

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
April 14, 2010**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices at 6:30 p.m. on Wednesday, April 14, 2010.

Present were Chairman Jon Britt, Vice Chair Joe Blakaitis, Ron Forlano, and John Fricker.

Absent: Randy Gilbreath.

Also present were Director of Community Development Andy Garman and Permit Coordinator Sandy Cady.

Others Present: Wendy Ray on behalf of Israel Golasa of Beach Mart, Inc. and Mayor Dave Wessel.

Absent: Council Liaison Chuck Burdick.

Chairman Britt called to order the Regular Meeting of the Planning Board for April 14, 2010 at 6:32 p.m.

**PUBLIC COMMENTS**

None.

Chairman Britt stated that he would like to move the Special Exception permit up on the agenda. It was *consensus* of the Board to move the item up in the agenda for discussion.

**NEW BUSINESS**

**Discussion/Consideration of SE 10-001, a Special Exception Permit Application Submitted by Beach Mart, Inc. (Wings), on Behalf of Israel Golasa, Property Owner of 1186 Duck Road**

Director Garman stated that the application was from Beach Mart, Inc. which owns the Wings building at 1186 Duck Road. He stated that they would like to modify the roof over the porch from the existing cedar shake siding to a new simulated terra cotta clay tile roof. He presented the Board with a sample of the roof material.

Director Garman stated that the issue would require a major waiver from the Town's Commercial Development and Design Standards as determined by staff. He added that when the applicant applied for the Special Exception, looking at the design and development guidelines and the requirements for exterior finishes and colors, staff felt that they could not approve the material the applicant was requesting through a minor waiver process. He stated that staff

advised Beach Mart, Inc. that they would need to apply for a Special Exception which would go before the Planning Board and Town Council for approval rather than staff approval.

Director Garman pointed out that the Planning Board had in their packets the ordinance language that required the Special Exception. He went on to review Page 5 of the staff report with the Planning Board and audience. He noted that the roof material was not consistent with what is in the Town or germane to the Outer Banks. He added that it was more of a Mediterranean clay tile style and that was why the issue was sent to the Planning Board and Council; it was inconsistent with what the ordinance was trying to achieve.

Member Fricker clarified that Director Garman did not send the issue to the Planning Board, but understood that he told the applicant that staff was not going to approve the application as a minor waiver and if they wanted to pursue the matter, they would have to bring it before the Board. Director Garman agreed and noted that it would require a determination on the Town's part to approve the Special Exception.

Director Garman explained that Wings was built in 2003. He added that the Town adopted the Commercial Design Standards in 2004 and noted that Wings was not reviewed relative to the design standards. He stated that staff felt that the existing cedar shingle roofing on the porch was one of the features that were consistent with what the Town was trying to achieve with regard to the design standards. He stated that with the applicant wanting to change it to the new style, it would not be consistent and staff felt that the Council or Planning Board could not make the findings in the ordinance to approve the application.

Wendy Ray of Beach Mart, Inc. was recognized to speak. Ms. Ray pointed out that the new roof material was non-reflective. She went on to show the Board photographs of the Wings store in Avon, North Carolina. She agreed that the roof material was Mediterranean, but it coordinated with the style of the building. She stated that the current store had a bright red metal roof that Mr. Golasa intended to replace so it would all incorporate together. Chairman Britt clarified that the intent was also to replace the cupola roof. Wendy Ray stated that he was correct.

Member Fricker asked what was wrong with the present cedar shake roof. Wendy Ray stated that it had gotten very black, dark and was not consistent with age. She added that if it was a lighter color, it would not have aged as much. She stated that because it had aged to a black color that when one rides by the store at night, it did not draw the eye to the store. Member Fricker asked if what Ms. Ray was looking for was more of an attention getter. He further asked that the reason the terra cotta over a gray or brown color was because it would attract the most attention. Ms. Ray agreed and added that most of their stores were yellow and red. She stated that it was consistent with all the other Wings buildings. Member Fricker asked if Ms. Ray would acknowledge that it was inconsistent with the other stores in Duck. Ms. Ray stated that it would be to a degree, but that they were trying to be consistent with their other stores.

Chairman Britt opened the floor for Board discussion.

Chairman Britt stated that the new roof would be obviously different. He added that the only exception would be the surf shop's roof. He stated that in terms of material, it would stand out and be different. He reiterated that this roof would be a definite different style.

Vice Chair Blakaitis thanked Director Garman for the thorough information provided to the Board. He added that it came down to whether or not it met 156.111 of the design standards. He thought it was in disagreement with Item 4 of 156.111 in that it conflicted with what the Town was trying to achieve. He stated that he was not enthusiastic about granting approval of the Special Exception.

Member Fricker agreed with Vice Chair Blakaitis. He thought it would not be possible for him to make the requisite findings that staff set forth on Page 6 of the memorandum. He wanted to comment on the statements that Wendy Ray had made. He thought Ms. Ray was refreshingly candid in acknowledging that the purpose of changing the roof was to make it stand out more rather than to blend in. He stated that he would not be able to make the necessary findings of fact and thought it would be easier for him to make negative findings. He thought the proposed development was inferior to what had already been achieved by the existing shake roof. He noted that by changing the roof, it would stand out instead of blending in. He believed that the proposed development was incompatible with the adjoining properties. He added that he was convinced that the proposed development was inconsistent with the stated intent of the Commercial Development and Design Standards. He stated that he would vote against the Special Exception.

Member Forlano stated that he didn't have a problem with the color of the roof. He noted that the roof on the tackle shop in Duck was almost the same color, maybe brighter. He stated that he had a problem with the architecture in that the Town does not have any Mediterranean styling except for the Residential District. He thought if the applicant was willing to use the color in a cedar shake style and remove the red cupola roof to match the cupola to the cedar shake color, he would be agreeable. He stated that he would not be agreeable to the Mediterranean terra cotta style roof. He added that if the applicant would choose a cedar shake, then he would support the Special Exception request.

Wendy Ray asked if it would be permissible to put a metal roof on the building. Member Forlano did not think the Board could refuse a metal roof, since they had approved one in the past. Ms. Ray asked if the color would still need to be considered. Member Forlano stated that he would vote on the color.

Chairman Britt agreed with Member Forlano's comments. He added that the color was not the issue but the style was what was in question.

Member Fricker disagreed with Chairman Britt. He thought that it was the overall look that the applicant wanted to achieve that he was resistant to allow. He stated that the Board was not dealing with a subtle earth tone façade, but a brand new painted yellow building with white trim and a red cupola. He added that now Mr. Golasa wanted to put a Mediterranean style roof to replace the cedar shake, which was the only subtle aspect of the entire look. He thought it was a combination of everything that made it more objectionable.

Member Forlano agreed that the black roof was detracting. Member Fricker stated that he didn't think it was black, but thought it looked good.

Vice Chair Blakaitis agreed with Member Fricker's comments. He thought it was the overall look and all blending together. He thought that there could be a brighter roof combined with a more subtle building that would tone everything down. He stated that he was puzzled as to why Wings needed to attract more attention to the store. He added that citizens comment on Wings as they drive past it and know where it is located. He noted that some citizens do not like the building, while others do.

Chairman Britt thought the Board was in agreement that the Special Exception application would be hard to recommend approval as presented. He asked if the cedar shakes were to be painted, it would have to come back to the Planning Board. Director Garman thought the Board would need to review the color. He thought the ordinance wanted the brighter color to be used as an accent with contrasting colors of a building. He thought if the building was painted off-white with a red roof, it would be different. He stated that the color was subjective and was good for the Board to review.

Vice Chair Blakaitis stated that he did not object to the color per se, but did object to the color combination. He asked Ms. Ray what color the other Wings buildings were. Wendy Ray stated that 99% of the buildings were yellow and red. She stated that the small store in Nags Head had more of a pastel yellow color with a brown roof.

Chairman Britt thought the Board was in agreement that they would not recommend approval of the application, but would recommend that it go to the Town Council.

Member Forlano asked if the Board was voting on the application as it was presented with the terra cotta roof. Chairman Britt stated he was correct.

Member Fricker stated that the impression he had was that there were options that the applicant could have pursued when staff did not grant the minor waiver. He added that the applicant chose not to pursue other options when they were needed for the Board to consider. He didn't think the Board should be entertaining any suggestions as he felt it was between Mr. Golasa and staff.

Member Fricker moved that the Planning Board recommend disapproval to the Town Council of the Special Exception application. Vice Chair Blakaitis seconded.

Motion carried 4-0.

## **OLD BUSINESS**

### **Discussion of Policies/Ordinances related to Renewable Energy**

Director Garman stated that the wind energy ordinance was recommended for a public hearing at the May 5, 2010 Town Council meeting. He stated that the Board could now turn their attention to other items. He stated that he wanted to set up a general discussion on how the Board wanted to proceed with solar energy. He added that he would like to obtain input on the items the Board wished to consider in the ordinance as well as items they did not think were up for discussion. He presented the Board with several ordinances that dealt with solar energy and reviewed them.

Member Forlano stated that he was a firm believer of property rights, but what caused him concern was that now the Board was discussing easements on a neighboring property, where the neighbor could not have vegetation higher than 10 feet. He thought it was not only an infringement on property rights, but an infringement on a neighbor's property rights. Director Garman stated that it wasn't the case, but that there were possibilities. Member Forlano understood, but thought that the Board should consider ground mounted solar panels for several reasons. He stated that if the Town did not allow ground mounted solar, then setbacks, ground coverage, lot coverage and neighboring properties would not be an issue. He stated that he was concerned about the safety issue of having the panels accessible on the ground because of the hazardous potential of children getting hurt if they climb on them. He thought the panels should be located on the roof of buildings.

Member Fricker thought Member Forlano's comments made sense. Chairman Britt agreed with Member Forlano's comments. Director Garman stated that ground mounted solar panels were common in Duck, adding that they were used to heat swimming pools.

Chairman Britt asked if there were any building safety standards in place. Director Garman stated that there wasn't anything that stated that they needed to be fenced or contained. He stated that he noticed in a New York ordinance that it had a notation that the solar storage must be placed in a secure container, but did not say anything with regard to a fence around the panels.

Director Garman pointed out that in the staff report; he had noted the statute that was passed. He cautioned the Board that they would need to be very careful if ground mounted panels were prohibited. Member Forlano asked if the State statute referenced ground mounted or just solar systems. Chairman Britt stated that it referenced solar collectors. Member Forlano stated that he did not want solar collectors prohibited, but that the location of them should be out of harm's way by putting them on the roof of a building where they would be less obtrusive.

Director Garman and the Planning Board discussed setbacks for solar panels. He noted that with the 25 foot rear yard setback and if the intent of the Planning Board and Council was to encourage solar applications, the Town might provide some sort of exemption that the panels could be within 10 feet of the rear yard setback instead of the 25 feet.

Chairman Britt understood Member Forlano's concerns, but had a hard time prohibiting ground mounted systems. He stated that he could see safety rules around it, but had a hard time prohibiting ground mounted systems. Vice Chair Blakaitis didn't think the Board should touch the easements with regard to neighboring properties. He thought if a property owner didn't have the area and vegetation to install a system, it could not be done unless the owner built a side deck. He wondered how a system would impact coverage and vegetation.

Director Garman asked if there was anything listed in the draft ordinance that the Board did not want to discuss further. Chairman Britt stated that he did not want to discuss solar access. He stated that the Board should discuss zoning definitions. He asked the Board if they wanted to discuss permitted uses. Member Fricker stated that he did not agree with a Conditional Use permit, he thought it should be in favor of it or against it.

Chairman Britt stated that he did not want to touch solar access. Vice Chair Blakaitis agreed. He did not think the Board needed to discuss vegetation removal if a homeowner had 80% coverage in that they would have the ability to remove some vegetation and still meet the minimum vegetation requirements. Chairman Britt thought the Board should discuss lot coverage and area limitation, i.e., setbacks, screening and fencing.

Chairman Britt thought roof top units should be discussed. Director Garman stated that the Board saw examples in a previous meeting where the units were limited to height above the roofline. Member Fricker asked when the Board would need to consider having solar panels above the roof ridge. Vice Chair Blakaitis pointed out that the ridge wasn't the question, but the height above the slope of the roof. He added that the Town allowed them as long as they weren't above 35 feet.

Member Forlano stated that he would need to be convinced that there would not be any problems with ground mounted solar systems. Mayor Wessel was recognized to speak. He asked if Member Forlano's fears would be resolved if there was fencing around the systems. Member Forlano stated that it would, but thought it was more unsightly to have the panels on the ground instead of on the roof of a home.

Marcia Hornstein of 133 Seabreeze Drive was recognized to speak. Ms. Hornstein wondered how the panels would impact animals. She agreed with Member Forlano's concerns.

Carla Gazzola of 133 Seabreeze Drive was recognized to speak. Ms. Gazzola stated that she would rather see the panels on the roof instead of the ground.

Director Garman stated that he would put together a compilation of information that was discussed and would provide several options for different issues regardless of lot coverage or setbacks. He added that he would discuss the statute and the way it was written with the Town Attorney.

## **APPROVAL OF MINUTES**

### **Planning Board Meeting March 10, 2010**

Chairman Britt directed the Board to review the minutes from the March 10, 2010 meeting.

Vice Chair Blakaitis moved to approve the minutes as presented. Member Fricker seconded.

Motion carried 3-0.

## **OTHER BUSINESS**

None.

## **STAFF COMMENTS**

None.

**BOARD COMMENTS**

None.

**ADJOURNMENT**

Chairman Britt moved to adjourn the meeting. There was no second.

Motion carried 4-0.

The time was 7:48 p.m.

Approved: \_\_\_\_\_  
/s/ Jon Britt, Chairman