

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
January 11, 2012**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, January 11, 2012.

Present were: Vice-Chair Joe Blakaitis, John Fricker, Ron Forlano and Randy Gilbreath.

Absent: Chairman Jon Britt.

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

Others Present: Chris Nason of Beacon Architecture, David Ryan of Creative Engineering Solutions, LLC, Ken Forlano and Ron Forlano, Jr. of Duck Deli, John Jenkins, Mayor Don Kingston and Councilor Dave Wessel.

Absent: Council Liaison Chuck Burdick.

Vice Chair Blakaitis called to order the Regular Meeting of the Planning Board for January 11, 2012 at 6:31 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

None.

It was *consensus* of the Board to move the Minutes up on the agenda.

APPROVAL OF MINUTES

Planning Board Meeting November 9, 2011

Vice Chair Blakaitis directed the Board to review the minutes from the November 9, 2011 meeting.

Member Fricker moved to approve the minutes as presented. Ron Forlano seconded.

Motion carried 3-0.

NEW BUSINESS

Discussion/Consideration of CUP-12-001, Application by Chris Nason of Beacon Architecture & Design, PLLC, on behalf of Forlano Properties, LLC, to Consider a Conditional Use Permit for a new 44 Seat Restaurant to be Located at 1221 and 1223 Duck Road, the Site of the Existing Duck Deli

Ron Forlano stated that before the CUP was considered, he wished to recuse himself from the meeting. It was *consensus* of the Board to recuse Mr. Forlano from the meeting.

Director Garman stated that the Conditional Use Permit application was for a new restaurant. He noted that Ken Forlano and Ron Forlano, Jr. were present, adding that they were the operators of Duck Deli. He stated that their architect, Chris Nason, and their engineer, Dave Ryan, were also present and would be able to comment and answer any questions from the Board. He stated that the application was for a 44 seat restaurant and back in September, 2011, Lot 1 was rezoned in order to support the request. He stated that it was previously a residential property but was rezoned as a commercial one. He explained that a conceptual site plan was presented to Council and the Planning Board as well as the Saltaire Homeowner Association and discussed at length with Town staff supporting the rezoning. He stated that this application would be the second phase of the project. He went on to review the project with the Board and audience, noting that the lighting plan had not been received and would need to be addressed. He further noted that staff was recommending removing one of the parking spaces and reducing only two of the end parking spaces to 9 feet.

Member Fricker wondered if there were any property owners from the Saltaire subdivision present at the meeting. It was confirmed that there were no property owners of the Saltaire subdivision present. Member Fricker asked what notices, meetings and information had been put out to the property owners of the Saltaire subdivision since the rezoning with respect to what was being presented to the Board. Director Garman stated that there was a meeting that the applicant had requested with the Saltaire Owners Association where the rezoning was presented. He noted that he, Town Manager Layton, Councilor Dave Wessel and several members of the Association were present at that meeting. He stated that after the meeting, the applicant applied for the Conditional Use Permit and Town staff immediately notified the Saltaire Owners Association president via email of the application and sent additional emails with copies of the drawings, site plan and staff comments. Member Fricker asked if everything that was given to the Planning Board on the issue was also presented to the Saltaire Owners Association. Director Garman stated that it was and he received confirmation that the owners did receive the information.

Vice Chair Blakaitis noted that the final landscaping, lighting plan, signage plan and the architectural detail which included the cladding and colors were missing from the application. Director Garman stated he was correct.

Chris Nason and Dave Ryan were recognized to speak. Mr. Nason stated that the project was a challenging one as the site was very constrained. He stated that they made extensive efforts to reach out and listen to the Saltaire community. He stated that they tried to remain close to the original site concept that was provided to the Board a few months back. He went on to review the project with the Planning Board and audience.

Member Fricker asked what the timeline was for the project. Chris Nason stated that they would like to get the project done as promptly as possible. He stated that the engineering would need to be completed in order to get the building lined up to get the project going. Member Fricker clarified that the applicant would not be breaking ground until the Fall of 2012. Mr. Nason stated that he was correct. Member Fricker stated that it appeared to him that the restaurant as it presently exists was 1,698 square feet. He added that the applicant was proposing to rebuild the restaurant to 3,280 square feet. He pointed out that it was a 93% increase in the overall size of the facility. He asked why. Mr. Nason stated that the kitchen was the major reason for the increase in size. He added that the smokers and the walkout freezer were also going to be brought into the new building as part of the kitchen.

Member Fricker stated that the space had doubled from what was presented to the Board several months ago. He asked if they knew back then what would be needed to make the building efficient. Chris Nason stated that they tried to increase the parking because that was one of the areas where the property was deficient. He added that one of the reasons for the increase in the building size was to have a mezzanine to be used for storage and a small office. Dave Ryan thought that if the square footage of both existing buildings were added together, it would be the equivalent to what was being proposed.

Vice Chair Blakaitis asked where the remaining seating was intended to be placed. Ken Forlano stated that he was trying to put all the seating inside but may have a few pedestal tables outside. Member Fricker understood that there was seating for 35 but Mr. Forlano wanted to have 44 seats as well as reserving the right to request more seating on the covered deck at a later time. Mr. Forlano stated he was correct, adding that he would need the extra seating if the parking and water usage allowed for it.

Vice Chair Blakaitis asked if Mr. Forlano would be allowed the additional seating outside without any impacts to the parking under the new restaurant ordinance. Director Garman stated that he would, depending on the wastewater approval.

Member Gilbreath asked if any other businesses were allowed to have 9x18 foot parking spaces. Director Garman stated that Aqua Restaurant and Duck News Café were permitted reduced parking spaces and sizes. Dave Ryan noted that 9x18 foot spaces were pretty much an industry standard for parking. He stated that with regard to the other missing items, the landscaping plan was provided but was vague. He added that they would be willing to provide specifics. He stated that with regard to the lighting, he thought light fixtures attached to the building would be used and expected to have the details for it within the next several days. He noted that the open space in the rear of the property had an active septic drain field and there were no plans to alter that area.

Vice Chair Blakaitis asked if any outdoor functions would be anticipated at the restaurant. Member Fricker thought it should be a question of the property owner due to the tent. Ken Forlano stated that he had no intention to use the outdoor area. He added that the tent was not a permanent structure as it was only put up for specific events. He stated that he spoke to his father about the possibility of the Planning Board considering allowing him to let his father continue to use that area for events up to a certain point and then after that, have him find an alternative location for the tent for future events.

Member Gilbreath asked if a permit was needed to hold a wedding on a property. Director Garman stated that a permit was not needed, but a tent permit was. Member Gilbreath asked if there were two oceanfront homes and one neighbor told the other it was ok to put a tent up on another neighbor's yard, it was ok. Permit Coordinator Cross stated that in a residential situation, a permit for the tent would not be required. Member Fricker pointed out that Lot 1 was no longer considered a residential lot. Permit Coordinator Cross agreed and added that it changed the situation. Member Fricker clarified that Lot 1 would require a permit to put up a tent regardless of whose tent it was and who requested it. Director Garman stated that tent permits were considered a building code regulation. He added that with regard to commercial use, he wasn't sure if the zoning or use of the property would be taken into consideration. He noted that currently, the property was still a residential use and was non-conforming since it was rezoned. He didn't know if the Town could make the property owner obtain a tent permit to put the tent where the current house sits. He stated that once the house was torn down and converted to a commercial building, then it would be a commercial building and would be regulated by the building code.

Member Fricker stated that the only reason he raised the question was because he wanted it on record that the Planning Board had taken those concerns into consideration when deciding how to recommend with the application. Vice Chair Blakaitis agreed, adding that the Board was not present to decide whether the tent could be on the property. He stated that the tent was a point of contention with the subdivision. He thought it became an enforcement issue at some point.

Vice Chair Blakaitis stated that he recognized the concerns of the subdivision but wasn't sure if the Board should go there. Member Fricker thought there were a lot of other issues that have not been resolved. He thought it would be more efficient to have everything in front of the Board. He stated that he had some concerns. He stated that when there was situation such as this one, the ordinances in place should be considered in order to help the Board deal with any potential issues.

Member Gilbreath pointed out that there were 50-75 wedding homes in Duck, so there were other communities that were experiencing the same issues. He added that this issue was not really any different and the applicant should not be afforded special treatment. Director Garman stated that most complaints related to wedding homes were related to parking and noise. He noted that, with regard to the restaurant ordinance, no outdoor amplified noise was permitted after 10:00 p.m. He added that Council wanted staff to bring back another ordinance that would deal with the noise limit Town-wide.

Member Fricker stated that the process in front of the Board was a Conditional Use permit process and not one for a residential house being used for weddings. He wanted to make sure the Board considered such things as noise and parking. He stated that he would like additional data with regard to noise. Director Garman stated that one of the comments he received was that an owner did not want Lot 1 redeveloped to contribute to the wedding events that happened at the neighboring property.

Dave Ryan stated that as far as the shared driveway access, there was a recorded easement in place for the existing residence and the Saltaire House residence for the shared access between

the two properties. He stated that the site development plan was kept as such that it showed the shared driveway. He added that as far as the rear of the site, it was buffered between the adjoining properties and met the Town requirements with regard to vegetation preservation.

Vice Chair Blakaitis pointed out that the Town engineer looked at the stormwater management and thought it may not work the way it should. Dave Ryan stated that revisions to the plan were made after reading the engineer's initial comments. He added that the concerns were addressed and additional information was provided. Vice Chair Blakaitis stated that the Town's engineer felt the plan was good but that he could not formalize comments until a more complete stormwater management plan was submitted. Director Garman stated that the site plan had been revised based on the comments. He added that staff received a follow up email from the Town engineer and he was comfortable with the revised stormwater plan. Dave Ryan went on to review the revisions to the Planning Board and the audience.

Member Fricker pointed out that in the parking area there were 11 spaces along the northeast side that were 9x18 feet. He further pointed out that two of the spaces were compact spaces. He asked what staff's position was with regard to the compact spaces. Director Garman stated that there were compact spaces in other areas but the question was whether they would be fully utilized. He stated that staff would recommend the compact spaces be eliminated and just have 10 foot wide spaces. Member Fricker asked if staff took into consideration the likelihood of pedestrian traffic coming into the restaurant. Director Garman thought there would be a lot of pedestrian traffic. He stated that it would probably be better to have one less parking space than two that will not be utilized.

Vice Chair Blakaitis stated that he was inclined to take Town staff's recommendation regarding eliminating one space and making all of the parking spaces 10x18 feet with the 2 end spots at 9x18 feet. Member Fricker agreed.

Member Fricker asked Director Garman if he wanted more time in order to present a more complete package with the issues addressed or if he felt comfortable enough with the application that the Board could vote on the Conditional Use Permit. Director Garman stated that he felt comfortable that he could come up with an opinion on each of the bullets that were placed under the Recommendations, but wondered if the Planning Board needed to see the application again. Member Gilbreath felt there should be more information before the Board made a decision. Vice Chair Blakaitis stated that no application should be submitted until all documentation was received. Member Fricker felt that the bulleted items needed to be addressed. Director Garman felt it was a good plan but the Town needed to cover its bases. Vice Chair Blakaitis agreed and felt the plan should be complete.

Director Garman stated that changes needed to be made, but wondered if the application should come back to the Planning Board or go directly to the Town Council. Vice Chair Blakaitis stated that he was inclined to have it brought back to the Planning Board's February 8, 2012 meeting. Member Fricker agreed.

Member Fricker moved to table the issue until the Planning Board's February 8, 2012 meeting. Vice Chair Blakaitis seconded.

Motion carried 3-0.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

None.

ADJOURNMENT

There being no further business to discuss, Member Fricker moved to adjourn the meeting. Member Gilbreath seconded.

Motion carried 3-0.

The time was 7:59 p.m.

Approved: _____
/s/ Joe Blakaitis, Vice Chair