



Town of Oriental
Application for Special Use
Permit- Fee \$350.00

Date Received: 1/06/2020 Fee Paid: 350⁰⁰ Permit #: 2020-07

APPLICANT: BOND HARDWARE & SUPPLY CO. LP, dba VILLAGE HARDWARE
ADDRESS: P.O. BOX 873, ORIENTAL, NC 28571
PHONE: 7 CELL: 31 FAX: 3 EMAIL: A
PROPERTY OWNER: (252) Terrence D. Sullivan, et al
ADDRESS: 1, EAST, CARY, NC, 27518
PHONE: _____ CELL: _____ FAX: _____ EMAIL: terrysullivan@gmail.com
PROJECT CONTACT PERSON: CLIFFORD BOND
ADDRESS: 1, ORIENTAL, NC 28571
PHONE: 1 CELL: 3 FAX: 33 MAIL: 1
PHYSICAL LOCATION: 606 BROAD STREET, ORIENTAL, NC 28571
GMO ZONE OF THE PROPERTY: MU
INTENDED USE OF PROPERTY: RETAIL HARDWARE STORE
PREVIOUS USE OF PROPERTY: WHAOT
DOES THIS PROJECT INVOLVE A CHANGE IN USE? YES NO
IF YES, DESCRIBE HERE: currently vacant lot.

DOES THIS PROPERTY INVOLVE A COMBINATION OF USES? YES NO
IF YES, DESCRIBE HERE: _____

HAS THIS LOT BEEN REPLATTED IN LAST 12 MONTHS? YES NO IF YES, WHEN? _____

NO. PARKING SPACES AVAILABLE: _____
SQUARE FOOTAGE OF STRUCTURE: 48000 SQUARE FOOTAGE USED FOR BUSINESS: 100% NUMBER OF PARKING SPACES REQUIRED: 120 WILL OFFSITE PARKING BE UTILIZED? YES NO IF YES, WHERE AND NUMBER OF SPACES? _____

WILL SIGNS BE ERECTED OR MODIFIED? YES If yes, please complete a sign permit application. (SEE ATTACHED)

DOES THIS USE COMPLY WITH COVENANTS/HOA RESTRICTIONS? NONE (attach copy)

ATTACHMENT(S): Change of Use Form Sign Permit Site Plan or Survey Parking Landscape Plan Other: SEE ATTACHED "BRIEF IN SUPPORT OF APPLICATION"

I certify that all of the above information and that contained in the attachments hereto is true and accurate to the best of my knowledge and that all work will comply with state and local codes, laws and ordinances. The Town of Oriental will be notified of any modifications to the approved plans prior to the change being done. I understand that any place modifications may require a new application in compliance with the Town of Oriental. Grown Management Ordinance, and failure to report such changes may result in permit revocation. I certify that I am the property owner or that I am authorized to act on the property owner's behalf.

[Signature]
Applicant Signature

1-6-2020
Date Signed

EXHIBIT "A"

The APPLICANT states and affirms the following facts and submits herewith certain attached documents in support of the APPLICATION, to wit:

1. The affected property is an approximately 0.47 acre vacant parcel located at the southeast corner of Broad Street and Mildred Street in the Town of Oriental, N.C. The subject property is Lot 2 of Fulcher subdivision, Pamlico County. It is currently vacant of any structures (and to the best of Applicant's knowledge it has been vacant for many decades). It is finish-graded and has been meticulously maintained by the current owner for many years. It is served by public utilities including power, water and sewer. It is well-graded and drains well. The Applicant's proposed use will not significantly alter or impact "upstream" or "downstream" drainage from the property.
2. The Applicant is the current Owner/Operator of a very long-established retail hardware, marine supply and building materials dealer located immediately adjacent to the above-referenced property at 804 Broad Street, known as Village Do It Best Hardware and Marine Supply. The current Village Hardware Store property directly adjoins the Southwest property boundary of the subject property. Village Hardware and its predecessors has been a continuously operating enterprise for almost one hundred years with roots established since at least 1922. It was formerly operated as "Delamar Hardware". In its almost one-hundred-year operation, it has had only three other owners prior to the current owner/Applicant who has owned and operated the business since approximately 2006 when it was purchased from Linwood and Elizabeth Stowe. The store is a locally owned and operated business with very strong local ties and support for the community. The Applicant is also the "Buyer" of the subject property pursuant to a "Offer To Purchase and Contract," dated November 7, 2019, and proceeds in this Application pursuant to express provisions of an Addendum to said Offer/Contract. The above-referenced Offer/Contract is expressly contingent upon a timely approval/grant of this "Application for Special Use Permit."

3. Should the Applicant's requested SUP be granted, Applicant intends to slowly expand and transition operations from its present location at 804 Broad Street to the subject 806 Broad Street location in an efficient and harmonious manner so as to disrupt current operations as little as feasible. Maintaining continuous operation throughout such transition is critical to both the store's operation and to the community since Village Hardware is the only hardware store in the Town of Oriental. The expansion will also allow the Applicant to enhance its current operations allowing for both new products and services as well as expanding its current offerings as noted herein, thereby being able to better serve the needs and interests of the community and its residents.

4. By way of overview, the function of the Special Use Permit procedure established by N.C. Statutes and the GMO, is to determine whether the GMO's standards have been met by the Applicant's proposal. Being a quasi judicial proceeding, the Applicant, upon a showing that the standards of the Ordinance have been met, will be entitled to the requested Permit. To that end, the Applicant respectfully submits the following:

5. The Ordinance (GMO) establishes four substantive standards required of the Applicant (in addition to the requirements that the application be complete and otherwise complies with the requirements of the GMO) as regards the proposed use (reference Section 86 of the GMO). They are:
 - 1) Does not materially endanger the public health or safety;
 - 2) Meets all required conditions and specifications [of the GMO, et al.];
 - 3) Would not substantially injure the value of adjoining or abutting property; and,
 - 4) Will be in harmony with the area in which it is located and will be in general conformity with the comprehensive [GMO] plan.

The proposed use(s) of the Applicant is (are) in full and uncompromised conformity with those standards as set forth in the Ordinance [GMO] and as set forth hereinafter below.

6. As to the first of the four standards, that the proposed use “does not materially endanger the public health or safety,” since this is an established business located immediately adjacent to the subject property and has not in multiple decades of continuous operation by multiple owners been found guilty of any conditions or actions that have been established to “endanger the public health, welfare, morals, or safety of the community,” this standard has been conclusively met and established. Numerous North Carolina court cases in regard to this standard have held that any finding of adverse endangerment of the public health or safety must be supported by “substantial evidence” of an objective adverse impact and that general fears as to a potential or possible threat to public safety (such as increased crime, increased traffic, statistical concerns, etc.) without any specific and documented foundation as to how those fears specifically relate to the subject property and proposed use(s) have been held inadequate to support an adverse finding as to an adverse impact upon the public health or safety. Based upon the established record and history of the long established and operated business, such public safety/health concerns are herewith addressed. It is also respectfully submitted that the overall public convenience, interest, necessity and general welfare of the community will be served by the approval of the Applicant’s request since approval will allow the expansion of services and offerings by the Applicant to the community overall that would be otherwise impossible to provide without the grant of the requested Application. Specifically, additional services to the community by the Applicant that are under consideration include:

1. 24/7/356 ice, bait, limited fishing supplies and other kiosk-type services which will expand and enhance the overall convenience to visitors and members of the community;
2. Expanded lumber and building materials availability that cannot presently be provided from the existing facilities;
3. Significant expansion of yard, garden and landscaping products and services, especially hardscape products such as bulk mulch, gravel, sand and other products that cannot be provided from the existing facilities;

4. Expansion of the type and variety of plantings, shrubbery, trees, plants, etc. that also cannot be provided from the existing facilities;
5. Provision of business-center services that are not currently available in the community;
6. Applicant's current plans incorporate the installation of multiple (2) high-capacity standby power generation equipment to enhance storm-preparedness and storm-response for the community. This will allow for the installation of planned on-site 24/7/365 ice production and dispensing facilities that will be able to provide larger quantities of bulk and bagged ice and water that might not be otherwise available in the aftermath of hurricanes and other natural disasters.
7. The Applicant is also considering as a part of the overall construction plans, the incorporation of "hardened" and storm-resistant construction techniques, protocols, and procedures to mitigate the impact of hurricanes and storms. The Applicant is also considering incorporating into the design of the facilities a "hardened" facility for use by local amateur radio operators during hurricanes, storms and natural disasters to enhance local communications when usual utilities and public communications facilities are not available. This will significantly enhance the overall safety and welfare of the community during hurricanes and natural disasters.
8. The expansion of facilities will also allow for warehousing of critical storm preparedness supplies and materials in advance of storms and natural disasters that cannot be currently accommodated with available space.

7. As to the second of the standards, that "the proposed use complies with the standards set forth in the GMO", by general reference and commitment, the Applicant represents and affirms that any and all uses of the property shall comply with any and all applicable GMO standards. Specifically, but without limitation:

1. While it should be noted that the Applicant is in the very preliminary stages of design, planning and budgeting for the facilities to be constructed/installed and

incorporated, a preliminary conceptual plat/plan-sketch is submitted (Exhibit "K" attached hereto) as a part of this Application reflecting potential currently-anticipated facilities. All currently-anticipated uses proposed by the Applicant fully comply with GMO "General Development Standards," Article VI, Sections 111 - 122, GMO. Specifically:

2. The minimum lot size (20,383.81 sq. ft.) significantly exceeds the minimum square footage specified for MU/MU-1 (5,000 sq. ft.);
3. Building setback requirements of Section 113 will be fully met or exceeded as set forth on the attached plat/plan-sketch and as tabulated on Exhibit "J";
4. Although architectural and building design plans are in a preliminary and conceptual stage, building height limitations specified in Section 114 (35 feet) will not be exceeded;
5. Although minimum roof pitch requirements specified in Section 115 do not apply to commercial buildings, it is the desire of the Applicant that the spirit of the minimum 4/12 and maximum 12/12 pitch limitations will be complied with as may be practicable and/or feasible;
6. The "building footprint" will not exceed 8,153.5 square feet (40% of the "lot area") per Section 118.2.3;
7. The total surface area covered by surfaces impervious to water penetration will not exceed 12,230.3 square feet (60% of the "lot area") per Section 118.2.5;
8. All provisions of Section 120 of the GMO (specifically Sections 120.2 through 120.8) will be complied with as regarding drainage requirements and provisions of Section 121 regarding "terraforming" shall be complied with (it is anticipated that grading required will be very minimal);
9. Provisions of Section 136 regarding the "Broad Street Corridor Overlay District" will be complied with;
10. Parking (Article IX, Section 161) shall be provided per Section 161.3.10 at one space per 400 square feet of building floor area; and,
11. It is presently anticipated that primary driveway access will be provided from Mildred Street.

12. Since the architectural design of the proposed buildings/structures is in the conceptual/design phase, the exact configuration and design of signage has not been determined at this time. The Applicant is aware of the provisions and requirements of Article X of the GMO. Signage installed will be done pursuant to the terms and conditions of the GMO and only after the issuance of a "Sign Permit" issued by the Town of Oriental pursuant to the "Town of Oriental Application for Sign Permit" (see attached, Exhibit "E").

8. As to the third standard, that the use will not "substantially injure the value of adjoining property," the use(s) proposed for this property are essentially identical and in virtual exact conformity with existing other commercially-zoned properties adjacent to and near this property except for a residential lot at the "rear" (southeasterly corner) of the subject property. This residential property is Lot 3 of the "Fulcher Subdivision," while the subject property is Lot 2 of the subdivision (the existing Village Hardware Store is located on Lot 1 of the referenced subdivision). The residential property (Lot 3), currently adjoins the existing Village Hardware Store property which has been in use as a retail hardware store since the 1970's. The use proposed for Lot 2 does not result in any substantial change as far as residential Lot 3 is concerned. A representative of the Applicant and Village Hardware (Mr. Greg Ruzicka), has discussed the proposed use of the subject property with the owner of (residential) Lot 3, including providing barriers to isolate the residential lot from the subject property including fencing, trees, barriers of other types, etc. The residential Lot 3 owner indicated that he would prefer the planting of Leyland Cypress trees along the property-line to conform with similar trees he has planted between his residential Lot 3 and the existing hardware store operation (Lot 1). The applicant has no objection to this and plans/proposes this barrier is a part of the use proposed. It should be noted that when considering 'injury to value of adjoining property,' North Carolina courts considering this issue have consistently held that any such consideration must be based upon a "rigorous standard" establishing a "substantial foundation" regarding property value impacts and cannot rely upon speculative opinions

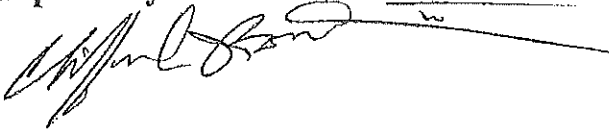
about values without supporting facts or documentation as such opinions relate to the specific property under consideration. The Applicant has no belief or knowledge regarding any substantial injury to value of adjoining property owners as a result of the proposed use. To the best knowledge of the Applicant, the subject property (Lot 2) and other lots in the "Fulcher Subdivision" are not subject to any recorded Restrictive Covenants or other recorded agreements, understandings, contracts, easements, or other instruments affecting the use, development or occupancy of the subject property.

9. As to the fourth standard, "that the use will be in harmony with the area and in general conformity with the GMO," as noted above, the proposed use is a simple and straightforward continuation (and limited expansion) of the existing use of the adjoining "Village Hardware" property (Lot 1). As noted above, Applicant has affirmed that the requirements and standards of the GMO will be fully complied with. It should be noted that "Sales and Rental of Goods Merchandise and Equipment" (which is an exact description of the services currently rendered by the existing Village Hardware operation and of the uses proposed by the Applicant) is specifically enumerated under Section 2.000 of Article IV, Section 60 of the GMO (Ordinance 2017-253), as amended. Multiple North Carolina court cases have found that the inclusion of a particular use (such as that referenced above) establishes a presumption that the use is compatible with the surrounding area. Specifically, in Woodhouse v. Board of Commissioners (299 N.C. 211, 216; 261 S.E. 2d 882, 886 (1980)) the court noted that "inclusion of the particular use in the ordinance as one which is permitted under certain conditions, is equivalent to a legislative finding that the prescribed use is one which is in harmony with the other uses permitted in the district." The Applicant's proposed use is in harmony with the area and in conformity with the GMO.
10. Section 86 of the GMO addresses procedural Special Use Permit guidelines. The GMO addresses burden of evidence and burden of persuasion issues at Section 87 and places upon the Applicant the burden of persuasion as to issues relating to compliance with GMO requirements and provisions; however, as to the issue of whether the application should be turned down for any reason set forth in Section

84.1.4, the burden of persuasion rests on the party or parties urging that denial. Absent such successful opposition, the Town Commissioners shall issue the requested Special Use Permit. The Applicant knows of no such opposition or objection.

WHEREFORE, it is respectfully submitted that the Applicant's request for a Special Use Permit, for the reasons set forth herein above, meets applicable GMO requirements and standards and that Applicant has established, by a preponderance of the evidence, that a grant of the requested Permit will further the goals and objectives of the GMO, to wit, the prevention of harm that comes when incompatible land uses are located too close to each other.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Clifford J. Bond, III", written over a horizontal line.

Clifford J. Bond, III, Applicant
January 6, 2020

Planning Board Recommendations on Village Hardware SUP request

The Planning Board recommends approval of the permit, according to the following:

86.1.4.1 The requested permit IS within its jurisdiction according to the table of permissible uses. Section 9.250

86.1.4.2 The application is complete

86.1.4.3

86.1.4.3.1 DOES comply with the requirements of this chapter:

86.1.4.3.2 The Planning Board has been presented no evidence and therefore does not have an opinion on whether the project endangers public health or safety,

Additional evidence may be presented to the Board of Commissioners at their Public Hearing.

86.1.4.3.3 The Planning Board has been presented no evidence that the property value of adjoining/abutting properties will be devalued.

Additional evidence may be presented to the Board of Commissioners at their Public Hearing.

86.1.4.3.4 The Planning Board has been presented no evidence that the proposed project will not be in harmony with development and uses in the area.

Additional evidence may be presented to the Board of Commissioners at their Public Hearing.

86.1.4.3.5 The Planning Board finds that the proposed project will be in general conformity with the Land Use Plan, adopted by the Board of Commissioners.

The Planning Board does not have an opinion on the conformity of the project to the Pamlico County Flood Prevention Ordinance and defers to the County Building Inspector to enforce whatever requirements are necessary to mitigate repeated losses at that address.

From the applicant:

The Ordinance (GMO) establishes four substantive standards required of the Applicant (in addition to the requirements that the application be complete and otherwise complies with the requirements of the GMO) as regards the proposed use (reference Section 86 of the GMO). They are:

- 1) Does not materially endanger the public health or safety;**
- 2) Meets all required conditions and specifications [of the GMO, et al.];**
- 3) Would not substantially injure the value of adjoining or abutting property; and,**
- 4) Will be in harmony with the area in which it is located and will be in general conformity with the comprehensive [GMO] plan.**

Additional evidence may be presented to the Board of Commissioners at their Public Hearing.

The Planning Board notes that this SUP request is simply for the location of a hardware store (high volume traffic retail) at the given proposed location. Any discussion concerning design of said establishment will be considered when the plans to build are submitted for compliance.

Stan Aeschleman, Chair, Oriental Planning Board

Reviewed and updated 2/19/2020

Town of Oriental

Statement of Zoning Consistency with Adopted Plans

The Mayor and Commissioners of the Town of Oriental find the action to grant a Special Use Permit as presented in the public interest, and consistent with the Town's Land Use Plan, CAMA Plan, and other long range adopted plans in that:

- (1) The proposed development is consistent and not in conflict with the existing development standards in Article IV of the GMO.
- (2) The proposed development is allowed in the requested zone.
- (3) The proposed development is consistent with the Land Use Plan.
- (4) The proposed development is consistent with the Floodplain Prevention Ordinance.

Stan Aeschleman, Chair, Oriental Planning Board