

**Town of Milton
Planning & Zoning Special Meeting
Milton Library, 121 Union Street
Tuesday, December 9, 2013
6:30 p.m.**

**Minutes are not Verbatim
Transcriptionist: Helene Rodgville**

1. Call Meeting to Order – Don Mazzeo called the meeting to order at 6:30 pm.

2. Roll Call of Members

Don Mazzeo: We'll do a roll call of Members

Virginia Weeks	Present
Lynn Ekelund	Present
Barry Goodinson	Present
Linda Edelin	Present
Tim Nicholson	Present
Don Mazzeo	Present

3. Additions/Corrections to the Agenda

Don Mazzeo: Do we have any additions or corrections to our current Agenda?

4. Approval of agenda

Don Mazzeo: Hearing none, I'll accept a motion to accept the agenda.

Barry Goodinson: Move to approve the agenda.

Lynn Ekelund: Second.

Don Mazzeo: All in favor to accept say aye. Opposed. Motion carried.

5. Business – Discussion and possible vote on the following item:

a. Modification of a Special Permitted Use & site plan approval

An application from Truitt Jefferson & the Backyard, LLC requesting approval for the modification of a Special Permitted Use and site plan pertaining to the construction of a parking lot to be used for supplement parking for an adjacent property. The parking lot is located at 201 Broadkill Road. The property is zoned C1 (Commercial) and is further identified by Sussex County Tax Map and Parcel # 2-35-14.15-101.00

Don Mazzeo: This is a special meeting that's been requested. Do we have representation this evening from the applicant?

Truitt Jefferson: I own the property that has the request. The person that's really managing the property and doing it is Amy here and we just need to get some approvals. We've been a long time getting to where we are and we would just like to get the approval so she could get open, because

there's people not working that could be working in Town and people that would have another place to go eat if they wanted to. But we're almost there, but we still need a little approval. So, Amy do you have anything you want to say? Questions?

Don Mazzeo: Well at this time, I would like to know if there's anyone from the audience, if there's someone here who would have anything to say concerning this particular application; while the applicant is here and obviously the Commission is here? If you would, come to the front, identify your name and address for the record, please.

Anthony Melnick, 301 Holland Street: It's right here in Milton on a little dead end. The reason we came here wasn't so much for this particular agenda, but I was told that I would be able to have my voice heard. It involves a code violation regarding the current streetlight in the parking lot of the cafe. We were told by Amy, actually my wife had a conversation with her on November 20th, that this would be rectified. Essentially it's like a spot light going into our kitchen window and our bedroom window. We've had to buy new draperies, so the room is not all lit up. It's an obvious infraction and I'm concerned about this other property if this will continue. I would just like to see this remedied. The reason I'm here speaking tonight is because after three weeks in good faith, nothing's been done.

Don Mazzeo: Okay, thank you very much.

Anthony Melnick: Sure. Anybody else?

Don Mazzeo: Is there anyone else that would like to comment on this application?

Barry Goodinson: Just a clarification. That's a different light than you're talking about, correct?

Anthony Melnick: Yes, it's the current standing light at the current parking lot, but it's an obvious infraction and it has not been addressed. I've been very neighborly and nice and given it three weeks, so we would like some action taken. We've been very patient thus far.

Virginia Weeks: I need some clarification. Which light is this Barry? There's only one.

Anthony Melnick: Yeah, there's one that was put into the parking lot. It's at the far end, I guess on the...

Virginia Weeks: Could you show me the location? Here's the restaurant. This is the front of the restaurant. Here's the parking. This is the light over here that DelDOT installed.

Amy Rae: DP&L.

Virginia Weeks: The big, tall one.

Anthony Melnick: Yeah and it's obviously not to code. It's very explicit in the Code about a glare; it's more like a strobe light.

Virginia Weeks: So we are talking about the one in question?

Anthony Melnick: Yeah, it's the one light.

Virginia Weeks: Thank you very much.

Anthony Melnick: You're welcome.

Amy Rae: Nice to meet you.

Anthony Melnick: We want you to open. We're very excited about your restaurant.

Amy Rae: You spoke to Edie. Yes. And we actually have had it adjusted again and we are happy to continue to adjust it...

Anthony Melnick: It really didn't make a heck of a lot of difference.

Amy Rae: We're actually happy to continue adjusting it; when they adjusted...

Anthony Melnick: We just want it brought up to Code. The light, as it stands, is not up to Code.

Don Mazzeo: Either you come forward and identify yourself or you can't speak.

Stacy Melnick, 301 Holland Street: The light actually faces; even though it may look like it's facing down; it's faces directly into our home; even with the two adjustments that have been made, it's still very, very bright. It's a very bright spotlight.

Anthony Melnick: The wattage doesn't seem to be proper for that...

Stacy Melnick: Instead of it facing down and letting it light the entire backyard; the entire back of my house.

Amy Rae: Okay. Okay.

Don Mazzeo: Thank you very much.

Virginia Weeks: Thank you.

Don Mazzeo: Well, I will now ask the Commission if there's any commentary regarding this particular application as it has been presented to us? I will open with one statement is that the original plan showed four independent lights covering virtually the entire parking lot area. Today your application is coming forward with one and I will agree with the folks that have just spoken, that it is a very bright light; but it does not cover the entire parking lot. Specifically, the two items that I was... there's three of them. There's three parking spots that I recognized when I was on-site this past week; 11, 12 and 13; while they are semi-lit, if I use that term very loosely. The spotlight that has been proposed does not reach that corner of the parking lot at all.

Virginia Weeks: Those are the three on side, the handicapped.

Amy Rae: The original lights wouldn't have touched those. It's on the other side of the building.

Don Mazzeo: Be that as it may, there's still in my opinion, an insufficient amount of light for those three particular parking spaces. Just in general, the fact that we have an unshaded light now up on Route 16, it is not, again, not in my opinion providing sufficient light even to go across the parking lot and (I can't read those numbers) 21 through 26, which are up against the fence away from Route 16. The purpose of lighting is not just

so that people can see where they're going, but it's to provide public safety for the folks that are coming into your establishment.

Amy Rae: It is an extremely bright light.

Don Mazzeo: It is extremely bright. I will admit to that.

Lynn Ekelund: It is.

Don Mazzeo: But it's not necessarily providing lighting into the area that I would like to see lights on the parking lot vs. on the neighbor's house. Now maybe they can be readjusted. It can be readjusted, even further to the point where in fact it will be diminished from the neighbor's and put more light back into that corner over there.

Amy Rae: The three spaces on the other side of the building, with all due respect, I don't think are part of this agenda... are part of this... That was the parking lot and the lighting on the parking lot was never anything that we needed to apply for.

Seth Thompson: Mr. Chairman, it is a different parcel, so we're dealing with the private parking lot that's on the subject parcel for this application; which I think explains why that was handled on the initial site plan that was approved; where you had the four lights on the private parking lot parcel.

Don Mazzeo: Okay, so what we're saying basically is we cannot address that tonight.

Seth Thompson: Correct. The three in the far corner on the separate parcel.

Don Mazzeo: Okay, under those circumstances, we will no longer be discussing 11, 12 and 13 tonight, but we still have what was four independent shaded lights to provide lighting into the adjunct parking spaces. We no longer have a shaded light; we have one spotlight and that's what you're proposing.

Amy Rae: Correct.

Barry Goodinson: Can I ask a question. I know it doesn't count if I'm not speaking into this thing. Are there standards of codes that specify how much light is required in a parking lot in Milton?

Seth Thompson: There aren't specific standards in terms of the degree of lighting. I think the Melnick's are referencing the one section of the Code that does say for off-street parking the outdoor lighting shall be designed to shield adjacent properties from glare.

Barry Goodinson: So there's no floor, but there's an issue about the maximum amount that can be going into adjacent properties?

Virginia Weeks: Direction.

Seth Thompson: That's correct. Our Code doesn't specify you need X number of lights per X number of feet; anything like that; but the lighting that is approved needs to be aimed or shaded in a manner that it doesn't cause glare into the neighboring properties.

Barry Goodinson: Just have a follow-up question. From an enforcement standpoint, is there any way that we could request that these adjustments

be made so you're not troubled by the light anymore, but we can still see this business open? How do we do that?

Seth Thompson: Right. The application that's really before you is a Special Permitted Use, so if you attach as one of the conditions that the light be adjusted so as to not glare into the neighboring property, you can approve it with that condition and again, it's a Special Permitted Use.

Barry Goodinson: Okay. Alright.

Virginia Weeks: Mr. Chairman. I have a question please. The four lights that were going to be in the parking lot, they would have belonged to you?

Amy Rae: Yes.

Virginia Weeks: The one that you have now, to whom does that belong?

Amy Rae: Delmarva Power.

Virginia Weeks: So if something goes wrong with that light, you're not in a position to repair it.

Amy Rae: Delmarva Power takes care of everything.

Virginia Weeks: You don't control the light.

Amy Rae: It's basically a rent... Can I turn it off and on? No.

Virginia Weeks: If the light bulb goes out and there is no light available in that parking, you cannot provide light; you can't get an electrician out there and have light bulbs changed.

Amy Rae: No. I can call Delmarva Power.

Virginia Weeks: I'm concerned about that.

Don Mazzeo: I share your concern. If you had the original four lights on the property, as your lighting and if there was an issue with it, then you would be able to correct it literally immediately. I completely understand Delmarva Power will come out and do the repairs for you; but I don't believe they come out instantaneously...

Amy Rae: Within a day. Usually the same day they're called.

Don Mazzeo: Would you then, under those circumstances, as a condition of your approval, say that if the light goes out at night, you shut down your business?

Amy Rae: I don't think that's something I'm happy agreeing to. No.

Virginia Weeks: I have to say that inevitably I think you are going to get your permission to open; however, I believe that you have put the Town in a position, by going ahead and modifying the lights, without coming to us first, you've put the Town between a rock and a hard place and that should not have been done. Now, we're supposed to approve a light you don't control. I basically would like to see something else, if it's just one light; somehow or flood lights put up on the building, that could be turned on in an emergency situation, if that light's not working; because it's dark out there. I agree with you. These three on the side, those are those handicapped positions; those are very dark, but we can't adjust them. But I am very concerned about the fact that if the light goes out, there's no lighting for the parking lot.

Amy Rae: We actually do have emergency lighting that does light all around the entire building. The Fire Marshall requires that and it's all run on battery packs.

Virginia Weeks: But it doesn't light the parking lot?

Amy Rae: Yeah, they're off the side. The Fire Marshall required us to have emergency lighting.

Barry Goodinson: And are you able to turn those on, so...

Amy Rae: If I turn all of my power off, they all come on.

Barry Goodinson: I see. Okay. Okay.

Amy Rae: So it's emergency lighting; if the power goes off to the building, that's when they come on.

Lynn Ekelund: Have you had any other neighbor's come to you with complaints about the lighting as it sits presently.

Amy Rae: I actually haven't spoken to anyone. Mrs. Melnick spoke to Edie; it was just you guys.

Lynn Ekelund: So you didn't speak with Bill Certificate of Occupancy?

Amy Rae: I did not. Did you? You spoke to Bill?

Lynn Ekelund: Because it's my understanding that he came to you with basically the same sort of a complaint and it was well we can adjust it; so it's also my understanding that there are four homes on Holland, so you've heard from two then of the four with the same complaint.

Amy Rae: And we actually have had it adjusted twice... we had it, Mr. Certificate of Occupancy; they came out and adjusted the next day and then after Mrs. Melnick came by, it was adjusted again; so it's now been adjusted... it's been installed and adjusted and then adjusted since then, twice. The way the light is, it is on an arm and it can be pushed further down. I have not been on-site when DP&L has come by. Joe did call after Mrs. Melnick was there; he also called after Mr. Certificate of Occupancy was there and they came and because I didn't know who it was that came, I wasn't able to reach out. I knew you guys were there and I could have driven around to your house and I'm sorry I didn't do that... I've been a little busy. That's no excuse, just an explanation, so we're certainly happy to adjust it further. I'm also happy to change the style of light. That light on recommendation of our electrician, as well as the engineer of DP&L, was recommended to make sure we had full coverage of the area. Safety, of course, is one of our utmost concerns. We have the dumpsters there and the fencing. The last thing I want is a dark area there, where someone can hide. So I feel like four shoe box lights, which they're called, actually give you a circle of light, so the center of the parking lot, with the four shoe box, just naturally, I mean, it naturally isn't going to be filled. This, to me, felt like such a better... It gives a much cleaner, much larger area of light.

Lynn Ekelund: I was there last night and I share your concern about the spots; I'm not talking about the spots next to the restaurant proper; but 21, 22, 23, they didn't seem to be all that well illuminated by the single spot. I

also drove around to Holland and that is glaringly bright. This is after it's been adjusted 1, 2 or 3 times.

Amy Rae: Twice.

Lynn Ekelund: I'm not sure, twice. It was shockingly bright. I had spoken to Bill Stoedter and he had told me just how bright it was. I was surprised. I expected it to be bright, but it's white hot bright.

Amy Rae: Joe's comment, Joe actually walked all the way back to the fence on Truitt's property and said... and it has since been adjusted... his comment was it looks like a freight train and they came out the very next day and adjusted and you could actually see, because I looked that night. I drove into the restaurant after dark and I looked and you could see the circle; that doesn't mean that it's not still shining. If it's still shining... if it's still shining, I'm... but what you could see that you couldn't see before, so I thought maybe it had worked, was you could see the circle of light in the middle of the field.

Lynn Ekelund: It does (look like a freight train). Well, last night, to me, it looked like a freight train and that's after two adjustments, so I'm very concerned about the homes on Holland. I'm also concerned about the public safety aspects. I'm concerned about the light going out and having nothing, as is Mrs. Weeks. I also share her comment that this wasn't exactly done in the most kind way, on your part, to have a site plan that has been approved by Planning and Zoning and for whatever reason, just deciding, no, I don't think I'm going to do that. I think I'll do this instead and then present us with a fait accompli. It doesn't set well with me, personally. Okay.

Barry Goodinson: May I speak? Thank you. Just looking at this, it seems to me that these are huge industrial lights that are going to wash the parking lot and I think probably they'd adequately light it, if they were aimed properly; rather than the four, which would provide four separate pools of light. Looking at this, it seems to me it's not the light that's the problem; it's the arm on which it's mounted; because it's raising it up too much and rather than pointing down to the ground, it's pointing out; so there's enough light here, it's just in the wrong place. I guess it's a question. Is there a different mounting mechanism that could be used to cant it further down to wash the parking lot and I think that would adjust the concerns about safety and address the concerns about the bright light in the windows.

Amy Rae: Yes, there's not only different mountings, there's different lights. There are different styles of lights and I am very happy to call and change the style of light. It is important to me that the Melnick's are comfortable and that they don't see my light and don't hear us and don't... that certainly is not my intention. So I am happy to agree to adjusting that, whether it's the adjusting of the existing light or even changing that one light, until we come an agreeable thing for the neighbor's, and for us.

Barry Goodinson: So how do we do that?

Seth Thompson: You would need to approve the modification on the condition that... and it's difficult not having the specific plans in front, in terms of the type of light; but the best you could do is articulate what exactly is the requirement that you're placing on the application (is). Clearly you could identify it as a light that doesn't cause glare into the neighboring properties, but then the issue is, is there some percentage of the parking lot that you want covered? I always like objective standards, as opposed to subjective standards; so that's really the question, is how the Commission views this and it needs to be something that a third party or a Code Enforcement Officer or whomever can read it and say yes this meets this condition, or no this doesn't.

Virginia Weeks: Mr. Chairman, your concern about the dark spots 21, 22, 23, 24; what if motion detecting floodlights were put on her building, so that when people went out there to get into their cars...

Don Mazzeo: It would certainly be an improvement and would not certainly be out-of-pocket, a very large expense.

Amy Rae: No, it wouldn't. My concern would be Mrs. Lockwood's home, at that point, because of the direction, and the street, so you're driving down Route 16 headed east and boom, the light comes on.

Virginia Weeks: No, I believe you could get motion detector lights in the corner of your building over there, that would not be turned on by the motion on Route 16.

Linda Edelen: You're talking about something similar that I would put on my garage?

Virginia Weeks: Yes.

Linda Edelen: That might also help the situation in the handicapped parking, which is...

Virginia Weeks: We're not allowed to address that.

Don Mazzeo: We can't address that.

Seth Thompson: The difficult... Fortunately, Mr. Jefferson is here. I mean, this is difficult because technically the restaurant is on a separate parcel; so normally when you're attaching conditions it's on the parcel that's the subject of the application. I suppose it would be possible... I'm less concerned about attaching floodlights to the building that's very close to the division of the two parcels, then dealing with something that's on the other side of that building that's been there. The difficulty is it's up to Mr. Jefferson, if he's willing to agree to that; but then going forward, obviously, let's just say for instance the restaurant sells, you now have a condition that the person with this parcel, can't necessarily meet, because it's no longer within their control. That's the difficulty. That's really why the condition should attach to the parcel that's the application.

Don Mazzeo: Let me ask a very basic question. On your original plan you had four pole lights that were shaded, they were pointing down... How

would you feel about putting just one pole lamp at the corner of number 21, which is basically at the corner here? One at that spot and this would then give you a lot of light over here and it would be totally shaded from all the neighbor's because it's going to be a down light and after you get the adjustments done for the pole lamp that's out there now, you're going to have a lot of light being focused down here and the one in the corner giving you the spot across the back?

Amy Rae: It's not a decision that I can make. That's a decision for Truitt, or Mr. Jefferson.

Don Mazzeo: Well I have an applicant sitting here this evening. What I'm looking for is a compromise between your one super-sized spotlight and the removal of four independent lights; you put up one; you keep the big spotlight, or one similar to it; but it's going to be pointing down, not into the neighbor's yard.

Truitt Jefferson: Yeah, it wasn't intended to... I think part of it was that was what DP&L brought us and it looked like a good deal, but we didn't know what it was going to do to all the neighbor's with all the light that it kicks off. Now, what needs to go up there is different size fixture that would face down and not go in somebody's window, but the area out there is going to become more lighted than what it was, because there's a business there now and if the other side gets developed, there's going to even be more lights and the people that are used to no light, they're going to have to get used to a little bit of light; but it should not shine in your window. I agree with that. So we'll take a look at them on... I don't have anything here. I leave my experts that can tell us how that would work, but if...

Barry Goodinson: I appreciate the compromise, because I think that's a good way to go. I'm just kind of tired of driving around Milton and seeing sort of mis-matched stuff; so I don't like the idea of having one type of light here and another one here; you drive downtown in Milton and even those kind of electrified gas lights, they're all of different heights and the globes are of different sizes and it kind of drives me nuts and I want to be able to sort of stop that hodge podge lodge look and be a little bit more consistent.

Virginia Weeks: We are never going to match the light they put up, without permission.

Barry Goodinson: That's not what I meant. That's not what I'm asking for.

Virginia Weeks: It was the light they put up without permission; without coming to us and without thinking it through. Now we're stuck with it, so we're not going to be able to match it and unfortunately we don't have design control, except for when we agreed to these, because it was a compromise; it was agreed to and they didn't keep the compromise. They didn't keep the agreement.

Barry Goodinson: Well it wasn't a compromise, it was sort of a package deal and we weren't able to tease out, nor did we know what the

implications were of that package, I guess and that's what we're dealing with here; but we're trying to make this business work, so how do we light the parking lot, keep people safe, not bug the neighbor's and give people jobs and us a place to eat. That's basically what we're trying to do here.

Don Mazzeo: Our ears are open.

Truitt Jefferson: I think he can talk for me. He knows more about it than I do. He's a retired Federal Judge and he knows what's out there and I think he has the right idea for fixing the problem.

Bob Rae: I'm Amy's father-in-law, okay? For the last year and a half or so all of us have spent a lot of time at the Backyard trying to get things together and to go. And yes, it wasn't a perfect round of discussions, if you will, and many of the things that were in those plans, I didn't even see until a few weeks ago. Joe's father, Tommy Charles, was there with me the first time we saw them. He's a former Mayor for 20+ years up in New Jersey. He knew a little bit more about the plans than any of us did. Luckily we kind of looked at these things and said there's a lot here that is going to be very difficult to come through with properly. One of them was the lighting that seems to be a real problem. I know they've tried to accommodate everybody because they don't want a spotlight in somebody's living room. Nobody wants that and Amy's tried really hard to make sure that everybody in this community profits from that restaurant going in. Lots of people rely on her for this upcoming, hopefully getting the Certificate of Occupancy and getting going. The four different lights that were going to be put in this, since that's the topic of tonight's conversation; were very difficult to deal with. The lights themselves are not as good as this light that's in there now. Granted, the light itself was provided by the power people. One would think they might know a little bit more about it, than any of us here. I'd like to think that, at least. They certainly know more than I do about it, but it is a bright light and it needs to be controlled and maybe there's another arm that can be put on it, but in point of fact, that's a very bright light. It covers the entire area, maybe not every single space with the same amount of coverage that perhaps you would like or perhaps on the other side, as you would like; because it can't possibly get that far across the building. Now, Amy needs to get this place opened or it's going to fail. End of story. If she doesn't get going pretty soon, lots of people are going to suffer for it. That's not your problem. We understand that. However, in the spirit of compromise, there has to be something tonight that can be done. The one light can be adjusted. It is a very subjective standard to say what's in their window, what's not, but we certainly would like to make sure that they don't get disturbed, so all you can get is the assurances from this young woman and her partners, who are very good people of high integrity. You can trust them. Amy keeps her word. If there is some accommodation to that tonight, she will follow it or I will make sure she follows it, one way or the other; but the lighting itself is a difficult

issue because the four different lights there are not going to give the coverage that you would like. Another light of that magnitude is going to... will cause problems on the road; because I know there are several places that I drive past at night that are actually disturbing to your visual acuity at night when you're driving a car. The lights, the motion lights, certainly we can attempt to put those in on the corner that the two or three spaces seem to be a little less covered than the rest of them. Not being an optician or anything, I don't know the intensity level that is required, or that we each might want, however I know that the area by the handicapped space is lighted; the area in front of the restaurant is lighted; most of that whole area is very well lighted. But it is a matter of direction, so if we can come to some accommodation tonight with the contingency that we will certainly make sure that we do everything possible to stop the railroad train from going into their living room and I don't believe that the addition of that one extra upright light is going to add anything that perhaps the motion sensor lights would not add. So if you could do an accommodation such as that, we can get this train rolling; not into their living room, but rolling forward and get this restaurant open. Now, Amy is a very responsible person. If you come to her and there's a complaint, she's going to address it. She's been going 18-20 hours a day for a long time now and so she is a little frazzled and if she did overlook some things at a different point in time, I hope we've addressed them and I hope we can continue to address them to your satisfaction; to everybody's satisfaction. This town needs that restaurant. This is a growing town. It's a good town and if you could help her, I would appreciate it.

Virginia Weeks: I agree with you. The Town needs the restaurant. Nobody wants that restaurant more than I do. I am tired of driving into Lewes to get decent food. That said, I don't think the lights in their living room are subjective. That's not a subjective. They're there. I know they're there, because the person next to me floodlights their backyard at night and I can see the shadows of my blinds on my bedroom floor at night. I have a nightlight.

Bob Rae: That's not coming from them, though, right?

Virginia Weeks: No. It's not a funny thing. They have to be satisfied.

Bob Rae: We understand that. We certainly understand that, Ms. Weeks and we don't take it lightly. The problem is the experts have put the thing in there. They've said it's good. They said they aimed it.

Virginia Weeks: But you didn't come to us and see if it satisfied the Town Codes. You did what DeIDOT said; this is the way to do it; that won't cost you a lot of money; this will light the parking lot; but we didn't explore any other avenues that referred to what happens in Town and what the Town Codes are; that's the problem I see.

Bob Rae: Part of that, if I may address that; part of the problem is, of course, a lack of understanding of the plans. I will also say there were

several discussions back and forth between Planning and Zoning and a few of the individuals involved in that; not any little bit of discussion, but quite a bit of it; so it wasn't like it was just overnight. It would have been nice if we could have addressed it a year ago; however, we're overcome by events and Amy can't do everything. There were some issues and there are some conflicts, some problems with different vendors, shall we say and so that entered into it. It's like any business that has four million things to do; sometimes some things fall out. If that was... It was never meant to be reflect any way on the board or the Planning Commission; it was never done intentionally to do that.

Virginia Weeks: Nobody said that.

Barry Goodinson: Can I just jump in? This is an ax that I've been grinding for awhile and it's primarily about expertise and I keep on saying we don't know what we don't know. I don't think we can fault a restaurateur for not understanding lighting engineering and we're community volunteers and we do the best we can, but not all of us understand lighting engineering. The Town has to have consultants who work with us, who go through these plans. I've studied landscape design, but I've not studied lighting engineering, so I can look at a plant here and know that trees aren't going to work, but we don't know what we don't know. So we need to have expertise, helping this committee be able to catch these things before we get to this point, right now. So we're all in the same boat. I don't like the tone that it's you should have known... you didn't tell us... or you didn't catch this. So I don't want to go there. I want to be able to fix this.

Virginia Weeks: Exactly and they did not come to us with this light for us to look at; the shadow box lights would have been fine; they're in parking lots all over the area and they work well.

Barry Goodinson: Right, but the other issue too is, a designer can sell to people whatever the heck they want and until it's spec'd out, you don't know what it's going to cost. I'm working on the Lewes Public Library capital campaign. We've designed the library, now we're crossing our fingers right now, hoping that we can afford the library we just designed, because that's just the way the process works. You design it and then you find out how much this thing costs that you designed and then you go through that horrible process called value engineering, where you start pulling stuff out and that's kind of what we're doing here on the fly. We're value engineering the lighting for this parking lot and none of us are happy that it's happening at the last minute and none of us are happy with the process; but it is what it is and we've got to deal with it. So toward that end, I'd like to propose that we approve the modification on the condition that the light be adjusted, so as to not interfere with the neighbor's and covers 75% of the parking lot.

Don Mazzeo: Why 75% is my question? The other 25% represents less safety for those folks that are going to be in that parking lot.

Barry Goodinson: I'm just putting it out there; 75% is a passing grade, so I figured let's go with that.

Linda Edelen: I, like the rest of us, have spent 2, 3, 4 times driving through different... I think the lighting is adequate. I think it would be improved with perhaps some motion lights on that one corner, but it's adequate. I've been in a lot of restaurant's parking lots that it's really difficult. The sign is very well lit and very attractive. There are adequate lights, I think, around the building so that people can see where they're going. People are going to get out of their cars. They're going to back into the area. My opinion is that there's adequate parking. My problem, is the neighbor's, so I would suggest that we do as Barry has already said; maybe not even with a percentage, but correct the issue so that it doesn't bother the neighbor's and that we do have that corner lit a little bit better.

Stacy Melnick: I will say this. I look at the parking lot every night. I can tell you the one thing that it is, it's adequately lit. Whatever you may think that it's not, I can tell you license plates of who was parked there; I can tell you when Amy's there, what cars are there; and I get to see it and I can tell you just driving there at night and living right behind it, it is adequately lit. I will say definitely there's a spotlight into my house; but it is very adequately lit.

Virginia Weeks: Nobody thinks that it's not.

Don Mazzeo: Before we move on, I have a question and I think we've already had it answered by way of Robin. Within our Codes, is there any designation by quantity called "foot candles"; does anyone know the terminology? I'm sure there are people here who understand foot candles; that's the amount of illumination in a specific location and it's measured over the complete distance of the parking lot or the area that's under discussion.

Virginia Weeks: I think we have an example of it.

Don Mazzeo: I think there may be something there, but is there anything in our Code today that identifies what is the minimum foot candle required in a parking lot? Period. Paragraph. If the answer is no, then I think we have to just move along.

Robin Davis: As what the Solicitor said earlier, no.

Don Mazzeo: Then we must move along and figure out how to make it right. If we have enough people here who are saying that it is lighted sufficiently and we have a neighbor who will have no lights blasting into their living room, then I'll accept the motion to move on.

Robin Davis: If I may first, Mr. Chairman. Again, as the Solicitor said, we need to narrow this down because my department and the Code Enforcement Officer are going to be responsible for checking to see if this is okay. If we keep getting complaints every day from the neighbor's because it's still glaring, but we have the applicant saying I've adjusted it and that's... I'm caught in the middle, so I need something.

Lynn Ekelund: That's my concern as well. What is our recourse if the adjustments are not sufficient?

Barry Goodinson: Correct. That's what I was asking too.

Virginia Weeks: Excuse me, may I ask the attorney a question? Seth, if we were to make a motion to approve this modification, based on the condition that the lights be readjusted to the satisfaction of the neighbor's, would that be... Because once they're satisfied, they're satisfied.

Seth Thompson: Understood, but I wouldn't... It's not really appropriate to take it out of the Town Official's hands and put that discretion into a private citizen's; you can't really delegate power to that degree. Now, of course, the Code Enforcement Officer is going to speak with the neighbor's. That obviously is going to be how that needs to be determined, in terms of whether it's causing a glare into their home. You shouldn't give the authority to approve the angle, to somebody that's not affiliated with the Town. I'm looking at the diagram and I wish I had a ruler, but it seems to me that the floodlight candle, I can't recall the technical term that the Chairman used...

Don Mazzeo: Foot candle.

Seth Thompson: Foot candle – it seems to cover a rather large area; that's at least a few inches and on the scale 1" equals 30'. Now I recognize where the length is a little bit off of the parking lot, but it looks like the parking lot is 65' wide. Now of course, that's the hypotenuse, there. Is that what we're looking at to get to the far corner?

Barry Goodinson: A hypotenuse?

Don Mazzeo: We don't do engineering at this table.

Seth Thompson: It does look to me and the commission's obviously heard testimony that the parking lot is well lit, so it appears that there should be an ability to adjust the light downward, so that it's not shining into the neighboring property, while still lighting up, I think, the vast majority of the parking lot, again just based on our foot candle here. Really that's a condition that exists anyway. Our Code requires that the parking lot lighting not glare into the neighboring property, so frankly, even if you guys didn't make that an express condition, it's still a code requirement. But it's always helpful to spell it out for the applicant. It sounds like they've made efforts and they've already been able to modify it twice. I take it the degree hasn't been enough yet. That's my analysis on it, but as far as having the neighbor approve it; I don't think that works.

Virginia Weeks: No it wasn't necessarily that the neighbor approve it, but that Robin be in consultation with the neighbor; that Robin, alone, not make that decision; that they consult with the neighbor's to make sure that...

Seth Thompson: Right and I don't mean to parse words. I guess I just wanted to make it clear that the neighbor couldn't say well, this doesn't satisfy me, therefore, you need to have that thing indirectly down.

Barry Goodinson: Shut down.

Seth Thompson: That's right.

Virginia Weeks: I have one other question. Robin, are you available all week, if they work with DelDOT, is somebody available to go out there and check this; or are you on vacation; is the Code Enforcer on vacation? What's the scoop?

Robin Davis: Mike is off on Friday.

Virginia Weeks: And you?

Robin Davis: I am, as of right now, I am here. I will be at work.

Virginia Weeks: So you'll be available to them, once they get it adjusted and...

Robin Davis: I just want it to be done. It might not be, you'll pick up the phone and I'll be there in two minutes, available.

Virginia Weeks: No. No. But you'd get back to them within a day?

Robin Davis: Yes. I just want to try to make sure... I don't know when Delmarva Power can come out and adjust the light and then it's going to have to be looked at night. I can't work off the day...

Virginia Weeks: It's dark at 4:30-5:00.

Barry Goodinson: My question though is this is not... I don't want it to be a situation that you can't get a Certificate of Occupancy because we can't get the Code Enforcer or the light people all lined up in a timely manner.

Don Mazzeo: If we put a condition that it gets adjustment before this application gets to a Certificate of Occupancy, then it has to happen.

Robin Davis: I think what it is is the applicant would like to open her restaurant, so if it's a week before... that's up to the Commission though.

Virginia Weeks: I just want to make sure that if DelDOT comes out on Wednesday, that somebody from Town will be there Thursday or Friday to make sure that that light is what they say it is.

Robin Davis: I don't see any problem with that, but again, if the phone call comes at 3:00, I can't guarantee to be expected to be out there at five after three.

Virginia Weeks: No.

Barry Goodinson: Going back to what Seth had said though, if the law exists that the light cannot interfere with the neighbor's, then there's no need to attach that condition. If we approve the modification, then we don't have to attach a deadline, because there is no deadline. The requirement that it doesn't interfere with you exists in perpetuity, or until the law is changed.

Seth Thompson: It does. I might suggest that the condition still be placed that it be modified to come into Code; but again, the code requirement exists.

Barry Goodinson: Okay. Okay. I'm fine with that.

Don Mazzeo: So therefore there's no condition, is there?

Seth Thompson: I would want to make it clear that it currently doesn't

satisfy the Code, at least based on the testimony that you heard tonight.

Virginia Weeks: And that we're not going to approve something before it meets Code.

Don Mazzeo: Right.

Virginia Weeks: So if we vote to approve this modification, it has to be up to Code.

Seth Thompson: Right, but just to make it clear, you could approve it with that condition; there wouldn't be a need to come back here.

Tim Nicholson: Why would we need to do that, if the Code already exists?

Seth Thompson: I would just want to make it clear that you're not approving it in it's current situation, basically. I think that's the easiest way to explain it. Do you see what I mean? If somebody were to read the record and say well oh, they approved the site plan and that light was in that place at the time of approval, I think there's an argument there.

Barry Goodinson: But don't the minutes of this meeting, because of leaning into these microphones all the time, have a... If we were to go back and look at the transcript, I think the intention would be clear, right?

Seth Thompson: Understood.

Virginia Weeks: May I make a motion?

Don Mazzeo: I'll certain accept your motion.

Virginia Weeks: I would like to move that we approve this modification, stipulating that the light has to be current with code, with Town Code. Is that alright?

Seth Thompson: I think that's fine. If you want to spell out the fact that it can't be glaring into the... obviously it needs to meet all elements of code.

Lynn Ekelund: I'd like specifically to refer to 220-40(a)(7), which is the outdoor lighting of off-street parking lots shall be designed to shield adjacent properties from glare. I want to specifically reference that.

Virginia Weeks: Would you like to make the motion. I don't have a book in front of me? I withdraw my motion.

Seth Thompson: Ms. Ekelund, it's Section 220-42.

Lynn Ekelund: Well, I don't have my glasses on Seth. Now I have them. I'd like to make a motion that we approve the applicant's request for a modification, specifically when the streetlight, either in it's current form, or a different form, specifically conforms with Section 220-42(a)(7) "The outdoor lighting of off-street parking lots shall be designed to shield adjacent properties from glare."

Don Mazzeo: We have a motion. Do I have a second?

Barry Goodinson: Second.

Don Mazzeo: Let's take a roll call vote, please.

Robin Davis: Mr. Chairman, I do have one question. Does by having this motion and if it does get approved, does this give the Town the right to go ahead and issue the Certificate of Occupancy, prior to the final adjustment being made?

Virginia Weeks: That's a question for the attorney.

Don Mazzeo: I was just going to say that.

Seth Thompson: The way the motion was stated, I think the light needs to be adjusted; otherwise you're...

Lynn Ekelund: That's how my motion was meant.

Seth Thompson: Okay.

Don Mazzeo: And that's the way it's now on the table.

Bob Rae: If I might interject that...

Virginia Weeks: No.

Don Mazzeo: I'm afraid you can't, legally.

Bob Rae: I'm not here legally. I'm just asking...

Barry Goodinson: Let me withdraw my second, then, because I'm concerned that we're going to bind ourselves too much if that's the case. I'm comfortable with the fact that we have Codes in place and we have a Code Enforcer who will go out there and be checking on this light and particularly if there are neighbor's who are going to request that if it's necessary.

Seth Thompson: You could put a timeframe on it. That's a possibility. In other words, the light needs to be adjusted within X number of days. I don't know what's...

Barry Goodinson: I don't want to do that. My fear is, if we put a time to it, it puts this whole process at the mercy of a bunch of people trying to get lined up and we've got snow coming and we've got holidays coming and there may be vacation. I'm concerned about that.

Virginia Weeks: We didn't put ourselves in this position.

Barry Goodinson: I understand that.

Virginia Weeks: The applicant put us all in this position by installing the light without coming back and discussing it all. No matter what, I don't know if the Town can approve a light that doesn't meet Code standards. I don't know, even though we accept this modification, I don't know if you could go ahead and use that modification if the light is not yet up to standards.

Barry Goodinson: How does it normally work? If we approve something at this juncture, then what's the process where... there are all sorts of approvals that are made here. We just happen to know about this particular glitch. There are lots of glitches we don't know about, so what normally happens?

Seth Thompson: Since this is a modification of a Special Permitted Use in a site plan, it's a little bit different procedural posture, obviously. Normally when you guys approve something, nothing has been installed, so then the installation occurs; First State goes out and inspects the building and then the Certificate of Occupancy gets issued. We're dealing with a modification, so it's just a different procedure and frankly the light's already there.

Don Mazzeo: Let me ask a question then. If we approve, as, was already on the table with the motion that this modification is accepted, can a Certificate of Occupancy then be issued and if the neighbor files a complaint, the applicant will just have to correct it, won't then? Ultimately, it falls back to the applicant to correct to what Codes are in place today; so if Certificate of Occupancy is issued tomorrow morning, assuming this goes through, then Amy opens up her restaurant; tomorrow night the lights go on and it's in their bedroom window; they make a phone call to Town; inspector goes out and says, yeah, you have to fix your light and in the meantime she's already making her phone calls to get the lights corrected anyway. What's our issue here then?

Virginia Weeks: Enforcement.

Don Mazzeo: Are we forcing them to make a phone call, which they're going to do anyway and the applicant's being forced to correct it, because she wants to and we're allowing them to go forward and we're opening a restaurant. Let's get going.

Virginia Weeks: Absolutely, except what is the enforcement for getting the code enforced?

Don Mazzeo: Well that's up to these people here. We're not in charge of them. The people back there are.

Virginia Weeks: Yup.

Seth Thompson: If the applicant weren't to change it, then her Special Permitted Use would be withdrawn.

Virginia Weeks: Exactly. Great.

Don Mazzeo: It's in their best interests to correct it, not in ours.

Virginia Weeks: I just wanted that on the record.

Don Mazzeo: You heard it. You just heard it.

Virginia Weeks: Right. Now we can go.

Linda Edelen: So do I understand it then, that all we have to do is say yea/nay.

Seth Thompson: I believe the second was withdrawn, so procedurally we had a motion, but then the second was withdrawn.

Lynn Ekelund: Let me ask a question. You're saying that the recourse then if it is not corrected, is that the Special Permitted Use would be withdrawn?

Seth Thompson: And that's in addition to the regular recourse that you would have in terms of citing somebody for violating the Zoning Code. So really you have two different recourse's here, because this is a Special Permitted Use.

Virginia Weeks: Okay, I just wanted that on the record. Thank you very much.

Don Mazzeo: Alright. I will now accept a motion... would you like to withdraw your motion?

Lynn Ekelund: I'll withdraw my motion. Yes.

Don Mazzeo: Now I will accept a motion to approve the modification to this application, as presented to us.

Tim Nicholson: Are you making a motion?

Don Mazzeo: I'll accept a motion. I can't make it.

Barry Goodinson: So moved.

Tim Nicholson: Second.

Virginia Weeks: What was the motion? I didn't hear it.

Barry Goodinson: To approve the application as presented.

Don Mazzeo: And we have a second by Barry?

Tim Nicholson: No. I did.

Don Mazzeo: Okay. Tim, okay. Roll call vote please:

Virginia Weeks	Yes
Lynn Ekelund	No
Barry Goodinson	Yes
Linda Edelen	Yes
Tim Nicholson	Yes
Don Mazzeo	Yes

Don Mazzeo: Motion has passed. Let's have a restaurant in town.



Adjourn

Seth Thompson: You need another motion.

Tim Nicholson: Motion to adjourn.

Don Mazzeo: Before we do, you folks are fine, I would like to bring something to the table regarding the lighting. In general, for our Code, I can't believe that even in Sussex County I would not find foot candle numbers quantifying what lighting is required in a parking lot. Why? That's a rhetorical question. I would like to have somebody, maybe from our new engineering firm, to bring something to the table. Barry brought it up. We need experts. They're the experts, we're not.

Virginia Weeks: Right. Mr. Chairman...

Tim Nicholson: We have a new engineering firm?

Don Mazzeo: Absolutely.

Virginia Weeks: Mr. Chairman, I would just like to know if we can take just a moment. I'm just really curious if Robin could tell us what happened at the last Town Council? You don't want to hear that? There was a load of zoning issues on the agenda.

Seth Thompson: It's not a discussion, you just want an update.

Don Mazzeo: Well, you know what...

Seth Thompson: I think I can give a quick update there.

Virginia Weeks: Or if he could prepare a report for next week.

Don Mazzeo: For next week. Yes, let's do that.

Barry Goodinson: Can I move to adjourn?

Lynn Ekelund: Second.

Don Mazzeo: All those in favor say aye. Opposed. Motion is carried.