

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
November 12, 2014**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, November 12, 2014.

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

Absent: Marc Murray.

Also present were: Director of Community Development Joe Heard and Permit Coordinator Sandy Cross.

Others Present: Council Liaison Chuck Burdick, Terry Grant, Mark Bissell of Bissell Professional Group, Jim Braithwaite of Allis Holdings, LLC, Mark Copeland of Copeland Construction and Mark Martin of Sandmark Construction.

Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for November 12, 2014 at 6:38 p.m.

PUBLIC COMMENTS

Terry Grant of Scarborough Lane was recognized to speak. Mr. Grant asked for a status of the repairs that were planned for the Wings structure. Chair Blakaitis stated that the issue was not before the Planning Board, so he could not give him an update. He thought Director of Community Development Joe Heard could give a short update.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the Town has put up a page on its website that addresses the status of the Wings structure. He stated that over the last few months, the Town had been working with representatives from Wings with regard to information related to the value of the building and the repair costs. He added that the issue for the Town was if the repair costs exceeded 50% of the replacement value of the building, then Wings would have to bring the entire site into compliance. He added that after the Town retained an attorney, an engineer and a commercial appraiser, it was determined that the repair value was less than 50%. He added that the Town has issued a building permit to repair the building. He anticipated that it would begin in the near future.

OLD BUSINESS

None.

NEW BUSINESS

It was *consensus* of the Board to move New Business Item B up on the agenda.

Special Exception 14-004: Application for a Special Exception to Allow Several Proposed Parking Spaces on the Stan White Realty Property at 1236 Duck Road, to be Located Within the Required Ten Foot Setback from the Front Property Line and the Required Five Foot Setback from the Southern Property Line

Director Heard stated that the Board was considering a Special Exception for the property at 1236 Duck Road. He noted that the property presented contained the Stan White Realty building. He stated that the applicant was seeking a special exception permit to allow several areas of the proposed parking lot improvements on the property to encroach the minimum setback requirements in the Village Commercial zoning district. He stated that there were two handicap-accessible spaces which were propose as close as 7.1 feet from the front property line. He added that there was a minimum front setback of 10 feet, so they would encroach 2.9 feet. He stated that there were three other spaces, located at the southern side of the property that would encroach into the required five foot setback from the property line.

Director Heard stated that the request for the Special Exception was tied directly to the proposed improvements to the Waterfront Shops property. He stated that the property at 1236 Duck Road presently contains a 2,500 square foot building, seven parking spaces in front of the building and an over 50 foot wide access drive that connected the property directly to Duck Road. He stated that as part of the proposed improvements and the Waterfront Shops expansion, it would include the removal of the existing access drive and reconfiguration of the parking area as well as the addition of two parking spaces. He noted that the property would end up with nine parking spaces.

Director Heard stated that related improvements with regard to access to the property would include a driveway, parking area to the south, a connection to the new proposed parking area as well as the existing connection to the Waterfront Shops parking area to the north. He noted that the property would continue to maintain two access points. He went on to review the criteria for the special exception with the Board and audience. He noted that staff was recommending approval of the special exception permit.

Member McKeithan asked how the project would be an improvement to the Town's stormwater management project. He asked how the project would dovetail to what was planned in Town with regard to stormwater management. Director Heard stated that one of the key factors in the proposal was the removal of the existing 50 foot wide drive. He added that the 50 foot wide drive extended through the front of the property at 1236 Duck Road. He stated that as part of the proposal, the applicant would be removing a significant amount of impermeable surface and replacing it with grass, landscaping and swale improvements. He noted that the swale improvements would connect with the stormwater improvements that the Town will have just completed to the south of the property.

Chair Blakaitis clarified that there would be no effect on the property. Director Heard stated that there was nothing specific to the property. Chair Blakaitis thought the project was well thought out.

Member Fricker moved that the Planning Board recommend to Town Council to grant Special Exception 14-004, based on the Planning Board's determination that the application meets Findings 1, 2, and 3 as set forth in the staff report dated November 12, 2014. Chair Blakaitis seconded.

Motion carried 4-0.

Conditional Use Permit 14-004: Application for Expansion of the Waterfront Shops at 1240 Duck Road, a Conditionally Permitted use in the Village Commercial Zoning District, to include the Addition of Four New Retail Buildings Totaling 3,840 Square Feet and Construction of a New Access Drive, 24 Space Parking Area, Elevated Wooden Walkways, and Other Associated Improvements

Director Heard stated that the proposal covered two properties – 1236 and 1240 Duck Road. He stated that the proposal was to amend the existing Conditional Use Permits for the Waterfront Shops property to add four new retail buildings, totaling 3,840 square feet. He added that the other improvements would include an elevated wooden deck and walkway extending between the buildings, crossing over the adjoining pond and connecting the buildings with the existing shopping center to the west. He stated that there would be a pergola structure located on the walkway over the pond; a new access drive off of Duck Road and a parking area containing 24 parking spaces on the Waterfront Shops property just south of the Stan White property.

Director Heard stated that the property at 1240 Duck Road was nearly six acres and zoned Village Commercial. He stated that the property wrapped around two parcels - the Stan White property to the south and Tommy's Market to the north. He stated that the shopping center presently contains 17,649 square feet of retail use, 1,740 square feet of offices and a little over 6,200 square feet for eating establishments. He stated that the proposal would add 3,840 square feet of retail use to the property.

Director Heard stated that with regard to lot coverage at the Waterfront Shops, with the additional coverage, parking area and buildings, the property would be less than 40%, still under the 60% lot coverage in the Village Commercial district. He stated that the Stan White property presently had 52.7% coverage and with the improvements that will be made, some lot coverage will be added while some coverage would be removed, resulting in a net increase of 63 square feet and bringing the lot coverage to 53.1%, which was well under the 60% maximum. In addition to what would be occurring on the property, there will be the additional removal of 219 square feet of impervious area in the right-of-way in front when the driveway is removed.

Director Heard stated that the applicant has obtained an encroachment permit for the proposed access drive from the North Carolina Department of Transportation to add a fourth ingress/egress drive to the property located south of the Stan White property. He noted that there were currently three drives on the property. He stated the applicant would be replacing an existing, non-conforming larger drive on the Stan White property so the overall number of access drives would remain the same. He added that the distance between the access drive to the Stan White property and the middle drive was only 69 feet in distance. He explained that the Town's current standard was 80 feet so it was an existing, non-conforming situation. He added that with the

proposal moving the drive to the south, the drive ends up being a total of 160 feet from the driveway to the north, improving the situation and bringing it into conformance.

Director Heard stated that, with regard to the internal traffic circulation, all of the buildings would be served by a wooden walkway, with no parking directly adjacent to the new buildings. He added that the parking area would add two new ADA spaces. He noted that with the creation of the new retail space, it created a need for 19.2 additional parking spaces with the applicant adding 24 total. He stated that as staff evaluated the site as a whole, and added up all of the uses on the Waterfront Shops property, the minimum parking requirement for all uses was 161 parking spaces. He added that with the additional proposed parking area, the development would have 173 parking spaces; complying with the Town's standards. He stated that the development currently had six ADA parking spaces and the applicant was proposing to add two more.

Director Heard stated that, in looking at the Stan White property, there were presently seven parking spaces on the property in front of the building. He added that they would be required to have 15 spaces due to the size of the building under the Town's current standards. He noted that it was a legal, non-conforming situation but was grandfathered and could remain as is. He stated that with the proposal, the amount of parking on the site would increase to nine, helping to improve the situation.

Director Heard stated that there would be landscaped beds around the parking area as well as wetland planning and stormwater BMP and a low landscaped bed between the building and the pond. He stated that the number of trees and shrubs would comply with the Town's landscaping standards. He pointed out that there was a dumpster pad located at the rear of the Stan White property that serves the Waterfront Shops. He noted that there were three dumpsters in that location and it's proposed that they will be reoriented to the rear of the new parking lot. He stated that the applicant was proposing to have two dumpsters in that area, one for recycling and one for regular trash, as that was all that was needed.

Director Heard reviewed the lighting, water service, stormwater management and other improvements to the property with the Board and audience. He noted that staff was recommending approval of the retail buildings as well as the site improvements subject to the conditions noted in the staff report.

Chair Blakaitis asked if the pond was also a stormwater retention area. Jim Braithwaite was recognized to speak. Mr. Braithwaite stated that the pond had always been a retention area. He added that he was trying to make the pond a more park-like feature so it would be more than just a retention pond. Chair Blakaitis asked if there was any concern regarding the wildlife in the pond. Jim Braithwaite thought it would enhance the setting and improve the wildlife setting.

Member Forlano asked if the ten foot property that was owned by the Saltaire subdivision fell outside the applicant's property. Jim Braithwaite thought it did. Mark Bissell of Bissell Professional Group was recognized to speak. Mr. Bissell noted that there was an easement across the Saltaire subdivision property, but it didn't impact the property area.

Mark Bissell noted that the Stan White property did not have a formalized stormwater plan and by removing the driveway it will be an improvement to the existing situation. He added that the

new pavement would be pervious pavement from Duck Road back to four of the parking spaces on either side of the property.

Chair Blakaitis asked what the calculations were for rainfall for the retention pond. Mark Bissell stated that the State criteria was retaining 1.5 inches of rainfall. Chair Blakaitis asked if the Town's engineer looked at the rainfall. Director Heard stated that engineer Mike Robinson had reviewed the plans on behalf of the Town and stated that it was an exceptional design for the stormwater management.

Vice Chair Fricker recognized the written comments of Member Murray and stated that it seemed to him that these concerns were more of an administrative nature and could be monitored by staff. He asked if that was correct. Director Heard stated that staff should be notified of the typical things that would be the responsibility of the owner. He added that staff would want documentation and clarification consistent with Member Murray's comments. Vice Chair Fricker asked how it should be handled. Director Heard thought the Board could reference the concerns in the recommended conditions, but also felt that it was something that the applicant could address in the materials before they proceed to Town Council. Mark Bissell noted that the developer ultimately had total responsibility for the compliance with erosion control.

Vice Chair Fricker thought that Member Murray's point was a good one in that he felt that something should be in place so it would be self-enforcing. He stated that it seemed to him that now that the Special Exception issue about parking spaces has been resolved, it did not appear to him that there were any other issues. He asked if that was correct. Director Heard stated that it was. He added that the conditions would keep things that would remain on the permit if the Council issued it. He stated that there weren't any other issues that needed to be addressed other than the erosion control.

Chair Blakaitis moved to recommend sending CUP 14-004 to Town Council with the conditions stated in the staff report and with the one addition that Vice Chair Fricker brought up. Vice Chair Fricker seconded the motion.

Motion carried 4-0.

Special Exception 14-002: Application for a Special Exception to Allow the Concrete Surrounding a Proposed Swimming Pool at 138 Rakioc Court to Encroach 3.5 Feet into the Required Rear Setback of Twenty-five Feet in the Single-Family Residential Zoning District

Director Heard stated that the applicants are seeking a Special Exception Permit to allow the concrete deck surrounding the proposed swimming pool to encroach 3.5 feet into the required rear setback of 25 feet for the single-family residential RS-1 district. He stated that if the Special Exception is approved, the proposed deck would be located 21.5 feet from the rear property line for a distance of approximately 45 feet. He stated that the proposed pool was roughly triangular in shape, had rounded corners, and the sides of the pool were approximately 28 feet from the internal part of the property and about 35 feet in length. He stated that the swimming pool itself would not encroach into the required setback. The only encroachment would be the decking immediately surrounding the pool.

Director Heard stated that the property was a little over 10,000 square feet in size, with the house built in 1985 and everything on the property currently complied with all of the Town's development standards. He stated that the Poteskeet development occurred prior to the incorporation of the Town and the lot sizes were smaller than the Town's 15,000 square foot standard. He added that there was no issue that the lots were considered to be legally non-conforming. He stated that the adjoining property added a pool in 2011 that was approximately 240 square feet in size and was installed in compliance with the Town's setback standards. He added that the other adjoining property had a pool that was approximately 336 square feet in size along with a hot tub, and both were in compliance with the Town's building setback standards.

Director Heard stated that in looking at the criteria for granting a Special Exception and applying it to this particular proposal, the use would not negatively affect adjacent properties; staff felt that while the property was non-conforming in size, the pool and surround could be accommodated with some minor modifications; staff felt that if the Special Exception was granted, it didn't appear to cause any hardship or negatively impact the surrounding properties since the encroachment would occur in the rear property line as there was a significant distance between the area and the properties in the adjoining neighborhood. He noted that staff's opinion was that a reasonable sized pool could be developed without the need for a Special Exception Permit. He found no hardship that warranted granting the Special Exception. Staff recommended denial of the Special Exception.

Mark Copeland of Copeland Construction was recognized to speak. Mr. Copeland stated that he was representing the applicant. He stated that the owners were not going to use concrete decking, but would be using wooden decking. He added that he had not seen the plans, but was called to come to the meeting to represent the applicant. Chair Blakaitis clarified that the applicant did not want to use the concrete wall around the pool. Mark Copeland stated that it would only be used 3.5 feet into the required setback. He added that the owners wanted to eliminate the concrete and would be using wooden decking.

Member Forlano asked if the applicant wanted to switch from concrete to wood decking to satisfy lot coverage. Mark Copeland stated that the applicant did not have a lot coverage issue. Member Forlano asked if the applicant would have a lot coverage issue with just the pool. Mark Copeland stated that he did not know because he had not seen the plans for the pool. Director Heard noted that there wasn't a lot coverage issue no matter what material was used. Chair Blakaitis stated that the information the Board received about the wooden decking was because the applicant thought it would not affect the encroachment into the setbacks; however, it does. Mark Copeland thought if the applicant used wood decking, it could all be put in within the setbacks. Chair Blakaitis stated that neither wood or concrete would work with regard to the setback.

Chair Blakaitis stated that the Special Exception was difficult for the Board to approve because there was no real hardship. He thought the pool could be put in without encroaching into the setback.

Vice Chair Fricker stated that the Board could not debate something that was a moving target. He added that the Board could only vote up or down what the applicant presented. He thought it was rather clear that the applicant had not shown that there was an unreasonable hardship.

Member McKeithan moved to recommend denial of Special Exception 14-002, based upon staff's findings. Member Forlano seconded.

Motion carried 4-0.

Special Exception 14-003: Application for a Special Exception to Allow the Proposed Addition of an Elevator to the Existing Residence at 156 Lone Way to Encroach Two Feet into the Required Southern Side Setback of Ten Feet in the Single-Family Residential Zoning District

Director Heard stated that the Special Exception application was for an elevator shaft to encroach two feet into the side yard setback. He stated that the lot was non-conforming in terms of width as the minimum requirement currently is 75 feet and the lot is only 50 feet in width. He stated if the Special Exception application is approved, the addition would be located eight feet from the southern side property line for a distance of approximately 11 feet. The minimum side setback in the RS-1 district is ten feet.

Director Heard noted that it was a legal, non-conforming situation and was grandfathered. He stated that with regard to the criteria to be met, the subject property was non-conforming and there was somewhat of a hardship given the narrow width of the property. He pointed out how the design of the addition blends with the existing residence and minimizes impacts on adjoining properties to the south. He added that staff recommended approval of the application.

Mark Martin of Sandmark Construction was recognized to speak. Mr. Martin stated that he was representing the owner, adding that they have been discussing the project due to some mobility issues.

Member McKeithan asked if the owners of the property had family members with mobility issues that they required an elevator. Mark Martin stated that it wasn't a critical issue, but in a few years, it could become one. Member McKeithan asked if the owners lived in the house full-time. Mark Martin stated that they did not.

Member McKeithan asked if there was any input from the three owners to the south of the property. He further asked if the Town was required to obtain their input. Director Heard stated that the adjacent owners received notice and were given the opportunity to share their comments, but nothing was received. Vice Chair Fricker asked if there was any communication from anyone regarding the application. Permit Coordinator Cross confirmed that nothing was received.

Vice Chair Fricker moved that the Planning Board recommend approval of Special Exception 14-003, based on the Planning Board's determination that the applicant has met the findings in the staff report. Chair Blakaitis seconded.

Motion carried 4-0.

APPROVAL OF MINUTES

Minutes from the October 8, 2014, Regular Meeting

Chair Blakaitis moved to approve the October 8, 2014 minutes as presented. Vice Chair Fricker seconded.

Motion carried 4-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Director Heard stated that at the Council meeting, the Council asked the Board to look at the tree protection and vegetation ordinance. He added that it was not something that would be rushed before the Board and will be brought to the Board for discussion at its next meeting.

BOARD COMMENTS

None.

ADJOURNMENT

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

The time was 8:14 p.m.

Approved: _____

/s/ Joe Blakaitis, Chairman