

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

Haley moved, Dever seconded, THAT WE APPROVE THE MINUTES OF November 9, 2006 AS PRESENTED. Voted unanimously.

PUBLIC HEARING

2766: VLL TRUST: An appeal for a VARIANCE to allow three (3) residential units on a pre-existing non-conforming lot within the existing dwelling, 10,000 sq. ft. net density per unit required, Tax Map U06, Lot No. 4, located at 147 Main Street in the Central/Business District.

Could not hear Mr. Keniston's presentation. From notes only.

Keniston – The proposal is to change an existing commercial space on the second floor to a residential unit. There will be no change in the square footage. The access is through an existing stairway. There is already a kitchen in the unit. There will be no change in the use of the building in regards to neighborhood appearances. There are two parking spaces, where only one space is required for a one bedroom apartment. This would be almost identical to the unit next to this. The other commercial use is the CAP program which is the most intense use on the site. Dever – Do we have an authorization letter from the owners? Keniston – Pasted a letter to the Board. Dever – This plan looks like Kengar Realty was scratched out and VLL was added. Was this done by Associated Surveyors? Keniston – (Inaudible) not to incur any added expense. Dever – Carl, do you have a problem with your plan being modified? Johnson – For purposes of presentation to the Zoning Board, I have no problem with it. As Mr. Keniston stated, when we go to the Planning Board, there would be a revised plan done and the name will be upgraded. Keniston – One of the abutters did raise some issues. Mack – It is in the packet. Have you read this letter? Keniston – Yes. He addresses a 4' x 6' deck. It is not a deck but a landing. He also asked the Board to require a Master Plan. The site plan amendment is a Master Plan. Hearing closed at 7:20 pm

2768: DAN PATRISSE: An appeal for a SPECIAL EXCEPTION to construct a garage within the 50' buffer of a non-designated wetland, Tax Map R-18, Lot No.10D located at 5 Trinity Road in the Forestry Conservation District

Patrisse - Am I to present something? Mack – Do you have anything to present. Patrisse – No I don't, except for what you have. Dever – How long has that intrusion in the wetlands been there. Patrisse – What do mean by intrusion? Dever – The stonewall and fill are in the buffer zone. Patrisse – The fill that's there has been there since I bought the property. This was not known to be that this

was a wetland. In fact, I thought it was a culvert under the driveway that is seasonal. The closest part of it is not considered a wetland. The wall and fill that is there was started over a year ago. I am well beyond the setback so I had no reason to think that this was anything else. Mack – Have you seen the letter from the Conservation Commission? Patrisso – No. Mack – Read letter from Conservation Commission:

Meredith Conservation CommissionMeredith, NH 03253

To: Meredith Zoning Board of Adjustment
From: Meredith Conservation Commission
Date: December 5, 2006
Subject: Daniel J. Patrisso, Trinity Road, - Application for Special Exceptions, Tax Map R18 Lot 10D

Dan Patrisso, 85 Spring Street, Laconia, New Hampshire has requested a Special Exception as specified in the Zoning Ordinance, Article V Section D-9 to construct a garage within 50 feet of a non designated wetland. The Conservation Commission inspected the site on December 4, 2006.

We observed that ground work has already started for the proposed garage including a stone retaining wall which has been backfilled. The retaining wall is within 21 feet of the delineated wetland thus intruding 29 feet into the buffer zone. Water from upstream of the property makes its way downstream through a defined channel and culvert under the driveway to the residence.

We also observed that there appears to be two existing garage doors on the main residence so we assume the current proposal is to construct an accessory garage. We observed several alternative sites for construction of an additional garage on this property which would not infringe into the Town wetland buffer zone. We do not believe the applicant's proposal promotes the purposes of Article V Section D-9. We therefore recommend that the Board deny an after-the-fact special exception and that applicant should change their plans to move the location to another site on their property.

We ask that the Board not reward the applicant for beginning construction without the benefit of public review and a legitimate permit as there appear to be several alternative sites on this property for such construction. Also, awarding an after-the-fact special exception when alternatives exist would legitimize this practice and make a mockery of enforcement of the Zoning Ordinance related to the wetland buffer. Granting the request under these circumstances would also mock property owners who comply with the Ordinance.

We appreciate the opportunity to provide these recommendations and ask your consideration. Commission member Ralph Pisapia is available to provide clarification or answer any questions you may have regarding this memorandum.

For the Commission


Robert LeCount, Secretary

Patrisso- There were no wetlands on this property when it was purchased and there was no way for me to know. I was there when the wetland biologist came out and basically said that there is a small strip and it doesn't even begin where the culvert is. As a property owner there is no way for me to have any conception that this is considered a wetland since when I bought the property there were no wetlands. This is assuming that I did something knowingly against some type of

law. As far as I know, I can build a stonewall anywhere on my property. I don't think this makes any sense. Edney – The application for the building permit came in with a sketch that did not indicate drainage or anything. It wasn't until I was called out to look at the footing that I saw drainage. I then asked for it to be flagged. As Nicole indicated on her mapping it doesn't start until well beyond the culvert however, she did indicate that there is a strip of wet and a 50' buffer would apply. Abear – I am a neighbor. The wetlands that seem to be in question are non-delineated, which means they were not mapped before the gentlemen started his project, so perhaps there is some credence to his claim that he did not know before he started as opposed to what the letter says. Hearing closed at 7:30 pm

2769: ASSOCIATED SURVEYORS FOR SRB PROPERTIES:(Rep. Carl Johnson) An appeal for a VARIANCE from Article V, Section D-6A, to construct a storage building in the Commercial-Route 3 South District, Tax Map S17, Lot No. 17J located on Northview Drive in the Commercial-Route 3 South District.

John Mack stepped down.

Johnson – I would like to proceed with a four member board. This is a vacant piece of property behind Energy Savers located on Rte 3 and Northview Drive. Opposite the lot is Fitness Square. The lot above and to the east are vacant. Energy Savers purchased the lot to create a storage warehouse. We have prepared a site plan for the Planning Board anticipating that this would be an accessory use because the primary use of the building is in the existing building. Mr. Edney ruled that in order for an accessory use to be an accessory it had to be on the same property. In order for this to proceed as an accessory use we need a variance. The criteria for granting a variance in this case are to demonstrate through the 5 criteria that this use does not violate the spirit and intent of the ordinance. It is not a use that is unlike any other uses that are in the neighborhood and it would not diminish surrounding property values. This is going to be warehouse building. There will be no employees housed in that building. There will be deliveries with storage inside. Currently right now there is a big parking lot that services Energy Savers. There is an access way that goes in between the two properties. Because of the character of the surrounding properties, this piece would be fairly inert. A wholesale business with no outside storage is a permitted use in Commercial-Route 3 South District. This is very close to what that would be. Although this is not a wholesale business, the functional use of the building is almost identical to one. This would not be contrary to the public interest. The hardship element has been changed and one of the elements that have to be demonstrated is that the zoning restriction as applied would interfere with the reasonable use of the property considering its setting. This is a very reasonable use of this property. This proposed use is reasonable and meets with the general characteristics of the zone. This property would not be injurious to the public or private rights of others. I think it would do justice to allow the people to use this as a storage building. The use is not contrary to the spirit of the ordinance. If the board should have a concern as to what the potential future

use of the building if the property were to be sold, the statute allows the Board to restrict the uses. We have been before the Planning Board for one meeting. The engineering plan is being reviewed and we are scheduled for a second hearing in January. One of the conditions is that the lots are merged into one lot and a variance be granted from the Zoning Board. We are here to seek the variance because we feel that we have met all the criteria that are identified within the Zoning Ordinance. Haley – What will the building look like? Johnson – I have a picture. I stand corrected, I don't have it. One of the elements that we have to be at the Planning Board for is architectural design review. It will be a Morton style building with earth tones and it sits down low because of the cut situation into the hill. Haley – We have tried to keep things aesthetically pleasing. Maybe your client could take that into consideration. Dever – Is this whole building going to be used by Energy Savers? Johnson – Yes. One option they have to circumvent the Zoning Board would be to put a retail portion of the business in there and have storage in the rest of the building. We are being up front in what we are trying to do. Dever – You could combine the lots and then you wouldn't have to be here. Johnson – One of the options is to combine the lots, however; if that were the case from the standpoint of the use and the practical aspect of how the properties are being utilized, there would be no difference. That would result in no benefit to the public. Dever – When we grant a use variance, we ask, is there an alternative that is not costly and that is what you have to look at. Johnson – Although it would not be costly to do that, it would affect the values of the properties. Abear – Is the company, using the facilities, the owner of the land, or is there a separate owner? Johnson – The owners of Energy Savers own both lots. They lease space in their building. Abear - If the owner of both lots will be the owner of both buildings and the operator of the business then I think Mr. Dever has hit the nail on the head. I think that changing the ordinance or granting the variance based on the convenience to the land owner when the goal can be reached by merging the two lots would be damage to the public interest. We need to follow the ordinance. Hearing closed at 7:55 pm.

2770: ASSOCIATED SURVEYORS FOR CHARLES & KAREN THORNDIKE

PARTNERSHIP:(Rep. Carl Johnson): An appeal for a VARIANCE from Article V, Section D-5A , to construct a small theater within a previously existing commercial/retail building in the Business and Industrial District, Tax Map S23, Lot No. 26 located at 50 Reservoir Road in the Business and Industrial District.

Johnson – The entrance to Annalee Doll comes in off Rte. 104 and intersects with Reservoir Rd. The building in front has conditional approval from the Planning Board for Corporate offices of the Annalee Doll Company and we received approval to move the gift shop to a portion of the building in the front. The parcel in the back has frontage on Reservoir Rd. and access is over the roadway. Charles and Karen Thorndike Partnership own both parcels. The greater majority of the eastern portion of the property is undeveloped and wooded. This proposal is to convert the existing gift shop into a small theater. This will be a small theater,

approximately 200-250 seats. In comparison, the theater at Inter-Lake's was 440 seats and Spinelli Theater is 355 seats. The proposal does include a slight expansion of the building. The existing doll museum building would be a secondary auxiliary theater which would be a practice theater. They would not be used concurrently. They could use the smaller one in the winter months. This won't contribute to the reduction in value of surrounding properties as a result of what is being proposed. When the Business/ Industry zone was created, it was created to cover the portion of the property from Pease Rd. and Rte 104, including Commerce and Enterprise Court in that subdivision, so that Business/Industry uses could be accommodated on those properties. The whole backend of the Business /Industry zone was drawn around the Annalee property to include all of the lands that were being currently used by or owned by Annalee Dolls at the time. The boundary to the east goes from Business/Industry to Residential. A theater is not a permitted use in the Business/Industry zone. They are, however, an allowed use by special exception in the Residential zone. If the property was one place over, we wouldn't be asking for a variance but a special exception. There will not be a drawn out period of time where traffic would be coming back and forth to the site. It is event oriented. They will be closed on Sundays. If you look at reasons why zones are created, it is not only to prevent certain uses but also to promote some uses. I think the use that is being proposed is in harmony with the existing site. As part of the planning process, there will be site plan review. There will be some reconfiguration of the parking. They want the site, as well as the use, to stay intimate. The zone allows for 75% lot coverage. The lot coverage, as we are now, is 15%. The parking analysis will be creative. We are also looking to connect to municipal water & sewer. We feel this is a reasonable use of the property considering its uniqueness. I think we are being very conscientious in terms of how we use it. This is not contrary to the spirit and intent of the ordinance. Dever – The Theater Company is going to purchase this property? If we grant a variance, it would only go with this piece? Johnson – That is correct. Dever – If the variance isn't granted, would the expansion of the building go forward? Johnson – No, not by this applicant. Brian Halpren - It is an outside company that is buying the property and the Winnepesaukee Playhouse would be a tenant. Townsend Thorndike - This ownership is currently under litigation. (Passed documents to the Board). Next to the last page is a summary of requests of the court which affects this meeting. There is a suit in the Supreme Court which is mentioned in this lawsuit. Johnson – Point of clarification. The applicant before you is Charles and Karen Thorndike Partnership, the variance you grant is to them and runs with the land. The fact that you are granting a use variance runs with the land, however; you can sufficiently restrict that variance to apply to a specific application before you. Rusty McClear – I would like to speak in favor of this application. This would be an asset to the Community. The land suits it well. Claire (?) - I would like to echo what Rusty said. I visited the playhouse at the school this summer. I think this would be great. Thorndike – I hope you take this under consideration. Hearing closed at 7:55 pm

2771: ASSOCIATED SURVEYORS FOR CHARLES & KAREN THORNDIKE PARTNERSHIP :(Rep. Carl Johnson): An appeal for a SPECIAL EXCEPTION to expand a non-conforming structure within the protective buffer of a designated brook, Tax Map S23, Lot. No. 26 located at 50 Reservoir Road in the Business and Industry District.

Johnson – One of the aspects of accommodating this site to be acceptable for the theater use would involve an expansion of the gift shop for the creation of the stage and theater area, also a lobby and receiving area. In the packet is a plan. The current situation is the gift shop already exists within the 100' setback to Reservoir Brook and that's because the Watershed Resources Conservation Overlay District was created in 1997 and the building was already there. There is a gravel access road which comes in off the paved existing drive and comes in back of the area. That area was used as a loading area and that access way is very close to the brook. With the limit of the brook and the limit of the existing top of the gravel parking area, the encroachment is about 11'. We are hoping to increase the setback from the brook from 11' to 35'. The means in which we are going to accomplish that is to prepare a sediment erosion control & grading plan. We are going to analyze the conditions and come up with a way of stabilizing that land area. Jim Jordon will come up with a landscape plan for that same area so as to maintain the ecological integrity between there and the brook. The brook is narrow, fairly flat and not fast moving. Yet, it still takes the untreated water that is hitting this area. By increasing the setback, stabilizing the area and turning it back to its natural condition, that situation will go away. The Conservation Commission's comments were to incorporate, as part of the engineering and grading plan, remove some gravel to bring down the grade that more nearly approximates the grade that existed prior to the creation of the gravel driveway. We will incorporate that into the plan. They also requested we use Best Management Practices. We are eliminating vehicular traffic in that area. We have looked at alternatives. The total existing non-conforming use within the buffer right now is less than 9000 sq. ft. After we get done, it will be about 4700 sq. ft. It goes down by 47% and the area in close proximity to the brook will be stabilized. If you look at the purpose and intent of the Water Resources Conservation Overlay District, our proposal is consistent with that. Dever – You will have to get site plan approval? Johnson – That is correct. Dever – You have to have an approved site plan prior to coming here for a special exception. Johnson – For a use, not for the buffer impact. If it was a special exception for the use and not a variance we would, but since it is a variance, we don't. Dever – I have to look that up. Johnson - Applications for special exceptions regarding the Watershed Overlay District, you are not required to have an approved site plan on record. For a use special exception, you are required to have a site plan approved by the Planning Board, if it is a variance, you don't have to. That's my understanding. Townsend Thorndike – I own 30 acres to the west of this property. There is a parking easement for the gift shop that is needed to survive and there is a conflict between the owners. Regarding parking, if you are going to have over 200 people going, then you will have at least 125 cars for 35 parking spaces that are there. Where are the cars

going to go? I am going to end up with them at my house. Mack – Parking is at the Planning Board level. We don't have anything to do with parking at this level. Townsend Thorndike – I object to any exception with regards to the water as an abutter. Abear – The property was developed prior to the Water Overlay District being implemented? Mack – Yes, I believe so. Abear – If the Water Overlay District had been in place before, it would be a complete non-conforming use? Do I understand that correctly? Mack – No, I don't think you do. Johnson - There are two Waukegan Districts now. One is new that was voted in last year (Lake Waukegan Watershed Overlay District) and site plan review does not apply to that district. The district that we are asking for the special exception is the Water Resources Conservation Overlay District. That district created buffer zones and setbacks from wetlands. Abear – My question goes to water quality. The Water District is implemented to maintain appropriate water quality for Lake Waukegan and the community. If we had development before implementation and approvals were required, then it sounds like we have the opportunity to go back and at least mitigate what would have been done if it were done today. This special exception is to put in additional parking and to modify the existing road? Is that correct? Johnson – No, that is incorrect. There is no proposed parking or roadways as part of this proposal. We are taking away an access road; we are taking away a parking area and taking away a loading area. There will be no expansion of parking that would require us to come back to the Board for special exceptions or variances. Abear – The jurisdiction of the Board is to preserve the health and safety of the community. If we are going to modify the site, the question becomes, are we changing it in a manner that will in some way impact water quality in the zone? Perhaps the Board should look at oil water separators. This would help with runoff. Halpren – We are here to improve the situation on the brook. Keniston – The entire Business /Industry zone lies upland of Lake Waukegan, so it is to the Town's benefit to allow a use that is not a traditional Business / Industry use because it won't have as much of an impact. Keith Forrester – I am a licensed environmental engineer. I would much prefer to see this application than something industrial. Dever – I have reviewed this Carl and I think it's ambiguous enough that I don't have any objection with this going forward tonight , but I do want this reviewed by Tim. Townsend Thorndike – I would like to site a conflict of interest with John Dever regarding both of these applications and ask him to step down from voting. Dever – I have been down this road before with Mr. Thorndike and I do not intend to step down. Townsend Thorndike – I think this is the first time I have ever approached this in public. Dever – No, it is not. Townsend Thorndike – Please take his opinion with a grain of salt. Dever – I would like to repeat, I am not stepping down. Hearing closed at 9:00pm.

DELIBERATIONS**2766: VLL TRUST:**

Mack – I have a problem with this. The density is getting worse and worse every time they come before us. Dever – There are a lot of uses on that property. There was a proposal by the Planning Board to do away with density requirements and just handle everything by site plan review but that was defeated at town meeting. So the people are telling us that they want the 10,000 sq. ft density. Haley - I hear you but up the street you have the same situation. Mack – (Inaudible) Haley – Wouldn't this building be better off residential with apartment versus half commercial? Mack - I would have less of a problem if they were going to turn it into all residential units (inaudible) Haley – We have spent time on the Master Plan and one of the things is that we don't have enough places for people to live that are in the service jobs. This is one way to have it all in one neighborhood. Dever - I agree but they have set density requirements and if they want to push the housing more, then lets change the density requirements. Mack – During the Zoning rewrite that was one of the options and that was voted down. Haley – Butch, when all is said and done, you will have your continued base of operations there? Keniston – I am a tenant there now. Haley – You will continue to be a tenant? Keniston – Yes. Haley – With this plan, how many apartments will be in the building? Keniston – Three. Haley – The only way you would get more is if the two existing tenants disappeared. You would have to come back here. Keniston – If the Board isn't going to approve a third, you are going to approve a fourth and a fifth? That doesn't make any sense. Haley – You are making an assumption. What is there now and what does it take to make it all apartments. Keniston – (Inaudible)

Hawkins moved, Dever seconded, IN CASE # 2766, VLL TRUST, I MOVE THE APPEAL FOR A VARIANCE TO ALLOW THREE (3) RESIDENTIAL UNITS ON A PRE-EXISTING NON-CONFORMING LOT WITHIN THE EXISTING DWELLING, 10,000 SQ. FT. NET DENSITY PER UNIT REQUIRED, BE DENIED, AS IT DOES NOT MEET THE VARIANCE CRITERIA FOR NET DENSITY. Voted 4 -1 in favor.

2768: DAN PATRISSE:

Haley – There are certainly other alternatives he has for his garage. Mack – I agree with you 100%.

Haley moved, Dever seconded, IN CASE # 2768, DAN PATRISSE, I MOVE THE APPEAL FOR A SPECIAL EXCEPTION TO CONSTRUCT A GARAGE WITHIN THE 50' BUFFER OF A NON-DESIGNATED WETLAND BE DENIED, AS THERE ARE MORE THAN ONE ALTERNATIVE FOR THE LOCATION OF THE GARAGE WHICH WOULD KEEP IT AWAY FROM THE WETLANDS. Voted 5-0 in favor.

2769: ASSOCIATED SURVEYORS FOR SRB PROPERTIES

Dever – I think they have an alternative to this. I don't think they meet the spirit and intent of the ordinance. There is an alternative. They can combine the properties. If we grant a variance for a storage facility that is a separate unit, tomorrow they could sell it and then it won't be a storage unit for the business that is there. They could move one of their businesses up there and do it legally or combine the properties. Hawkins - I agree. Variances have been based on a minimal variance or if there were other options, they were denied.

Dever moved, Haley seconded, IN CASE # 2769, ASSOCIATED SURVEYORS FOR SRB PROPERTIES, I MOVE THE APPEAL FOR A VARIANCE FROM ARTICLE V, SECTION D-6A, TO CONSTRUCT A STORAGE BUILDING IN THE COMMERCIAL-ROUTE 3 SOUTH DISTRICT BE DENIED AS IT FAILS TO MEET THE SPIRIT AND INTENT OF THE ORDINANCE. Voted 4-0 in favor.

2770: ASSOCIATED SURVEYORS FOR CHARLES & KAREN THORNDIKE PARTNERSHIP:

POSTPONED UNTIL DECEMBER 21, 2006

2771: ASSOCIATED SURVEYORS FOR CHARLES & KAREN THORNDIKE PARTNERSHIP:

POSTPONED UNTIL DECEMBER 21, 2006

. MOTION FOR REHEARING

2759: ASSOCIATED SURVEYORS FOR DONNA & ALBERT DUCHARME: An appeal for a special exception to allow construction of a roadway and utility crossing within a protective buffer and across a non-designated wetland and drainage; and an appeal for a special exception to construct a water impoundment area within the protective buffer and an appeal for a special exception to construct a common driveway within a buffer and across a non-designated stream and associated wetland, Tax Map R30, Lot. No. 3 & 4, located on New Road in the Forestry Rural District.

Jack Dever stepped down. (Not there for the original hearing)

Mack – I have reviewed the request and I have a few comments. There is no new evidence that has been put before us. A lot of the items that were presented are not within the parameters of the Zoning Board of Adjustment. We did discuss and I don't think we were mistaken in what I would call the typo on the district that was

on the notice. Haley – We have two criteria? Mack - Did we make a mistake and is there any new evidence. Haley – I don't think we made any legal error and what is new?

Haley moved, Hawkins seconded, IN CASE #2759, ASSOCIATED SURVEYORS FOR DONNA & ALBERT DUCHARME, I MOVE THAT WE DENY THE REQUEST FOR A REHEARING BECAUSE THERE WAS NOT A TECHNICAL ERROR AND NO NEW INFORMATION THAT COULD NOT BE AVAILABLE AT THE PREVIOUS HEARING. Voted 5-0 in favor.

Meeting adjourned at 9:30 pm

Respectfully submitted,

Christine Tivnan
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on _____, 2007.

John Mack, Chairman