

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

Hawkins moved, Joslin seconded, THAT WE APPROVE THE MINUTES OF September 14 , 2006 AS PRESENTED. Voted unanimously.

PUBLIC HEARING

2760: EDWARD & STEPHANIE MCDONALD: An appeal for a VARIANCE to allow construction of an 8' x 10' storage shed with a side setback of 11', 20' required and a rear setback of 22', 40' required, Tax Map U39 -1, Lot No. 17, located 5 Brookhurst Lane West in the Shoreline District.

Mack – We are going to go out of order tonight. Associated Surveyors agreed to this. McDonald - We are here again requesting a variance to build an 8' x 10' shed. The lot is a non-conforming lot. We were here last year applying for a variance for the same size shed but in a different location. That was denied. I believe the board thought it was too close to the property line. We have relocated the shed. There was a stump that we had ground so the shed will now be 22' from the rear and 11' from the side. There are 30 homes in our association with 12 existing structures that are closer than what we are asking for. We feel this is consistent with what is in the neighborhood. We are making plans to become residents here next year so we are trying to consolidate two homes. We need extra room. Hearing closed at 7:15 pm.

2759: ASSOCIATED SURVEYORS FOR DONNA & ALBERT DUCHARME: (REP. CARL JOHNSON) An appeal for a SPECIAL EXCEPTION to allow construction of a roadway with utilities crossing into a protective buffer of and across a non-designated wetland and drainage; to construct a water impoundment area within the protective buffer and to construct a common driveway within a buffer of and across a non-designated stream and associated wetland, Tax Map R30, Lot. No. 3 & 4, located on New Road in the Forestry Conservation District.

Abear – Point of order Mr. Chairman. Mack - Yes. Abear -This application is improperly noticed. I request that we discontinue the hearing at this point. The notice refers to R30 Lots 3&4 located on New Road in the Forestry/Rural District. This property is not in the Forestry/Rural District. Edney – It is in the Forestry/Conservation District. Mack – I don't know if that is relevant. Board, what do you think? Joslin- I can't see how that changes it. Pelczar – It is still on the right Map # and Lot #. Mack – All of the abutters were notified properly. Fred – Like you said, all the abutters were notified even though there was a little typo. I

see no problem. Mack – All those in favor? Board voted unanimously to go forward. Samantha Jewett – (Attorney with Haughey, Philpot & Laurent) – We ask the Board to make some findings based upon a set of three different criteria. I will hand you a copy and have Carl present it to you. Johnson – You are familiar with the property so I will not go into a lengthy detail about it. It is over 200 acres. on New Road in the Forestry/Conservation District. The application to the Planning Board was submitted and is in the process of developing the property into conventional lots. Previously the application came to you for a cluster subdivision and wetland impacts within the access ways. We were granted that but we did not have detailed engineering plans for the crossings. We were basing our estimated impacts to the wetlands on the culvert sizes that were anticipated and the design of the roadway. The Board made it clear that the purpose and intent of the Water Overlay portion of the Meredith Zoning Ordinance does not necessarily require that you have detailed engineering plans because you can demonstrate that the criteria will be met without them. Subsequent to getting the approval from the Zoning Board for the special exceptions, we did proceed with our application to the Planning Board. Part of the application to the Planning Board involved detailed engineering and drainage plans of the roadway. The engineering portion has been signed off by the Town Engineer. The total estimated disturbance on site for the subdivision exceeded a certain amount so an application to the State of New Hampshire Department of Environmental Services was made. We did receive approval from them, with the approval noted on the plan. The roadway and common driveway position is the same as it was the first time around. There are a couple of modifications to the actual crossing itself. Because of grading, the width of the roadway and the positioning of two culverts, the roadway had to be raised slightly so the total impact was slightly greater than what I estimated. The reconfiguration of the crossing was reviewed by the Conservation Commission. Their question was, is this the same as what you applied for originally? The answer was yes and I then explained to them the slight differences. In addition to the position of the roadway and to handle the runoff and treat it, it is necessary for a small water retention area. This was approved by the Town's consulting engineer. The reason we are here is to ask for special exceptions that are part of the Water Resources Conservation Overlay District. This was adopted by Town Meeting March 11, 1997. This district applies to all districts in Town given certain circumstances. The purpose and intent of the Water Resources Conservation Overlay District is as follows:

1. To promote the health, safety and general welfare of the community; and
2. To prevent the degradation of surface water and ground water quality; and
3. To preserve the ability of wetlands and areas adjacent to wetlands and streams to provide treatment for water quality purposes, to filter pollutants, trap sediments, or retain and absorb chemicals and nutrients; and
4. To prevent the destruction of, or significant changes to natural wetlands which provide flood storage; and
5. To prevent the destruction of habitats for rare, unique, threatened or endangered species of flora and fauna; and

6. To prevent the development of structures and land uses in wetlands and areas adjacent to wetlands and streams which will contribute to the degradation of surface and/or ground water quality by means including but not limited to wastewater, toxic substances, excessive nutrient release, accelerated runoff, erosion and sedimentation; and
7. To preserve and enhance the aesthetic and recreational values associated with wetlands; and
8. To protect fish and wildlife habitat, maintain ecological balances, and enhance the ecological values such as those cited in RSA 483A-1B.

The ordinance goes on to describe the districts, the specifics of the districts, the wetlands and the buffers to the wetlands and then describes the uses that are allowed by special exception to incur within those districts. Within Designated and Non-designated Wetlands, the following shall be allowed by Special Exception:

- a. The construction of a wetland crossing for purposes of access or utilities, such as a road, driveway, or sewer line.
- b. The construction of a water storage or impoundment.

Within Non-designated Wetlands, the following shall be allowed by Special Exception:

- a. The placement of fill for lot development purposes, provided that a Mitigation Plan is prepared. We are not here to ask for that.

Within Designated Brooks or Streams and Non-designated Brooks or Streams, the following shall be allowed by Special Exception:

- a. The construction of a stream crossing for purposes of access or utilities, such as a road, driveway, or sewer line.
- b. The construction of a water storage or impoundment.

Within Protective Buffers established per Section I, the following shall be allowed by Special Exception:

- a. The undertaking of a use not otherwise permitted in the Buffer, provided it can be shown that such proposed use is not in conflict with any of the provisions of Section C (Purpose and Intent), which is what I read previously to you.

In granting a Special Exception, the Zoning Board of Adjustment must determine that each of the following conditions have been met:

- a. The proposal is consistent with Section C (Purpose and Intent); and
- b. Alternative proposals have been considered, and that the submitted proposal represents the minimum amount of reasonable, unavoidable environmental impact to wetlands, streams and/or associated buffer areas; and
- c. Environmental impacts to abutting or downstream properties and natural resources have been considered and minimized.

As I mentioned, this project involves the development of over 200 acres. The first environmental mapping was the delineation of the wetlands. We did a walk of the property to determine where the road would most likely be and then we developed

the lots in such a manner that there would be no direct wetland or buffer impacts of the development of any of the lots on the property. We delineated the wetland crossing on this lot for two issues. One is, it is the most adequate sight distance position to have a roadway to access the subdivision. The second is it is an existing crossing. It was part of a forestry notification process from prior owners. There was a crossing and a culvert. The State Wetlands Bureau approved what is in the ground right now. To seek an alternate location would result in a larger total wetland impact than what is there already. We have designed a reduced roadway standards road. The Planning Board voted at their meeting that they were satisfied with the configuration of the lots and the configuration of both the access road and the common driveway. That leads me to believe that the Planning Board, at the very least, is satisfied that the engineering that was done for this minor crossing is sufficient to insure that there is no adverse degradation to the wetland. The common driveway is in a position in that it is coming off of New Road in an area that is best for site distance. There is no location where we could access the developable portion of the property and have less of an impact than what we are proposing. This is consistent with other projects the Planning Board and Zoning Board have worked together on to provide safe adequate access to allow the development of property with the degradation of wetlands. We believe we have met the criteria for a special exception.

For special exception above and beyond the specific requirements as noted in the Overlay District the applicant must demonstrate:

- a.** That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and adverse violation of the character or appearance of the neighborhood.
- b.** That the use will not be injurious, noxious or offensive and thus detrimental to the neighborhood.
- c.** That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life and property, unsanitary or unhealthful emissions or waste disposal or similar adverse causes or conditions.

We are asking that you grant a special exception to provide us access to the property. I feel we have done an admiral job in avoiding all and any additional wetland or buffer impacts in the development of the property. Abear- I live across the street from the proposed project. I would like to make it clear to the Board that I am not speaking in favor or support of the application. The drawing we have in front of us shows delineated wetlands but the delineated wetlands shown are largely only the developable portion of the lots in question. The problem is that there are other access points that have no delineated wetlands. Whether or not there are wetlands in those locations, I would propose to the Board that if you walk there, there is a prior logging access road that exists that does not impact the wetlands near it. It may be more expensive but it has no wetland impact. I would ask the board to review, if not consider requiring a study of that part of New Road for access of the lots. I know the applicant has stated that there is no wetland

impact. I don't think that is correct. Without delineations shown on something that the Board has, I don't know how we can agree to or dispute that allegation. There are drainage issues beyond what has been discussed by the applicant. The applicant has stated that the Town's engineer and the Applicants engineer have declared that the issues have been reviewed and resolved. I would express that it refers to the rate of effluent discharge from the property but that does not speak to the creation of the detention pond or of the impacts of the detention pond to the wetland area. The retention area was spoken of as a method to treat runoff from the roads in the area. If you walked this area you would know that it is an extremely soggy area where they are putting the road through. There will be 10' of fill and 6' of cut in some areas. There will be a huge disruption in the area if we allow this proposed roadway. We need to review location and type of road. There are significant ridgeline issues. The cut will be 100' wide. This will generate a considerable amount of water. This is not a minor cut. Allowing this to proceed will make a change. I would like the Board to be aware that the roads that are supporting this subdivision external to the proposed road and internal to the subdivision are not supported by the Town's emergency services professionals. The Fire Chief and Police Chief are on record as being in opposition to this. There are significant problems in getting emergency response equipment in there. If we ignore that, we are going to be stuck with a huge tax bill to improve the roads to and from the site. The land in the area is going to be impacted in a manner both noxious and obnoxious. The impact to the wildlife hasn't been studied. This will allow development within the Conservation District. Development and Conservation Districts are diametrically opposed in their goals. If the Town is going to follow its Master Plan, it needs to consider very closely what, when, and how we develop it. We need to allow the Community to step back and recognize what kind of changes we are making for the future. What is the impact to the taxpayers? Are the people on the Neck going to want to spend two million dollars to put a road in Chemung? Probably not. Mack- You are getting off the subject. We as a Zoning Board have nothing to do with the development of or fixing roads out in a subdivision. We are being asked to issue a special exception for a crossing for an access. You need to just discuss the special exception and how that affects it. Abear – The health and safety in the area will be negatively impacted. They will be putting in a detention pond with water retention year round with a heightened threat from all the insect born diseases. I don't think alternative ways have been done. Johnson – Most of Mr. Abear's comments are above and beyond the application and the jurisdiction of the Zoning Board, so I won't speak to those. I will mention the Town of Meredith requires that access to any more than two lots be something other than a driveway, it can be a road, so the crossing that we are proposing was to access a three lot subdivision. On 20 acres, it would be the same as you see before you right now. So the claims of the roadway, the development, and the lots are largely irrelevant. The claims of how this drainage is going to be running all over the place and causing all kinds of sediment and erosion control is simply not the case. The site drainage report was handed to the Board. This is to make sure that the claims that Mr. Abear is making is not going to happen. In terms of alternative locations, there are logging roads out here and

there may be logging roads that don't impact wetlands. We did an analysis of the entire frontage of the property on New Road to determine what access point would be available from a site safety distance standpoint and also to access the developable portion of the property in a manner that is going to be acceptable to the Planning Board and the Selectmen for the design of the road. A lot of the logging roads have sharp turns. The Town of Meredith is not going to be in favor of creating a roadway that is a hairpin turn roadway in order to avoid an extremely minimal wetland impact. The alteration of terrain, destruction of property, cutting of trees, cuts and fills is going to be increased. If that is in fact the concern of the abutters, they would be barking up the wrong tree. Carolyn Baldwin (Attorney representing Mr. & Mrs. Abear) – What concerns me is that you as a Board should not look at your job too narrowly. What you permit here will allow this development or not. You should not feel your jurisdiction has been preempted by the Selectmen in looking at this road and giving permission for a road that is narrower, steeper and longer than what is permitted. You need to look at each of the provisions in the Zoning Ordinance under both parts in special exception. Both the Wetlands Overlay and the broader general terms of a special exception. (Passed a Memorandum to the Board) We would ask that you look at each of these specific requirements and look at the big picture. What is the end result of the special exception going to be? You have the job of enforcing and interpreting the Zoning Ordinance. The first is to look at the purpose and intent of the Overlay District itself. How does this "promote the health, safety and general welfare of the Community? This is for the benefit of one landowner. It would allow a road in an area that is already served by substandard roads. The entire district is characterized by forests, rugged terrain, and steep slopes and so forth as well as the scenic view. What are the alternative proposals? We haven't seen any. There is nothing in this application that addresses the impact of the project on other properties. Maybe this drainage study will help address this. That was Article V. Then there is Article VII A, which is your general provision for special exceptions. Allowing this special exception will enable a development that is totally unlike what is there now. Will it be injurious, noxious or offensive to the neighborhood? You have heard Mr. Abear's opinion and Mr. Johnson's. Which will it be? Will the use be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life and property? This area is far from town facilities and services. You heard that Mr. Abear testified that the Police and Fire are not sure they can get in there. Adding a new road is not in the public interest. So I would ask you to look at these specific requirements and ask yourself if this application can meet every single one of them factually. Johnson – On the purpose and intent, it is a convolution to expect an applicant to prove that what they are specifically asking for promotes the health and safety and general welfare of the public. That is the purpose and intent of having the Zoning Ordinance where it lists those purposes and intents that is telling you why you have the thing in the first place and it then goes on to list the ways in which you can develop a property by constructing roadways, drainage, utilities and any other use if you can determine it meets the purpose and intent of this portion of the Zoning Ordinance. I think by far the application before you, for the impacts we are requesting, goes

above and beyond proving that we have done more than we should have to do to meet the purpose and intent of the Zoning Ordinance. Joslin – This picture at the bottom, is this going all the way in to the proposed site? Johnson – This is the general location of where the roadway will access the subdivided lots. Joslin – Does this logging road follow the road you are proposing? Johnson – Only a portion of it does. Hearing closed at 8:00 pm.

2763: ASSOCIATED SURVEYORS FOR MICHAEL & JOSEPH PELCZAR: (REP. CARL JOHNSON) An appeal for a SPECIAL EXCEPTION to allow construction of a new building within the 50' buffer of a non-designated wetland, Tax Map S23. Lot No. 54 & 55, located on Foundry Ave. in the Business/Industrial Zone.

Johnson – I would like to state, as I previously stated and is a matter of public record, the purpose and intent of the district, the specific criteria for granting a special exception in that district and the criteria for granting a special exception in general, are the same for this project as the last project. So if the board does not mind I will not re-read into the record those specifics. This parcel was granted subdivision and site plan approval by the Meredith Planning Board. The abutting lot was developed by Mr. Pelzcar and his brother in the business and industry zone by constructing a 50' x 100' building, a storage building and associated parking. They purchased the lot next door primarily because it had an approved site plan that was approved in 1988. Subsequent to the purchase, I analyzed what they could get on the property. We delineated the wetlands. (Carl showed the Board a plan with the wetlands in color) The wetlands and the highlighted buffer areas leave two very tiny buildable areas on the property. Buildable in the sense that they are upland and not within the buffer. Neither one of these buildable areas would meet the setback requirements. There is no place on this lot that you could put any structure without benefit of the special exception and or a variance. We have a site plan going before the Planning Board. Plan B is to construct a building of similar size to the existing building in the biggest so called buildable portion and because they own both lots, they would merge these lots. The 1.3 acre lot and the 1.3 acre lot would be merged permanently. This would make the middle line go away so there would not be a setback issue. This will minimize any impact to the wetlands. The proposal before you is a buffer impact only. The other advantage to this is that we do not have to construct any additional parking. There will be no additional pavement added to either lot to accommodate the construction of the 50' x 100' building. Carl presented a plan to the Board of what was previously approved on the site plan of record for lot coverage and what they are proposing tonight. The Conservation Commission does not like this project. They said that the building could be reduced in size and moved. Because this is a separate existing lot of record, if we weren't able to merge the lots and do what we are asking for we would be faced at some point in time telling a person that they have a lot that was approved by the Town of Meredith Planning Board for subdivision and that they couldn't do anything on that lot. Something would have to be allowed on that lot and the lot coverage would be significantly greater than

what we are doing. There would be no additional cut on Foundry Ave. We will be using the existing entrance. We feel because we are not adding additional lot coverage on one lot and a very minor amount on the other, it is about as sensitive as you can be considering you have a 1.3 ac. lot. Hearing closed at 8:20pm

DELIBERATIONS

2759: ASSOCIATED SURVEYORS FOR DONNA & ALBERT DUCHARME: (REP. CARL JOHNSON)

Mack –We have to remember that 50%-75% of the presentation from the opposing has nothing to do with the application. I don't have a problem with this request. We have already looked at this from a different angle and they haven't really increased it other than the fact due to engineering changes. The other issues that the abutters had, I would assume would be addressed at the Planning Board stages.

Hawkins moved, Pelzcar seconded, IN CASE # 2759, ASSOCIATED SURVEYORS FOR DONNA & ALBERT DUCHARME, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO ALLOW CONSTRUCTION OF A ROADWAY WITH UTILITIES CROSSING INTO A PROTECTIVE BUFFER OF AND ACROSS A NON-DESIGNATED WETLAND AND DRAINAGE BE APPROVED, AS THE USE WILL NOT BE DETRIMENTAL TO THE CHARACTER OR ENJOYMENT OF THE NEIGHBORHOOD; NOT INJURIOUS, NOXIOUS OR OFFENSIVE AND THE USE WILL NOT BE CONTRARY TO THE PUBLIC HEALTH, SAFETY OR WELFARE. Voted 5-0 in favor.

Hawkins moved, Pelzcar seconded, IN CASE # 2759, ASSOCIATED SURVEYORS FOR DONNA & ALBERT DUCHARME, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO CONSTRUCT A WATER IMPOUNDMENT AREA WITHIN THE PROTECTIVE BUFFER BE APPROVED, AS IT MEETS ALL OF THE FORE MENTIONED CRITERIA FOR A SPECIAL EXCEPTION. Voted 5-0 in favor.

Hawkins moved, Pelzcar seconded, IN CASE # 2759, ASSOCIATED SURVEYORS FOR DONNA & ALBERT DUCHARME, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO CONSTRUCT A COMMON DRIVEWAY WITHIN A BUFFER OF AND ACROSS A NON-DESIGNATED STREAM AND ASSOCIATED WETLAND BE APPROVED , AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION. Voted 5-0 in favor.

2760: EDWARD & STEPHANIE MCDONALD:

Mack - I remember this one. We had made a suggestion and now they are back. Hawkins- This is certainly better than what it was before. All the lots in there are small.

Hawkins moved, Haley seconded, IN CASE # 2760, EDWARD & STEPHANIE MCDONALD, I MOVE AN APPEAL FOR A VARIANCE TO ALLOW CONSTRUCTION OF AN 8' X 10' STORAGE SHED WITH A SIDE SETBACK OF 11', 20' REQUIRED AND A REAR SETBACK OF 22', 40' REQUIRED BE APPROVED, AS IT MEETS THE CRITERIA FOR A VARIANCE. Voted 5-0 in favor.

**2763: ASSOCIATED SURVEYORS FOR MICHAEL & JOSEPH PELCZAR:
(REP. CARL JOHNSON)**

Mack – I have to agree with Carl. This is a lot better than what was approved before. Hawkins – I agree. Mack - The fact that the lots will be merged to give them one lot gives them leeway to develop this lot of record with minimal impact. If we approve, I would like to see that we have a stipulation for the building only and no additional parking, paving etc. be allowed on that lot.

Hawkins moved, Joslin seconded, IN CASE # 2763, ASSOCIATED SURVEYORS FOR MICHAEL & JOSEPH PELCZAR, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO ALLOW CONSTRUCTION OF A NEW BUILDING WITHIN THE 50' BUFFER OF A NON-DESIGNATED WETLAND BE APPROVED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION WITH AN ADDED CONDITION THAT ON THIS LOT, BE THE BUILDING ONLY AND NO OTHER ADDITIONAL DRIVEWAYS OR PARKING. Voted 4-0 in favor.

Meeting adjourned at 8:45 pm

Respectfully submitted,

Christine Tivnan
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on _____, 2006.

John Mack, Chairman