

PRESENT: Mack, Chairman; Hawkins, Haley; Pelczar ;( Stepped Down for both Applications) Clark; Edney, Code Enforcement Officer; Tivnan, Clerk

Hawkins moved, Clark seconded, THAT WE APPROVE THE MINUTES OF JULY 12, 2007, AS PRESENTED. Voted unanimously.

## **PUBLIC HEARINGS**

**2805: MICHAEL & CHARLENE BOULANGER:** An appeal for a VARIANCE to erect a porch addition with a front setback of 22', 30' required, Tax Map No. R05, Lot No. 11, located at 4 Meadow Lane in the Residential District. CONTINUED FROM JULY 12, 2007.

Boulanger – The plans are to put the porch on the front side of the house. The west side has the oil tank and no entrance. The backside is for a future addition and the east side is where my garage is. So, the only place to put it is in the front which will make it 8' closer to the boundary. My neighbors have no objection. Clark – How old is the house? Boulanger – It is a modular and I believe around 1988. Clark – How close are the neighbors? Boulanger – One is 90' and the other is just a lot, about 60' away. Hearing closed at 7:10PM

## **REHEARING**

**2791: LAND ACQUISITION, LLC:** (Rep. Mark Derby) An appeal of an ADMINISTRATIVE DECISION of the Code Enforcement Officers interpretation and enforcement of the provisions of the Zoning Ordinance related to Article V C-2 (District Boundaries), Tax Map S17, Lot No. 2. located on Upper Ladd Hill Road located in the Shoreline and Central Business District.

Derby – I'd like to give you some background. We appealed an Administrative Decision dated April 10th involving a split lot. The lot is split between the Central Business District and the Shoreline District. There was a hearing and we appealed it on April 20, 2007 and had a hearing before the Board on May 10, 2007. The Board was unable to deliberate on May 10<sup>th</sup> because the meeting went late into the evening. They ultimately deliberated on May 24, 2007 and denied our appeal. We filed a rehearing on June 13<sup>th</sup> and the Board held their deliberations on the motion for re-hearing on July 12<sup>th</sup>. We are here today, starting fresh on the rehearing. This is a 19.158 acre lot off Upper Ladd Hill Road. Approximately 14.5 acres are in the Central Business District and another 4.5 acres located in the Shoreline District. We approached the Code Administrator to confirm that we were on the same page as to our interpretation of Article V, Section C (2) of the Zoning, which reads "If a lot or abutting

lots owned by one person are intersected by a district boundary, the lots may be considered to be in that district which comprises the majority of the lot area." So, in looking at this 19.15 acre lot our position was that the entire 19.15 acres is to be considered and treated as if it is in the majority district. The major district in this case is the Central Business District. The interpretation of the Zoning Administrator that we disagree with essentially imposes upon this district a new requirement that is not contained anywhere in the text of the Zoning Ordinance. Therefore, we believe it is erroneous. His new requirement was to create a weighted average of the density required by the two zones. We objected to that. We believe that the language of Article V Section C (2) is clear on its face. When it says "the entire lot shall be treated as if it is in the majority district." That means that all of the requirements and restrictions of the majority district apply to the entire lot. When you have a split lot, there are certain hardships that occur to the owner. It doesn't invalidate the entire Zoning Ordinance to have a zoning boundary come in and split a lot. Zoning Ordinances generally have split lot provisions. In our Motion for Rehearing, I have singled out a number of other Towns and Municipalities where they have dealt with the split lot problem. One of the more common ways that they dealt with it was to say you can go into the less restrictive lot but only 50' or 100'. Meredith has no such restrictions or qualifications on Article V, Section C (2). The potential argument of when it says "the property **may** be treated as if the entire property is in the majority lot." The Supreme Court in *Duffy vs Dover* said it was in fact the landowner's choice. The error in *Duffy vs. Dover* was that the Zoning Board considered its choice to decide whether or not the applicant could or couldn't make the decision. We are saying that it is the applicant's decision to request to make use of Article V, Section C (2). Meredith's ordinance is very simple and straightforward. We submit the ordinance is not ambiguous and the Code Administrator erred when he imposed a new formula for calculating density of the overall project. The Meredith voters could have placed specific restrictions on Article V Section C (2). There are alternatives out there. (Submitted to the Board a brief letter with bullet points summarizing their arguments) Tab 2 is a copy of all of the foreign cases which I cited in our motion. With that, I would respectfully request that our appeal be granted of the April 10, 2007 decision of the Code Enforcement Administrator. Clark – According to your reading of the law, the owner of this property could purchase additional contiguous properties, all of which would be subject to the less restrictive zoning. Derby – I don't think that case is before you today. This lot does stand alone. It was bought as a stand alone unit and it has been a stand alone unit. Article V, Section C (2) does use the word plural. You don't need to make that decision today because this is not the case. This is one lot. Clark – Are these rental units or are they going to be resold? Derby – I believe the plan is to build single-family townhouse condominiums to be owned by individual owners. Clark – My understanding is if a lot is subdivided for sale that subdivision needs to get approval and that would be denied if non-conforming lots were created. So, my question is, if you plan to sell these lots, will you be able to since when you break them apart

they will then be non-conforming to the zone that they are in. Derby - I believe the condominium statute would govern this. We would not be selling off individual parcels. I am not sure what is coming before the Planning Board. Mack-The way the ordinance reads, if we do grant this appeal that whole lot becomes whatever zone the owner wants it to be and it stays that way. Ken Anderson -I abut lot 2. My concern is that this is a business development next to our development and the other concern is how the water easement would be accomplished. Mack - Any water easement has nothing to do with the decision making policy of this Board. As far as it abutting your parcel, from my understanding, they are talking about making residential units, not a business use. Anderson - A business can't go up there? Mack - Their request was to have it classified as business for density purposes so they could get more units on a piece of land. Dave Broughton - We have requested through the Town Manager and the Town Planner to have some input as far as our roads being used as part of their development. There is a plan that shows an extension at the end of our road that we were told would eventually come out and go up by the water tanks and I am assuming this development is part of this. Am I correct or wrong? Mack - As far as roads, that is Planning Board. Mack - This is for density only. Broughton - This is not a Planning Board meeting? Mack - This is a Zoning Board of Adjustment meeting. Pelczar- (17 Sunset Hill ) I abut this Shoreline District property where there are 1 acre house lots all away along. By doing this, what is going to stop them from jamming house lots in this area? We may not be in the Waukegan Watershed District but we are what I consider the Winnepesaukee Watershed District. We are having a problem with town water and we are upstream. I am not in favor of this plan. Derby - I think the Chairman has made it clear that the issues about roads and other development issues are better handled by the Planning Board. As to the issue about density, we did prepare a very preliminary Site-Plan Review which we submitted at the last hearing which we believe stands as evidence of the unreasonableness of the Code Administrators decision in this case. Hearing closed at 7:35PM

## **DELIBERATIONS**

### **2805: MICHAEL & CHARLENE BOULANGER:**

Hawkins - I realize this is a variance application and is fairly straightforward. According to the applicant's drawings of his situation with his house and the setbacks, I myself think it is a good fit.

Hawkins moved, Haley moved, In case # 2805, MICHAEL & CHARLENE BOULANGER, I MOVE THE APPEAL FOR A VARIANCE TO ERECT A PORCH ADDITION WITH A FRONT SETBACK OF 22', 30' REQUIRED BE GRANTED, AS IT MEETS THE CRITERIA FOR THE VARIANCE. Voted 4-0 in favor.

**2791: LAND ACQUISITION, LLC: (Rep. Mark Derby)**

Mack - We reviewed all the information we have regarding this. I don't think our forefathers saw this situation arising and it has left an opening for this to happen. I think we were trying to use reasonableness when we looked at it the first time and so was the Code Enforcement Officer versus black and white legality. In essence we were in error originally. I think our hands are tied on this one.  
Hawkins – I would have to agree.

Hawkins moved, Clark seconded, In case # 2791, LAND ACQUISITION, LLC; I MOVE THE APPEAL OF AN ADMINISTRATIVE DECISION OF THE CODE ENFORCEMENT OFFICERS INTERPRETATION AND ENFORCEMENT OF THE ZONING ORDINANCE BE GRANTED. Voted 4-0 in favor.

Mack – Any discussion? Haley - Did you mention you had a Site Plan? Derby – (Gave board a copy) Mack – I think Ken is looking for the exact location of the land. Haley – This does not have access to Meredith Bay in any form? Derby – There is a road E that I guess will get it down in that direction. Mack – They don't have frontage on the lake if that is what you are asking for? Haley – Yes. Clark - I have to agree with the applicant because there is no provision in the Zoning Ordinance that allows anyone to do that. However, I don't think the voters really thought about this but one has to go with what's on the face of the law. What's interesting is the whole question about whether this is one lot or whatever lots because these are condominiums. To me, a reasonable judgment ( after this meeting) would be, since these are multiple lots, multiple dwellings, that the Shoreline District should have the shoreline density and the central business should have the central business density with no mixing. One building, or one business being put up there, I would agree with the applicant that it all get the Central Business District. I think the neighbor who testified has a valid point. He purchased that land with the expectation that it was in the center of the residential district with density requirements that would prevent a whole bunch of houses being right up next to him. Mack – I sympathize with you Warren and the vote tonight just nullifies the decision of the Code Enforcement Officer. Clark – If we nullify this decision of the Code Enforcement Officer, that means he has to make another decision? Correct? If we say no, that does not necessarily mean that the people appealing it, their position is correct. We are merely saying that the Code Enforcement Officer's decision is incorrect. We are not making a decision are we? Mack – Technically we are because they are appealing the density. Clark – That's right, but that assumes there are only two possible decisions. I would hold that there is another decision that could be made. Mack – We have reviewed this with Town Counsel. Clark – Again, what we are saying is only that the Code Enforcement Officer's decision is nullified and that another decision needs to be made by the Code Enforcement Officer. Mack – The decision is made by the language in the ordinance. Clark – We haven't discussed nor do I know the

definition of the word "Lot". Mack – If this is a condominium form of ownership, there is only one lot. Clark – That's what I didn't know.

Meeting adjourned at 8:00 PM

Respectfully submitted,

Christine Tivnan  
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on \_\_\_\_\_, 2007.

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John Mack, Chairman