

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
September 25, 2013**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, September 25, 2013.

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

Absent: None.

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

Others Present: Michael Strader and Warren Eadus of Quible and Associates, Mike Robinson and Bob Evans.

Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for September 25, 2013 at 6:36 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion/Consideration of CUP 13-002, an Application by Michael W. Strader, Jr., P.E. of Quible and 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 (Revised Submission)

Director Garman stated that a new site plan was submitted. He stated that the Planning Board heard the item at their August 14, 2013 meeting and at that time they reviewed the plan and recommended approval to the Town Council based on the information that was provided to them. He stated that several discussions and concerns arose after the Planning Board meeting. Director Garman discussed in brief detail some of the concerns, and noted that a number of meetings were held with the Town engineer, the applicant's engineer and the adjacent property owner, Bob Evans, regarding concerns that Mr. Evans had about how the project addressed his property. He stated that at the Council meeting, they listened to the evidence provided by Bob Evans and discussed the events that had transpired since the last Planning Board meeting. Town Council requested that the applicant revise the application to address three main concerns:

1. The applicant should evaluate methods to reduce the amount of fill being placed on the property, particularly in the southwest corner of the site and along the western property line.
2. The applicant should explore changes to the proposal to provide better grade transition to the western adjacent property. The transition should limit the amount of fill necessary within five feet of the property line. The applicant was asked to lower the finished floor portion of the building, which would allow the driveway grades to be lowered and tapered along the western property boundary.
3. The applicant was asked to explore the site distance of the eastern driveway relative to the hill to the east on Scarborough Lane and provide adjustments to the driveway to improve sight distance and safety exiting the driveway.

Director Garman noted that the applicant did make changes to the site plan based on Council's concerns. He added that he met with the Town engineer and the applicant to review the changes with the applicant asking for any additional input. He stated that he and the Town engineer provided their input and then the applicant provided their final submittal after that meeting.

Director Garman stated that the applicant lowered the finished floor elevation of the building from 15 feet to 14 feet, which allowed them to lower the elevation of the adjacent property grades as well as the parking area and western driveway. He stated that they have tapered the driveway along the western curb line to allow the transition between the two properties to be less significant. He added that the cross slopes have been increased in that area. He stated that the applicant adjusted the size of the stormwater basin and adjusted the location allowing them to save more trees along the property line. He stated that the eastern driveway has been shifted slightly to the west in order to improve the sight distance to the east. He noted that the changes provided by the applicant sufficiently addressed Council's concerns with staff prepared to recommend approval with the changes they provided.

Michael Strader of Quible and Associates was recognized to speak. Mr. Strader stated that they had received three directives from the Council meeting and felt that they have addressed those concerns and then met with staff and made a few more minor modifications.

Vice Chair Fricker asked if staff or Michael Strader could be more specific with regard to the steps that were taken to make the grade transition better than what was previously proposed.

Bob Evans of 105 Scarborough Lane was recognized to speak. Mr. Evans asked if he could have a copy of the modified plans to see the changes that had been made. Director Garman provided Mr. Evans with a copy.

Michael Strader stated that the main site restrictions were the seasonal high ground water table, the wastewater and the grading along Scarborough Lane. He stated that the biggest reduction of fill was accomplished by removing all the freeboard associated with the stormwater basin. He added that in order to reduce the runoff into the basin, they incorporated an additional structure to allow them to lower the grade. He stated that they analyzed the eastern entrance and increased the slope to 10%, which was the maximum slope they wanted to achieve. He noted that they had

one parking space in excess of the Town's requirements and eliminated the space in order to maintain the 10% grade along the entrance.

Vice Chair Fricker clarified that the building had not been lowered. Michael Strader stated that the building had been lowered as it was previously at 15 feet and was now at 14 feet. He added that it allowed them to drop the elevation at the loading zone which was previously at 11 feet and was now at 10 feet so the actual grading of the southwestern corner of the building dropped by one foot. Vice Chair Fricker asked if it also contributed to diminishing the amount of fill needed. Michael Strader stated that it did. Vice Chair Fricker asked if the top part of the grade area on the corner of the southeast corner runs from 8.78 feet to the southwest corner of approximately six feet. Michael Strader stated that it ran from 8.78 feet to 6.88 feet, which was a 3:1 slope.

Member Murray clarified that the freeboard at the top of the berm was lowered by one foot. Michael Strader stated that it was a half a foot. He added that they have captured all of the stormwater on the site and retained it on the site. Member Murray asked what moving the freeboard cost with regard to overflow capacity. Michael Strader stated that between the three basins, they met the State standard of 1.5 inches. Member Murray clarified that by reducing the fill, it was less effective with regard to keeping the stormwater on the site. Michael Strader disagreed and stated that with the changes they made, they could now store more water in a smaller area and disturb less of the ground and vegetation.

Vice Chair Fricker noted that Michael Strader had mentioned that stormwater runoff on the property was never an issue. He added that it was an issue due to the fact that the proposed fill would make the area two to three feet higher than the adjacent property. He asked why it should not continue to give the Board and Council reason to question it. Michael Strader stated that regardless of the amount of fill, they will continue to keep runoff on their property. He added that they were not proposing to convey any stormwater onto the adjacent property. Vice Chair Fricker asked Town Engineer Robinson if he agreed. Town Engineer Robinson stated that he did. He added that the amount of fill being proposed was not going to have any impact on the groundwater table.

Council Liaison Burdick understood that there would be a 2.5:1 slope toward the property line with the plan. He clarified that the water would flow toward the adjacent property. Michael Strader stated that it was part of the basis for the amount of fill up to the property line. He stated that the flow they were referring to was impervious surfaces, while the flow Council Liaison Burdick referred to was over pervious surfaces. He added that NCDENR allowed them to take credit for the infiltration because the coefficient in those areas was low enough where it counted for infiltration, so it wasn't being pushed off to the adjacent property. Council Liaison Burdick asked if it was within a five foot distance. Michael Strader stated that it was.

Bob Evans asked if the bottom of the ADA ramp was at 11.4 feet, why the building could not be dropped down. He pointed out that the property around there was at 12-12.5 feet while the building was at 14 feet. He stated that the applicant kept talking about a four foot loading ramp, but the Town's ordinance specifically stated that deliveries would be limited to vans and smaller trucks. He added that the applicant did not need a four foot loading dock as they weren't allowed any large trucks. He stated that the applicant took a broad stroke and reduced some fill, reducing the freeboard and showed a lower half which was just taking the top piece off of a

pyramid and not reducing the fill. He stated that the capture the applicant calculated was 1.5 inches for just the pervious surfaces. He added that they were supposed to be counting runoff from the wooded and grassy areas, which they have not done. He stated that he would prefer the applicant bring the berm back up and thought it was the most ridiculous site that was ever designed. He stated that the building should be at a height that it would disappear and be quiet and not intrusive in the Village Commercial area. Vice Chair Fricker pointed out to Bob Evans that the Planning Board was not charged to revisit the items he brought up. Bob Evans stated that he appreciated the Planning Board's time.

Chair Blakaitis suggested that the Board discuss the driveway issue first. He clarified that the eastern driveway was to be moved which would improve the sight line somewhat. He added that the study on the sight line for the curve had six feet. Director Garman stated that the six feet was nominal as far as improving the sight line. He added that the applicant provided an analysis of the sight distance and thought recognizing that the eastern driveway could only be moved so much and that they would do what they could. He stated that after meeting with staff, they were provided with a suggestion to orient the stop bar to be perpendicular with the street so someone would not have to look over their shoulder to see traffic coming down the hill. Chair Blakaitis clarified that the applicant met the guidelines previously. Director Garman stated that they had. Chair Blakaitis thought that perpendicular stop bar was a good idea.

Member McKeithan stated that he wanted to get clarification from Town Engineer Robinson that the different calculations that the applicant's engineer provided were accurate. He asked Town Engineer Robinson if he could substantiate that the documentation of the calculations were correct. Town Engineer Robinson stated that he did not go through it line by line but assumed that they were correct. He added that he did look over the report and thought they did an adequate job addressing the concerns. He further thought they were in pretty good shape with the sight distance.

Council Liaison Burdick thought by straightening out the driveway, the applicant made it easier for drivers to see the oncoming traffic. He thought the change was a worthwhile improvement.

Chair Blakaitis pointed out that the applicant did lower the building by a foot. He added that the Board needed to look at that along with the slope.

Member Forlano stated that he wanted clarification of the five foot right of way. He asked how high the back of the curb was on the west side to the adjacent property. Michael Strader stated that it varied along the property line. He added that there was zero change at the points close to the street but there were locations where there was a two foot difference at the point of the curvature at the drop inlet. Director Garman stated that the proposed elevation was 8.5 feet at one of the drop inlets with the top of the curb at nine feet because the curb was six inches high. He added that directly to the west along the adjacent property, the elevation was at 7.64 feet. He stated that between the 8.5 and the 7.64 foot, there was approximately one foot difference between the two properties.

Member Murray clarified that it dropped down to eight feet with a contour line of seven feet, which looked to be the toe of the slope approximately five feet away from the property line. He noted that it was lower than the 7.64 feet elevation. Michael Strader agreed and noted that it was because it was a trough. Director Garman stated that both properties would be sending it to the

property line via troughs. He noted that the area being filled at the property was currently a depression. He added that one of the accommodations in the Town's ordinances was for lots with a true depression, with the idea that the depression could be filled a certain way and then a certain amount of fill would be allowed from there. He stated that the applicant's property had a depression in the rear and thought the same concept was being applied to this property as it would to a residential lot. He thought the site plan had been improved greatly.

Chair Blakaitis asked what made the applicant stop at 14 feet and what would have been the effect if they went further. Michael Strader explained that there were a number of considerations – the elevation of Scarborough Lane, the eastern side of the property, the need for a retaining wall and the fact that the finished floor could not have glazed windows due to the retaining wall. Chair Blakaitis thought there was an advantage to lowering the building. Mr. Strader stated that they were able to decrease the amount of fill, especially in the rear of the building.

Vice Chair Fricker stated that it seemed to him that after watching the Council meeting that they were concerned with the stormwater runoff as the goal that they wished to have accomplished. He asked if that was correct. Council Liaison Burdick stated that it was one of the issues and thought it was the most important one. Vice Chair Fricker understood that the goal for the Board was that enough change had occurred and compromise was accomplished by lowering the building, so it was assured that there would not be any runoff. He wondered what more the Board could ask of the applicant. Council Liaison Burdick thought the question was if they went from 15 feet to 14 feet and then to 13 feet, would there be a significant impact. He didn't know how high the east wall was. Michael Strader stated that it was a 20 foot elevation and they were filling six feet of the finished floor elevation. Council Liaison Burdick asked what the height of the first floor would be. Mr. Strader stated that it was 10 feet above. Council Liaison asked if they went down another foot, the building could be kept above grade. Chair Blakaitis thought a reasonable compromise had been made by the applicant. Council Liaison Burdick thought the key question was how to build on the lot and attain the proper stormwater control without impacting the adjacent property owner.

Member Murray clarified that the contention of the adjacent property owner seemed to be that the applicant was not showing much restraint with regard to the amount of fill they were adding. He added that Bob Evans had highlighted sections of the Town's ordinance for the Board, but in looking at the existing grade lines and proposed grade lines, along the property line it seemed to be running in the 7.5/7.2 foot range. He stated that the proposed final grade line was at seven feet. He asked if the Town ordinance would allow the applicant to fill to 7.5 feet beneath the adjacent property grade. Director Garman stated that generally a property could be filled to match the adjacent higher property. Member Murray clarified that the applicant was not filling to the extent that the ordinance allowed. Director Garman stated he was correct, adding that it would not be done if the property was going to be higher than the adjacent property.

Chair Blakaitis thought the applicant had done a fairly good job with the revised plan. Vice Chair Fricker thought that everyone was trying to do the best they could and he hoped that this revised plan would achieve that goal. Council Liaison Burdick thought a good, terse explanation of the changes and the impacts would be helpful for when Council deliberates at their October 2, 2013 meeting.

Vice Chair Fricker moved that the revised Conditional Use Permit application be recommended by the Planning Board for approval to Town Council; based on the most recent changes to the application site plan that have been presented at this meeting by the applicant's representatives; reducing the amount of fill on the property, improving the grade transition based upon Town and the applicant's engineer statements that there should be no reasonable expectation of stormwater runoff onto the adjacent property, and the final sight distance and driveway modification. Member McKeithan seconded.

Motion carried 5-0.

Council Liaison Burdick thought when Director Garman presents the item at the Council meeting, that it be made clear that the issue continues to be why they could not go lower and that the applicant had a good answer to that. Chair Blakaitis agreed. Council Liaison Burdick added that it needed to be presented as part of the public hearing. Vice Chair Fricker thought they needed to let Council know what their goal was with the project. Council Liaison Burdick thought it needed to be presented that the applicant had optimized the height of the building. Chair Blakaitis pointed out that part of the reason for lowering the building was for aesthetic reasons. Council Liaison Burdick noted that the applicant optimized the entire site plan and thought it was the key that Council was looking for.

NEW BUSINESS

Discussion of Modifying Town Code Requirements for Variances and Appeals to be Consistent with HB 276 – Changes to Board of Adjustment Procedures

Director Garman stated that the Board discussed the issue briefly at their August 14, 2013 meeting. He stated that staff agreed to review the Town's ordinance to look at the procedures for granting variances and appeals to make sure they were consistent with the new State law dealing with procedures for the Board of Adjustment.

Director Garman stated that the Board had in their packets a draft ordinance with the revisions based upon the State law with the changes that were occurring. He explained that most of the information was housekeeping in nature with a lot of information rearranged to provide more clarity in the ordinance. He went on to review the draft ordinance with the Board and the audience, noting that the voting procedures had been stricken and then added back in to a new section entitled "Voting". He pointed out that the 4/5th majority for variances remained the same for the Board of Adjustment to grant a variance, however; it previously required a 4/5th majority for the Board of Adjustment to overturn a decision by the Zoning Administrator. He added that it was now via a simple majority.

Director Garman stated that the section dealing with appeals was new and came right from the State statutes, with a lot of procedural issues. Director Garman stated that the biggest substantial change dealt with variances. He stated that it shall not be necessary to demonstrate in the absence of a variance, no reasonable use could be made of the property. He explained that previously, in order to grant a variance a finding had to be made that no reasonable use could be made of the property. He noted that it was a much less strict standard than what previously existed. He stated that hardships resulting from personal circumstances as well as from conditions that were common to the neighborhood of the general public could not be the basis for

a variance. He stated that this was not much different than before, however the act of purchasing property with knowledge that circumstances exist can no longer be considered as a self-created hardship. He thought that was something that was commonly used in the past by Boards of Adjustment.

Chair Blakaitis moved to recommend that the draft ordinance for HB 276 be recommended for approval by Town Council as presented. Vice Chair Fricker seconded.

Member Forlano clarified that the areas stricken from the ordinance would show up elsewhere in the ordinance. He asked where the section for reasons for recusal was located in the draft ordinance. Director Garman stated that it was relocated to the voting section to be consistent with the formatting that the State law put out.

Motion carried 5-0.

APPROVAL OF MINUTES

Planning Board Meeting – August 14, 2013

Vice Chair Fricker had a correction to Page 2 of the minutes.

Vice Chair Fricker moved to approve the minutes from August 14, 2013 as amended. Member Murray seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

Council Liaison Burdick thought the Board dealt with the Conditional Use Permit application very well. He stated that he felt comfortable that Council would approve it at their October 2, 2013 meeting.

ADJOURNMENT

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

The time was 7:49 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman