because: Clark – I think not. Thorpe – I don’t see how you argue this one. If the spirit of the ordinance is to retain the zoning and we are not using the land as it was zoned. Flanders – I think you could make the case the idea of zoning is to keep certain areas certain ways. In this case, by not granting this, we would not be doing that. His only recourse would be to make it residential. It is coming off of Foundry Ave. That area is an industrial area. Goodheart – I agree with Dave. By letter of the law, it doesn’t meet the spirit of the ordinance. Flanders – That is somewhat of a contradiction. If you go by the letter of the law you can’t speak to the spirit of it. Goodheart - There needs to be some bend. Flanders – Yep. Pelczar-I agree with Brian. Thorpe –I do too. Clark – To me it is a skillful manipulation of the rules by purchasing the property, creating a situation that needs to be mitigated, and then saying this is the best way to mitigate the problem we have created. I think this is totally contrary to the spirit of the zoning ordinance. Pelczar – It sounds like you are passing judgment on them personally. I don’t know why I feel that way. Clark – Because that is what I am doing.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary Hardship: Clark – Will someone tell me the hardship? Pelczar – It is the property. It is unusable to the residential side and this is a better place for it. Clark – I don’t see it unusable on the residential side. This could have been subdivided so there could be another residential lot on it. Flanders – But then we are back to the access. That is part of the problem. It doesn’t matter where or when it was subdivided, access is an issue. No one wants a house behind a plumbing shop. Clark – Now they will have it behind a

warehouse. Flanders – No, because there is a buffer area. Clark – If you see a hardship here, I contend it was one created by the applicant. It was visible and obvious when he took steps to purchase the property there would be a hardship. Goodheart- If he knew he had future plans. Pelczar - People buy property to enhance their property all the time. I do understand you Warren. Flanders – We are not here to judge. Clark - My belief is when people buy property, they need to look at property around it, what it is zoned for and what they can do with it in regards to zoning. It's one thing if the zoning changes after they purchase it. According to John Edgar's letter, the initial thought was to expand their existing building in terms of lot coverage and this is what they have chosen not to do. I don't think they meet the hardship criteria.

Flanders moved, Goodheart seconded, IN CASE #2943, RIGHT ANGLE ENGINEERING FOR FOUNDRY AVENUE REALTY TRUST, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE III-D-3A) TO ALLOW WAREHOUSING, LIGHT MANUFACTURING, BUILDING TRADE OR REPAIR SHOP AND/OR EQUIPMENT AND TRUCK REPAIR FACILITY IN THE RESIDENTIAL DISTRICT, TAX MAP S23, LOT NO.46, LOCATED ON FOUNDRY AVE. IN THE RESIDENTIAL DISTRICT BE APPROVED, AS THEY HAVE MET THE CRITERIA. Voted – 4-1 in favor.

- Pelczar-Yes
- Flanders-Yes
- Thorpe-Yes
- Goodheart-Yes
- Clark-No

Pelczar – Thirty day appeal period.

2944: FOX HOLLOW PROPERTIES:

Dever – I don't see anything wrong with this. Pelczar-I think this is better than having 5 poles. Thorpe – I agree.

Thorpe moved, Clark seconded, IN CASE #2944, FOX HOLLOW PROPERTIES, I MOVE THE APPEAL FOR A SPECIAL EXCEPTION (ARTICLE V, SECTION D-9 G1A) TO ALLOW CONSTRUCTION OF A WETLAND CROSSING FOR PURPOSES OF ACCESS OR UTILITIES, SUCH AS A ROAD, DRIVEWAY, OR SEWER LINE, TAX MAP U13, LOT NO.15, LOCATED ON BONNEY SHORES ROAD IN THE SHORELINE DISTRICT BE GRANTED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION. Voted 5-0 in favor.

2939: MICHAEL CASEY, ROBERT HOFEMAN AND ROBERT CASEY:

Warrren – Mr. Chairman, I was wondering if it would be appropriate for someone to review what they call The Findings of Fact. I would like to suggest some. Dever – Go ahead.

1. Property has been operating as "Rental Cottages" since before the adoption of the Zoning Ordinance and is therefore grandfathered for this use.
2. Originally, there were 8 cottages but these have all been rebuilt over the last 20 years and now there are 7 units. These units are larger than the original cottages and back further from the lake, but they are still classified as Rental Cottages and it is as Rental Cottages that approval for this expansion was granted by the Planning Board.
3. There was no need for the Planning Board to put condition on building expansion approvals limiting use to Rental Cottages since the applicant asked for no change in their status.
4. Granting the appeal would effectively convert the buildings from being Rental Cottages to being single family residences.

We might not want to include the last one. This is how I see it. I am now finished with this. I would like to make a couple of points. I disagree with the abutters who feel that private ownership would increase the intensity use of the property. I think rental property tends to have more extreme use than properties used by their owners, primarily because the renters have to get a whole year's worth of fun in one week. By converting these to condominiums, it would in affect convert them to private single-family dwellings where as up until now, they have been rental cottages. With the exception of one unit that was occupied by the rental agent, which is consistent with operating rental cottages, I don't have a problem with one cottage being lived in by the person who is managing the others. If they want to go from rental to single-family, I would suggest they need a variance. I personally would have no problem allowing them to convert to condominiums, provided they put restrictions on the buildings, such as they can only be used as rental cottages as they have in the past. Thorpe – The argument that the only thing changing is the form of ownership and that will not change the use of the land; the intensity of the use of the land and so on will not change. I disagree with that. I believe the land use and the use of the property will change. Therefore, it's not just a change of ownership. Clark – The applicant disagrees with my contention that these have not been converted from rental cottages. The Attorney indicated it is his belief that the conversion has already been approved. I looked through the file and I didn't see anything that shows that. That does not mean the document doesn't exist. I think this is worth noting that there is a disagreement about this. The change of use is from rental cottages to single-family dwellings. Dever – Which would require 4 acres per unit. Flanders – I don't know if the use is that much different. I do see the issues from rental to single-family because once you call it single-family it opens up a different door. Pelczar – I agree with Warren and Dave. Clark – I believe it is contrary to the spirit of the ordinance. Dever- When I brought up to Mike that he will lose control, he said the Condominium Association will be able to control it. We all no how those associations work. When something goes wrong, the first place they will come to is Bill's office and then you have to say I don't have anything to do with that. If this was to be granted, I would want a condition in there that there would be no further expansion of the buildings. This is a tight lot. Clark – For the

record. If the applicant had agreed to put constraints in the deed for how the properties could be used, limiting the use as rental cottages, then I see no reason to deny them. But, that is not what I am hearing. I am hearing it is also a change in how they are used. That is the reason I would vote against this. I have no problem with the condominium. My problem is with the change of use. Dever – I know Al referenced court cases and he is saying just approve them and let them go. If that's the way they felt then the legislature would have changed the law. They did say the town has control. Clark – As I read the case law, what it said to me was that we cannot deny this based on the issue of ownership and I am not voting against this for that reason. I am voting against this because of the use. If people are living in this as a primary residence, this is not an approved use of the property and it should be stopped with the exception of the one cottage that is lived in fulltime to administer the others. Dever – Let's go through the 5-criteria.

1. Granting the variance would not diminish the values of surrounding properties. Thorpe-I think that is questionable. Pelzcar – It might hurt the other surrounding properties. Dever – They have control over it now but not if it changes. Clark – That's a good point. Dever – If each one was on 4 acres you wouldn't be so concerned. Clark – I would suggest that is not a reason in this case to vote against this measure because that's something that is affected only by the change in ownership and we can't make a vote based on ownership. If the change of use will affect the other properties, then that is reason to vote against it. I don't think the change in use will affect that. I won't vote against that.

2. Granting the variance would not be contrary to the public interest: Clark – I think it is. The public interest is to have lack of density in that particular area. It's one thing for rental cottages but not single family dwellings. Dever – This would fail on two. Thorpe and Clark agreed it would fail on two.

3. Granting the variance would do substantial justice: Clark – This would provide substantial injustice. Because of the inadvertent progression of these cottages does not provide justice for someone to take advantage of the grandfathering law that is contrary to the zoning ordinance.

4. Granting the variance would observe the spirit of the ordinance: Dever – They are asking to allow 7 units without the proper density. That is certainly contrary to the spirit of the ordinance. The Board all agreed.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Flanders – I don't see a hardship. Maybe some conveniences to what they are trying to do. Dever – I don't see the hardship at all. Clark – I don't believe there is a hardship.

Clark moved, Thorpe seconded, IN CASE #2939, MICHAEL CASEY, ROBERT HOFEMAN AND ROBERT CASEY, I MOVE THE 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 DENIED BECAUSE THEY HAVE FAILED TO MEET AT LEAST FOUR OF THE REQUIRED 5-CRITERIA FOR A VARIANCE. THE ONE THEY MAY HAVE MET WAS IT WOULD NOT DIMINISH THE VALUES OF SURROUNDING PROPERTIES. Voted 5-0 in favor.

Dever – Thirty day appeal period.

Meeting adjourned at 11:00 PM

Respectfully submitted,

Christine Tivnan
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on March 10, 2011

Jack Dever - Chairman