

**CURRITUCK COUNTY
BOARD OF ADJUSTMENT REGULAR MEETING
September 8, 2011**

REGULAR MEETING

The Currituck County Board of Adjustment met on September 8, 2011 at 7:30 p.m. in the Historic Currituck County Courthouse. The following members were present: Bryan Bass, Ralph Jones, Donald Ferebee, Christian Conner, and Cameron Tabor. The following members were absent: David Palmer and Theresa Dozier. Brad Schuler, Planner; Tiffany Sanders, Planning Technician; Donna Voliva, Planner II; and Benjamin Gallop, Board of Adjustment Attorney; were also present.

Mr. Bass called the meeting to order and announced a quorum had been met with four regular members and one alternate member. Mr. Tabor was called upon to act as a voting member.

APPROVAL OF AUGUST 11, 2011 MINUTES

Mr. Ferebee motioned to approve the August 11, 2011 minutes with no changes. Mr. Jones seconded the motion and the motion passed unanimously.

Mr. Schuler and Mr. Michael Lewis appeared before the board and were sworn in.

BOA 11-09 ISLAND GLASS STUDIOS: Conditional use permit to allow light manufacturing located at 105 Pan Ridge Court in Point Harbor, Parcel 0132-000-019J-0000, Poplar Branch Township.

Mr. Schuler presented the following case to the Board:

BOARD OF ADJUSTMENT CASE ANALYSIS

Meeting Date:	September 8, 2011
Case Number:	BOA 11-09
Applicant:	Island Glass Studios
Property Owner:	May and Hughes LLC
PIN:	0132-000-019J-0000
Address:	105 Pan Ridge Court, Point Harbor
Zoning District:	Commercial (C)
Township:	Poplar Branch

Request

Conditional use permit to allow a light manufacturing use in the C zoning district, pursuant to the Table of Permissible Uses of the Currituck County Unified Development Ordinance.

Narrative

1. The applicant is proposing to operate a glass blowing studio in an existing building approved for office/warehouse uses at 105 Pan Ridge Court. The business will be in two units (1 & 2) of the six unit building. The studio will house four glass lathes and up to five kilns.
2. All improvement for the business will be inside the building. There will be no additions to the building or increased lot coverage.
3. The existing parking is in compliance with the parking standards for the proposed use.

Conditional Use Permit Criteria and Staff Findings

The Board must find that the applicant meets all criteria in order for a conditional use permit to be approved. Following is the staff suggested findings for each criterion (as is required by the UDO).

In granting a conditional use permit, the Board of Adjustment may attach to the permit such reasonable requirements in addition to those specified in this ordinance as this will ensure that the development in its proposed location meets the following:

- (a) The application is complete.**
 1. The application is complete.
- (b) The proposed use is among those listed in the Table of Permissible Uses as a conditional use indicated with a "C."**
 1. The proposed use is among those listed in the Table of Permissible Uses as a conditional use indicated with a "C."
- (c) The conditions proposed meet or exceed the minimum requirements of this ordinance.**
 1. The site shall be in compliance with the requirements of the UDO shall a type "B" bufferyard be installed along Pan Ridge Road.
- (d) The conditional use will not endanger the public health or safety.**
 1. The proposed use should have no impact on public heath or safety.
- (e) The conditional use will not injure the value of adjoining or abutting property and will be in harmony with the area in which it is located.**
 1. The proposed location is surrounded by commercially zoned property. The use will not injure the value of the adjoining property and will be in harmony with the area.
 2. The surrounding land uses include:

- | | | | |
|----|--------|------------|---------|
| a. | North: | Vacant | Zone: C |
| b. | South: | Commercial | Zone: C |
| c. | East: | Commercial | Zone: C |
| d. | West: | Commercial | Zone: C |

(f) The conditional use will be in conformity with the Land Use Plan and other officially adopted plans.

1. The 2006 Land Use Plan classifies this property as Limited Service within the Point Harbor subarea. The existing development is in conformity with the policies of the LUP to buffer and cluster commercial development in those areas.
2. The use is in conformity with the following Land Use Plan policies:

POLICY ID4: LIGHT OR LOW IMPACT INDUSTRIAL USES may be located in or near existing built up areas (other than residential) to take advantage of available services and to minimize home to work distances. Light industry is generally considered a "manufacturing activity that uses moderate amounts of partially processed materials to produce items of relatively high value per unit weight". Such industries tend to require less space for production, are generally more environmentally friendly, and produce goods targeted toward consumers rather than businesses. Examples light industrial uses include research and development facilities, warehousing and distribution, and manufacturing of office or household goods. Careful design and/or buffering shall be required to ensure compatibility with surrounding areas and to create a positive image along area roadways.

POLICY ED1: NEW AND EXPANDING INDUSTRIES AND BUSINESSES should be especially encouraged that: 1) diversify the local economy, 2) train and utilize a more highly skilled labor force, and (3) are compatible with the environmental quality and natural amenity-based economy of Currituck County.

(g) The conditional use will not exceed the county's ability to provide adequate public facilities.

1. The proposed use will not exceed the county's ability to provide adequate public facilities.

Staff Recommendation:

Staff recommends **approval** of this request subject to the findings of fact as presented above and the following:

Requirements:

1. A type "B" bufferyard shall be installed along Pan Ridge Court.
2. No open storage shall be permitted. All materials, supplies, and products shall be stored with in an enclosed building or shall be screened from view with opaque fencing.
3. The use shall not generate more noise, smoke, odor, fumes, vibrations or other disturbance than is characteristic of permitted business uses located within 1,000 feet in any direction when observed, measured, or monitored from the closest property line.

DISCUSSION

Mr. Lewis explained they were relocating their business from Salvo, North Carolina. He stated there would be no retail sales from the location. He said they had already started the building permitting process due to the need to install gas lines and he had already spoken with the County Fire Marshall.

Mr. Tabor asked about the requirements from the County Fire Marshall.

Mr. Lewis stated he had faxed all the information that was requested to Mr. Mims, Currituck County Fire Marshall. At this time, he was unaware of any other requirements.

Mr. Ferebee moved to close the public hearing. Mr. Tabor seconded the motion and the motion passed unanimously.

ACTION

Mr. Conner moved to approve the conditional use permit based on staff's finding of facts and requirements. Mr. Jones seconded the motion and the motion passed unanimously.

BOA 11-07 ANDREW COPELAND: Appeal of administrator's determination that gravel proposed on the property is not considered incidental or commonly associated with the single family dwelling located on the same property located at 1617 Caratoke Highway in Moyock, Parcel 0023-000-033H-0000, Moyock Township.

Ms. Voliva, Ms. Donna Conner, Mr. Andrew Copeland, Ms. Easter Dozier, and Ms. Beulah Spellman appeared before the board and were sworn in.

Ms. Voliva presented the following memo to the board:

MEMORANDUM

To: Board of Adjustment

From: Planning Staff

**Minutes are not official until approved by the board.*

Date: August 31, 2011

Re: BOA 11-07 Andrew Copeland Appeal

At the Board of Adjustment meeting on August 11, 2011 the board continued Mr. Copeland's appeal and requested staff to review the revised site plan. Andrew Copeland is appealing the administrator's decision that:

- Gravel in excess of 19,000 square feet is not considered incidental or commonly associated with a 480 square foot single family dwelling, in violation of the Currituck County Unified Development Ordinance, Chapter 3, Section 3.2.

The property is located at 1617 Caratoke Highway in Moyock, Parcel 0023-000-033H-0000, Moyock Township.

Upon inspection of the property, staff prepared a scaled site plan that identified the existing gravel area. Based on revised information, the administrator's decision remains unchanged. In an effort to present the board with relevant information to make a decision on this appeal staff is providing the following to the board:

- A single family dwelling building permit and approved site plan were issued by the county for a 480 square foot modular on November 5, 2010. The approved site plan included 12' x 40' modular with 2 – 3' x 3' landings at each entrance to the proposed home as well as a 24' x 170' (4,080 square feet) driveway.
- The Currituck County Unified Development Ordinance, Chapter 17, defines accessory use as:
 - *Use, Accessory*
A use customarily incidental and subordinate to the principle use of a building and located on the same lot or building.
 - a. *a use may be regarded as incidental or insubstantial if it is incidental or insubstantial in or of itself or in relation to the principle use; and,*
 - b. *to be commonly associated with a principle use it is not necessary for an accessory use to be connected with such principle use more times than not, but only that the association of such accessory use with such principle use takes place with sufficient frequency that there is common acceptance of their relatedness.*

Specifically, vehicular accommodation areas (vehicular access, parking, and total circulation areas) are an accessory use to single family dwellings.

- A land disturbance permit was issued by Currituck County Soil and Water Conservation that included 25,000 square feet of land disturbance (driveway, septic area, and building pad).
- A notice of violation was issued by the Code Enforcement Officer on June 1, 2011.
- A revised site plan was submitted on June 2, 2011 by Andrew Copeland to address the notice of violation issued by the Code Enforcement Officer. The revised site plan (not to scale) indicated gravel areas in what appears to be in excess of 19,000 square feet providing access and parking associated with a 480 square foot single family dwelling.

- On June 13, 2011 Donna Voliva, Currituck County Planner, determined the gravel area estimated to be in excess of 19,000 square feet was not considered accessory to a single family dwelling since it is not incidental or commonly associated with the single family dwelling proposed on the lot.
- A site plan provided by Donna Conner contained clear measurements of the existing gravel, although not to scale on August 23, 2011.
- A site visit was made on August 30, 2011 by the planning staff and measurements of the existing gravel areas were obtained. The gravel areas are now illustrated on a scaled drawing prepared by the planning staff. Please note based on the equipment used, the measurements may have a slight margin of error.
- The scaled site plan indicates existing gravel in excess of 20,000 square feet on the property.
- The Unified Development Ordinance allows 30% maximum lot coverage or 33,821.1 square feet. The revised scaled drawing indicates approximately 21,520 square feet of coverage, 480 square feet being the single family dwelling. Although the total lot coverage complies with the ordinance requirements, it remains the administrator's decision that the gravel area on the property does not meet the accessory use standards of being incidental or commonly associated with a 480 square foot single family dwelling.
- Vehicular accommodation areas for single family dwellings typically consist of a driveway (24' maximum width) providing access and circulation to the dwelling and/or accessory structure(s).

The County submits the following attachments:

- Attachment 1: Appeal application submitted June 13, 2011 by Andrew Copeland, property owner.
- Attachment 2: Letter of determination sent June 13, 2011 from Donna Voliva, Planner.
- Attachment 3: Photos of site taken on May 31, 2011 and August 30, 2011.
- Attachment 4: Site plan approved as noted November 5, 2010.
- Attachment 5: Revised site plan submitted August 23, 2011 by Andrew Copeland.
- Attachment 6: Revised, scaled site plan prepared by planning staff.

DISCUSSION

Mr. Conner asked what would be an acceptable size for the driveway.

Ms. Voliva stated a maximum width allowed would be 24'. A driveway with a parking pad and a turn around area that would be sufficient for their vehicles would be allowed. She stated that the current width of the driveway on the appellant's property was 104'. The depth of the driveway would provide access to any accessory structures and the main home on the property.

Mr. Bass questioned the driveway area that was proposed on the original site plan as it was submitted with the single family dwelling permit application.

Ms. Voliva stated there wasn't an actual depth listed on the site plan and that the driveway wasn't drawn to reach the area of the single family dwelling. However, she would allow the driveway to be extended in order to access the home. She stated in

order to do that a modification to the land disturbance permit would be necessary and it wouldn't be hard to make that modification.

Mr. Tabor questioned if the proposed single family dwelling was a 5,000 square foot home if the existing driveway would still be an issue.

Ms. Voliva stated if the home was on a 10 acre parcel and approximately 2,000' back off the road then the amount of square footage associated with the driveway would probably be close to the amount of the existing driveway. The location of this home in relationship to the highway and function of the driveway is the reason the existing driveway is not considered an accessory to the dwelling. There could also be more vehicles associated with a home that had five bedrooms as opposed to one bedroom.

Mr. Bass reviewed a site plan that showed the current amount of gravel on the property, because of a visit by Ms. Voliva.

Ms. Conner stated that Mr. Copeland had personal vehicles that he wanted to park on the property and that was the reason for the size of the driveway. She stated that the gravel was at least 20' from the septic field area. She said the site plan that was originally submitted was drawn by her and she didn't realize it had to be accurate since at that time Mr. Copeland was unsure of where he wanted to place the single family dwelling on the lot. She stated that the lot coverage requirements have not been exceeded. She said she had sent Ms. Voliva multiple site plans as requested.

Mr. Ferebee asked why Mr. Copeland wouldn't come into compliance once Ms. Voliva stated there was a violation.

Ms. Conner said Ms. Voliva stated it was her opinion that the gravel wasn't customary for a one bedroom home therefore it wasn't a code violation. She stated they were in violation of the land disturbance permit because the amount of gravel on the property exceeded the amount as approved on the original site plan. She was told to give Ms. Voliva a new site plan and they would then be in compliance. Ms. Voliva denied the second site plan that was submitted based on the same determination that the amount was not customary to a one bedroom dwelling.

Mr. Bass reviewed the original approved site plan. He asked if that was the amount of gravel that currently existed on the property.

Ms. Conner stated no. She stated at the time that site plan was approved she was unaware of the fact the driveway needed to be an accurate reflection of what would be placed on the property. She stated the amount of gravel on the property now exceeded the amount that was drawn on the original site plan.

Ms. Voliva stated she had all three copies of the site plans as submitted by the appellant.

Mr. Conner questioned the need for the site plan to be drawn to scale.

Ms. Voliva stated that it did not have to be drawn to scale but in order to determine the amount of gravel on the lot the plan would need to be drawn as close to a scale as possible.

Mr. Gallop explained the June 2, 2011 site plan was the one in question. That was the first modified site plan submitted and was denied.

Ms. Conner stated the gravel had been tightened up since the submittal of that site plan. She said that they had revised the site plan but it was still denied.

Mr. Bass asked which site plan was the one in question regarding the appeal.

Mr. Gallop stated the June 2, 2011 site plan denial was the reason for the appellant's appeal. Since the August meeting they had provided another revised site plan that showed a lesser amount than the one that had been submitted in June. He asked if the Board was willing to affirm the June 2, 2011 site plan determination, are they willing to modify it based on the revised site plan that had been submitted since the August 11, 2011 meeting or are do they want to reverse the administrator's determination.

Mr. Bass questioned the amount of coverage of the gravel.

Ms. Voliva stated that on the site plan submitted in June it was approximately 19,000 square feet. The site plan that staff prepared, based on the visit to the property, was approximately 20,000 square feet.

Mr. Bass questioned the amount of gravel that was proposed on the original approved site plan.

Ms. Voliva stated approximately 4,080 square feet. She stated it was shown as a 24' x 170' area and that was the distance from the home to the front property line.

Ms. Conner stated that the driveway on that site plan was drawn at a 40' width because the Department of Transportation had installed a 40' culvert pipe.

Ms. Voliva stated that only a 24' driveway width had been approved. She stated that the driveway doesn't typically extend to the edge of the culvert pipe. She said the conditions on the permit indicated that the maximum allowed width of the driveway was 24'.

Ms. Conner stated that when she drew the original site plan that had been approved she only drew in the driveway to show a location and direction for the driveway. She was unaware of the need for accuracy.

Mr. Tabor asked if it was customary to do that when drawing a site plan.

Ms. Conner stated it was her first time ever drawing a site plan.

Mr. Gallop asked if a 24' wide driveway that extended back to the home would be sufficient.

Ms. Conner stated it would if the parking area would be allowed to accommodate Mr. Copeland's vehicles it would be sufficient.

Mr. Tabor asked if the driveway culvert was 40' wide.

Ms. Conner stated yes and there were two posts, one on each side, for a future gate. She stated the gravel amount was probably about 30'.

Mr. Jones asked what the width was proposed on the original site plan.

Ms. Conner stated she didn't draw that plan to a scale therefore there was no measurement stated on the original site plan.

Ms. Voliva stated that staff approved a 24' width. She stated that typically the culvert at the driveway tends to be a little wider so that there is grass on either side for stability. The width tends to be a little wider at the edge of the pavement but once the driveway comes onto the property at the property line, it can not exceed 24' in width. She stated she measure about 26' in width during her visit of the property.

Mr. Gallop asked Ms. Voliva if the Board's decision would preclude the appellant from bringing another site plan for review.

Ms. Voliva stated no, they would be allowed to submit another site plan for review. She stated that her determination didn't exclude the appellant from submitting another revised site plan in the future.

Mr. Tabor asked if it was possible for the appellant and staff to get together to come up with a site plan that would be acceptable.

Ms. Voliva stated that had been tried but was unsuccessful.

Ms. Conner said she didn't think a remedy could be met because she stated that Ms. Voliva was only going to allow a parking pad for two vehicles. She said she didn't feel the gravel was too much to have for the types of personal vehicles Mr. Copeland owns.

Mr. Jones stated the need for a correct and accurate site plan to be submitted for review. The site plans needed to be drawn to scale.

Ms. Conner stated she had submitted multiple site plans and asked Ms. Voliva to show her what would be accepted and she refused to do so. She said the measurements were accurate and one of the site plans referenced a scale of 1" equals 100'.

Mr. Bass asked were there any drawings that showed the square footage of the gravel that showed less than 19,000 square foot of gravel other than the original site plan that was approved.

Ms. Voliva stated the approved site plan was the only one and it was just over 4,000 square feet. She stated none of the site plans with measurements did not show the gravel any less than 19,000 square feet.

Ms. Easter Dozier stated she was a neighbor to the appellant's property. She stated her concern for the appellant placing heavy equipment on the property and she questioned the need for five vehicles for only one person. She was concerned the property would be used as a business use rather than a residential use. She said that there were drainage problems on her property because of the appellant's land disturbance on their property. She questioned the type of dwelling and asked if it was a single wide trailer.

Mr. Tabor questioned if the dwelling was a single wide trailer or a modular.

Ms. Voliva stated that the dwelling unit was an office trailer that was built to the state building code. It was not designed as a single family dwelling but because it was built to state and local code, it can be modified to meet single family dwelling requirements. A single wide trailer is built to HUD code not to state building code.

Ms. Spellman stated she was also a neighbor to the appellant. She stated her concern that the property would be used for his trucking business and not used as a residential property. She stated that she had been awoken at night due to his 18-wheeler truck coming in and out of the property.

Mr. Bass asked Ms. Spellman if she was aware of a business being operated from the appellant's property.

Ms. Spellman stated Mr. Copeland had been operating his trucking business even since he was told to stop using the property for business purposes.

Mr. Tabor asked if the trucks were being loaded or unloaded on the property.

Ms. Spellman stated she had seen the trucks come onto the property and seen paperwork being exchanged.

Mr. Bass reminded the Board the reason for the appeal was for the amount of gravel on the property.

Ms. Conner explained their previous interaction with the neighbors. She stated there were people in the area that also had violation but she had no intention of submitting a complaint.

Mr. Dozier stated that the appellant had been conducting business on the property. She stated that the gravel was put on the property so that the appellant's work trucks could access the property.

Mr. Ferebee moved to close the public hearing. Mr. Jones seconded the motion and the motion passed unanimously.

ACTION

The Board discussed the Unified Development Ordinance requirements with Staff and Mr. Gallop.

Mr. Gallop stated that the appeal was in relation to the June 2, 2011 site plan that was submitted.

Mr. Bass discussed the site plans and the square feet of gravel as proposed on each one.

Mr. Ferebee moved to uphold the administrator's decision. Mr. Jones seconded the motion and the motion passed with Mr. Conner voting nay.

OLD BUSINESS

Mr. Conner moved to approve the BOA 11-07 Copeland order from August 11, 2011. Mr. Ferebee seconded the motion and the motion passed unanimously.

Mr. Ferebee moved to approve the BOA 10-09 Williams order from April 14, 2011. Mr. Jones seconded the motion and the motion passed unanimously.

ADJOURNMENT

There being no further business to discuss Mr. Ferebee motioned for adjournment. Mr. Jones seconded the motion and the motion passed unanimously. The meeting adjourned at 9:05 p.m.

Respectfully Submitted,

Tiffany B. Sanders/s/

Planning Technician