

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
July 17, 2013**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, July 17, 2013.

Present were: Chair Joe Blakaitis, Vice-Chair John Fricker, Ron Forlano, Marc Murray, and Tim McKeithan.

Absent: None.

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

Others Present: Councilor Nancy Caviness, Fire Chief Donna Black, Arbor Rafeldini, Michael Strader of Quible and Associates, Warren Eadus of Quible and Associates, Clark Twiddy of Twiddy and Associates, Doug Styons of Styons Surveying, Inc. and George Hazen.

Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for July 17, 2013 at 6:32 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion/Consideration of SUB 13-001, an Application by Harris Koenig on behalf of Jane K. Terry, Property Owner, for Final Subdivision Plat Approval of the Duck N' Cover Subdivision Located at 1284 Duck Road

Director Garman stated that this was a final plat approval and the Board needed to verify that the applicant had completed the items that they said they would do as part of the preliminary plat approval, which primarily involved relocating the septic system and driveway so that they were located on the same property as the dwelling. He stated that the applicant completed these two items and the relocated septic system met the Health Department requirements and received final approval. He stated that the relocated driveway received final approval from the Town through the zoning permit process. He stated that staff felt the application met all of the requirements established during the preliminary plat and would recommend approval of the final plat. He noted that the issue did not need to go back to the Town Council as the Planning Board would be the final reviewing body for it.

Chair Blakaitis noted that the common driveway for the two lots was not shown. He clarified that they did not have to be shown. Director Garman stated he was correct adding that if it was a shared driveway, the setback between the two would be waived.

Member Murray moved to approve SUB 13-001 as presented. Member McKeithan seconded.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of CUP 13-002, an Application by Michael W. Strader, Jr., P.E. of Quible & Associates, P.C., on behalf of TFP, LLC, Property Owner, to Consider a Conditional Use Permit for a New Property Maintenance Facility to be Located at 109 Scarborough Lane

Director Garman stated that the applicant was present, Michael Strader of Quible and Associates, along with Warren Eadus and Ralph Lassiter. He noted that Clark Twiddy of the Twiddy Family was also present. He stated that Warren Eadus had a presentation for the Board.

Warren Eadus of Quible & Associates, P.C. was recognized to speak. Mr. Eadus went on to give a short presentation regarding the project to the Planning Board and audience.

Chair Blakaitis asked what allowed the application to reduce the size of the stormwater area. Warrant Eadus stated that they used site specific hydrology in order to come up with the stormwater detail. Chair Blakaitis asked if there was a figure that he was able to reduce percentage-wise. Mr. Eadus stated that he did not have that figure. Chair Blakaitis asked if the stormwater was completed using more precise calculations and clarified that landscaping, drainage or slope changes were not done. Michael Strader stated he was correct.

Member McKeithan asked if the Health Department had recommended against the implementation of LID methods. Warrant Eadus stated that the Health Department had asked that the septic field be as far away from the southwest corner of the property, which was the lowest part of the property.

Director Garman stated that Town staff had several meetings with Quible and Doug Twiddy since the time they submitted the project. He stated that the first submittal was looked at by staff and that he went out to the site with the Town engineer to look at the property and noted that the slope on the east side of the property was significant. He stated that it was a very difficult site and commended the applicant for attempting to deal with a 35 foot elevation on the northeast corner that dropped to a six foot elevation in the southwest corner.

Director Garman stated that he and the Town engineer thought there could be some possible ways to reduce the impacts on the slope as well as reduce the amount of clearing that would be occurring on the property. He noted that the property had a lot of mature trees around the perimeter. He stated that the suggestions made to the applicant included the following:

1. Relocating some of the parking along the southwestern drive aisle.
2. Suggesting to the Planning Board a two parking space reduction, if necessary.
3. Look at LID techniques in order to reduce the size of the stormwater basin.
4. Relocate the retaining wall further west and reduce the grading on top of the bulkhead.

Director Garman stated that he had a second meeting with the applicant and they agreed to come before the Planning Board to address the issues at once and then if they have to come back with revisions, they would be able to do that after learning what the Planning Board and Town staff may be concerned with, rather than making the changes and then coming back again. He thought the goal was to put the site plan out there, receive comments and then see where it went from there. He stated that the applicant understood where Town staff was with regard to the project but wanted to hear the Planning Board had to say.

Director Garman noted that the building met the architectural criteria for the Town and confirmed that it would be less than 5,000 square feet. He added that the applicant met the parking requirements with the current site proposal. He stated that staff did not have any concerns regarding the drive aisle as it was not on NC 12 and it made sense to have the proposed circular driveway configuration. He stated that their lot coverage was only at 46% where 60% was permitted, so they were well under their lot coverage allowance. He noted that they were proposing to exceed some of the fill limitations, but did have an engineered stormwater plan. He stated that the landscaping plan met the Town's ordinance; however, he would like to see more of the existing vegetation retained on the site.

Vice Chair Fricker asked when the first on-site meeting with the Town engineer was. Director Garman wasn't sure. Vice Chair Fricker clarified that there was no meeting with the applicant on-site to discuss the issues prior to submittal of the plan. He further clarified that a meeting was conducted after the plans were completed. The applicant indicated that this was correct. Director Garman stated that there was some discussion on the conceptual plan prior to the Planning Board submittal, but added that it was before any grading information was presented or discussed.

Member Forlano asked what the rationale was for stripping all of the vegetation and putting in 190 new plants. Warren Eadus stated that the severe slope was dominated by mainly Russian olive bushes and non-native plants. He added that the retaining wall would require that the vegetation be removed. Member Forlano asked why the trees would be removed and have an area leveled for the septic repair area. Warren Eadus stated that it was not a usable area if the slope was retained. He added that it was also part of the yard on the site and the owners would like that area to be flat. Member Forlano asked if the slope was unsafe. Warren Eadus stated that it was not stable. Michael Strader noted that normally, a repair area would not need to be cleared but with the 15 foot setback, the applicant would need to be able to show a constructible repair area from the structure.

Director Garman noted that the repair area is now larger than it was on the original submission. He added that there may be other options that could be looked at such as peat repair. Michael Strader thought that a TS2 would be more appropriate for this setting.

Member Murray stated that there wasn't any detail for the retaining wall. He asked if it was 15 feet high with a sheet pile. Warren Eadus stated that the applicant had some choices with regard to materials. He stated that the way it was built, it was sheet pile that was driven with very little disturbance behind it with anchors. He added that they would use 150 anchors across the wall that would be drilled into the side of the hill. He noted that they could meet the height without much deviation from the submitted plan.

Council Liaison Burdick stated that there was a lot of discussion regarding saving the trees. He asked if there was an overlay plan that the Board could look at so they could see what currently exists on top of what was proposed so they could have a better idea on where the changes could make a difference. Warren Eadus stated that he only had the tree plan currently. Council Liaison Burdick thought if the Board was presented with an overlay, they would have a better understanding of the impacts on the trees. Mr. Eadus agreed.

Vice Chair Fricker pointed out that the applicant was going to disturb approximately 95% of the lot and replace the 70+ mature trees with mostly shrubs. Warren Eadus stated that they would not be doing that. Vice Chair Fricker stated that he wanted to understand when a meeting was held where suggestions were made to reduce the size of the stormwater pond and possibly requesting that the Planning Board allow the applicant to reduce the number of parking spaces in order to reposition the septic field. He asked if the Town engineer was present for the meeting. Director Garman stated that he was. Vice Chair Fricker asked if it was represented that the suggestions made were feasible. Director Garman believed that they were. He added that the engineer was just evaluating it in his professional judgment. He added that when they sat down with the applicant's engineer and gave them suggestions, it seemed that everyone felt they were reasonable. He added that he later found out that there was an interest in preserving the repair areas as a flat area. Warren Eadus stated that they wanted the repair area flat in order for employee functions to be held.

Vice Chair Fricker pointed out that when the applicant came before the Planning Board before for a zoning text amendment, it was represented as a very modest building and looked residential, with nothing mentioned regarding clearing the entire lot. He added that now that the Board had the plan, it was showing that the applicant wanted the largest building they could have. He stated that they have come forward looking for exception to both the height of the wall and the fill areas and by removing the mature trees on the eastern side of the lot and replacing them with immature trees and/or shrubs, it would make the new building clearly viewable from the street and the east parking lot. Warren Eadus disagreed, adding that the buffer on the adjacent property would remain in place.

Member Murray thought that the one thing that the Board had not discussed was LID technology. Michael Strader stated that they had entertained LID development and wanted to use cisterns, but it was not practical in this case. He asked if the goal of reducing the pond size was for LID purposes. Member Murray thought it would mean that there would be fewer trees removed. Mr. Strader stated that he was not comfortable with reducing the size of the stormwater pond any further. Member Murray stated that he wasn't suggesting reducing the size of the basin independently, he was suggesting that the stormwater management capacity be increased elsewhere on the property and trade it for less development on the back side of the

property and maintaining the buffer. He thought by using those techniques, it would mean some kind of accommodation to save some of the trees.

Director Garman stated that staff did not want the applicant to reduce the size of the stormwater basin just for the sake of reducing it. He stated that staff was focusing on preserving vegetation around the perimeter of the property and knew it would be impossible to save all of the trees in the footprint of the development. He asked if there were trees in the stormwater basin that had to be removed. Michael Strader stated that they could make modifications to the grade of the pond to potentially save some of the trees.

Member McKeithan stated that the nature of the business was not considered retail. He asked if there was any flexibility to significantly reduce the number of parking spaces. Director Garman stated that the applicant designed the site to meet the Town's parking requirements. Member McKeithan stated that he understood, but pointed out that the parking standard was mainly based upon a retail operation. Director Garman agreed and added that there was flexibility to reduce the requirement. He stated that they were showing one more parking space than what was needed. He added that this would not be a major change or reduction to the parking.

Vice Chair Fricker asked if they needed the parking spaces. Member McKeithan stated that he wanted to know why they needed the extra spaces. Warren Eadus stated that they could get by with the existing spaces but were thinking of the use in the future and the property value. He added that they would be open to compromise and change.

Clark Twiddy of 217 Colington Ridge in Kill Devil Hills was recognized to speak. Mr. Twiddy stated that parking was a good thing and that they were not tied to the spaces indicated on the plan. He stated that they would always like to have more but understood the Planning Board's concerns, adding that they would be willing to compromise.

Member Murray asked with regard to the wall, if the applicant would be willing to switch from sheet pile to a wood bulkhead. Michael Strader stated that it would depend on the cost. Member Murray asked if they would use helo anchors. Warren Eadus stated that they were more expensive, but a smaller wall would be cheaper. He understood that there was a 10 foot setback and that they were at 15 feet, but wondered if it was too close. Chair Blakaitis stated that the issue was not that it was too close. Director Garman stated that it had to do with preserving the existing vegetation. Michael Strader stated that it would still require some grading and vegetation removal.

Director Garman thought Council Liaison Burdick's suggestion for an overlay of the trees with regard to the proposed development was a good one. He added that the goal would be to save some of the clusters of trees on the property. Warren Eadus stated that if all parties agreed to move the bulkhead, the applicant would likely still lose some trees in the development.

Council Liaison Burdick thought the applicant was looking for guidelines from the Planning Board. He thought that the Board wished for the applicant to save the maximum number of trees possible. He suggested that the applicant concede two to four parking spaces if necessary, use LID techniques wherever possible to minimize the size of the retention pond, and come back with a plan that accomplished all of the issues. Chair Blakaitis agreed, but added that the Board

had not discussed the fill issue in the southwest corner. He asked if the reason for the fill was to match the grade of the adjacent property. Warren Eadus stated that the primary reason was to convey the stormwater to the rear of the property. Chair Blakaitis clarified that the five foot setback could not be met. Michael Strader stated he was correct, adding that the lowest that the stormwater basin could be was six feet and they were already at that point. He felt that if the focus of attention was at the basin, he could slide the seven foot contour to the east but could not do it further north. Chair Blakaitis suggested that the applicant come back with some possible LID techniques.

Director Garman noted that the basin came up to nine feet at its highest point and then dropped back down. He asked if it was done that way to get the volume needed. Michael Strader stated he was correct.

Chair Blakaitis wondered if the application should be tabled or a motion should be made not to approve it and then table it. He suggested asking the applicant to come back in order for them to address the items discussed – spending the most time on the slope on the northeast corner, the four parking places on the end and the possibility of exploring LID techniques to see what could happen. Council Liaison Burdick thought the plan needed to come back with the best way to save the existing vegetation wherever possible. Chair Blakaitis thought that Council Liaison Burdick’s suggestion for a vegetation overlay should be considered.

Arbor Rafeldini was recognized to speak. Ms. Rafeldini stated that she represented the owners of 111 Scarborough Lane. She stated that they did think that the removal of the tree line will have an adverse effect for everyone involved. She added that some of the trees have been on the property for 18-19 years and replacing the large trees with small shrubs would not look good. She stated that Donna Black and Nancy Caviness were not only the adjacent property owners, but also business owners and felt it was important to keep the vegetative buffer in place.

Vice Chair Fricker moved to table CUP 13-002 pending revisions by the applicant to meet the objectives as described by the Planning Board. Member McKeithan seconded.

Motion carried 5-0.

Discussion/Consideration of SE 13-001, an Application by George and Susan Hazen, Property Owners, to Consider a Special Exception Permit at 114 Christopher Drive to Reduce the Front Yard Setback by Approximately Three Feet in Order to Permit the Installation of a Swimming Pool

George Hazen of 114 Christopher Drive was recognized to speak. Mr. Hazen stated that he and his wife have owned their home for 25 years and were looking to put in a pool. He stated that he was informed last fall that they could not because of the setback. He noted that the pool he was looking to install was 12x24 feet and not 12x27 as was listed in the staff report. He stated that he was looking for a special exception due to the difficulties of relocating the septic system. He stated that the special exception was a fairly minor request in comparison to the difficulties associated with relocating the septic system. He noted that his neighbor supported him putting in the pool and had put one in last year, adding that his neighbor was able to put the pool in the rear because his home has only four bedrooms. He stated that the easement for his own property put

his property line 15 feet from the roadway and felt that because he couldn't have a pool; it made his home an exception to the neighborhood. He pointed out that at least seven pools were in the front with the setback closer than what he was requesting. He felt his request was far less intrusive than other properties on Christopher Drive and was consistent with what existed in the neighborhood.

Chair Blakaitis clarified that Mr. Hazen's request for a special exception comprised his solution for putting the pool in the rear of the property and a peat system in the front. George Hazen stated that the peat system was the only system available for a repair area. He added that if he was forced to completely change his septic for a pool, it was not reasonable for him.

Director Garman stated that the staff report outlined various things that the Planning Board was required to look at when reviewing these types of applications. He pointed out that there were five criteria that had to be looked at when reviewing this type of special exception. He noted that Criteria #3 stated the following: "the applicant has demonstrated that the requirements of this chapter are unreasonable or impractical due to unusual building design, lot shape or mature vegetation, or there are special or practical siting constraints where original placement of the dwelling on the lot prohibits reasonable improvements that meet existing requirements." He stated that the key sentence was the original placement of the dwelling. He added that there was original placement of the dwelling and the septic system, which has to be built with the dwelling. He stated that the Board needed to determine if there were things, based on the original placement, which would preclude Mr. Hazen from installing a reasonable sized pool.

Vice Chair Fricker asked if the footprint of the house was the same as what was shown in the staff report. George Hazen stated that the footprint was the same, but the front deck had changed as it extended across the face of the house. Vice Chair Fricker clarified that the living space had not been enlarged, but just remodeled to add a fifth bedroom. Mr. Hazen stated that he added the front living area but never changed the footprint.

Member McKeithan asked how the swimming pool contractor determined that a 10x20 foot pool would be the largest that could be installed. George Hazen understood that a pool could not be closer than 15 feet from any of the lines on the septic field. He added that the contractor has already moved the septic field as far back as was allowed on the lot and would have to take two of the legs to have them run down towards the rear of the property.

Chair Blakaitis thought structures could be within five feet of the septic field. Director Garman stated that it was different for pools as it was 15 feet from the pool water and five feet for the foundation of the building. He stated that he took the site plan and tried to fit the septic lines in the front yard with a conventional system and it would not fit. He wondered if the doglegs for the septic could be turned sooner to gain an additional four feet as well as reducing the width of the concrete from five feet to three feet to obtain the extra two feet in order to accommodate the 12x24 pool. George Hazen stated that he didn't have any details other than the lines run diagonally from the house to the septic tank.

Member Forlano asked if the septic field was the original one. George Hazen stated that it was not. He added that he was required by the Health Department to enlarge the field when he added the fifth bedroom. Member Forlano noted that the difference in the pool size was 10x20 versus

12x24. Mr. Hazen stated that it was 33% less. He added that the 10x20 pool was not definite in the rear yard and that he was not interested in a pool that size.

Chair Blakaitis asked if a pool could be installed in the rear yard in the size desired, how Mr. Hazen would feel. George Hazen stated that it would not be a desirable location because it would not be easily accessed.

Vice Chair Fricker clarified that if Mr. Hazen did not put the repair area in the front yard, he could have it put in the back yard. George Hazen stated that if the pool was in the back and septic system in the front, he could put the repair area in the back. Vice Chair Fricker clarified that Mr. Hazen did not want to install a 10x20 pool in his back yard. Mr. Hazen stated he was correct. Vice Chair Fricker asked Mr. Hazen if he would be willing to install a 10x20 pool in the front yard. Mr. Hazen stated that he would not. Vice Chair Fricker explained that the Board had to find that the Town's ordinance was unreasonable on its face but also had to find that the application was impractical based upon certain criteria.

Vice Chair Fricker moved that the Planning Board approve the application based upon the finding under C3 that the applicant has demonstrated that the application of the ordinance would be impractical because of the constraints imposed by the original placement of the house on the lot, precluding a reasonable improvement. Chair Blakaitis seconded.

Motion carried 4-1 with Member Forlano dissenting.

APPROVAL OF MINUTES

Planning Board Meeting – June 12, 2013

Member Forlano moved to approve the minutes from June 12, 2013 as presented. Vice Chair Fricker seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

Vice Chair Fricker felt that it was harder to clarify what the issues were and what the Board needed to be doing with this meeting being no exception. He wondered if there was any way the outstanding issues could be clarified in advance of the item coming before the Board. Member Murray thought an applicant wanted to turn something in so they could get the ball rolling and get all suggestions in one visit.

ADJOURNMENT

There being no further business to discuss, Chair Blakaitis adjourned the meeting. There was no vote.

The time was 9:26 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman