

MINUTES

The Town of Manteo Planning and Zoning Board met in Regular Session on Tuesday, October 11, 2005 at 6:00 p.m. at the Manteo Town Hall, 407 Budleigh Street

The following members were present:

	Chairman Bill Parker
	Member Phil Scarborough
	Member Christine Walker
	Member Jamie Daniels (Vice Chair)
	Member Bebe Woody

The following members were absent:

Also present at the meeting:

	Erin Burke, Planner
	Becky Breiholz, Town Clerk
	Johnny Boniface, Building Inspector

Chairman Parker called the meeting to order at 6:07 pm

SUBJECT: Adoption of Agenda as presented or amended. Chairman Parker would like to add time after public comments for Planner Erin Burke to give a presentation on the new zoning ordinance.

MOTION: Member Daniels seconded by Member Woody to adopt the agenda as amended was approved by the following vote: Ayes: Members Parker, Walker, Daniels, Woody and Scarborough. Noes: none. Absent: none

SUBJECT: Approval of Minutes Regular meeting September 13, 2005

MOTION: Member Walker seconded by Member Daniels to approve the minutes as presented was approved by the following vote: Ayes: Members Parker, Woody, Scarborough Walker and Daniels. Noes: none. Absent: none

PUBLIC COMMENTS-Chairman Parker asked if anyone who wishes to speak to please come forward.

John Robbins-Wanted to talk to the Board about the new zoning ordinance and thinks that there are some corrections that need to be made. On the non conforming situations Section 1.11 (a) and the way he reads that is that you cannot sale your non conforming building or use and would like some clarification on that. He says it is further complicated to him in the purpose of the zoning ordinance, "the gradual elimination of those buildings and structures which are incompatible with the character of the districts in which they are located." Many people feel threatened by those words of gradual elimination; also confusing is the language that if any non conforming uses ceases for any reason for a period of more than 30 days and subsequent uses may conform to the regulations specified by this ordinance. He also does not like the specified use provision pushing the auto and boat sales back 200 feet from the highway. He also had concerns

about the Storm water criteria (#2) the fill and 2 percent slope and these regulations do not make sense. He would like further clarification on these. The zoning ordinance needs to be tweaked. Chairman Parker asked that he write those down for their review and that there are some mistakes in the ordinance.

Malcolm Fearing-would like to talk about the Marshes Light project at the Salty Dawg property. He is a small time developer and he supports development and welcomes the organization coming to town and looks forward to the project being built in some fashion; Mr. Fearing asked that his comments be verbatim- "at 4:30 today when I came to the office there was no signed executed conditional use permit, it doesn't exist I was told in this office." "A condition of that permit if it was executed would say before a permit may be issued a legally binding 4 party agreement between the developer, the town, the county and DOT must be done, the grievance, its not here, its not executed so before a permit and this is in your minutes of your meeting as a condition of your permit, so I would state that based on that condition and that is condition number one. Number C of conditional #1 at the request of the Town of Manteo and an agreement by NCDOT to extend Uppowoc Street to Grenville, I asked again today at 4:30 does that agreement exist and in checking with records that agreement does not exist so as a condition of your own permit it says before a permit may be issued that the legally binding 4 party agreement they do not exist. The site plan has been changed #10 it says after approval of the Board of Commissioners no conditions to the conditional use permit shall be modified without a public hearing. That submission on the wall is not the submission you have so I would argue that as to the approval even though the agreement has not been executed it has been modified and that public hearing has not occurred. Further the site plan submitted on 2-17-04 shows a 5 year vesting I don't think you have an ordinance that calls for a 5 year vesting, if I remember from that meeting there is to be a clarification from the town attorney if it is even legal, I have requested that verification and as of this date I do not have a confirmation whether a 5 year vesting is legal or not but I will submit to you based on the ordinance that you are undertaking this project it is not in your ordinance, this submission on 2-17-04 or there about give the developers the right to build up to 123 residential units, that proposal right there illustrates a maximum density of residential units of up to 138, which I submit to you is over the density. Information supplied to me by the Town shows a upland square footage of 519,957 square foot of uplands, that is important on that submission it says there are 609,957 square feet by information supplied to me by members of your staff shows an inconsistency. That submission has 609,957 I have requested a copy of the Army Corp permit to my knowledge it is not on file or in this building, I have requested a copy of the CAMA permit to my knowledge it is not on file or in this building. This lack of information would mean that permit application is incomplete even it was ready to be acted upon because in your ordinance it says an application must be complete before you act. I'm not saying I want to stop the project, but what I am saying is this project hasn't started you have now passed an ordinance or the BOC has that in my reading that ordinance would make this project a non conforming project before it was ever built. Mr. Robbins indicated that you cannot sell a non conforming structure you need to listen to what I am saying, I know a little about this subject because I'm in the insurance business, if you have knowledge and act with that knowledge with this project does not meet the legal requirements of this town there is a problem, there is a problem for the developers

because they would be selling buildings that are in non compliance, there is a problem for the town because they are selling buildings that are non compliant, there is a problem for you individually and this problem should not occur. Well the ordinance says it can't be grandfathered if the damage exceeds 50%, we have all witnessed what happened in the Gulf Coast would you say that is a low probability occurrence here on the Outer Banks, a moderate occurrence or a high, I would contend that it would be a high possibility that we would have a storm like that. If 50% of the value damaged they couldn't rebuild based on what I'm reading in your ordinance. If they can't rebuild those units somebody is going to be knocking on some bodies door. So what am I saying, change it so it is in compliance, make it fit the ordinances of the Town so these developers won't have a problem, so you all won't have a problem, so that the buyers who buy the buildings won't have a problem. For clarification about the development agreement that is made on March 29th is between Brindley Partners LLC they are not doing the project, I don't believe that partnership exists now. The developers of the project are Salty Dawg LLC, based on information I have received today the buildings you are getting ready to review again there are changes as far as location on the site plan any change requires a public hearing, there is no height identification on the first floor habitation so we don't know if they exceed 36 foot or not, I am not here trying to hurt that project I am here to protect that project, to protect the town and protect the people who buy. Thank you for listening to me.

Johnny Robbins-Skyco-He understands that he is being painted with a dark brush by some as a evil developer who intends to take the water and sewer from the town, spread it all over the island and build huge condo projects, which is impossible and he has to operate within the rules that have been set. His problem at this point and cause for concern is the fact that I see the ordinance as an assault on private property rights and it exercises a level of control which based on comments he is hearing, yes it is strict but it is to control people such as himself it is not meant to eliminate the rights of citizens, but the way it is written it does. You can't apply the rules one way for one person and another way for another person. They have to be applied fairly to all. It needs to be revisited and we all need to be playing by the same rules. Thinks the Marshes Light project is a good project and does not want to do anything to harm it, but he wants everyone treated the same way. Zoning Ordinance does not need to be defended it needs to be changed.

Planner Erin Burke-gave a power point presentation of the new zoning ordinance to clarify some of the issues that has been raised. A copy of this presentation will be made a part of the minutes.

Chairman Bill Parker –commented that it will probably be easier to tract if we do each building individually and that the Planning Board has done the main site review for the project and so the job tonight is to review the individual buildings and then making a recommendation to the Board of Commissioners.

SUBJECT: Site Plan Review of Building #1 in the Salty Dawg Development. Building #1 is the first of four mixed use units in an area being called the Quad. There is 3,342 sq. ft. of retail space and 6 condo units in this building. This building is located along Fernando Street and has Single Family Residences (SFR) to its north and proposed SFR to its west; this means that there must be an opaque buffer between these two uses. All HVAC units will be located on the roof, but the roof is constructed so that they will not be visible from the surrounding properties. The parking associated with this building is 16 spaces; please see Phase 1 Development Parking Calculations for more details. The lighting fixtures associated with this use will be uniform throughout the development. This fixture is a cut off fixture and complies with the ordinance. Staff recommends approval with the following condition: 1) Handicap Parking Spaces to be identified 2) the location of all dumpster pads must be approved by the Public Works Director.

Planner Erin Burke explained to the Board the change on the master plan, the original plan that was adopted in April 17, 2004 shows the setback as 20 feet and is now being shown at 8 feet. Her understanding was the twenty foot buffer was to protect the residents on Fernando Street. Member Daniels commented he thinks its adequate what they have but when you look at the master plan there are a lot of people who were told that there would be a twenty foot buffer there. A lengthy discussion took place on the master plan that was adopted and the one presented tonight regarding the setbacks being changed from 20 feet to 8 feet. Chairman Parker commented that we need to stick with what is shown on the first drawing and the project is going to carefully scrutinized and it has been brought up that changes have to go through the whole process which we are happy to do. Bob Howsare Vice President with Kitty Hawk Land Company who is the developer responded that the setbacks they used on this plan are the setbacks that were given to them from the Town of Manteo and the zoning ordinance. Chairman Parker commented that the master plan that was approved is being challenged and we need to start off with making sure what was approved on the master plan. Member Daniels also commented about a new access road being on the new site plan. Mr. Howsare commented that when they got the master plan approved to his recollection that area did not show any architecture design and through that process the architects contacted the Town and asked specific questions on those setbacks and used the information received from the Town. As far as the approval goes on the development agreement #C “as a result of the review process the Town has reviewed the project not as a site specific development plan but rather for a conditional use group development and recommend approval of this project.” They have to get a certain amount of units on this property and there is a lot of retail space that the town wanted and they were forced to do and they followed information received from the Town as far as setbacks. Member Daniels commented again that the people across the street understood there to be a twenty foot buffer it is a good design and meets the ordinance but there is a change and the residents need to be made aware of this change to see how they feel about it. Mr. Howsare pointed out on the development agreement #7 b and c “where the site plan shows simple square or rectangular footprints for the proposed buildings the applicant and the Planning Board agree that the footprints are diagrammatic for the purpose of establishing square footages and lot coverage and that the buildings when designed will have more irregular shapes to conform to the Manteo Way of Building and square footages heated areas of building footprints for the hotel and mixed use-use retail/residential shall not exceed those shown on the site plan.” Chairman Parker commented that has been done but the fact that this is different than the

original plan presented and there seems to be a consensus of all Board members that they stick to the original plan. A lengthy discussion took place on the square footage of the buildings on the original plan and the one submitted. The Board would like some more information in writing on why there is a 12 foot change and is that a significant change to the site plan and would like to see a wider buffer and to speak to the residents to see how they feel about the change. The Board can call a special meeting after they receive the information they are seeking.

MOTION: Member Daniels seconded by Member Woody to table building #1 for further information was approved by the following vote: Ayes: Members Woody, Scarborough Walker and Daniels. Noes: Parker. Absent: none

SUBJECT: Site Plan review Building #3 Salty Dawg-Building 3 is the second of four mixed use units in an area being called the Quad. This is the same problem of setbacks that was discussed in building #1.

MOTION: Member Daniels seconded by Member Woody to table building 3 was approved by the following vote: Ayes: Members Woody, Scarborough Walker and Daniels. Noes: Parker. Absent: none

SUBJECT: Site Plan Review Building #13 Salty Dawg. Building #13 is one of two ten unit Condominium Units. The parking associated with this building is 15 spaces; please see Phase 1 Development Parking Calculations for more details. The lighting fixtures associated with this use will be uniform throughout the development. This fixture is a cut off fixture and complies with the ordinance. Staff has some concerns with the drive isle to the east of this building. The width of the paved surface and the angle, may not allow for two vehicles to pass safely and Ms. Burke was informed that the drive isle is one way. Staff recommends approval with the following conditions: 1)The HVAC units shall be shielded so that they are not visible from the surrounding area. 2) the location of all dumpster pads must be approved by the Public Works Director.

MOTION: Member Daniels seconded by Member Walker to recommend approval to the BOC Building #13 with the following conditions: 1)The HVAC units shall be shielded so that they are not visible from the surrounding area. 2) the location of all dumpster pads must be approved by the Public Works Director and 3)the north drive isle is one way was approved by the following vote: Ayes: Members Parker, Woody, Scarborough Walker and Daniels. Noes: none. Absent: none

SUBJECT: Site Plan review Building #14 Salty Dawg project-Building #14 is the second of two; ten unit Condominium Units. The parking associated with this building is 15 spaces; please see Phase 1 Development Parking Calculations for more details. The lighting fixtures associated with this use will be uniform throughout the development. This fixture is a cut off fixture and complies with the ordinance. Staff recommends approval with the following conditions: 1) The HVAC units shall be shielded so that they are not visible from the surrounding area. 2) The location of all dumpster pads must be approved by the Public Works Director.

MOTION: Member Daniels seconded by Member Walker to recommend approval to the BOC building #14 with the following conditions: 1) The HVAC units shall be shielded so that they are not visible from the surrounding area. 2) The location of all dumpster pads must be approved by the Public Works Director was approved by the following vote: Ayes: Members Parker, Woody, Scarborough Walker and Daniels. Noes: none. Absent: none

Chairman Parker commented that some other issues brought up at public comments about the project and that is the fact that some of the permits are missing and before any building permits are issued the Town must have on file 1) storm water management approval from the state; soil and erosion control from the state; CAMA permit; deed of easement to public for 30' park and boardwalk connecting to existing boardwalk; deed of easement granting the public right to use all private streets. Ms. Burke commented that she has been provided with the storm water permit and the soil erosion control permit. She has spoken with the attorney and he is preparing the easements for both the drive areas and for the public park and board walk area and has been discussed with the developer. On other changes Planner Burke commented she has spoken with the developer trying to get a overall master plan that reflects everything that it is supposed to reflect according the conditional use permit up to a certain limit since it can't reflect the landscaping for the entire project and she stated that the notes on the Master Plan need to reflect the following: 1) Group Development, hotel, & 22 lot subdivision 2) if in fact there is a 5 year vested plan it needs to have a beginning date of April 7, 2004. Any substantial changes require the developer to go through the application process again. 6) strike lot area insert subdivision 6b) strike lot area insert subdivision 6 d) multifamily area (sq feet and acres) 8) marine use plans for assigning slips or selling individually, 55 previously existing spaces need to be shown on the site plan and individually numbered. The overall plan is the master plan that was approved with the recommendations by the Planning and Zoning Board and the conditions placed by the BOC, in that meeting the Board of Commissioners permitted a maximum of 108 dwelling units with alternative development scope of 123 units; the overall plan tonight reflects 86 multifamily units and 22 single family residences and the plan submitted April 7 had 84 multifamily; the master plan submitted identifies retail space in the hotel site and to note that this is not what the BOC approved when they approved that 60 unit hotel space. Ms. Burke asked if the ship store calculation is included in the overall retail calculations. The developer will get that information to Ms. Burke. It needs to be noted on the master plan that Main Street is being named as the street adjoining Fernando Street and to remind the Board that they will have to approve street names and the conditional permit does read Elizabethan style names. Also the intersection at Fernando Street and what will be Main Street there appears to be pavement that may or may not need to be removed, it would be very hard to make a right hand turn into that development. Total square footage of the site for upland was discussed that was brought up at public comment; the figure used was off the plan that was submitted before the land swap. Chairman Parker commented about the fact brought up during Public comments there was a mention of assignments and Mr. Howsare commented that they are still partners with them and Ms Burke commented she will contact our Town Attorney to see if he thinks it is something we need to have on file to confirm that they are partners.

Recess taken at 8:00 pm

Board Members Concerns

Member Scarborough brought up irrigation for the Salty Dawg project and Chairman Parker commented that part of the storm water plan is addressing this.

Chairman Parker commented that the new zoning ordinance is unclear in allowing multifamily use in R5 and that was an oversight and the BOC have set a Public Hearing for that. There are some conflicts in the ordinance and Ms. Burke commented that if they would go through the ordinance would they please bring it to her attention so a list can be made for things that need to be amended or changed. Lengthy discussion took place on the buildings that don't comply and maybe there is a better way to word them. The Board discussed the sewer capacity and the need to monitor it and the Board would like to look at this again and Ms. Burke is to get this information to the Board for their next month meeting.

MOTION: Member Daniels seconded by Member Woody to adjourn the meeting at 8:30 pm. was approved by the following vote: Ayes: Members Parker, Scarborough, Woody, Walker and Daniels. Noes: None. Absent: None

This the 11th day of October 2005

Bill Parker, Chairman

ATTEST:

Becky Breiholz, Town Clerk