

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
August 10, 2011**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices on Wednesday, August 10, 2011.

Present were Chairman Jon Britt, Vice-Chair Joe Blakaitis, John Fricker and Randy Gilbreath.

Absent: Ron Forlano.

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

Others Present: Ken Forlano; Christopher Nason of Beacon Architecture; Mark Bissell of Bissell Professional Group; Willo Kelly; Starkey Sharp of Sharp, Michael & Graham; Mayor Dave Wessel; and Town Manager Christopher Layton.

Absent: Council Liaison Chuck Burdick.

Chairman Britt called to order the Regular Meeting of the Planning Board for August 10, 2011 at 6:34 p.m. He noted that Member Forlano had recused himself from the entire meeting. It was *consensus* of the Board to start the meeting with New Business.

NEW BUSINESS

Discussion/Consideration of RZ 11-01, a Zoning Map Amendment Application Submitted by Christopher Nason of Beacon Architecture, Inc., on behalf of Ken Forlano of Forlano Properties, LLC, Property Owner, to Rezone Lot 1 of the Saltaire Subdivision, Located at 1221 Duck Road, from RS-1 – Single Family Residential to VC – Village Commercial

Director Garman stated that the application was to rezone Lot 1 from RS-1 to VC. He noted that Chris Nason of Beacon Architecture, Mark Bissell of Bissell Professional Group and Starkey Sharp of Sharp, Michael & Graham were present on behalf of Ken Forlano. He went on to review several maps of the property in question as well as other adjacent properties to the Board and audience, showing the zoning classification for each property. He explained that the transitional areas were designated as such in the Town's Land Use Plan for a wide range of uses – yellow for residential and purple for village commercial. He noted that the transitional uses in the Land Use Plan were for either residential or commercial uses.

Director Garman stated that the area in question of the Saltaire subdivision was recorded in 1974 and the zoning map of the Duck Village area was adopted in 1982, meaning that the subdivision pre-dated the zoning map for the Town. He noted that all of the lots were zoned as RS-1 when the initial zoning was adopted. He stated that even though the Duck Deli Restaurant was not part of the zoning request, the purpose behind the application was to rebuild the existing restaurant with the owner asking to rezone Lot 1 and combine the two lots together so a conforming

restaurant structure could be built. He stated that the restaurant pre-dated the Town's zoning map and became a nonconforming use when the map was adopted. He added that in 2001, Dare County rezoned the restaurant lot as Village Commercial, so it became conforming as a use but the structure itself was not conforming. He stated that the lot in question was subject to the covenants of the Saltaire subdivision and was not related to the zoning change.

Director Garman presented the Board and audience with a proposal of what the applicant wanted to do. He stated that the applicant was proposing to move the restaurant closer to the road and have parking to the rear of the building. He noted that it would take away a current dangerous parking situation that existed and would allow people to safely enter the site and turn around in order to leave, as well as allowing delivery vehicles to be off the road. He stated that the applicant wished to leave the existing septic system in place and would have to provide a significant buffer between his property and the adjacent residential property. He stated that the alternative to the whole solution if a total reconstruction was not permitted would be to repair the restaurant as it exists and repair it up to 50% of its value within any 12 month period. He noted that the residential lot was the only one in the Village Commercial area that had access solely on Duck Road with no access to the Saltaire subdivision on Marlin Drive.

Director Garman stated that if the rezoning was approved, it would have to come back and go through a Conditional Use Permit process. He added that the applicant would have to submit a site plan, building elevations and show all of the details of the site. He stated that it would have to be reviewed by the Planning Board and Town Council with additional opportunities for the public to give public comments. He stated that one of the things that would be looked at with regard to the Conditional Use Permit process would be the compatibility with the surrounding properties. He thought that the way the lot was shaped and the different elevation contours would provide separation from the adjacent properties. He stated that staff felt there was a public service to be served by allowing the rezoning of the lot. He added that there were two particular locations in Town that staff was concerned with and this lot was one of them; Wee Winks was the other. He explained that the Board could make findings to support rezoning of the property as per the staff report.

Chairman Britt opened the floor for comments.

Frank Crawford of 102 Marlin Drive was recognized to speak. Mr. Crawford stated that his lot abuts the lot that would be turned into a parking lot. He stated that he was strongly opposed to the project, adding that everyone was opposed to further commercialization of the property. He stated that he understood that the Town was not obligated to enforce the covenants, but asked if the Town had the authority to abrogate them. Director Garman stated that a memorandum from the Town's attorney was included in the staff report where he stated that it did not abrogate the covenants, but that the property was still bound by the covenants. He added that it would be up to the association or property owners to enforce the covenants. Member Fricker noted that covenants were a private contractual agreement between and among the property owners of a community. He added that there were legal remedies available to the homeowners association.

Elizabeth Martinus of 148 Marlin Drive was recognized to speak. Ms. Martinus stated that this has been an ongoing situation that the homeowners association has been dealing with. She added that every neighbor she has spoken to has not been in favor of the rezoning.

Josephine Crawford of 102 Marlin Drive was recognized to speak. Ms. Crawford thought the whole issue has been about pushing the envelope. She added that the homeowners are in a situation that was very unsettling.

Michael Smith of 111 Marlin Drive was recognized to speak. Mr. Smith stated that the issue was concerning to him for the lot to be developed. He noted that it was on a blind corner and he was concerned about the possibility for further expansion.

Ken Forlano of 1223 Duck Road was recognized to speak. Mr. Forlano pointed out that the wedding house on the corner of Marlin Drive and his father – Ron Forlano – were two separate issues. He added that his father owns the wedding house and he owns the deli. He stated that has been running the Duck Deli for the past 26 years and there was a chance to move it into the future and the only way to do it would be with the rezoning. He stated that everyone should look forward instead of backward, adding that the plan would better suit the Town instead of trying to make piece meal changes to the deli. He stated that he loves running a small business, adding that he did not want the deli to be bigger but more efficient.

Starkey Sharp of Sharp, Michael & Graham was recognized to speak. Mr. Sharp stated that he was the attorney for the applicant. He stated that back in the early part of the summer; he had contacted the homeowners association and was told to contact the attorney for the homeowners association, which they did. He stated that he submitted a letter explaining what was proposed for approval by the association. He added that the association did not want to take a position and was leaving it up to the individual members; therefore, the association was not going to accept or reject the proposal. He stated that they made an effort to work with the homeowners association with some concessions and the association has been unresponsive.

Christopher Nason of Beacon Architecture was recognized to speak. Mr. Nason stated that there was a meeting held over the Memorial Day weekend with the homeowners association where they were shown the proposal and could voice their concerns. He added that this was not the first time the proposal has been presented to the association.

Chairman Britt closed the time for comments.

Member Fricker asked if the property owners in the adjacent community were notified of this agenda item. Director Garman stated that all of the adjacent property owners were directly notified. Member Fricker asked if the president of the Saltaire Homeowners Association was present. Director Garman stated that he was not. Member Fricker asked if the covenants required all of the homeowners or just a majority to agree on the proposal. Starkey Sharp stated that it was not a black and white situation with regard to the issue. He added that Saltaire was an older subdivision and several issues may arise given the age of the covenants.

Vice Chair Blakaitis asked if the applicants were willing to move forward without the homeowners association's approval. Starkey Sharp stated that the applicant has made attempts to gain approval but has not been able to come to a resolution. He stated that once the process with the Town has been completed, a decision will be made. Vice Chair Blakaitis asked if there were any outstanding obligations between the association and the applicant that need to be

addressed. Ken Forlano stated that he just recently paid his dues; 26 years worth, bringing him up to date. Vice Chair Blakaitis asked why Mr. Forlano had not paid them in such a long time. Mr. Forlano stated that the association did not like him.

Chairman Britt stated that he has known that the situation has existed for some time and the decision the Board was making tonight was to recommend rezoning the properties. He suggested that the Board ignore the site plan. He added that if the rezoning moved forward, the conceptual site plan needed to be what the Board would see for the Conditional Use Permit. He stated that there were compelling arguments to support the rezoning and this was only one step in the process.

Member Fricker stated that he was troubled by how the proceeding was going as it seemed that, at the Planning Board level, the concerns by the homeowners association were irrelevant and would be more appropriately raised at the Town Council level. He stated that when he heard that the applicant had not paid his dues for 26 years, he lost all sympathy for his situation. He thought the rezoning would be good for the Town and would likely vote in favor of it but was not happy about it.

Member Fricker clarified that the owner of the wedding house would retain the driveway access that was adjacent to the applicant's property. Director Garman stated that it was not stated in the staff report. Member Fricker stated that if that was the intention, he would suggest a separation of the driveway access to the wedding house. Chris Nason stated that he had talked about the driveway with the applicant and that there were concerns. He stated that the applicant wanted to limit the number of curb cuts on Duck Road. Director Garman stated that he would not want to see an additional curb cut as well on Duck Road.

Starkey Sharp noted that he was looking at a revised declaration of covenants from December, 2001 that stated that the owners of the Saltaire subdivision intended to adopt new covenants to replace or supersede the existing covenants from July, 1981. He stated that back then, mandatory dues were not listed in the covenants. He added that the fact that the applicant did not pay his dues for 26 years was not as shocking as it may appear since it was not mandatory. Member Fricker asked if the payment of dues was mandatory since the 2001 adoption of the covenants. Mr. Sharp stated that that it wasn't unless the property owners joined the homeowners association. Member Fricker apologized to the Board with regard to his comment about the applicant not paying his dues for 26 years.

Vice Chair Blakaitis didn't think Member Fricker needed to apologize for his comment. He felt somewhat the same way and was troubled by the proceedings because there was so much conflict between the homeowners association and the applicant. He wished that the homeowners association would give the applicant an agreement and felt that the applicant was opening himself up to considerable problems without the association's approval. He stated that he shared Member Fricker's concerns but knew that the Town could gain from the proposal. He did not think that the concerns of the association with regard to the other two properties becoming commercial were founded and felt there were too many advantages for the Town not to consider this. Member Gilbreath agreed with Vice Chair Blakaitis and Member Fricker's comments.

Chairman Britt stated that he did not like the strife between the homeowners association and the applicant. He hoped that the two could find a way to work out their differences. He stated that he would support recommending the rezoning.

Member Fricker moved to recommend to the Town Council the rezoning of the applicant's lot from RS-1 to VC with the findings as set forth that were consistent with staff's recommendation and were also consistent with the Town's Land Use Plan. Member Gilbreath seconded.

Motion carried 4-0.

Chairman Britt stated that the recommendation would go before the Town Council at their September 7, 2011 meeting and that there would be plenty of time for additional comments before the meeting.

PUBLIC COMMENTS

Mayor Dave Wessel was recognized to speak. Mayor Wessel stated that he gave each member of the Planning Board a copy of the Coastal Review. He pointed out that the Town of Duck had received the Local Government of the Year award for the Town's opposition to sandbags on the beach. He presented the Planning Board with the award that was received and thanked the Board and Director Garman for their hard work.

OLD BUSINESS

Discussion/Consideration of Revisions to Ordinance 11-04, an Ordinance Regulating Erosion Threatened Structures on the Ocean Beach

Chairman Britt noted that the revised ordinance had the changes that Town Attorney Hobbs had suggested from the last meeting. Director Garman reviewed the changes with the Board and the audience.

Chairman Britt stated that he did not always agree with Town Attorney Hobbs but tended to agree on the changes made. Member Fricker stated that, unless there was a strong reason not to, a board should follow the advice of the experts that were hired. It was *consensus* of the Board to accept the changes Town Attorney Hobbs had suggested.

Chairman Britt directed the Board to review the dune walkover section of the ordinance. Director Garman stated that he had made the changes the Town Attorney Hobbs had suggested and went on to review them with the Board and audience. Member Fricker asked if this was the section that there was some question as to whether the Board was directed to discuss it. Director Garman stated that there were some issues and the concern was whether it should be something that the Council directed the Board to deal with. He added that there were several people that had contacted staff with concerns regarding the ordinance since the Council sent it back to the Board. He went on to discuss damaged walkovers with the Board and audience.

Chairman Britt stated that he did not like the whole paragraph on walkovers. Vice Chair Blakaitis asked if it was because there was too much confusion with the distance. Chairman

Britt stated he was correct. Member Fricker stated that he was tempted to strike the undamaged sentence of the ordinance. He felt that 25 feet was a lot. He suggested leaving the 15 feet in for damaged walkovers and change the undamaged language to 20 feet. Vice Chair Blakaitis asked why both damaged and undamaged walkovers could not be 15 feet. He noted that 15 feet was a lot whether the walkover was damaged or undamaged. Chairman Britt stated that he was not comfortable with 25 feet. Member Fricker suggested removing any reference to damaged walkovers. Chairman Britt and Vice Chair Blakaitis agreed. Director Garman suggested removing “wet sand beach” as it related to dune walkovers only.

Vice Chair Blakaitis moved to recommend approval of Ordinance 11-04 to the Town Council with the changes made. Member Fricker seconded.

Motion carried 4-0.

APPROVAL OF MINUTES

Planning Board Meeting July 13, 2011

Chairman Britt directed the Board to review the minutes from the July 13, 2011 meeting.

Member Fricker had one change to Page 2 of the minutes.

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

Motion carried 4-0.

CLOSED SESSION

Chairman Britt moved to enter closed session in accordance with Section 143-318.11(a)(1), to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes. Member Gilbreath seconded.

Motion carried 4-0.

The time was 8:23 p.m.

Planning Board Meeting July 20, 2011

Upon return from Closed Session, Chairman Britt directed the Board to review the minutes from the July 20, 2011 meeting.

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

Motion carried 4-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Director Garman stated that he would keep the Board posted regarding the September 14, 2011 agenda. He stated that there was the potential that the September 14, 2011 meeting would have a long agenda. He stated that he would be in touch with Chairman Britt with regard to it as the Board may wish to set an earlier meeting time if the agenda is extremely lengthy.

BOARD COMMENTS

None.

ADJOURNMENT

There being no further business to discuss, Chairman Britt moved to adjourn the meeting. There was no second or vote.

The time was 8:32 p.m.

Approved: _____
/s/ Joe Blakaitis, Vice-Chairman