

PRESENT: Mack, Chairman; Hawkins, Haley; Pelczar; Joslin; Edney, Code Enforcement Officer; Tivnan, Clerk

CONTINUED FROM MAY 10, 2007

DELIBERATIONS

2779A: On remand from consolidated appeals to the Belknap County Superior Court, Henmor Development, LLC seeks relief from the road frontage and access provisions of RSA 674:41 to allow its proposed construction of a single family home on, and 2-lot subdivision of, Bryant Island, Lake Wicwas, Tax Map R10, Lot 22. Also included in the applicant's development proposal is a separate parcel on Chemung Road, Tax Map R14, Lot 58. Both properties are located in the Shoreline District as defined in the Town of Meredith Zoning Ordinance.

Bates – (Town Attorney) – I have handed out a document that summarizes the test that is stated in RSA 674:41 that the applicant has to meet in order for this Board to grant this relief. What I would suggest is that the Board do your initial deliberation with the standards in mind that I have passed out, reach a consensus, stop short of a formal final decision and charge me with the task of going away and produce a draft decision to be considered at a further public meeting. Mack – I agree with Tim. Based on that, I have been thinking about this case since we first heard it. If you look at criteria # 5, they talk about hardship to the town and future purchasers of the property. They take one case and throw it at us. You have to take a look at the restrictions and the limitations that were put on it based on the site plan review. I am not sure the case that they cited was the exact circumstances as this one. The other argument was that nobody reaches criteria #5, so why do we have a statute that has 5 criteria's. Bates – How do you mean that Mr. Chairman? Mack – One of the arguments from the attorney was that in the Vachon case, their decision in issuance said that, no matter what, additional hardship and financial burden will be put on the town; so therefore, you will never meet the criteria. Criteria #1, in my opinion, requiring them to do it, would entail practical difficulty and unnecessary hardship. It has never happened before. Criteria #2, that the circumstances do not require the development of Bryant Island to be related to existing or proposed streets: I don't think it is practical to put streets on an island that is going to have 2-lots. Criteria #3, it does not distort the official map. Meredith does not have an "official map." Criteria # 4- Difficulty of caring out the Town's Master Plan. I don't believe it requires streets on small or large islands, accessed by boat, will distort anything in the Town's Master Plan. Criteria #5 – The hardship to future purchaser's is a hard one but they will know their limitation when they record their deeds. The hardship is accepted by the purchaser. They are not creating future hardships. People make a determination whether they want to buy the property with the limitations' that it has. I don't believe there is financial hardship to the Town. With the limitation and the

restrictions that have applied, I don't think the financial burden is anymore than ice fisherman out on the lake or anything else that happens on the lake or islands. People understand the inheritaed dangers of living on an island as far as town services. I would like everyone else to weigh in on this. Hawkins – I agree with everything you have said. The RSA is very vague when it comes to streets on small islands. As far as people buying on an island, they know what they are getting. Joslin – I agree with what you said also. Especially with regard to Town services; we have a volunteer fire department and we don't make any bones about having anything more than that. Pelczar – I also am in agreement. I have served on the fire department and we have had a couple of calls on that lake and we do the best we can to get there. Haley – I agree. I am looking back at one time when I was looking to purchase on an island. When I figured I had to load and unload 4 times, I decided against it. Just this week we had fire engines rescuing workman in the bay. The fire department answered the call. When you buy on an island you know what you are buying and you can't expect that because of your decision the Town is going to change its way. All the things you listed on the 5 criteria I agree with. Bates –This is a clear consensus in the direction you would like to go. I will draft a decision that incorporates that thinking and submit it for your review. The Board voted unanimously to proceed with Attorney Bates drafting a decision.

2759: ASSOCIATED SURVEYORS FOR ALBERT & DONNA DUCHARME:

Mack - Tim, may I request that you give us a quick synopsis of what the Judge is saying. Bates - The court was not convinced with the Abears argument that the ZBA provided insufficient notice of its hearing because the notice of hearing incorrectly identified the .property as being located in the Forestry and Rural District instead of the Forestry and Conservation District. Judge Smukler quizzed the plaintiff's attorney and said that you and your clients were there so you were not misled. That's off the table. The plaintiffs also argued that the ZBA unreasonably ignored new evidence when it denied their request for rehearing. The Judge said that it was not unreasonable for you to ignore those new materials. The court was not persuaded. It said that the Ducharme's plans to subdivide and develop their property in no way do those documents stand for the notion that the plans to construct a road, a common driveway, and a water impoundment area will negatively affect existing roads or create emergency access problems. Finally, we come to the request for finding. Both the opponents and the applicant had requested for the Board to make specific findings to support the decision. The court felt that the Board failed to either address the findings specifically or to explain in a written decision why it was granting the special exception. The lack of either one meant that the court really couldn't tell what the basis was for the Boards decision. The judge did not overturn what the ZBA did but sent it back down for an opportunity to clarify your thinking. The ordinance is a little squirrelly about these special exceptions.

2780: RCC ATLANTIC, INC FOR ELIZABETH ALMSTROM, TRUSTEE:

Mack – I took a look at where this is going and I feel that changing the location would cause more of a disturbance. Joslin-I don't see the need to construct another road. Haley – There was some question that if they changed the location, they would not get the same service. Joslin- Dr. Almstrom has spent a lot of time and energy on this whole project. He is such an environmentalist that he has done all the homework, Hawkins- By having it in the sensitive zone the tower will only be 90' versus 130'. Mack – There was discussion at the last meeting about the type of tower. Is it a monopole or mono-pole? I think we should preference it in the motion.

Hawkins moved, Pelczar seconded, In case # 2780, RCC ATLANTIC, INC FOR ELIZABETH ALMSTROM, TRUSTEE, I MOVE AN APPEAL FOR A VARIANCE TO CONSTRUCT A WIRELESS TELECOMMUNICATION FACILITY IN SENSITIVITY ZONE BE GRANTED, AS IT MEETS THE CRITERIA FOR A VARIANCE AS ADDRESSED IN THE VARIANCE APPLICATION AS WELL AS OUR DISCUSSIONS. AS AN ADDED CONDITION, I WOULD ADD THAT THE TOWER WILL BE A MONOPOLE. Voted 5-0 in favor.

2780A: RCC ATLANTIC, INC FOR ELIZABETH ALMSTROM, TRUSTEE:

Hawkins moved, Joslin seconded, In case # 2780A, RCC ATLANTIC, INC FOR ELIZABETH ALMSTROM, TRUSTEE, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO CONSTRUCT A WETLAND CROSSING WITHIN NON-DESIGNATED WETLANDS FOR INSTALLATION OF A CULVERT FOR DRIVEWAY ACCESS BE GRANTED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION AND ALL THINGS CONSIDERED IT IS BY THE FAR THE BEST LOCATION FOR THE CROSSING AND DRIVEWAY. WE DID TAKE INTO ACCOUNT THE CONSERVATION COMMISSION'S CONCERNS AS WELL AS THE ACCESS TO THE EXISTING WOODS ROAD AND LEDGE. Voted 5-0 in favor.

2791: LAND ACQUISITION, LLC:

Pelczar stepped down.

Haley – This was a decision of two zones and you made the determination that it was more in one zone than the other thus they were over developed. Edney – I looked at prior interpretations because our Zoning Ordinance is not that clear. In this case, the majority of the lot proposed for development is in the Central Business District. For purposes of establishing the overall unit density for the project, the area requirement for each zoning district shall be calculated and combined to represent the total project density. I explained to these folks that that is the methodology that is used. Mack – I understand where Bill is coming from. There is no definite path that we have to follow. Also, in reviewing it, I think we

need to keep in mind the purpose and intent of the shoreline district to begin with. I think if I was in Bill's shoes I would get them to meet all the shoreline instead. He is being fairer than I would be. We need to keep the purpose and intent of the shoreline district in mind.

Haley moved, Hawkins seconded, In case # 2791, LAND ACQUISITION, LLC, I MOVE WE UPHOLD THE DECISION OF THE CODE ENFORCEMENT OFFICER IN THAT ONE OF THE MAJOR FACTORS OF HIS JOB IS TO INTERPRET THE ORDINANCE AND MAKE WRITTEN JUDGMENT TO THE VALUES REQUESTING PERMITS. LOOKING AT PRIOR INTERPRETATIONS AND RECOGNIZING THAT WE ARE NOT FULLY COMPLETE IN OUR DESCRIPTIONS MADE THE BEST JUDGMENT CALL. Voted 4-0 in favor.

2792: MSS REALTY TRUST OF 1995:

Mack-I think this will be a good use of the land. I don't think a nursing home will increase traffic. Haley - We need more Senior Housing.

Haley moved, Pelczar seconded, In case # 2792, MSS REALTY TRUST OF 1995, I MOVE AN APPEAL FOR A VARIANCE TO ALLOW A NURSING/CONVALESCENT HOME TAX MAP S17, LOT NO. 16 LOCATED ON RTE.3 AND MILE POINT ROAD IN THE SHORELINE AND COMMERCIAL – ROUTE 3 SOUTH DISTRICT BE GRANTED, AS IT MEETS THE CRITERIA FOR A VARIANCE, THE NEEDS OF THE COMMUNITY AND IS CENTRALLY LOCATED TO DOWNTOWN. Voted 5-0 in favor.

2793: ROBERT HALE ANDREW AND PHYLLIS ELDRIDGE TRUST:

Hawkins moved, Haley seconded, In case #2793, ROBERT HALE ANDREW AND PHYLLIS ELDRIDGE TRUST, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO CONSTRUCT A DRIVEWAY WITHIN THE PROTECTIVE BUFFER OF A NON-DESIGNATED WETLAND WITH POSSIBLE UNDERGROUND UTILITIES BE GRANTED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION AND IT IS THE BEST PLACE FOR A DRIVEWAY. Voted 5-0 in favor.

2794: PAUL A. & ARDYCE W. PELTON:

Mack- I think this is better than what is there now. My feeling is they meet the criteria.

Hawkins moved, Joslin seconded, In case # 2794: PAUL A. & ARDYCE W. PELTON, I MOVE AN APPEAL FOR A VARIANCE TO ALLOW CONSTRUCTION OF AN ADDITION TO AN EXISTING NON-CONFORMING STRUCTURE, BY EXTENDING THE EXISTING BUILDING PLANE BY 93%, 50% ALLOWED BE

GRANTED, AS IT MEETS THE CRITERIA FOR A VARIANCE AND IT IS THE VERY BEST WAY. Voted 4-0 in favor.

2795: PAUL A. & ARDYCE W. PELTON:

Hawkins moved, Pelczar seconded, In case #2795: PAUL A. & ARDYCE W. PELTON, I MOVE AN APPEAL FOR A VARIANCE TO ALLOW CONSTRUCTION OF A BULKHEAD WITH A SIDE SETBACK OF 11'. 20' ALLOWED AND A REAR SETBACK OF 17.2', 30' ALLOWED BE GRANTED, AS IT MEETS THE CRITERIA FOR A VARIANCE. Voted 4-0 in favor.

2796: PAUL A. & ARDYCE W. PELTON:

Hawkins moved, Pelczar seconded, In case # 2796, PAUL A. & ARDYCE W. PELTON, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO EXPAND A NON-CONFORMING STRUCTURE BY MORE THAN 400 SQ. FT. BE GRANTED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION AND THEY ARE DOING THE VERY BEST THAT THEY CAN DO. Voted 4-0 in favor.

2797: RAYMOND & BERNICE HACKETT:

Haley – How many units have we gone through in that original colony? Mack – Same as all the ones we have done at Brookhurst.

Haley moved, Pelczar seconded, In case # 2797, RAYMOND & BERNICE HACKETT, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO EXPAND A NON-CONFORMING STRUCTURE BY MORE THAN 400 SQ. FT., LOCATED AT 105 PLEASANT STREET BE GRANTED, AS IT MEETS THE SAME CRITERIA THAT WE HAVE USED THROUGHOUT THAT DEVELOPMENT. Voted 5-0 in favor.

Meeting adjourned at 8:00 pm

Respectfully submitted,

Christine Tivnan
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on _____, 2007.

John Mack, Chairman