

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

Alternate: Reichlen, Goodheart,

PUBLIC HEARING

Dever — We are here to discuss the communication we received from Town Counsel. Does everybody have a copy? The Board all had copies and had no questions.

Clark moved, Thorpe seconded, IN CASE # 2939, MICHAEL CASEY, ROBERT HOFEMAN AND ROBERT CASEY, I MOVE, GIVEN OUR ATTORNEYS WRITE UP ON THIS CASE ACCURATELY REFLECTS THE FEELINGS AND DECISION OF THE ZONING BOARD OF ADJUSTMENT, WE ACCEPT THIS WRITE UP AS OUR DECISION AND CONVEY THIS TO THE APPLICANT IN A MOST EXPEDITIOUS MANNER.

**DECISION ON APPLICANTS' MOTION FOR REHEARING
MEREDITH ZONING BOARD OF ADJUSTMENT**

In Re: Michael Casey, Robert Hofeman and Robert Casey
Case # 2939

This case arises from an application filed by Michael Casey, Robert Hofeman and Robert Casey, seeking a variance from the Meredith Zoning Ordinance's density provision contained in Article V, D-10, E.

A full hearing on the application was held by the board on March 10, 2011, after which the board voted to deny the application. The applicants have now filed a motion for rehearing claiming that the board's decision was illegal or unreasonable. The filing of this motion has offered the board the opportunity to review and further analyze the issues of the case, in a calmer setting than at the time of the hearing. On April 27, 2011, the board voted to suspend its decision for further consideration, in order to further evaluate the matter and to obtain guidance from legal counsel.

With the benefit of hindsight, it appears that there was confusion at the time of the hearing. This confusion may have stemmed from the fact that the applicants' presentation and request was somewhat contradictory. While the application was seeking a variance from the ordinance's density requirements, the applicants kept stressing their desire to change the form of ownership of the

property to a condominium, which seems to have little or nothing to do with the core issues of the variance request. The form of ownership, and the applicants' desire in that regard, have no direct bearing on the issue before this board, and nothing to do with its decision. Also, the applicants kept stressing that the "only" change they wanted to make was to change the form of ownership. However, if that is so, it does not appear that any variance is necessary.

As the applicants have repetitively made quite clear in the numerous earlier applications made to this board, the present use of its property is as a commercial use, being rentals to transients. That use is grand fathered and therefore vested.

If the applicants truly mean what they say, and *only* desire to change the form of ownership of the property, then because of that grand fathered status they do not need a variance to the density requirements, and that should be the end of this case.

The only reason for which a similarly situated applicant would require a variance to the ordinance's density provisions would be if it sought to *change* the use to a noncommercial, residential use. Such a use is permitted in this zone, but only if the density requirements are met. The applicants' property does not have sufficient land area to meet the density requirements for this changed use, which would thereby necessitate a variance.

Therefore, the board is in the unusual position of needing clarification from the applicants as to their intent, before it can make a decision on whether to grant or deny the request for hearing.

If the applicants respond that they truly are proposing no change to the present commercial rental to transient use of the property, and only seek to change the form of ownership, then no variance is necessary, and we will modify our decision accordingly.

If instead the applicants respond that they seek a change of use, therefore requiring a variance to the density requirements, then this board will issue a decision granting the motion for rehearing, so that the case can be heard clearly in the framework of that request.

It is requested that the applicants clarify their intention in writing, directed to the town's land use department, within 15 days from the date of this interim decision.

Voted 5-0 in favor.

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MEREDITH ZONING BOARD

MAY 18, 2011

Meeting adjourned at 5:40 PM

Respectfully submitted,

Christine Tivnan
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on June 9, 2011

Jack Dever - Chairman