

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
June 13, 2012**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, June 13, 2012.

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

Absent: None.

Also present were: Director of Community Development Andy Garman, Council Liaison Chuck Burdick and Permit Coordinator Sandy Cross.

Others Present: Michael Morway of Albemarle & Associates, Mike Robinson, Ben Cahoon of Cahoon & Kasten, Pat Pettit, Timothy and Suzan Gillis, Karen Power, Crouse Gray, Mary Fowler, Terence McPhillips, Marietta Lee and Andrea Jordan.

Absent: None.

Chairman Britt called to order the Regular Meeting of the Planning Board for June 13, 2012 at 6:34 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion/Consideration of an Application by Michael J. Morway, P.E., of Albemarle & Associates, Ltd., on behalf of Wee Winks, LLC, Property Owner, to Consider a Conditional Use Permit for a New Group Development to be Located at 1216 Duck Road

Director Garman stated that the discussion was regarding Conditional Use Permit 12-03. He stated that the Board had started talking about the project back in March when the applicant submitted a sketch plan. He added that the Board looked at the sketch plan in a very informal way in order to review the project and provide comments before the applicant came up with a full-blown design. He stated that at that time, the project included two buildings and three properties and now the project has changed to include three new buildings and a recombination of four properties total. He went on to review the existing conditions and the sketch plan from March to the Planning Board and audience.

Director Garman stated that the new site plan showed Brindley Real Estate at 4,400 square feet, Wee Winks Market at 4,400 square feet and the ABC Store at 2,000 square feet. He stated that the applicant was now preserving a great deal more vegetation based upon previous discussions,

including additional proposed bulkheading. He noted that staff thought the landscape and bulkhead plans were good given the topographic changes at the site. He went on to review the landscaping and stormwater plans with the Board and audience.

Director Garman stated that about 25 feet of green space would be added with the development that was currently pavement and that all buildings would have a copper roof and lap siding. He reviewed the lighting plan with the Board and audience. He stated that the design met most of the Town requirements except for the driveway access and building placement. He suggested that the Board discuss those issues.

Director Garman stated that Town staff had received a lot of comments regarding the driveway access from the Poteskeet Village owners regarding the proposed driveway on Wampum Drive. He noted that the Town had an ordinance in effect that dealt with driveway access and anywhere there was a commercial lot that had access to a side street that is a public road, the Town ordinance required access to that side street. He added that it was in place for a variety of reasons – to help facilitate vehicle safety onto Duck Road as well as for pedestrians on Duck Trail. He stated that the Town has been trying for years to correct the issues and that was one of the reasons for the ordinance.

Director Garman stated that the applicant proposed two access points onto Duck Road. He pointed out that the Town ordinance states that all accesses should be on a side street. He stated that staff could not require access to Duck Ridge Village Court as it was a private street. He added that staff felt it was reasonable for the applicant to have one access onto Duck Road and was consistent with NCDOT policy for street access for this type of road classification. He stated that staff did not believe that the northern access would be consistent. He stated that staff recommended removing the driveway and have the parking in the rear. He added that staff would recommend one access on Duck Road and one on Wampum Drive.

Mike Robinson and Mike Morway were recognized to speak. Mr. Robinson stated that the stormwater plan was generally good. He and Mr. Morway went on to review the plan with the Board and the audience.

Director Garman stated that the other issues staff pointed out were lighting but those issues have been resolved. He then went on to review the roof color, the use of the Brindley building, the pavement striping and signage as well as the public comments staff received on the application with the Board and the audience. He noted that he had received an email from the division traffic engineer for NCDOT and that they were generally in agreement that the accesses along Duck Road should be limited.

Ben Cahoon was recognized to speak. Mr. Cahoon stated that Jerry Davis has owned the property for quite some time with the Wee Winks building in existence for a very long time. He stated that they were now realizing that they need to do something and that they wanted to remove the existing gas pumps, which precipitated the application. He stated that the original sketch plan did not include the Brindley building as he cautioned Mr. Davis that the driveway would be an issue. He stated that the Village Commercial Ordinance was the right thing to do in order to incorporate all of the properties comprehensively instead of doing it in a piece meal effort. He complimented Mike Morway on the work he had completed on the site.

Ben Cahoon stated that he wanted to specifically address the use of the Brindley building. He pointed out that he had labeled the spaces as storage but had since spoken to Doug Brindley about the use. He noted that his firm had designed a number of realty office buildings on the beach, including the Twiddy building. He stated that Mr. Brindley realizes that because his building is in Duck and the site was limited, there were some things that he was not going to be able to do that one might normally see in a conventional rental management office. He stated this it was his understanding that the space would be used as a property management maintenance office, which was where the workers would hang out; where the vendors would check in to get their orders; for record keeping and dispatching. He stated that before the application goes before Council, he would clear up and clarify the use issue.

Ben Cahoon stated that having dealt with the Village Commercial Ordinance in the past, it was a big picture ordinance and was one of the reasons the applicant could get three small buildings on a site rather than one large box type building. He stated that before the redevelopment of the site, there were two driveways on the site and a large paved area. After the redevelopment, it would have two driveways and a much better situation.

Mike Morway stated that he had met with Gretchen Byrum of NCDOT and she was happy with what she saw. He stated that the project revision did not look much different from the original. He stated that they had looked at different configurations to accommodate the site without adding an extra driveway. He noted that the only way they could end up with the same number of parking spaces as well as accommodating the stormwater was for the driveway to be cut off. He added that the parking was already four spaces short of the required parking so to reconfigure the site without the second driveway would cause the site to lose additional parking, building and stormwater.

Chairman Britt suggested that the Board look at the list and work their way through it, starting with the driveway access. He noted to the audience that the Board would take public comments as they go through the list.

Chairman Britt asked the Board how they wanted to deal with the staff recommendation on the driveway access as well as the proposal that was in front of them. Vice Chair Blakaitis asked for justification for the northern entrance and why it was so important to the project. Mike Morway stated that the entrance was for the Brindley Realty building and would be clearly marked as an entrance. Chairman Britt asked if the Brindley building would be used for weekend check-ins. Ben Cahoon stated that it would.

Vice Chair Blakaitis pointed out that there were many instances on the bypass where one has to turn off the main highway to get to an entrance of a business. He complimented Mike Morway on the improvement of the plan from the last presentation to the Planning Board. He stated that the second driveway was an area of concern for him. Mr. Morway stated that the applicant wanted to redevelop the site to enhance the Town.

Pat Pettit 128 Marlin Drive was recognized to speak. Ms. Pettit stated that when she looked at the plan, she felt that the size of the Wee Winks building was significantly larger. She asked what the square footage of the new building would be. He stated that the new building was

4,400 square footage which included a partial second floor. Ms. Pettit stated that she was questioning the layout of the three buildings and could not figure out why the buildings could not be configured better so that there was only one entrance and one exit. She thought there should be a better way to lay out the buildings. Mr. Morway stated that one of the issues that were discussed was putting all of the parking in the front so there was an entrance in the middle. Ms. Pettit commended the applicant on the lighting plan.

Member Fricker asked if there had been discussions with the applicant since the March meeting regarding the placement of the office building at the north end of the site. Director Garman stated that there was a meeting when the new concept was developed. He stated that he had brought up the issue of the driveway access at that time and Mike Morway had hand sketched a plan that took out the driveway at that meeting. He added that Mr. Morway went back and talked to the applicant and they decided to come back with the site plan in front of the Board. Member Fricker thought that a board or fact finding body was ill equipped to evaluate the representation being made by the applicant as to whether it was feasible or not when there had not been any in-depth discussions regarding the specific problems should the building be moved. He stated that until and unless Town staff was able to respond to each one of Mike Morway's representations as to why it wasn't feasible, he didn't think the Board was in a position to make judgments as to whether they were going to insist upon moving the building. He asked Director Garman if he was satisfied that it was justifiably not feasible. Director Garman stated that he was in the same position as the Board. He stated that he could not sit down and try to sketch different designs that would fit.

Member Fricker asked Director Garman if anyone come to him on behalf of the applicant and tell him that they didn't think they could do what was being proposed for a specific reason. Director Garman stated that the applicant had told him that by doing the sketch that was presented; some parking spaces would be lost. He added that it was hard for him to evaluate that and when it came to the Village Commercial Development Option, the applicant could submit it like they did and the Board could make the decision on whether or not to approve it. He stated that it wasn't like an ordinance that absolutely would prohibit the proposed configuration. Member Fricker understood that the Village Commercial Development Option would be one where there would be considerable dialogue to try to reach an agreement that everyone would be happy with. He wondered if there was enough dialogue. Director Garman stated that the Village Commercial Development Option, when it was created, was supposed to be an innovative tool to allow some flexibility to design sites, but he felt that the intent was not to alleviate an applicant of obligations they would have. He noted that if an applicant could meet the ordinance and provide a decent project, they should try to meet the ordinance. He stated that he was satisfied with one driveway, but felt that two was taking advantage.

Member Fricker thought that there should only be one driveway access. He thought the preferred arrangement would be one driveway on Duck Road and one on Wampum Drive. He stated that the problem he had was that it seemed that the applicant had decided that it was a threshold issue and that they wanted the driveway cut, so they designed a two story building instead of a one story leaving it in the back lot and now conceptually there was no way to turn the parking area and building in order to fit on the lot. He thought that the decision making process should have been reversed.

Crouse Gray was recognized to speak. Mr. Gray stated that he had been retained by the Poteskeet Village Homeowners Association to review the project. He stated that the project started off with 5,300 square feet of existing buildings and now the proposed project buildings would exceed 10,000 square feet. He stated that the HOA would like to see the second driveway access maintained on Duck Road. He added that the HOA would like signage stating that Poteskeet Village was a private subdivision in order to keep the public from traveling into the subdivision.

Mary Fowler of 118 Wampum Drive was recognized to speak. Ms. Fowler asked if anyone had considered that there was direct access to the boardwalk at the end of Wampum Drive. She thought there would be a huge safety issue. She wondered how that area would be kept safe.

Timothy Gillis of 117 Duck Ridge Village Court was recognized. Mr. Gillis stated that it appeared that there was insufficient parking and drainage capture on the site. He pointed out that the reality was that the applicant could not have all of the square footage for their buildings and parking required to be handled by those four lots. He stated that the project simply could not be done.

Chairman Britt suggested that the Board look at the access issue and if they were happy with the way the buildings were proposed.

Member Fricker stated that there wasn't any member on the Planning Board that was insensitive to the concerns of the residents, owners and part-time residents. He stated that he looked at the situation as it might be with Wampum Drive if the Board was to approve it or a similar plan with one driveway cut on Wampum Drive to the Twiddy complex and the Scarborough Faire Shops and the number of cuts on the adjacent side streets. He stated that in discussing the issue earlier with Town staff, he was advised that no one from any of the homeowners association in any of the adjacent communities has complained to staff about the congestion or safety issues associated with commerce coming onto a residential street.

Terence McPhillips of 131 Wampum Drive was recognized to speak. Mr. McPhillips agreed with Member Fricker's comments. He pointed out that there would be a number of large semi trucks that Twiddy Realty did not have. He thought it was important to point that out.

Marietta Lee of 103 Wampum Drive was recognized to speak. Ms. Lee stated that comparing Twiddy Realty and Scarborough Faire to this project was not a good comparison.

Karen Power of 103 Duck Ridge Village Court was recognized to speak. Ms. Power stated that she was very familiar with the traffic in Duck and felt that the second entrance would cause a safety issue especially with the pedestrians. She asked for clarification as to whether there would be apartments on the second floor of the Brindley building. Director Garman stated that there would not be any apartments and added that there was never a plan to have apartments in the building.

Member Forlano stated that he had several issues with the project. He stated that the project has gone from two to three buildings and that the three buildings were larger than the two existing ones. He thought that the Brindley building was causing the issue with the second driveway and

wondered if it was possible to reduce the project to two buildings and eliminate the one driveway. Ben Cahoon stated that they could simplify everyone's life and go to one building but it seemed to be in direct contradiction with the Village Commercial Development Option. Member Forlano noted that he wasn't asking to have the project reduced to one building. Ben Cahoon stated that even if there were only two buildings, it would still be contrary to the Village Commercial Development Option.

Chairman Britt asked if it was required that the ABC building be in a stand-alone building. Vice Chair Blakaitis stated that it was not.

Member Forlano thought that the Brindley Realty and ABC store could be combined and then move the Wee Winks store north on the property. He noted that it would eliminate the second driveway entrance and the parking could be located where the Wee Winks building presently existed. He asked where the Brindley Realty maintenance people would park their vehicles. Member Gilbreath didn't think it would be an issue during the week. Chairman Britt noted that Brindley Realty's maintenance vehicles presently park next to his business and he could see those additional vehicles causing a parking issue. Director Garman stated that he had pointed that issue out to the applicant and asked them to clarify what the maintenance people would be doing at the site. He stated that the question staff had was if that was considered an office use, adding that if it wasn't, it wasn't permitted.

Member Fricker asked if Brindley Realty's plan was to consolidate everything into the area next to the Wee Winks store. Director Garman stated that if the plan was to make a significant portion of the building dedicated to property maintenance, it has not been taken into consideration as it has been treated as office space. Vice Chair Blakaitis asked if staff agreed there would be a parking impact. Director Garman stated that he had not had a chance to analyze it as the use was presented as office space.

Chairman Britt stated to Ben Cahoon that the Board had obvious concerns about the use of the office space. Ben Cahoon stated that he didn't understand how checking in and out vendors were not considered an office function. He stated that it was calculated as office space. Chairman Britt asked if Brindley Realty's maintenance would be located at the new facility. Mr. Cahoon thought there would be some number of vehicles on the site. Director Garman noted that the site plan showed the space as an open space, i.e. one large room. He suggested that the applicant give some sort of clarification regarding how the space would be configured.

Member Forlano asked Chairman Britt what happened to the Brindley Realty trucks next to his business on the weekends. Chairman Britt stated that they were typically out in the field. He thought Brindley Realty was pushing the limit of office use. He stated that he was concerned as to how the office space would be used as it would affect traffic and business in Duck on the weekends. He stated that having the Board know exactly what will be going on in that space would affect the decision. Ben Cahoon reviewed the first and second floor uses of the proposed Brindley Realty building with the Board and audience.

Director Garman stated that he had an application come in for a zoning text amendment that will be brought before the Board in July that deals with a similar situation. He added that it would be

hard for him to say that the Brindley Realty use was approvable as shown when another company was dealing with the same situation and following the proper process to do so.

Member Forlano asked what the drop was from the back of the parking lot to the apron. Mike Morway stated that the back of the parking lot in general was ten and dropped down to four. Member Forlano noted that it was a substantial drop. Mr. Morway stated that there were huge grading constraints with regard to the parking lot.

Andrea Jordan of 113 Wampum Drive was recognized to speak. Ms. Jordan pointed out that there was an issue of overflow parking on the site and that when people could not find a parking spot in that lot, they tend to park on Wampum Drive. Director Garman believed that the issue was people eating lunch at Baldie's Burgers. He stated that the Town could enforce the parking on Wampum Drive to help alleviate the problem if the homeowner association petitions the Town to designate the street as a No Parking area.

Crouse Gray stated that there will be a huge volume on traffic on Wampum Drive, especially on the weekends. He added that he didn't think the reconfigured parking lot would work.

Chairman Britt thought the parking lot would be an extraordinary traffic flow spot and there will probably be more vehicles than anticipated. He felt that the building configuration should stay as is or the flow would hurt Wampum Drive. He thought a lot of the concerns that were brought up about the traffic on Wampum Drive would be there no matter how the buildings were configured. He felt that the second cut should be kept even though it was contrary to the Town's ordinance. He stated that he had concerns about the Brindley Realty maintenance department moving into the building as it would have an effect on the parking. He added that he was uncomfortable with that use of the Brindley building and that it was being done with an inadequate number of parking spaces. Director Garman noted that the Village Commercial Development Option allowed flexibility but it does not allow a use to be permitted that is not currently allowed.

Member Fricker stated that he liked the direction that Member Forlano was headed with his comments. He thought there should not be two cuts on Duck Road. He didn't think redesigning the site should be done by the Board and that the parties interested in the project should go back to the drawing board to address the three issues that will be paramount – pedestrian safety, the impact on Wampum Drive and the stormwater drainage. He pointed out that the Town has not dealt with a situation where there is a drop from ten feet to four feet with a substantial removal of vegetation. He stated that unless someone convinces him otherwise, he would be inclined to not recommend approval based upon the current proposal.

Vice Chair Blakaitis stated that he did not like the second cut. He added that the problem was not to redesign the project for the applicant, but did like Member Forlano's suggestion, and felt it was something that should not be done at this meeting. He thought the improvements would make the Town better and could far outweigh the traffic that may occur on Wampum Drive. He suggested having more pervious surfaces to help with the drainage. Mike Morway noted that more pervious surfaces could not be used when an area is not flat. Vice Chair Blakaitis thought that it was incumbent upon the Board that if they didn't like the entrance, they should say so.

Member Fricker stated that the problem was that there were a number of areas where the Board did not have enough hard, clear information and one of the areas was stormwater. He thought there were some other areas that the Board did not have enough information to make a decision. Director Garman stated that if the Board asked the applicant to reconfigure the site to eliminate the driveway and move the building, then it would change the site in a way that staff would not understand all of the impacts that would be created without a thorough review.

Member Fricker thought there were two scenarios – that the Board vote to make a recommendation to Council to not approve the application as presented and the other would be to offer the applicant the opportunity to withdrawal and resubmit a new plan with what the Board agreed upon. Chairman Britt stated that he was not comfortable just forwarding the application with the driveway cut removed without knowing what the impacts would be. Director Garman stated that Mike Morway had mentioned earlier that Gretchen Byrum with NCDOT was ok with the cuts, but he had spoken to Jason Davidson of NCDOT and he preferred one cut. He added that there was some inconsistency with NCDOT. He pointed out that the Town policy was to require access from a side street as opposed to Duck Road. Chairman Britt noted that even with the second curb cut, it was drastically improving the current situation. He stated that he liked the three smaller buildings on the site. He added that the Board still had to weigh the options versus an overall development that was larger and not as attractive.

Chairman Britt stated that there were a couple of options – the Board could tell the applicant to close the curb cut and present a new plan or come back to the Board with a completely new design with only two buildings. Mike Morway stated that if the existing Brindley Realty building remained, there would still be two curb cuts on Duck Road and two on Wampum Drive. Member Gilbreath stated that he was fine with two cuts on Duck Road to lessen the impact on Wampum Drive. Member Forlano thought the curb cut should go. Vice Chair Blakaitis agreed with Member Forlano's comments.

Chairman Britt asked the applicant if the Board asked them to remove the curb cut, would they bring something back or take it forward to Council as is. Ben Cahoon stated that he could not say because it was ultimately up to the owner of the property. He added that if the Board took any action, as presented or with the proposed modifications, it would still be up to the owner.

Chairman Britt stated that the main issue with the application was the second drive access. Vice Chair Blakaitis added that the impact of the office use was another issue. Member Forlano didn't think the application should be sent to Council as presented. He felt the applicant needed to go back to the drawing board to some degree. Chairman Britt agreed with Member Forlano in that he was not comfortable forwarding the application as presented. He added that if the Board was going to make a motion to deny, it needed to be specified why and what the Board would like to see brought back from the applicant.

Director Garman asked the Board if they wanted a trip analysis on Wampum Drive if the curb cuts were reduced from two to one on Duck Road. Chairman Britt thought it was a good idea.

Member Forlano asked if the Board should table the issue and look at it again at their July 11, 2012 meeting. Chairman Britt thought the Board needed to take a position and either recommend the application or not and say why.

Member Fricker moved that the Planning Board deny approval of the application as presented based upon the existence of the second northern driveway cut onto Duck Road; insufficient information with respect to the impact of vehicular traffic exiting onto Wampum Drive and that the Board would like a traffic analysis and depending upon the result of the analysis, that the applicant consider the possibility of redesigning the plan to eliminate the drive cut onto Wampum Drive; and have Town staff and the applicant address the use of the Brindley Realty office space and depending on the result, address the implications of such use. Member Forlano seconded.

Motion carried 5-0.

Chairman Britt called for a five minute recess. The time was 8:59 p.m.

Chairman Britt reconvened the meeting.

Consideration of Town Ordinance/Procedures to Approve Special Events and Crowd Gathering Activities

Director Garman stated that at their last meeting, the Board reviewed a list of things they wished to consider in the special events ordinance. He stated that he drafted an ordinance based on that discussion and it was included in the Board's packet. He noted that he made some word smithing suggestions that Member Fricker had suggested to him, adding that no substantive changes were made to the draft ordinance, but the changes were mostly to be consistent with regard to the terminology.

Director Garman stated that the ordinance was created that would require permits for special events that would anticipate attendance of more than 100 people. He went on to review the draft ordinance with the Board and the audience.

Member Forlano asked if "events and other types of performances on private lands" referred to wedding events. Director Garman stated that the intent of the ordinance was for commercial sites. Member Forlano stated that he wanted to make sure that the ordinance was not interpreted differently. Director Garman noted that the ordinance stated; "...this chapter shall not apply to places of personal residence..." He added that public or private land could be Town property or private commercial property. Member Fricker understood that wedding houses were not personal residences. Member Forlano agreed. Member Fricker clarified that wedding houses were private residences but not personal ones. Member Forlano stated he was correct. Director Garman suggested changing the language to state: "...single family dwellings..." Member Fricker pointed out that wedding houses were not single family dwellings. Vice Chair Blakaitis disagreed. It was *consensus* of the Board to change the language to strike personal residences and change it to single family dwellings.

Member Forlano noted that the timing in the ordinance did not allow time for an appeal to the Town Council. He added that there was five working days from receipt of the application for the Town to approve or deny and then it gets sent before the Town Council. He asked if there was enough time. Chairman Britt suggested changing the timeframe to 45 days to ensure enough

time for an appeal, if necessary. He further suggested that it be 60 days for more time. It was *consensus* of the Board to change the timeframe to 60 days.

Member Fricker noted that the draft ordinance stated that the Town Manager could modify the operating hours for amplified sound. Chairman Britt stated that there was no reason for amplified sound after 10:00 p.m. It was *consensus* of the Board to strike that sentence from the ordinance.

Member Fricker thought the language regarding the duration and frequency of events was subjective. He noted that it had changed slightly from the original draft. He stated that "...two or more events are to occur on the same date, which combined will..." has been changed to "...and are deemed likely to have detrimental effects on the Town's facilities and services..."

Chairman Britt stated that the Board had discussions about the lack of events in the summer. He thought the language would give people the ability to hold more events in the summer. Director Garman stated that the threshold could be changed from 30 days to 45 or 60 days. Chairman Britt suggested changing it to 60 days. Member Forlano clarified that it would not apply to Town events. Chairman Britt stated he was correct. Director Garman asked the Board what they considered the peak summer months. He further asked if they wanted it to be from June 1 through September 1 of each year. It was *consensus* of the Board to have the peak summer months noted as June 1 through September 1 of each year.

Member Fricker moved to recommend to Town Council that they adopt the draft ordinance as amended. Vice Chair Blakaitis seconded.

Motion carried 5-0.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Planning Board Meeting May 9, 2012

Chairman Britt directed the Board to review the minutes from the April 11, 2012 meeting.

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

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

None.

ADJOURNMENT

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

The time was 9:43 p.m.

Approved: _____
 /s/ Jon Britt, Chairman