

**\*\*\*\*\*DRAFT MINUTES FOR YOUR REVIEW-FINAL COPY AVAILABLE**  
**MONDAY\*\*\*\*\***

**MINUTES**  
**TOWN OF PITTSBORO**  
**PLANNING BOARD REGULAR MEETING**  
**MONDAY, FEBRUARY 18, 2010, 7:00 P.M.**

**ATTENDANCE:** Kenneth Hoyle, Chair, Alfreda Alston, Vice Chair, John Clifford, Jimmy Collins, and Karl Shaffer.

**ABSENT:** Harold Howard.

**STAFF:** Planner David Monroe.

**CALL TO ORDER**

Mr. Hoyle called the meeting to order at 7:00 p.m.

**ELECTION OF OFFICERS**

Mr. \_\_\_\_\_ nominated Kenneth Hoyle as Chair. Mr. \_\_\_\_\_ seconded. There were no other nominations, and the vote was unanimous.

Mr. \_\_\_\_\_ nominated Harold Howard as Vice Chair. Mr. \_\_\_\_\_ seconded. There were no other nominations, and the vote was unanimous.

Mr. Hoyle thanked the Board for its confidence.

**APPROVAL OF MINUTES**

- **October 5, 2009**

Mr. \_\_\_\_\_ moved to approve the minutes of October 5, 2009, as corrected, and Mr. \_\_\_\_\_ seconded. The vote was unanimous.

- **December 7, 2009**

Mr. Shaffer said on page 3, paragraph 2, it said that Shaffer had inquired why only parking on one side of the building, and it should say on one side of the street.

Mr. \_\_\_\_\_ moved to approve the minutes as corrected, and Mr. \_\_\_\_\_ seconded. The vote was unanimous.

- **January 5, 2010**

Mr. \_\_\_\_\_ moved to approve the minutes as corrected, and Mr. \_\_\_\_\_ seconded. The vote was unanimous.

**January 5, 2010**

Mr. \_\_\_\_\_ moved to approve the minutes as corrected, and Mr. \_\_\_\_\_ seconded. The vote was unanimous.

**NEW BUSINESS**

- **Site Design Ordinance**

Mr. Monroe stated that the principal presenter on this item was unable to attend due to other commitments, and requested that the Board defer this issue until the next meeting.

Mr. \_\_\_\_\_ moved to table this issue until the next meeting, with Mr. \_\_\_\_\_ seconding. The vote was unanimous.

- **Bellefont Station Site Plan**

Mr. Monroe said this site plan was for property with McDonald's to the west, and Carolina Brewery and other commercial uses to the east. He said a 60-seat restaurant and 2 proposed retails were shown as proposed within the footprint of the building. Mr. Monroe said that 37 parking spaces had been identified with a requirement of 33. Mr. Monroe said he was recommending that at least one of the handicap spaces be moved to the east side of the building to be available to the retail spaces, which would reduce the total number of spaces by 2 but it would still exceed the minimum requirement for parking.

Mr. Monroe said the overall impervious surface was 72%, and normally for this zoning district the maximum was not to exceed 70%. He said that civil consultants had conducted a study during the review of the McDonald's site plan and had determined that the detention pond behind the Lowe's building would more than adequately accept and handle treatment of stormwater runoff from those sites, and the overall impervious surface was less than 70%. So, he said, the impervious surface for this particular site could be averaged into the overall total, which again was less than 70%.

Mr. Monroe said the utility plan showed removal of the 2" meter and replacing it with a 1½" meter and two ¾" meters. He said the Town's specifications did not allow for the use of such meters because at low flows it did not register at all. Mr. Monroe said therefore, the 2" meter was the appropriate meter that would serve the entire building and would allow water to be distributed appropriately. He said that the underground electric was shown with a transformer located at the back of the building but there was no indication of how that line was being brought to the transformer, and the plan should be modified to demonstrate that.

Mr. Monroe said one of the big issues prevalent on this property was a utility pole that was located at the entrance of Lowe's, and in fact one of the guy lines for that pole was sticking out of the ground because it was so close to the edge of the slope. He said that pole had been relocated so it was no longer an issue, and now the grading plan indicated a slope that was tapered down rather than building a retaining wall. Mr. Monroe stated he believed that was a much more usable and useful design because it was an improvement to the property.

Mr. Monroe said NCDENR would have to approve a soil erosion and sedimentation control plan before final approval, and that could be a condition of approval of this Board's review. He said the architectural details of the buildings and the trash receptacle area must coordinate with the rest of the shopping area, and the developer had assured that they would do so. Mr. Monroe said the last issue that had surfaced was that he had held a discussion with Hydrostructures who indicated that there was some concern about the way that the water line was brought across Lowe's drive to this property. He said that Hydrostructures had indicated they had never seen any plans to demonstrate how that water line traversed Lowe's drive or if adequate valves were installed to meet the Town's standards for water and sewer lines. Mr. Monroe said he was therefore recommending that the engineer for this project meet with Hydrostructures to resolve that issue.

Mr. Hoyle asked where the actual driveway was proposed to be. Mr. Monroe pointed that out on the site plan, indicating that it would be the second drive on Lowe's Drive.

Mr. \_\_\_\_\_ asked was there only one building. Mr. Monroe replied it was one building with 3 tenants, with one being a restaurant and the other two retail.

Mr. Hoyle asked if the required 33 spaces were for the restaurant or for all 3 uses. Mr. Monroe said for all 3. Mr. Hoyle asked if there would be an issue if all 3 uses were restaurants. Mr. Monroe said that would not happen because there was not enough wastewater capacity to allow more than the 1 restaurant. He said the other two uses would be either retail or offices.

Mr. Hoyle said it appeared that the grease pit was located in the undeveloped area. Mr. Monroe said if it was located there it would be required to have a reinforced top.

Mr. \_\_\_\_\_ said his concern was when trucks were present to remove the material, what were the implications on parking and access. Mr. \_\_\_\_\_ said the reason for placing it in the drive itself was for accessibility during the occasional pump out.

Mr. \_\_\_\_\_ asked what else was located in that area. Mr. \_\_\_\_\_ replied potentially a handicap space with a ramp provided to the sidewalk to the retail areas.

Mr. \_\_\_\_\_ said it appeared unusual to him to have a grease trap located there, and asked was there any other option. Mr. \_\_\_\_\_ said it was not unusual for commercial development, noting they had done multiple commercial developments in that manner for easier accessibility. He said they had not wanted to put it in the back of the building because if cars were parked there then access because an issue.

Mr. \_\_\_\_\_ asked Mr. Collins if that posed any concerns to him. Mr. Collins replied no, as long as it was accessible.

Mr. \_\_\_\_\_ asked about the trash generated by the restaurant and the other two uses. Mr. \_\_\_\_\_ replied that the dumpster would have screening around it. Mr. \_\_\_\_\_ asked about a wash can area. Mr. \_\_\_\_\_ replied that the restaurant would be served by all disposable utensils, which would reduce the total wastewater generated by the restaurant. He said in regards to the transformer, they had decided to relocate it to its current location because it would be close to an existing CP&L transformer and it would allow them to back serve to the rear of the building. Mr. \_\_\_\_\_ said in regards to the issue relative to the existing 2" meter, he had talked with Hydrostructures and they had not been sure if a corporation stop had been placed in the tap itself, and no one seemed to know for sure. He said what they were proposing to do was to have the contractor expose that existing service pad so they could verify that what was there did meet the Town's requirements, and if not they would correct it.

Mr. \_\_\_\_\_ said in regards to the restaurant, if you retained bags long enough they would tear. He said if that happened what was the cleaning process to address that. Mr. \_\_\_\_\_ said the trash carried out to the dumpster would be routinely picked up, noting they would have a trash dumpster and a cardboard dumpster. He said there was a internal bay area that would provide a wash area in case of some accident or spillage. Mr. \_\_\_\_\_ added that in the materials they had included a rendering of the elevations and architectural materials to be used.

Barry Hill with \_\_\_\_\_ Architects stated that he had supplied a color drawing of the front façade and the side elevation. He said they would use the same brick color as the Carolina Brewery building next door, as well as stone that would be akin to the stone on the McDonald's building on the other side. Mr. Hill said they were also continuing the metal canopy look to show a neighboring to the buildings already existing on the site. He said they had rooftop equipment mounted but they would have a parapet height that would conceal that equipment from view.

Mr. \_\_\_\_\_ asked if that was on the dumpster side of the building. Mr. Hill replied yes, and pointed that out on the site plan. He said there would be a side door for take-outs, and the dumpster would be in a brick veneer enclosure to the right.

Mr. \_\_\_\_\_ asked if there would be a drive-thru window. Mr. Hill replied no.

Mr. \_\_\_\_\_ asked about the lighting plan. Mr. Monroe responded the lighting plan would have to match exactly what was on the site now, and that would be done before a building permit was secured.

Mr. \_\_\_\_\_ said the lighting plan they had supplied with the submitted materials was based on utilizing the existing Progress Energy lights, and they would be adding some additional cut-off lights. He said they would also be including some ornamental lights similar to what was on the Carolina Brewery building.

Mr. \_\_\_\_\_ asked would there be a secondary grease container where the dumpster was located. Mr. \_\_\_\_\_ replied he did not believe so. Mr. \_\_\_\_\_ asked did they know if the restaurant would be using grease or fryer oil. Mr. \_\_\_\_\_ said he was not sure about that.

Mr. \_\_\_\_\_ asked Mr. Collins if there was a requirement for that. Mr. Collins replied no, that it only had to be maintained and disposed of properly.

Mr. \_\_\_\_\_ remarked that anything from the sinks went through the grease traps, and reiterated that there was a can wash area inside at the back of the building.

Mr. Monroe stated that Piedmont Biofuels had a program where they would accept grease and convert it to biodeisel, so that was an opportunity to dispose of the grease.

Mr. Hoyle asked what kind of a restaurant was proposed. Mr. Monroe replied it was called New Japan.

Mr. \_\_\_\_\_ explained that it was Japanese cuisine that was almost “fast food” that was cooked to order.

Mr. \_\_\_\_\_ asked would seating be provided inside. Mr. \_\_\_\_\_ replied yes.

Mr. \_\_\_\_\_ said then as far as parking, this restaurant would have a fast, casual theme. Mr. \_\_\_\_\_ replied that was correct. Mr. \_\_\_\_\_ said they could get jammed up and take other commercial spaces.

Mr. \_\_\_\_\_ asked what the seating capacity was of the restaurant. Mr. \_\_\_\_\_ replied it had a maximum capacity of 60 seats, and the ordinance required one space for every 4 seats. So, he said, they were providing slightly more than what the ordinance required. Mr. \_\_\_\_\_ said the interior design of the restaurant had not been completed, and the seating may be closer to 50 than 60, but not knowing that they had decided to be conservative and provide enough to accommodate a 60-seat restaurant.

Mr. Hoyle said this restaurant would be the third restaurant on that street. Ricky Spoon replied that was correct.

Mr. Hoyle said that Mr. Monroe had indicated that the grading would be done at the very back of the site, but said there was a proposed retaining wall on the plan. Mr. Monroe said the original plan was for a retaining wall with grading and plantings, but that plan had now been revised.

Mr. \_\_\_\_\_ stated if you looked at the McDonald’s site you would see a low retaining wall along about half of that site. He said due to the shortness of the drive relative to the proposed finished floor elevation, they had decided to fill the slope rather than building a retaining wall. Mr. \_\_\_\_\_ said in the area relative to the parking there would be a small segmental block retaining wall that would match what was along the rear of the Carolina Brewery and McDonald’s. He said that wall would be about 60 feet long with a height from zero to about 3 or 4 feet and would then taper down.

Mr. Monroe said one other issue was that there was a storm sewer inlet that was about .4" higher than the adjacent pavement that would result in a small amount of puddling, and that needed to be corrected. Mr. \_\_\_\_\_ said they had caught that as well, and it would be corrected.

Mr. Hoyle said he had a major concern with more construction going in there in regards to controlling the sediment. He said that was very red dirt, and there had been major issues when McDonald's had performed their grading. Mr. Hoyle asked if they were equipped to address that, noting he did not want to see that red dirt flowing out onto the street. Mr. \_\_\_\_\_ replied they were equipped to handle that, noting it had been a concern expressed by Mr. Monroe as well. He said the good thing was that there would be very little grading necessary on the site because it was basically pad ready except for scraping to get it ready for construction. Mr. \_\_\_\_\_ said that the site was technically less than an acre so it did not require the State soil erosion and sedimentation permit, but they had prepared a soil erosion and sedimentation control plan in accordance with State requirements and would submit it for approval.

Mr. \_\_\_\_\_ asked where ultimately the stormwater discharge would travel to. Mr. \_\_\_\_\_ replied to an existing catch basin, and pointed that out on the site plan.

Mr. Monroe said the discharge would ultimately travel underground to the detention basin that was behind the Lowe's building. Mr. \_\_\_\_\_ said because of the natural slope of the site most of the stormwater would be contained internally to the site.

Mr. \_\_\_\_\_ asked about signage. Mr. Monroe stated that the signs would have to conform to the signs already displayed in the shopping center so that all signs would be unified.

Mr. Hoyle said in Mr. Monroe's statement, the language used on page 3 was "shall be modified" and he would like that to be changed to say "must be modified". He said in the next to the last paragraph regarding the grading plan, it said "shall be permitted" and he would like to have that changed to read "must be permitted."

Mr. \_\_\_\_\_ said to clarify, the Chair was suggesting approval tonight contingent upon the recommendations as outlined by Mr. Monroe. Mr. Hoyle replied that was correct, and that the work be completed before it went before the Board of Commissioners so that it did not have to come back before the Planning Board.

Mr. \_\_\_\_\_ asked about the 200 times the phosphorus per acre in regards to the sedimentation. Mr. \_\_\_\_\_ replied that came from the State Erosion Control office schedule. Mr. \_\_\_\_\_ asked was that a best management practice that was required. Mr. \_\_\_\_\_ replied it was not a BMP, but it was the required seeding schedule and seed bed preparation per the State manual. Mr. \_\_\_\_\_ said he believed that was ridiculous because it would not stay there and the grass did not need it.

Mr. Monroe said that what the soil erosion and sedimentation control plan required was protection, so he believed there was some leeway to defer from the requirements of NCDENR and not submit the plan to them.

Mr. \_\_\_\_\_ asked Mr. \_\_\_\_\_ what he thought about that as a design engineer. Mr. \_\_\_\_\_ replied that the site was less than an acre and did not require formal review, but he would want to make sure with NCDENR that it was acceptable not to submit the plan for review and permitting.

Mr. Monroe suggested that Hydrostructures could provide an adequate review of the elements of the soil erosion and sedimentation control plan.

Mr. \_\_\_\_\_ said fortunately there was a BMP that it all drained to, relative to the existing stormwater pond behind Lowe's, and it did have a 10-foot control shelf around it. He said the purpose of that shelf was to take up the nutrients such as nitrogen and phosphorus. Mr. \_\_\_\_\_ said that stormwater pond was fairly large and was actually underutilized at the present time.

Mr. Monroe said that stormwater pond was designed to treat stormwater from another project that was planned to the south, but now only a portion of that project would be treated by that detention pond so its capacity was greater than the stormwater it would receive.

Mr. \_\_\_\_\_ asked what entity had control of the stormwater pond. Mr. Spoon replied he did. Mr. \_\_\_\_\_ asked if he owned the common property where the stormwater detention pond was located. Mr. Spoon replied that he did.

Mr. Monroe stated that you could see from the site plan for Bellemont Station that the stormwater generated by the residential element would not be diverted to this pond. He said in fact, the commercial element had an additional pond added to it so that the stormwater would be proportioned out. Mr. \_\_\_\_\_ said all of the water from this site would drain to the detention pond behind Lowe's.

Mr. \_\_\_\_\_ moved to approve the Bellemont Station commercial building as described, including the recommendations as outlined in the memo from David Monroe, and including the suggestion that wording referring to "shall" be amended to read "must," and that the changes to the plan would be accomplished prior to being submitted to the Board of Commissioners for approval. Mr. \_\_\_\_\_ seconded, and the motion was adopted unanimously.

Mr. Monroe noted that this issue was scheduled to go before the Board of Commissioners on March 8. Mr. \_\_\_\_\_ said that was not a problem.

- **Major Transportation Corridor Text Amendment (Blair Rezoning Request at Foxfire Trace and US 64 Bypass)**

Mr. Hoyle indicated this was a housekeeping item to correct language. Mr. Monroe stated that the current language in the Major Transportation Corridor overlay district required that in order for an applicant to obtain a rezoning it was necessary that they submit a site plan. He said when an applicant wanted to submit an application for a rezoning and the property was zoned Residential, he was at a loss as to how to accept a commercial site plan for a residentially zoned property. So, he said, he was suggesting that they eliminate that particular language from the requirements of the Major Transportation Corridor overlay district, noting that it did not diminish

the Town's ability to control what was developed within those districts, but simply allowed the developer to have the opportunity to submit an application for a rezoning.

Mr. Monroe stated that Town Attorney Paul Messick had suggested he did not believe it was appropriate to have commercial activity occurring outside the corporate limits because the Town would receive no increase in its tax base, which was a legitimate argument. He said that Mr. Blair argued that this particular piece of property was unique in that it was adjacent to Highway 64 bypass and adjacent to Dee Farrell Road, and that it was a very narrow piece of property and was clearly not marketable for residential purposes, which was also a legitimate argument. Mr. Monroe proposed to the Board that in this particular case, because of the circumstances of the shape and size of the property, that it would be appropriate to modify the MTC to allow that kind of activity to occur. He said the corner of the property where Foxfire Trace and the 64 bypass intersected was already zoned C-2, and the balance of the property was zoned RA-2.

Mr. Hoyle said he believed the change would be the only way Mr. Blair could make use of the property, and asked if this was basically a language change to Section 13.4. Mr. Monroe responded that was correct.

Mr. \_\_\_\_\_ asked would that be the only case where the Town would have commercial outside the Town limits. Mr. Monroe said there was a plan approved across the street from the high school on property owned by American Asset Corporation, but a condition of that Master Plan approval was that when development began that they would be annexed into the Town.

Mr. \_\_\_\_\_ said it sounded like Mr. Messick was discouraging commercial uses outside the ETJ, and asked were they making a statement otherwise by approval the language change. Mr. Monroe said he did not believe so, noting that the language in the MTC overlay district had specific requirements that applied to commercially zoned property but they did not happen to be commercially zoned.

Mr. Hoyle said as with the property across from the high school, he could see the same thing happening in this case so that the Town could gain the tax benefit. Mr. Monroe said he believed it was small enough that they could do that.

Mr. \_\_\_\_\_ moved to approve the MTC text amendment as described by Mr. Monroe, seconded by Mr. Clifford. The motion was adopted unanimously.

## **OLD BUSINESS**

- **Powell Springs Senior Apartment Complex**

Mr. Hoyle stated they had the notes of discussions that had gone before, noting that Mr. Clifford as the newest Board member could participate in the discussion but would have to recuse himself when it came time for a vote since he had not participated in those previous meetings.

Mr. Monroe stated that since they had received the last set of plans there had been a revision to the landscaping plan. He said some of the species had been increased in size, noting the birch

had gone from 5' to 12' in height, the crepe myrtle had gone from 5' in height to 10' to 12' in height at planting, the dwarf holly had gone from 18 to 24 inches, and the purple plum had gone from 5' to 12'. Mr. Monroe said there was a reduction in the dwarf red nandina, from 18" to 12". He said the significant change was that the \_\_\_\_\_ had gone from 12" to 8". Mr. Monroe said that would provide some impetus for additional screening, but certainly not comparable to what was there today since it was mostly deciduous, but it was an improvement to the application.

Mr. Monroe stated that Mr. Russo had asked that Sections 6.1.C.1 and 6.1.C.2 be enforced and that the Town not rely on Section 6.1.C.3 which allowed for a reduction in the 75 foot buffer to 25 feet if the building was built out to municipal sewer. He explained that Section 6.1.C.1 stipulated that for areas that had scenic waterways, which this could qualify, that there shall be no structures located within 75 feet of that waterway. Mr. Monroe said that Section 6.1.C.3 allowed for the Town to possibly reduce that to 25 feet if the structure that was affecting the buffer was on municipal sewer, did not have septic tanks, and did not propose any roads within the buffer. He said his suggestion was that the 25 foot buffer that remained should be undisturbed, and that that be a condition of approval. Mr. Monroe said in this case the building was more than 75 feet from the top of the bank of the intermittent stream, but the retaining wall was not, so the retaining wall was considered a structure because it was above ground. He said that would be the only structure that would be within the 75 foot buffer, so it was up to the Board as to whether they wanted to allow that. Mr. Monroe stated that Mr. Russo, an adjacent property owner, was asking the Town to enforce the entire 75 foot buffer and that it not be disturbed. He said that was a consideration that the Planning Board could engage in.

Mr. Monroe said the options were that they could drop the 75 foot buffer down to 25 feet, they could require that the 25 feet remain undisturbed, they could ask that the retaining wall be relocated so that it was not within the 75 foot buffer, or they could allow the plan to proceed as presented. He said that Mr. Messick had offered an opinion that this plan as presented satisfied the requirements of Section 6.1.C. Mr. Monroe brought to the Board's attention the 6 conditions that he was recommending be included:

- That the 25 foot buffer remained undisturbed
- That the landscaping plan as revised be fully implemented
- That an agreement should be executed between East West Partners and this developer to allow for some grading as shown on the plan on property owned by East West Partners but off site of the property being developed.
- **tape ended**
- That stormwater calculations must be submitted to and approved by Hydrostructures.
- That utility constructions must be submitted to and approved by Hydrostructures.

Mr. Monroe said since writing that memo, it had been brought to his attention that there were a number of HVAC units, 23 on the front of the building and possibly another 2 or 3 as you went around the first curve the building. He said there was certainly the potential that as those units came on in the summer that they would become an irritant to residents living across Millbrook Drive and cause them not to enjoy their front porches, and that would certainly have an impact on their quality of life. Mr. Monroe said it was up to the Board to consider whether that was an

element of the plan that they wanted to consider to have some sort of amelioration to provide relief to residents living across the street.

Mr. \_\_\_\_\_ asked what possible forms that could take. Mr. Monroe replied \_\_\_\_\_ (inaudible).

Mr. Hoyle said that on the plans the HVAC units were not shown. Mr. \_\_\_\_\_ said that was correct, noting that those units were definitely shown on the landscape plan. Mr. Hoyle said when the plans were introduced originally, he had referred to it by a particular name. Mr. \_\_\_\_\_ replied he had referred to it as neo-traditional.

Mr. Hoyle said it did concern him greatly that there would be 22 plus HVAC systems pointing across the street, noting he would hate to be sitting on a front porch when all 22 plus systems were operating. He said it would be impossible to even hold a conversation if that was to occur. Mr. Hoyle asked how far away those units were from the street. Mr. Monroe said about 85 feet.

Mr. Hoyle said he had noticed that in neo-traditional construction by this company in Chapel Hill the buildings were constructed close to the street but the air conditioning units were not in front of them like they were proposed to be in this case. He asked what would be the alternative to moving those units. Mr. \_\_\_\_\_ said with the additional landscaping and the columns they were creating a hedge that, as Mr. Monroe had described, was not only being increased in height but was being increased in number as well. He said that would create a sound buffer that would mitigate any noise from the HVAC units.

Mr. \_\_\_\_\_ said the 16" columns would be 10' to 12' high, with 3' high holly bushes that would create a natural hedge row. He said that would also address comments from nearby homeowners regarding the unsightliness of the units. Mr. \_\_\_\_\_ said it was their intention that you would not see them or hear them.

Mr. Hoyle said the noise was what concerned him.

Mr. \_\_\_\_\_ asked if there was a solid wall between the sidewalk and the landscaping or between the landscaping and the HVAC units. Mr. \_\_\_\_\_ said it was not a wall but a series of columns with hollies and hedges between the columns. He said it was decorative but also served as a screen for those units to make the curb appeal that much better.

Mr. \_\_\_\_\_ asked if there were any windows on the Millbrook Drive side of the building. Mr. \_\_\_\_\_ replied yes. Mr. \_\_\_\_\_ asked what the height was of those windows. Mr. \_\_\_\_\_ said they were 3 feet high and 6 feet wide and was where the living area and bedrooms would be.

Mr. \_\_\_\_\_ indicated that the back of the building was more like the front, and they had tweaked it architecturally to make it that way.

Mr. Clifford said he had read all the information and had visited the site several times, and of most concern to him were the HVAC units. He said he had remained concerned until he had received the revised landscaping plan which addressed some of those concerns. Mr. Clifford said he was also struggling with the neo-traditional design and what the back of the building

would look like in that style, noting he was familiar with the Weatherstone Spring project. He said he believed at last month there was no drawing of what the buildings would look like. Mr. \_\_\_\_\_ said they had those drawings with them, and supplied to them to the Board. He noted that there might be some modifications made to those drawings.

Mr. \_\_\_\_\_ said the information provided indicated there would be a wetlands delineation just north of the road, and asked would they assume that that was the only one found. Mr. Monroe said that was correct. Mr. \_\_\_\_\_ asked was there somewhere a larger wetlands delineation map that had been produced when the entire Powell Springs MUPD was first considered. Mr. Monroe said it had been shown on the Master Plan, noting there was a small wetlands on a piece of property owned by Mr. Spoon that was north of this, and that was the channel that delivered water down to the existing wetland delineated past Millbrook Drive. He stated there was also a wetland on the opposite side of Millbrook Drive that was delineated on the original plat.

Mr. Shaffer said if you were walking the stream channel and you looked west, you would see the imposition of a stormwater pond already in place, and now you would see the same thing on the other side. He said he realized that the developer and/or designers had all met the intent of the ordinance and up to this point the Board had not done a serious balk on the 75 foot buffer. Mr. Shaffer said if you were standing at that creek and looking at the slopes coming in, that was a serious imposition on water quality. He said this project would not make or break the Haw River, but the collective acreage through the County would eventually have a huge impact. Mr. Shaffer said they could talk about the landscape density, the grass and the slope, but the fact was that with a slope you would not maintain soil and you would not maintain nutrients, and that was a fact or life. He said that was of concern to him, especially when the Town continued to approve projects that imposed on their creeks because they would never regain that lost value.

Mr. Monroe commented that if the Jordan Lake rules remained in their present form, then by 2015 this property would be subject to a retrofit. He said the choice was to do it up front or do it in 2015.

Mr. Hoyle said he believed that summed up the whole gist of the matter, in that at some point in time they had to make a stand. He said if the ordinance stated "shall not" build within the 75 foot buffer then that was what they would enforce. Mr. Hoyle said he believed this all came back to Section 6.1C.1 and 6.1C.2, and 6.1C.3 that said what the Board "may" allow. He said that was what they needed to consider.

Mr. \_\_\_\_\_ said there was much misunderstanding in the room about what that setback was, and he wanted to try to clear that up. He said the Board had an opinion from the Town's attorney who said that the plan satisfied the ordinance, and that was because it did. Mr. \_\_\_\_\_ said the only thing in the Town's ordinance regarding an intermittent stream was a 75 foot setback, and the ordinance said that within that 75 feet there could not be a parallel road, a septic system, or a building. He said the ordinance contained a definition of a building and that did not include retaining walls. So, he said, the plan satisfied the only regulation that the Town had. Mr. \_\_\_\_\_ said while it may be the wish of the Town Board at some point to revise those standards, as of yet they had not been.

Mr. Monroe said if you looked at the language in Section 6.1.C.2, it did speak to the point that Mr. \_\_\_\_\_ was making, in that the setback would be required unless the developer demonstrated that a lesser distance, but not less than 75 feet, was adequate to maintain the scenic character and to guard against stream pollution. He said that Mr. Shaffer's statement about the slope and sediment sloughing off that slope led him to believe that there was some concern about stream pollution. Mr. Monroe said that Section 6.1.C.2 would allow you to find that that slope was a possible point of stream pollution.

Mr. Bradshaw said with due respect, he believed that the ordinance did not allow the Board to make that determination in this case. He said that Section 6.1.C.1 had two different setbacks, which was a 100 foot setback along the Haw River and all continuously flowing intermittent streams within 2,500 feet of the Haw River, and a 75 foot setback of all continuously flowing intermittent streams beyond that 2,500 feet. Mr. Bradshaw said that Section 6.1.C.2 went on to say that "the above setbacks" which referred to all three of those mentioned in Section 6.1.C.1. He said the only setback to applied that the stream in question was the 75 feet, and they had satisfied that requirement in the plan. Mr. Bradshaw said they were not asking that the 75 feet be reduced, and Mr. Messick had agreed with that.

Mr. Hoyle asked what would take place at 75 feet. Mr. \_\_\_\_\_ said there would be some grading and a retention wall, and because he was not an engineer he could not respond further. But, he reiterated, the regulations that the Town had that were designed to protect the stream provided for a 75 foot setback, and that was exactly what the plan had.

Mr. Hoyle said it was a matter of interpretation. Mr. \_\_\_\_\_ said again with all due respect he did not believe it was.

Mr. \_\_\_\_\_ said he comment was geared towards the future, noting he did not like standing at that creek and looking at what would be two hills because of the impacts that would result from that. But, he said, it appeared that they were not prepared to refute that. Mr. \_\_\_\_\_ said in response to Mr. Monroe's recommendations for conditions, the 25 feet undisturbed buffer along the stream that was being recommended, while the Town had no authority to require that and there was no ordinance that required it, the applicant was willing to voluntarily agree to that condition.

Mr. Monroe stated he had talked with Karen Hall today who was with NC State's Agricultural Extension Office, and she had felt comfortable with a 25 foot undisturbed buffer providing there was a substantial sediment tract on this side of the stream. He said that Ms. Hall had been participating in the group that was preparing a riparian buffer ordinance.

Mr. Hoyle asked how they proposed to control the sediment. Mr. \_\_\_\_\_ said the key would be the construction sequence and the timing, beginning with a tree protection fence and then a silt fence. He said as soon as possible you would construct your BMP for erosion control and then you would divert water. Mr. \_\_\_\_\_ said you would take all possible water and send it through the small filter basins with the idea of the whole site draining in that manner. He said at no time would the slope be exposed.

Mr. Monroe said there were other artificial devices that could be utilized that would trap sediment before it reached the silt fence. He said they were like tubes that were filled with a material that would absorb water and sediment, and would actually filter much more sediment than just a silk fence. He said he would recommend such filtering devices be incorporated into the plan.

Mr. \_\_\_\_\_ said if Mr. Monroe agreed with Mr. Bradshaw's statement that the Town did not have the authority to place the six suggested conditions on the approval. Mr. Monroe said he did not believe that was what Mr. Bradshaw had said, noting he believed he had said that the buffer as proposed satisfied the requirements of the ordinance, and he agreed with that. Mr. \_\_\_\_\_ said he believed Mr. Bradshaw had said the Board did not have the authority to require that the 25 feet be left undisturbed. Mr. Monroe said the applicant had voluntarily agreed. Mr. \_\_\_\_\_ said that was correct, but there were 5 other suggested conditions.

Mr. Bradshaw said those conditions were not controversial, although he did not believe that no. 3 was necessarily the Town's problem although they would go along with it. He said the only issue he was stressing was that the Town had no ordinance or regulation that provided for a 25 foot undisturbed buffer, but the applicant was willing to voluntarily do that. Mr. Bradshaw said he would invite the Board to place that as a condition on the approval.

Mr. \_\_\_\_\_ said if that condition was placed on the approval but it was voluntary, then the Town had no way to enforce it. Mr. Monroe said the applicant had agreed on the public record to abide by the condition, so it was enforceable. Mr. Bradshaw said if it was placed as a condition on the approval then at that point it became a requirement for the development.

Mr. \_\_\_\_\_ asked was it appropriate to place a contingency on condition no. 2 to say that the landscaping plan shall be fully implemented, and that plants not surviving shall be replaced with a stipulation of time included. Mr. Monroe said that was reasonable, and suggested the condition should also be amended to say the landscape plan as revised. He suggested it read "the landscape plan as revised shall be fully implemented and plant materials shall be guaranteed for a period of one year." Mr. \_\_\_\_\_ said sometimes up to 40% of plantings would die, and you would not see that for 12 to 18 months, so he would like the time to be extended.

Mr. Bradshaw said they were making up rules on the fly which was not appropriate, but the applicant was comfortable with a one year guarantee. He said if the Town wanted to adopt a landscape monitoring and replacement ordinance then they needed to do that and apply it to everyone. Mr. Monroe said the one year guarantee would be the same as was required at the Kiwanis Park and at the park at Powell Place, noting those plantings were installed at the Town's expense.

Mr. Shaffer said it was clear based on the feedback from the public, particularly from this neighborhood, and those from this Board that this project while it met the Code was still being shoehorned in, and to him it was a very tight fit for the neighborhood. He said it appeared the project was being made to fit rather than looking for what was the best fit.

Mr. \_\_\_\_\_ moved to recommend to the Town Board approval of the Powell Springs Senior Housing as proposed with the conditions as stated and defined and agreed to by the Attorney representing the owner. Mr. \_\_\_\_\_ seconded. The vote was unanimous, with Mr. Clifford recused.

- **Planning Board Members Concerns**

Mr. \_\_\_\_\_ asked when the Board would get back to the Land Use Plan. Mr. Monroe said he hoped to have it to them in March.

There were no other issues brought forward.

**ADJOURN**

Mr. Hoyle moved to adjourn the meeting at \_\_\_\_\_ p.m. (maybe 8:20 or 8:25?), seconded by Mr. \_\_\_\_\_. The motion was adopted unanimously.