

PRESENT: Dever, Chairman; Thorpe, Clark, Reichlen, Goodheart, Edney, Code Enforcement Officer, Tivnan, Clerk

Clark moved, Thorpe seconded, THAT WE APPROVE THE MINUTES OF JUNE 9, 2011 on case #'s 2947 and 2948. Voted unanimously.

Clark moved, Thorpe seconded, THAT WE APPROVE THE MINUTES OF June 9, 2011 on the deliberation of case # 2943. Vote 4-0 in favor.

### PUBLIC HEARING

**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 Waukewan District.

Dever – We have a case we heard some time ago and we suspended our decision waiting for more information. That information has come forward so we are going to dispose of Case # 2939 now.

Thorpe moved, Clark seconded, In light of our interim decision dated May 19, 2011, and in light of the response from Atty. Nix dated May 26, 2011, I move that the Board accept the applicants' withdrawal of their application as they are changing only the form of ownership of the property, and not seeking to change the transient rental use of the property. Voted 5-0 in favor.

**2951: DASLK, LLC:** An appeal for a VARIANCE (ARTICLE V, SECTION D-10 E-2) to convert an existing structure to a 7 unit multi-family structure on 66,553 sf. of land, where 14 acres would be required (i.e., 2 acres per unit), Tax Map S17, Lot No.17E, located at 15 Northview Drive in the Commercial-Rte. 3 South District and the Waukewan Watershed Overlay District.

Regina Nadeau - I am here representing the applicants. Also with me is Dave Dolan the surveyor, who prepared the plan and Kent Brown who is an engineer who can address drainage for the property. This property is located on 15 Northview Drive. This site is already developed. Most of you probably know it as the former FRM office building. It has 37 offices in it along with 7 bathrooms. What the applicant would like to do is convert it to 7 residential apartments. Three of them would have two bedrooms. Four of them would have three bedrooms. I would like to introduce David Dolan to explain the site conditions. Dolan - There is a large cell tower located just to the north of the existing building. The existing building is in the middle of the property. It is about 3900 sf., two story wood frame building. There is parking in the front of the building and around the back. The total lot coverage as it exists is just over 67%. There are about 57 parking

spaces presently. We believe the entire site is in the Waukegan Overlay District. Rokeh Engineering put together a plan and we have incorporated his drainage breakline onto the plan. Everything to the west of the line flows westerly and into the direction of Lake Waukegan. On the east side of the line, it flows towards the east. There is a retention area designed and built that captures the majority of the water from the property and then releases it in an easterly direction. The abutting property to the east is the Senior Housing Development. Water crossing that property is obviously treated with recent development of storm water infrastructure and drainage structures throughout that property for treatment. The proposed physical changes to the plan are to remove 2500 sf. of parking so it will reduce the overall lot coverage to 62%. There is a small walkway to be added onto the front. Thorpe- Has anyone made an estimate of what percent of the runoff from the property will flow through the western drainage versus the northern drainage? Dolan - About 12%. Thorpe – I am trying to get an idea of how much of the runoff from the total 66,000 sf. flows towards Waukegan and how much to Winnepesaukee. Dolan – 8000 sf. towards Waukegan. Thorpe – So 66,000 sf. minus 8,000sf. all flows towards Winnepesaukee. Dolan – Yes, to the east. Thorpe- So we could say 12% goes to Waukegan and 88% to Winnepesauke. Dolan –Yes, if the water ultimately reaches those destinations. Also, we estimate that a straight line to Waukegan is about 3500' to 4000' away. Kent Brown (Engineer- representing Jon Rokeh) – As David said, there are two distinct drainage areas. There is a detention area in the back and some parking will be removed and that will increase the pervious area of the site. The adjacent sites have been developed. There is no new construction. (Pointed to a proposed treatment swale.) This will be an additional safeguard for any runoff that will leave the site. Clark – I was wondering if any consideration was given to the removal of the parking lot in the Waukegan area rather than the Winnepesaukee area. Nadeau – We initially submitted a site plan with the application that was for the prior approval for this property. Chris & Bill both explained they needed something up to date with proposed revisions. It forced us to do that, which made us gain a better understanding of the drainage on the site, so I apologize for the delay in the plans. Since this submittal, the applicant had offered to remove 10 back parking spaces. I just asked him and he has indicated to me if the concern is to further mitigate any impact to the Waukegan Watershed he would consider removing the parking spaces on the westerly side of the building and perhaps leave the other 10 as is. If we were to gain approval for the variance we would not have an objection to that being a condition. Clark – I'm assuming if you get approval for this, the next stop is the Planning Board. Nadeau – The next stop is the Planning Board to get site plan approval and then we will have to come back to you for a Special Exception for a multi-family use. I would like to go through the variance criteria. The variance is limited to the density which is required by the ordinance to protect the Waukegan Watershed, so as I address the 5 criteria for a variance, I am addressing them from that perspective.

1. Granting the variance would not diminish the values of surrounding properties: We have indicated this is an existing engineered site and we are proposing to the extent that it is necessary the drainage swale on the easterly side which lies between what is now the parking area and the Waukegan Watershed. There would be no adverse impact on abutting properties.

2. Granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance: In both cases it is to protect the Waukegan drinking water from overdevelopment and an adverse impact on the drinking water quality. In order to do that the drafters of this ordinance felt that limiting the density would be a direct way to affect that. In this case, we are a great distance away from Waukegan and also the relatively small amount of area affecting that watershed; it would seem that the treatment would be in the spirit of the ordinance. If you looked at it conversely, if the applicant were to fill the building up with 40 offices, there would be no change to this site. We are proposing to reduce impact and improve the drainage, so our proposal would be in the public interest and it would be in the spirit of the ordinance.

3. Granting the variance would do substantial justice because: There is nothing to be gained by the public just to maintain the status quo on this site. If the market held a demand for it and fill the building up with offices, the status quo would be maintained but the town gains nothing although it does fill a vacant building. However, if we are allowed to change the use and put in the proposal we are looking at, the public gains by having this additional mitigation and reduction of impact.

4. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship: The hardship test which we feel we fall under most directly is your first hardship test which speaks to the special conditions of the property and whether the provision of the ordinance at issue is reasonable in light of the application. In this case, what makes us a little different than the surrounding properties is we are a completely developed site. You can consider improvements on the site when you consider the unique circumstances of a property. The surrounding properties are undeveloped commercial, residential, and multi-family residential. We have looked at using this building as a public hall; private school etc. but there just doesn't seem to be a demand for it. We are unique in that respect. If you look at the relationship of the provisions of the ordinance to our proposal, it doesn't make a lot of sense to prevent the applicant from going forward because the town would just be maintaining the status quo. The next question is whether or not our proposed use is a reasonable one that ultimately will have to be answered by you when we come back for a Special Exception. I would note that multi-family housing is allowed as a matter of right by Special Exception.

Thorpe – Looking at the plot plan it appears all the parking areas on the west side were removed, there are still 17 spaces adjacent to the building, another 14 spaces away from the building and then the area that you planned to remove the pavement. Is there a need with 7 apartments for all this parking? Can we eliminate even more? Nadeau – I have spoken to the applicant. We had discussed this on site and the applicant has met with the Fire Department & Code Enforcement. They would like to have a surface, especially after this past winter, to be able to plow snow and have adequate turnaround for fire equipment. The applicant is willing to make adjustments but it just seemed to make sense since the plan would meet the lot coverage requirement. Kevin Morrissette (One owner of the LLC) We could give up some parking spaces but not the ones going against the building because there are two apartments on the front that have access. We could give up about 7 parking spaces and still maintain enough parking and if out in the

back you would still like those removed we would be willing to remove those also. Granted, there are a lot more spaces than what we need but the nice thing is to be able to plow the snow and then the tenants can move their cars and then we come back and finish up. This saves us shuffling tenants in and out. Clark – I was wondering about the hardship. You said it is difficult to rent commercial space in Meredith right now. There is no market for it? Nadeau – What I am saying is with regards to this building. The way it was set up with 37 cubicles, it would have to be multiple commercial tenants and would have to be complimentary tenants that would draw similar type businesses. Based on the size of this building, those needs and the experiential history the owner has had for over a year, trying to find someone to take the whole building or start to fill it up gradually, we have had no success. Clark – Are there other properties in the area that are vacant and having trouble filling? Nadeau – I don't know. Clark – If not, why is this applicant unable to fill space? Nadeau – Again, part of it has to do with the fact that because it is completely wide open now, taking on one tenant at a time as they come in may require rehabbing the building according to that tenants needs. Morrisette – Since we bought the building we have had absolutely no interest in this building with commercial tenants. We tried to market it different ways and we have come to the conclusion that multi-family would be the best use of this property. The 7 apartments fit into this building rather nicely with doing very little work. Clark – Why not 7 offices? Morrisette – Because we have had nobody approach us to rent. We don't know if past reputation of the building has worked against us. I don't know. I have been told that there is a need for apartments in Meredith. Reichlen – You refer to the neighboring lots as multi-family and single family but they are all on different streets. Everybody on this street is commercial. Nadeau – There is commercial and undeveloped. Reichlen – So we would be putting a residential property into a street that is fully commercial. Nadeau – Yes and no. That would be done if you grant us a Special Exception. Reichlen – We don't help anybody if we suggest that mixing residential and commercial is acceptable and then later say it is not. Nadeau – We have been thinking about that from day one but the ordinance does say you can have multi-family in this commercial district as long as you get a Special Exception. The whole back of this property backs up to another multi-family. The way it is situated, it's so far off Rte. 3 you can't see it. Dever- Bill, has there been any drainage issues with this site that you know of? Edney – We have nothing on record. Dever – Is there any intention if this variance is granted that you would be providing garages for tenants or shelters for vehicles? Nadeau – We discussed this and there are no plans for outside buildings for storage or parking. Dever – My concern is further earth disturbing activities that may have a down stream affect. Nadeau – The plan is to retrofit the existing building and do as little externally as possible. Clark – You said the basis of your appeal was the Waukegan Overlay District and since then you have presented evidence that this really has very little affect on the Waukegan Watershed area. However, as I recall, the minimum density requirement per family unit for B/I District which is part of what you are doing is 20,000 sf., so in addition to asking for a variance for the 2 acs. per family unit requirement in the Waukegan Overlay District, you are also asking for a variance on the 20,000 sf. per family unit in the B/I District. So even if you pass the hurdle on the Overlay District, I still believe you have a burden to justify exceeding the density in the B/I District. Dever – You are correct on the number but the wrong district. It's in the Commercial Rte. 3. However, if you look at the Waukegan

Overlay District rules, it says if they conflict with any other rules within the district, the Waukegan Watershed rules take precedent. My feeling is if we should grant them a variance to the 2 acs. that would automatically satisfy the other issue. Clark – I understand but what I am saying is the argument they presented is since this isn't really affecting the Overlay District the applicant shouldn't be subject to the 2ac. zoning. I say ok, assuming that is correct, they should still be subject to the base zoning requirement of 20,000 sf. They should tell us why they can have more density than 20,000 sf. per family unit. They have enough for 3 units not 7 units. I can't vote personally in favor of this unless I hear why they should be given a variance for more than 3 units. Nadeau – I am happy to address your question. The arguments that we put forth regarding the site itself still hold true which is that we've got 10,400 sf. We have explained there is no commercial demand for this building. From the residential standpoint, take that 10,000sf building and convert it to only 3 units given the cost of the building and the size of the units, it just doesn't make financial sense. Peter Morrissette – I am part owner of the building also. You asked about other vacant commercial buildings. The gray building at the bottom of the hill where the Fitness Edge is has vacant space all the time. Energy Saver has had vacant space recently and also where the bicycle shop used to be has been sitting vacant for a long time. Dolan – This is more back to Warren's concern about the zone boundary. This property is entirely in the Waukegan Watershed Overlay District. The more restrictive requirement is the 2acs. per unit. Hearing closed at 7:50PM

## DELIBERATION

### 2951: DASLK, LLC:

Thorpe – I know we are all sensitive to the Waukegan Watershed issue, but when I look at this, it all makes such sense. We are not in anyway aggravating the current conditions on the property. In fact, they are improving them. If only 12% of the runoff goes to Waukegan, with some being mitigated by a treatment swale, plus the removal of 7 parking spaces and the impervious coverage along with it, I am inclined to be in favor of it. Clark – I have a problem with the satisfaction of the hardship criteria. They say they have an office building they can't rent and if that is the only criteria, then anybody in town who has an office building they can't rent, should be allowed to exceed the density requirements and convert to apartments. In order to be a hardship, it has to be something unique relative to the property that similar properties don't also have. I have an issue with that and as I indicated, separate from the whole Waukegan Watershed Overlay District; if we think the Waukegan Overlay District is something that has been satisfied, which I tend to think it has. Yet; it is not in the watershed area but is in the Rte. 3 South area and that requires 20,000 sf. I don't think they should be granted a variance to exceed that because they have not demonstrated a hardship. I would grant a variance to exceed the 2ac. density but not the 20,000 sf. density criteria because I don't think the hardship criteria has been met. Dever – So, what you are saying is they should be asking for two variances? One for 2 acs. and one for 20,000 sf. Clark- Well- yes. I think Attorney Nadeau addressed the issue and did a good job but I don't think the hardship criterion has been met. Relative to the 2 ac. zoning that one has been met because there is no fair and substantial relationship between requirements of the ordinance and the

particular parcel, given the parcel is right on the border and very little of it is in the Waukegan Watershed. So even though that is not the criteria she presented, it is one I would use in granting the hardship criteria for the 2 ac. per parcel requirement. But that does not apply to the 20,000 sf. That's how I view it. Dever – It says in the Watershed District “The minimum gross lot area required for subdivision purposes shall be the more restrictive of the following:

1. The required minimum lot size pursuant to the underlying Zoning District; or
2. Two (2) acres per lot.

In instances where lots are not created but dwelling units are created (duplexes, multi-family, condominiums), the requirement specified above shall serve as the required density per dwelling unit.” So I would say this overrides the 20,000 sf. Clark – I interpret it differently. Thorpe – Just expanding on where you were, so, you are saying the only variance they need to seek is the 2ac. variance and not the 20,000 sf. Dever – Yes. The most restrictive one applies. Clark – If we decide the more restrictive thing doesn't apply, which is what we are doing then the other one would still apply in my interpretation. I think the statement you read assumes they met the other one and the more restrictive of the two should apply. Even if we give them a variance on the Overlay District, I think they should still have to meet the 20,000 sf. Dever – Does anybody else feel the same way? Reichlen – No. I think we are giving them one variance. I think how far they should go is an appropriate question. Are 7 units too many but it's still one variance. I do have a question around the whole Watershed District. I understand the arguments that the water is flowing outside the Waukegan area, then why is this district as big as it is. This property is fully in the district, not partially in the district. Where do we start drawing the line of reestablishing where that district really applies and where it doesn't? I am asking for some history here. We are making a determination to some degree about where the water flows and therefore it shouldn't be in the district. Dever – I wasn't involved in drawing the boundaries of this district but have in other districts. Historically, what happens is you always come to an area where you question should it be there or not be there and then it's a tug of war. You then have to make a decision. I know they did an exhaustive study on this. Clark - Perhaps they wanted to break it on a parcel boundary and because part of this was in there, they broke it on the outside of it. I would like to remind the Board that at a recent meeting, this Board, myself included, voted with an idea that a residential property was more dangerous to the watershed than an auto-repair facility because a residential property wasn't managed by the Planning Board as closely as a commercial property. I think we are being inconsistent. Dever – I don't agree with you. We are not talking apples and apples. The one you are talking about is one single residential lot. I can go around town and find many residential lots that are horrendous. There is no way to watch those lots. This one here could be multi-family that requires a Special Exception. You are actually getting the same oversight on this one as a commercial one. Clark – Good point. Thorpe – This is on town sewer correct. Dever- Yes and we do have a letter from the Sewer Department. Thorpe – In the hearing, Warren referenced that there was no evidence presented suggesting that a B/I use was more hazardous to the water quality than a residential. I don't believe we ever said that a residential was more harmful. Dever – That's another issue and I don't think it's worth

discussing at this point. Clark – I would like to add that Jack answered my concerns completely and I think what Dave said is true and I stand corrected. Dever – Let's go down the 5 criteria.

1. Granting the variance would not diminish the values of surrounding properties because: Thorpe – I don't think it would. Nothing I've heard would make me think the surrounding properties would suffer. All agreed it would not.
2. Granting the variance would not be contrary to the public interest because: Dever – Does anyone feel this would be? Reichlen – I don't see how it would be.
3. Granting the variance would do substantial justice because: Reichlen – They have agreed to remove 7 parking spaces if we approve this. I would like to make that a condition of the approval. This would help the Watershed District.
4. Granting the variance would observe the spirit of the ordinance because: Thorpe – If the property remained the way it was, it would be more hazardous to the Watershed District than the proposal. I think the substantial justice criteria and the spirit of the ordinance go hand in hand here. They are improving the property. Goodheart- I agree. Clark – Our zoning ordinance says the density for Rte. 3 South District should be 20,000 sf. per dwelling unit. Then our zoning ordinance makes it 4 times greater, and yet we are approving half what's otherwise required outside the Rte.3 District. I hardly see that that conforms to the spirit of the zoning ordinance. Dever – I am sure the 2 ac. zoning when it went into affect with the Overlay District they had the lake in mind more than they did an area such as this which is far removed from the lake although when you make a rule for a district, you follow the rule for the whole district. If we did allow the variance it is going to impact the lake either way.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Clark – As previously stated it's my opinion the applicant has not demonstrated anything unique about the property that creates a hardship. Goodheart - They have stated their intent was to have multiple businesses but based on the economic times there has been no interest. I think the hardship is an economically driven hardship and not a characteristic one. Dever – You can use economic hardship as part of the hardship criteria. Clark – I actually agree with everything you have said but there is one further point which is the hardship, to which they are subjected, tough economic times, is no different from the hardship any other office building holder would be subjected to. What you are essentially saying is anybody who has an office building, who wants a variance to use it as apartments should be able to do it because the hardship criteria is automatically met because its difficult hardship times and its hard to rent commercial space. Goodheart – I don't think we are setting a precedent here. Clark - We could vote one day today and vote the opposite way the next time. Dever – We have done that. In most cases we have voted against density cases. Reichlen – To their credit, it is a building that could look like an apartment building. It does not look like an office building. Clark – Also, it is not on Rte. 3. I will still probably vote against it.

Reichlen moved, Goodheart seconded, IN CASE # 2951, DASLK LLC, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-10 E-2) TO CONVERT AN EXISTING STRUCTURE TO A 7 UNIT MULTI-FAMILY STRUCTURE ON 66,553 SF.

OF LAND, WHERE 14 ACRES WOULD BE REQUIRED (I.E., 2 ACRES PER UNIT), TAX MAP S17, LOT NO.17E, LOCATED AT 15 NORTHVIEW DRIVE IN THE COMMERCIAL-RTE. 3 SOUTH DISTRICT AND THE WAUKEWAN WATERSHED OVERLAY DISTRICT BE GRANTED, WITH THE RESTRICTION THAT THE (7) PARKING SPACES IN THE WEST MOST SIDE OF THE WEST PARKING LOT BE TURNED INTO A VEGETATION AREA AS PART OF THIS APPROVAL. Voted 4-1 in favor.

Clark - No  
Thorpe - Yes  
Goodheart -Yes  
Reichlen - Yes  
Dever - Yes

Dever - Thirty day appeal period.

Meeting adjourned at 8:30 PM

Respectfully submitted,

Christine Tivnan  
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on August 11, 2011

-----  
Jack Dever -Chairman