

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

Alternate: Reichlen

Thorpe moved, Clark seconded, THAT WE APPROVE THE MINUTES OF APRIL 27, 2011. Voted unanimously. Flanders moved, Thorpe seconded, THAT WE APPROVE THE MINUTES OF MAY 12, 2011. Vote unanimously. Thorpe moved, Flanders seconded, THAT WE APPROVE THE MINUTES OF MAY 18, 2011. Voted unanimously.

**PUBLIC HEARING**

**2947: DEREK WITHAM FOR GROVER WITHAM:** An appeal for a VARIANCE (ARTICLE V, SECTION D-4B) to construct a garage with a side setback of 10' 4¾", 20' required, Tax Map U39, Lot 2-42, located at 10 Marinello Road in the Shoreline District.

Witham- I am here tonight because I would like to have a garage for storage. Last year I had some items stolen and the garage would allow them to be safely stored. This will not alter the look of the neighborhood. There are many houses in this area that have garages. I would just like to enjoy my property in the same manner as my neighbors. (Recorder not working) Clark raised concerns with the width of the driveway and having two driveway accesses. Applicant was amenable to limiting the width and only one driveway. Hearing closed at 7:15 PM

**2948: DOCKS UNLIMITED FOR EAGLE ENTERPRISES:** An appeal for a VARIANCE (ARTICLE V-D-6B) to allow display area within the front setback, 50' required, Map S19, Lot 9, located at 45 Daniel Webster Highway, in the Commercial Rte.3 South District.

Johnson-This property is located on Rte. 3 South next to the old Harpers Boat Restoration. What we are proposing is to allow display areas within the front setback. The site has been used in this manner in the past and the proposed display area does not abut surrounding properties. There are many other properties in town that have display areas within the setbacks (Passed to the Board a list of properties) some having approved site plans without the benefit of a variance. Surrounding properties have display areas within the setbacks so we don't feel this would be contrary to the public interest. This is a huge piece of property. We feel the use is reasonable. It has been used in this manner in the past. There would be no direct impact to the abutters or the general public. Dever – I believe there would be an impact. I'd like to read the - **General Purpose** of the Commercial Rte. 3 South District – "The purpose of this District is to provide an area for vehicularly oriented businesses. This area is located along Route 3 South, which is a major tourist route and year-round transportation corridor in the Lakes Region. Because it is a highly visible tourist route with a spectacular view of Lake Winnepesaukee, it is important that all proposed uses have attractive landscaping and

signs, and other aesthetic qualities. Where applicable, the height and locations of structures may have to be adjusted to ensure that the scenic views in this area are protected. Driveways and other points of access should be located in the safest possible location. Most of these concerns should be addressed through the Site Plan Review process.” I feel this use is contrary to the spirit of the zoning ordinance. This is not what we want to see driving up and down Rte. 3. Clark – We want a corridor that is green and attractive to both residents and visitors and not look like Rte. 1 in MA. Thorpe – I don’t see a hardship.

**2949: DOCKS UNLIMITED FOR EAGLE ENTERPRISES:** An appeal for a VARIANCE (ARTICLE V-D-6A) to allow storage of marine construction material outside, Map S19, Lot 9, located at 45 Daniel Webster Highway, in the Commercial Rte.3 South District.

Johnson – This proposed use of marine storage is in the back of a big storage building, out of site, mostly of the Rte. 3 scenic highway. As I mentioned, this is a 20 ac. piece of property. We have identified on the property a 50 x 50 box which will be the area to store marine construction materials until they can be utilized. It is visible driving up Latchkey Lane which is a private road. As part of the site plan process, we would entertain with the Planning Board about some type of screening for that storage area.

1. Granting the variance would not diminish the values of surrounding properties: This is a small 50 x 50 section of the land and the types of material there, rocks and so forth are located far enough away from the residential property so it would not affect their value.
2. Granting the variance would not be contrary to the public interest because there is no harm to the surrounding properties or to the general public. This is a private road.
3. Granting the variance would do substantial justice because it would allow reasonable use of the property. When the existing dock business is idle in the winter there is nothing going in and out of there. There is very little activity on the site in the winter.
4. Granting the variance would observe the spirit of the ordinance because the ordinance allows a reasonable use of a commercial piece of property. This is zoned commercial. This use is accessory to the main business.
5. Special conditions of the property that distinguish it from other properties in the area: The property is 20 acres. This is a very large piece of property and we are only utilizing a 50 x 50 portion of it for this component of the business. We believe this is a reasonable use. Pelczar – In that 50 x 50 area, are there any height restrictions? Johnson – There are none now. This Board or the Planning Board could set them. Clark – It sounds like you want to store rocks and boulders. Is that correct? Johnson – That is part of it. There are other incidentals. Clark – The rocks and boulders don’t bother me. It’s the incidental components that bother me. I would like to know what that includes. I don’t want to see a pile of old docks with parts. Graham – I am the owner. The reason this became an issue is I would get calls for breakwater construction and the difficulty is accumulating the rocks. Clark – Besides rocks, what would be stored there? Would you be amenable to

allow storage of rocks and other natural earth items, rather than general storage of marine construction materials? We don't want to see old docks with parts. Graham – I don't stockpile old docks. Clark – So you would be happy to say that this would be proposed storage of rocks used for marine construction. Graham- Right. The only other thing I would put back there would be a small pile of pilings. I bought some pontoons for the intention of making a barge. I am just getting around to welding those tanks together and anticipate this will be done in a few weeks. It will be on the lake and not on site anymore. Flanders – Are those the ones that were at your old property? Graham – Right. Dever – Is there any reason the storage of this material can't be moved back to the furthest corner of the lot so it can't be seen by anybody? Johnson - Only from a functional stand point to have to go back there and get the materials. I think it's in an area that is pretty far. Actually, as you move further back you are getting closer to the houses up there and on the other side of the lot there is a wetland. Pelczar – Where will you store your barges in the winter time? Graham – They both will stay in the water. I apologize for the way the site looks like now.

**2950: DOCKS UNLIMITED FOR EAGLE ENTERPRISES:** An appeal for a VARIANCE (ARTICLE V-D-6A) to allow seasonal storage of shrink-wrapped boats, Map S19, Lot 9, located at 45 Daniel Webster Highway, in the Commercial Rte.3 South District.

Johnson – We are proposing a 40 x 90 foot area for the seasonal storage of shrink-wrapped boats. This has been a use of this property over the years. On the site plan we are trying to identify the specific area for the boats to be stored. Once again, the ordinance doesn't say this type of use is allowed. But again, the portion of the business shuts down during the winter; nothing is happening there so we figured this would be a natural part of a marine type building to store shrink wrapped boats in this area until spring time.

1. Granting the variance would not diminish the values of surrounding properties: I don't see how this would affect the values of surrounding properties.
2. Granting the variance would not be contrary to the public interest because there are a lot of shrink wrapped boats stored around town.
3. Granting the variance would do substantial justice because it would allow a reasonable use of the property and would also allow the owner to generate some income over the winter.
4. Granting the variance would observe the spirit of the ordinance because the ordinance allows reasonable uses of commercial properties provided it doesn't interfere with the abutter's use of their property and it doesn't affect the public interest. I think this satisfies both of those requirements.
5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship: Once again, special conditions of the property that distinguish it from other areas is this is a very large piece of property. This is a reasonable use.

Flanders – How do we maintain the space you have proposed? Johnson –We came up with that area by going to where the parking ends, we ended it at the well and we maintained a 20' access to the rear, to get to the marine materials. That's how we defined the area. Graham – Shrink wrapping is a pertinent part of my business. It's a seasonal use. Hearing closed at 7:45PM

## DELIBERATION

### 2947: DEREK WITHAM FOR GROVER WITHAM:

Dever – Is everyone pretty much familiar with this area? Clark – I visited this site and there are a number of houses that are very similar to each other with minimal side setbacks. This property has a unique characteristic being it is not rectangular but trapezoidal. I think this is a hardship. My only concern which I expressed to the applicant was I didn't want to see a house with four driveways across the front. I would like to have an agreement if we allow this garage on the property; that it will be limited to a single or even a double width driveway but not two driveways or one driveway, four cars wide. Dever – We can make this a condition if we decide to approve it. Let's go down the five criteria. This property is an old subdivision that was done back in the 1960's. They are 100 x 100 lots. They are very small and many lots there have received variances for one thing or another. So I don't think this would diminish property values.

1. Granting the variance would not diminish the values of surrounding properties: All agreed. Clark made note subject to what he said earlier.
2. Granting the variance would not be contrary to the public interest: All agreed.
3. Granting the variance would do substantial justice: All agreed it would.
4. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship as the property is unique. Clark – I think there is definitely a hardship because of the shape of the property. Dever – Everybody agree with this? All agreed.

Clark moved, Thorpe seconded, IN CASE # 2947, DEREK WITHAM FOR GROVER WITHAM, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V, SECTION D-4B) TO CONSTRUCT A GARAGE WITH A SIDE SETBACK OF 10' 4 $\frac{3}{4}$ " , 20' REQUIRED, TAX MAP U39, LOT 2-42, LOCATED AT 10 MARINELLO ROAD IN THE SHORELINE DISTRICT BE GRANTED, SUBJECT TO THE CONSTRAINT THAT BY THE TIME HE GETS HIS CERTIFICATE OF OCCUPANCY, THERE IS NO MORE THAN ONE DRIVEWAY AND THAT DRIVEWAY IS NO MORE THAN TWO CAR WIDTHS WIDE. Voted 5-0 in favor.

Discussion -Flanders – I don't feel the need for the restrictions. Clark – There are two ways we can handle this. Brian could suggest an amendment to my motion or we could deny this one and vote on a motion without the restriction. Dever – Brian, what do you want to do? Flanders - If everyone wants to do that, I am Ok with it. Dever – I don't think the restriction will place an undo burden on the property owner. He has already agreed that he would is amenable to some type of restriction on it. Flanders- Ok. Edney – As a practical matter, when it comes to two separate driveways, they don't have the frontage for that and it would not be approved by Public Works. That's not even an issue. Clark – My motion doesn't allow two separate driveways. It's one driveway that can't be more than two cars wide. Flanders –What Bill is saying is Public Works already would take care of this. Right? Edney –Two driveway entrances would not be approved on that property. Clark – My motion says only one driveway and not more than two cars wide. He could have a two car wide driveway.

**2948: DOCKS UNLIMITED FOR EAGLE ENTERPRISES:**

Pelczar – I think with the size of this lot, he is able to stay back beyond the 50'. Dever – You don't feel he should be allowed to have display areas within the setback? Pelczar – Correct. I don't see a hardship here. Clark – This is contrary to the spirit of the ordinance and there is no hardship here. I would also point out that just because everyone else is doing it, in my mind the fact that so many are doing it makes it all the more critical that we not allow this to continue. All agreed. Dever- Let's go down the criteria.

1. Granting the variance would not diminish the values of surrounding properties: Clark – I think it would. We want a corridor that is green and attractive to both residents and visitors. Thorpe – So many other surrounding properties are encroaching on the 50' setback that I think it would be questionable whether it would diminish property values. I would be inclined to say it would not diminish property values. Brian- I agree with Dave. Pelczar – Me too.

2. Granting the variance would not be contrary to the public interest: Thorpe – I think it is contrary. Dever – I do too. If you read the general purpose of what the ordinance says for that district.

3. Granting the variance would do substantial justice: Thorpe – Not to the public.

4. Granting the variance would observe the spirit of the ordinance: Thorpe – No, especially when you read the description of the Rte. 3 corridor.

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship as the property is unique. Dever – I don't see how there is an unnecessary hardship. The lot is what it is. He has been able to operate.

Clark moved, Pelczar seconded, IN CASE # 2948, DOCKS UNLIMITED FOR EAGLE ENTERPRISES, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V-D-6B) TO ALLOW DISPLAY AREA WITHIN THE FRONT SETBACK, 50' REQUIRED, MAP S19, LOT 9, LOCATED AT 45 DANIEL WEBSTER HIGHWAY, IN THE COMMERCIAL RTE.3

SOUTH DISTRICT BE DENIED, AS THE APPLICANT FAILED TO SHOW GRANTING THE VARIANCE WOULD NOT BE CONTRARY TO THE PUBLIC INTEREST, FAILED TO SHOW THE VARIANCE WOULD NOT DO SUBSTANTIAL JUSTICE, FAILED TO SHOW THE VARIANCE WOULD OBSERVE THE SPIRIT OF THE ORDINANCE AND FAILED TO SHOW ANY KIND OF HARDSHIP THAT WOULD REQUIRE THE VARIANCE TO BE APPROVED. Voted 5-0 in favor.

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Pelczar – Being the business that he is in and we heard testimony that the piles will be small, you have to be able to store material. I'm alright with this one. They have a 50 x 50 area designated and as long as it doesn't grow, you have to be able to work. Thorpe - I agree. Clark – I too agree. I am concerned with the language of "marine construction material". That is wide open. Perhaps we should allow the variance to include storage of rocks, boulders and pilings rather than any marine construction materials. Marine construction materials would allow the storage of pontoons that are currently on the site which he says he has intentions to remove and not replace. I think we need some restrictions and the other thought is it seems he is storing a lot of this to one side of the property and centrally might be better. Dever – I suggested further back. The farther back you can get it, the better it would be. Clark – My other concern is when people put up something to hide something unsightly; my experience is generally the thing you put up is often as unsightly as what they are trying to hide. Dever – My concern is the designated area starts to grow and grow. How is that to be monitored? Clark – I don't see a problem with a pile of rocks. Pilings are different. Flanders – By that example, we could have a sand pit anywhere in town.

1. Granting the variance would not diminish the values of surrounding properties: All agreed.
2. Granting the variance would not be contrary to the public interest: All agreed.
3. Granting the variance would do substantial justice: Dever – As you pointed out Warren, he should have some area to store rocks.
4. Granting the variance would observe the spirit of the ordinance: Thorpe – I think retail businesses are allowed in this district and having the material to conduct your business is part of it. Flanders – I agree.
5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship: Thorpe – I think not being able to have basic materials for your business is a hardship. Clark – What do the other board members think about limiting it to rocks, boulders and pilings as opposed to any marine construction equipment? Thorpe – My take is to leave it up to the Planning Board. Flanders – I'm not sure it's fair to pin him down. Let the Planning Board make him screen it properly. Clark – I hear the board, thank-you.

Flanders moved, Pelczar seconded, IN CASE #2949, DOCKS UNLIMITED FOR EAGLE ENTERPRISES, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V-D-6A) TO ALLOW STORAGE OF MARINE CONSTRUCTION MATERIAL OUTSIDE, MAP S19, LOT 9, LOCATED AT 45 DANIEL WEBSTER HIGHWAY, IN THE COMMERCIAL RTE.3 SOUTH DISTRICT BE GRANTED , AS THEY HAVE MET THE FIVE CRITERIA. Voted 5-0 in favor.

**2950: DOCKS UNLIMITED FOR EAGLE ENTERPRISES:**

Thorpe – I think this is very much like #2949. I think the same principal applies and I think the conversation we just had applies to this one. Flanders and Pelczar agreed. Flanders – There are some decent boundaries that are easy to see to make sure he stays within that designated area. Dever – My concern is we have a dock building business and now we are expanding to boat storage. I think that is an over reach and could get out of hand down there. I think we have been generous with this site. I am not in favor of this. Clark – What does the boat storage area look like from the road? If it is visible from the road, I think people will think it is unsightly and will be contrary to the spirit and intent of the ordinance. Dever – I agree. Thorpe – Does the owner have the right to bring their own boats to this property without permission or control from Mr. Graham? Dever – No. He would be using the property in away that are not permitted. Pelczar – I still agree with Dave. Reichlen – Is seasonal well defined? Dever – No. Reichlen – I would suggest maybe we want it to be. To see boats stored in the winter is fine but if they are left in the summer, late spring or early fall, that can be considered unsightly for the tourist trade. Dever – I agree. Flanders – I assume we could put that in the approval. Clark – Few would argue a boat there for 12 months is not seasonal. Dever – How do you monitor that? Clark – Someone complains or we send the inspector around. You can say the same for every restriction we put on. I am not arguing against you Jack. I tend to agree with you. Dever – The other concern is someone wants to have their boat worked on but they want it shrink wrapped and stored until they get someone to work on it and then that doesn't happen and the months grow and then we end up with a derelict boat. Clark – I share your concerns. He is now asking for permission to have another business. Thorpe – Boat sales, service and repairs are a permitted use in this district. Dever – It doesn't say anything about storage. Flanders – But that would seem to be part of those businesses.

1. Granting the variance would not diminish the values of surrounding properties: Clark – Are these going to be visible from the Street? Dever- Yes. Pelczar – There was a boat place next door for years. I don't think so. Thorpe – Given the surrounding businesses, I don't think it would diminish the values of surrounding properties.

2. Granting the variance would not be contrary to the public interest: Clark – One could argue if it is unsightly it is contrary to the public interest. Dever – One could argue that. Pelczar – I don't think it would be contrary. That other boat place was next door for years. Dever – Those boats are gone now. When this district was created, the only reason Auto, Boat, Equipment-Sales, Service and Repair was included in this district was because it was already there. Pelczar – But it's there. Clark – Just because

something else exists in a zone doesn't make it legal. We should approve it according to the existing laws. Flanders – Anywhere you drive in the Lakes Region, you are going to see a shrink wrapped boat. I don't see this as an issue. Thorpe and Pelczar agreed.

3. Granting the variance would do substantial justice: Clark – I don't see a huge point one way or the other. Pelczar – Maybe the substantial justice is it allows him to recoup some cash in the winter time. Flanders – There are 20 acres of commercial land here that they are trying to find a use for. Dever – It is a small area where he wants to store the boats. If we make a motion to approve this, we could make it subject to a condition that he can't exceed what shows on the plan that is going to the Planning Board.

4. Granting the variance would observe the spirit of the ordinance: Clark – This is the reason I expect I will vote against approving this. The zoning ordinance is very clear. The purpose of this district is to maintain an attractive corridor up Rte. 3. I want to drive up Rte.3 and I want it to be attractive. Flanders – I disagree with that. I don't think it's against the spirit of the ordinance.

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship: Thorpe-I think it's true. . If part of the business is boat storage... – Dever – His business is docks. Thorpe – True. Flanders – I can appreciate the need as a seasonal business to get some off season income. Been there, done that. This is a huge piece of land. Clark – He has been to the Planning Board for this and they sent him to see us. Is that correct? Dever – Correct. Clark – Somehow I have the feeling the Planning Board did not like this and didn't want to say no, so they sent it to us hoping we would say no. I guess we have to evaluate this one on its own merits. I think it is contrary to the spirit and intent of the ordinance. Flanders – I think it is presumptuous on why the Planning Board sent them to us. Dever – Actually, the Planning Board didn't send them here. He was sent here by the Zoning Administrator. Thorpe – Where do we sit on the seasonal limitation? Dever – We don't have anything in our ordinance that designates seasonal. So, if someone wants to put a condition on it, we can certainly do that. Flanders – May we ask him what he thinks it is? Dever – We can ask for informational purposes and clarification. What is the season going to be? Graham – Probably November 1<sup>st</sup> to May 15<sup>th</sup>. Dever – There will be no derelict boats in there? Graham – No. I don't do repairs. Dever – Does that satisfy everybody? Clark – That doesn't satisfy me because it will be unsightly for just part of the year.

Thorpe moved, Flanders seconded, IN CASE # 2950, DOCKS UNLIMITED FOR EAGLE ENTERPRISES, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V-D-6A) TO ALLOW SEASONAL STORAGE OF SHRINK-WRAPPED BOATS, MAP S19, LOT 9, LOCATED AT 45 DANIEL WEBSTER HIGHWAY, IN THE COMMERCIAL RTE.3 SOUTH DISTRICT BE GRANTED WITH THE LIMITATION OF SEASONAL STORAGE FROM NOVEMBER 1<sup>ST</sup> TO MAY 15<sup>TH</sup>, AND THEY HAVE MET THE CRITERIA. Vote 3-2 in favor.

Clark-No  
Thorpe-Yes



Flanders-Yes

Pelczar-Yes

Dever -No

Dever – We have one more item. We need to set a date on the Casey application. This is not a deliberation; this will be a Public Meeting. We will set the date for our next scheduled meeting on July 14, 2011.

*The Vice-Chairman motioned to move into a non-public meeting under RSA 91-A: 3 II  
No action was taken.*

*At 9:10 p.m., the Board exited the non-public session and returned to the regular Zoning Board of Adjustment meeting.*

Meeting adjourned at 9:10 PM

Respectfully submitted,

Christine Tivnan  
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on July 14, 2011

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Jack Dever -Chairman

**PUBLIC HEARING**

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

**Jack Dever has stepped down.**

**DELIBERATION**

**Meredith Board of Selectmen’s Motion for Rehearing Case# 2943:** RIGHT ANGLE ENGINEERING FOR FOUNDRY AVENUE REALTY TRUST: An appeal for a VARIANCE (ARTICLE V-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. (Continued from May 12, 2011)

**Paula Wanzer, J. Duncan McNeish and Chuck Braxton Motion for a Rehearing Case #2943** RIGHT ANGLE ENGINEERING FOR FOUNDRY AVENUE REALTY TRUST: An appeal for a VARIANCE (ARTICLE V -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. (Continued from May 12, 2011)

Clark – Should we have some general discussion before we go down the criteria?  
Thorpe – I would like to offer some general observations first. Reichlen – I also. Thorpe – It is extremely obvious to us and the public that Lake Waukewan water quality is of paramount importance but we are not deciding whether B/I development is ok or not. We are trying to decide whether B/I development would be a greater hazard than residential development. There has been much assertion that B/ I development would pose a greater threat and that implies that a residential use would be less threatening. However, when you go through all the testimony we have heard, there has never been any expert testimony of any kind that B/I development would pose a greater hazard. In fact, we heard B/I development would require significantly higher levels of approval from the Planning Board. It would require a formal site plan, site plan approval, individual tenant certificate of occupancies, where residential developments will not. Although B/I development might present a more intense use, residential development also have their own hazards in terms of maintaining vehicles, pesticides, fertilizers, and those sorts of things. We have not heard arguments either way that either development would be more hazardous than the other. Reichlen – You have said a lot of what I was thinking. We have not heard evidence that B/I development jeopardizes water quality more than residential. Further, I think it comes down to who is there. You can have a bad resident or a bad business. It depends on who the occupant is. On the B/I side you have more controls. Clark – I agree with Bruce and Dave. Nothing has been presented to show B/I

development would pose a greater hazard to the water quality. To the contrary, evidence was presented that light Industrial uses would provide better control of runoff water quality than residential development since the former are subject to much more scrutiny. However, this is not the only case here. To me, this goes to variances not contrary to the public interest to that particular criteria. In my mind, I could not vote against this because it is contrary to the public interest. That is only one of the five criteria. Thorpe – The other issue is does the property have a special condition that distinguishes from other properties in the area. The only special condition I can identify is the access is through the B/I District but from a geography slope, drainage, or foliage, it is not unusual in any way. Does the access provide a hardship? I have not made up my mind on that one. Clark – I half agree with Dave but I am leaning strongly that there are no special conditions on this property. This special condition was created by moving the boundary line done by the applicant. I do not see anything special about this property. Reichlen – I feel the opposite of that. First, whether the applicant initiated the boundary line adjustment or not is irrelevant because the Planning Board approved it. The Planning Board's job is to see what is being done makes sense. For us to judge whether they made sense or not at this point does not make sense to me. We are where we are. It is zoned residential and the only access is through an industrial area. I think one of the purposes of zoning is to keep various types of things apart. You want residential areas to be residential areas and not have tractor trailer trucks pulling into an industrial building across from my zone. Zoning protects that. Likewise, zoning protects an industrial area from having school children and school buses. I think it is not only a hardship for the applicant but also for everyone in that industrial area. I believe the applicant is doing what zoning intends to accomplish. Clark – There are other uses for this parcel other than a residential house. In reading the Planning Board minutes, the applicant indicated they weren't going to put anything on this property but rather simply use this to increase their overall coverage to allow them to use the part in the B/I District more intensively. They have apparently changed their minds. I think this is contrary to the spirit and intent of the zoning ordinance. Pelczar - I agree with Dave. Thorpe – Where this goes for me is on the issue of the property having special conditions. If one comes down on the side of saying yes, it does because of the access through B/I District., then I think it falls out, the interest of the B/I property owners comes out to be most important, then you come down on the side of granting the original request. On the other hand, if one determines the property is not special, then the interest of the residential property owners becomes most important and you come down on the other side. I might point out the applicant on question #5 chose to argue their point as 5A, not 5B. I think it's important to remember that. Clark – I think there is another aspect relative to the issue of whether or not the spirit of the ordinance is observed. I see a property owner in the B/I District who made a deal with an abutter in the Residential District to obtain some land knowing full well the land is zoned residential and then comes to the Zoning Board so it could be used as commercial land. I think this is an end around the zoning ordinance. I think the overall process is contrary to the spirit and intent of the zoning ordinance. Flanders – Let's go through the criteria.

1. Granting the variance would not diminish the values of surrounding properties: Clark – I think we have a consensus on this. Part of the motivation of the Selectmen for the

appeal was the question about water quality. I don't think anybody here feels a case was made that the water quality would be worse if it was used as light industrial. Reichlen – It was brought up that this was in the Watershed District. From the evidence I heard, that is irrelevant. Nothing says light industrial can't be in the Watershed District.

2. Granting the variance would not be contrary to the public interest because: Reichlen - I don't think it would. I think it supports the public interest. If this is not done we could have school buses going into the industrial park. It comes down to where the entrance is to the property. It is what it is. We can't go back.

3. Granting the variance would do substantial justice because: Flanders – I think it does. It does more substantial justice to the abutters in the B/I District. Reichlen- I agree. Thorpe – This is debatable to me. My understanding is 5 of the 8 abutters are in the B/I District and (3) of the (8) are residential. I assume if you were one of (3) you would feel substantial justice was not done because the residential values were not protected. However, if the majority is 5 of the 8 in the B/I District, I believe they would think substantial justice would be done. Clark – Part of the reason we have zoning is so a residential property owner can have reasonable confidence when he purchases the property, the place next door is not going to be turned into some sort of light manufacturing. Flanders – How many abutters were not abutters to industrial properties before this? Reichlen – You have to look at this more favorable in light of where the entrance is. Flanders – I think this criteria relates more to the applicant than the abutters.

4. Granting the variance would observe the spirit of the ordinance because: Flanders – I think this comes back to what we think the spirit of the ordinance is. For some of us, it is to keep like zones together and for others it is not. For me personally, I think it does carry out the spirit of the ordinance, which is to group uses together and not mix them. Thorpe – I agree with that. Reichlen and Pelczar agreed also.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship: Thorpe – My take is the property has special conditions because of the entrance through the B/I District. I think this determines how the property can be used and distinguishes it from other residential properties in the area. On 5A it says 1. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application- I think that is true and 2. The proposed use is a reasonable use. I agree it is. That's my take on 5A. Reichlen – I agree. Clark – Again, we are not here making decisions between a light industrial use and a residential home. We are trying to decide whether a variance should be granted based on the 5 criteria. We don't know what the alternative is. The alternative could be a residential property or it might be a parking area or just open space to increase density. Denial of this does not necessarily mean we are going to have school children walking down Foundry Ave. Reichlen – I agree we don't know. Clark – It shouldn't matter. I think the applicant has done a great job in scaring us with the idea of children waiting by the side of the road as tractor trailers go by. Clark – If I look at this holistically, rather than step by step, and I

look at where we are now and how we got here. In my mind and heart it does not comply with the spirit of the zoning ordinance. I can't vote in favor of this. I don't like it. I respect how others may view it differently. Reichlen – We don't know when they did this that they had this long term attempt at an end round process. Clark – It doesn't matter whether we know it or not. The end result is step by step, they ended up doing something that is contrary to the spirit of the zoning ordinance.

Clark – I would like to go back to the values of surrounding properties: I would suggest we can't possibly know whether the values of surrounding properties would be diminished. We are being asked to grant a variance for a large range of activities and many of those activities that could occur within this range could diminish the values of surrounding properties. The argument that we should trust the Planning Board to do their job falls flat in my mind. We do not know what this property is going to be used for. They have failed to show the values of surrounding properties will not be diminished because they have not told us what they are going to be using the property for. Flanders- I feel they have. Reichlen – I feel they have also. Pelczar - In the Planning Board process, doing the lot line adjustment, they are not required to tell them what their intentions are. Clark – They have not provided us with sufficient information to make a ruling on whether or not the surrounding property values would be diminished. It is up to them to prove that to us. Flanders – Based on what we do with other cases, nobody has proved in either direction with any kind of significant evidence which way the property values are going to go and we don't expect that from most of our applicants. So, I have hard time thinking that we would deny this based on a lack of professional evidence on this point. Clark – We are not talking about professional evidence here, we are talking about an extraordinarily vague request. It is much more vague than most of the use variances we get. You said there was no proof either way. The applicant is supposed to prove that there is not any diminution of values to surrounding properties. Reichlen – Our job is to make an educated judgment. No one comes to us with absolute proof on any of these criteria. Clark – We make a judgment on what the parcel is going to be used for. Reichlen - I am not sure what degree you want to be told. Clark – One of the attorneys who argued this said they would have to come back for a Special Exception once they decide what they want to do, because we want you to basically rezone this so it is treated as a B/I District. It turns out we think that lawyer might be mistaken. They wouldn't have to come back here for a Special Exception. That indicates even the applicant doesn't know what they want to do with the property.

Flanders moved, Reichlen seconded, IN CASE #2943, RIGHT ANGLE ENGINEERING FOR FOUNDRY AVENUE REALTY TRUST, I MOVE THE APPEAL FOR A VARIANCE (ARTICLE V 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 THAT OUR ORIGINAL DECISION BE AFFIRMED, AS THEY HAVE MET THE CRITERIA. Voted – 4-1 in favor.

Pelczar-Yes  
Flanders-Yes

Thorpe-Yes  
Reichlen-Yes  
Clark-No

Meeting adjourned at 9:45 PM

Respectfully submitted,

Christine Tivnan  
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on July 14, 2011

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Mike Pelczar – Vice -Chairman