

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
November 12, 2008**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices at 6:30 p.m. on Wednesday, November 12, 2008.

Present were Chairman Jon Britt, Vice Chair Joe Blakaitis, Ron Forlano, John Fricker and Claiborne Yarbrough.

Absent: None.

Also present were Director of Community Development Andy Garman, Permit Coordinator Sandy Cady and Planning Intern Miles Thomas.

Others Present: Jeff Jacomet, Whitt Sessoms, Jim Braithwaite, Joseph Speight, Crouse Gray and Ralph Calfee.

Absent: Council Liaison Dave Wessel.

Chairman Britt called to order the Regular Meeting of the Planning Board for November 12, 2008 at 6:33 p.m.

PUBLIC COMMENTS

None.

It was *consensus* of the Planning Board to move New Business up in the agenda.

NEW BUSINESS

Application by Mr. Whitt Sessoms, III of the Cape Oil Corporation for a Conditional Use Permit (08-003) to Approve a New Formula Business at 1209 Duck Road in the Location of the Former Burger King Restaurant

Director Garman stated that a new business wishes to locate to 1209 Duck Road. He stated that the new business was proposed as a Kentucky Fried Chicken (KFC) and Arby's. Jeff Jacomet was recognized to speak. He stated that the primary use would be for KFC but if the Health Department had an issue with size or space, it would be an Arby's. Director Garman noted that the Crown Gasoline station and restaurant were approved in 1996 by Dare County and a Conditional Use Permit was issued. He stated that since that time, Duck incorporated and passed ordinances of their own, particularly with respect to formula businesses. He went on to read the definition of a formula business and added that based on the definition, the proposed KFC Restaurant would meet the criteria for a formula business.

Director Garman reviewed the findings the Planning Board would have to make for approval of the Conditional Use Permit. He noted that a formula business would have to comply with all applicable regulations of the zoning ordinance. He reminded the Board that restaurants were considered a conditional use and that the conditions stated that restaurants shall not have drive through service. He stated that staff made the argument in its staff report that the new formula business could not have a drive-thru since it would not be allowed based on the criteria of the ordinance. He stated that after discussing the issue with the applicant as well as the Town Attorney, staff re-evaluated their position since the drive through was a nonconforming structure and was no longer recommending removal of the drive-thru. He went on to review lighting and signage at the site with the Board.

Whitt Sessoms was recognized to speak. Mr. Sessoms gave a short history on the Crown Gas station to the Board.

Jeff Jacomet clarified that the color scheme at the drive through was an issue. Director Garman thought it was the size of the sign as well as the color scheme. He thought the ordinance provided a certain size for directional signage. He stated that staff could work with the applicant, but noted that the ordinance did not allow for more than one (1) free-standing sign on a property. He stated that colors should be subtle – earth tone or neutral. Mr. Jacomet clarified that the size of the sign would need to be corrected as well as the color scheme. He wondered why there was a height pole at the drive-thru. Director Garman wasn't sure. Whitt Sessoms thought the roof of the drive thru overhung approximately three to four (3-4) feet.

Chairman Britt suggested the Board review the lighting and signage in the application and discuss it. The Planning Board went on to review the items in the application with Director Garman and the applicant.

Chairman Britt asked if the application should be put off until the Board received a comprehensive sign plan. He noted that the Board could not pass the Conditional Use Permit until they received it. Director Garman thought if the Board placed conditions on the free-standing sign, they could move on, allowing the applicant to bring back the sign plan at a future meeting. He thought the Board could approve where the sign would be placed as it met the sign ordinance criteria.

Member Fricker asked what staff would recommend for the site. Director Garman stated that the applicant either could not have a free-standing sign identifying the formula business or have a free-standing sign that would have to be more scrutinized. Member Fricker clarified that the entire sign would need to be toned down and required the non-formula gas station to change their sign for a tenant that was a formula business. Chairman Britt stated he was correct and noted that the gas station was going to be re-branded, giving the applicant an opportunity to install a new sign.

Member Forlano stated that he did not see a reason for having anything on the gas station canopy and suggested that it be painted a solid color. Whitt Sessoms stated he did not have a problem with it but would have to clear it with Sampson Bladen Oil first. Chairman Britt noted that there was a condition in the permit that the vertical portion of the canopy should be painted with a neutral paint color. He asked Member Forlano if he wanted to strike the portion stating that the

business should be identified on the canopy. Member Forlano stated he would. He thought that both businesses should be identified with one (1) free-standing sign.

Member Yarbrough clarified that only two (2) items would be removed from the staff recommendation – deleting the first bullet and the last portion of the fourth (4th) bullet. Chairman Britt noted that the lighting would also be brought into conformity. Director Garman explained that further into the permit, staff was recommending that any future changes to the building exterior would be subject to an amendment to the permit and prior to obtaining permits or occupancy of the structure, a provision shall be submitted to and approved by staff in accordance with approving a minor site plan.

Member Fricker moved to recommend approval of the conditional use permit based upon the specific circumstances of the application, incorporating the following conditions:

1. The lighting under the canopy should be brought into conformity with the Town's lighting ordinance;
2. The free standing sign be redesigned with neutral, low reflective colors and materials and illuminated by down lighting only;
3. The free standing sign should be landscaped at the base with a mulched bed to include native or locally adaptive shrubs or grasses;
4. The vertical portion of the canopy should be painted using neutral paint color that is consistent with the color of the building;
5. Signs for the drive through should be designed/replaced to be consistent with the Town code;
6. The wall sign should be consistent with the graphic presented by the applicant as part of the Conditional Use Permit application;
7. All future changes to the building exterior, including colors, awnings or additional signage, shall be subject to an amendment to the Conditional Use Permit;
8. Prior to obtaining permits or occupancy, subject to the conditions and revisions herein, application shall be submitted to and approved by staff in accordance with provisions for approving a minor site plan as established by Section 156.117 of the Town Code.

Member Fricker noted that the Planning Board was making this recommendation upon specific findings of fact as required by Section 156.145, Conditional Use Permits, and by Section 156.061(d)(1)(8)(c) of the Code.

Member Yarbrough seconded the motion.

Motion carried 5-0.

Chairman Britt called for five (5) minute break. The time was 7:46 p.m.

Chairman Britt reconvened the meeting.

Application by Mr. Ralph Calfee, P.E., on behalf of Joseph P. Speight, III, for a Special Exception Permit (08-006) to Modify Certain Off-Street Parking, Paving, and Access Requirements as Authorized by Town Code Sections 156.096 and 156.118

Director Garman stated that the application was for a parking special exception and waiver of certain parking and paving access requirements established in the Commercial Design guideline section of the Town Code. He stated that the project address was 1564 and 1566 Duck Road and was the sight of the former Duck News Café and was also the location of the Station Bay Marina. He stated that the restaurant was formerly permitted as a forty-two (42) seat restaurant by Dare County in 1994. He stated that there was a fire at the restaurant in 2005, which closed it and since then, the applicant has been trying to do many things to try to reopen the restaurant. He stated that the applicant was currently trying to obtain approval for a waste water system, zoning of the structure and building permit requirements. He stated that they had received their CAMA permit in the spring of 2008 which would be good for three (3) years. He stated that the applicant was before the Board to obtain zoning approval to go from a forty-two (42) seat restaurant to a sixty (60) seat one. He noted that there was also a two (2) bedroom accessory apartment on the second floor which was a permitted use in the C-1 district. He stated that as per the Town's ordinance, a permitted use would be approved by him, however because the parking lot configuration did not meet all of the Town's requirements and because the applicant wished to increase the number of seats in the restaurant, it required a special exception to waive or reduce some of the requirements in the ordinance.

Director Garman noted the section of the ordinance that triggered the special exception request. He went on to review the application with the Board.

Crouse Gray was recognized to speak. Mr. Gray thought it was important to give the Board a short history on the property so they could be apprised of why it took so long for the applicant to come before them. He went on to give a short history of the restaurant to the Board.

Ralph Calfee was recognized to speak. Mr. Calfee stated that he was seeking an increase in the seating of the restaurant. He noted that the 1994 Dare County plan called for forty-two (42) seats but the restaurant had received a certificate of occupancy for forty-eight (48) seats. He noted that the apartment was permitted in 1992 and that he was not trying to change anything with regard to it. He went on to review the issues with the Board, noting that he wasn't trying to fight the Town's regulations.

Vice Chair Blakaitis stated that he was unsure about the width of the drive aisle requirement. He noted that there was similar situation with Aqua-S Restaurant and thought they were required to put in a twenty-four (24) foot drive aisle. Director Garman stated he was correct and noted that it was to accommodate the location of a fire truck. He stated that staff was trying to be consistent with their recommendations. He stated that he was unaware that they were unable to move the septic system as he had not seen a Health Department permit to date.

Ralph Calfee noted that there were parallel parking two to three (2-3) feet off of the drain field area. He stated that the Health Department may let them use that area for separation since it was a repair area. Crouse Gray noted that twenty (20) feet was the State minimum for a fire

truck. Chairman Britt stated that twenty-four (24) feet was necessary for setting up a ladder truck.

Member Fricker stated that while the State code established the minimum width, the Town ordinance established the twenty-four (24) foot rule. Director Garman noted that twenty-four (24) feet was the Town ordinance requirement for the two (2) way drive aisle. Member Fricker asked if the soil had been tested for septic. Ralph Calfee stated that it was not formally tested. Director Garman, Ralph Calfee and the Board went on to discuss the driveway and parking lot issues.

It was *consensus* of the Board that the apron at the north driveway would be required and that the gravel should be certified for load capacity.

Vice Chair Blakaitis moved to approve Special Exception 08-006, an application for a special exemption waiver for parking, paving and access with the conditions as rewritten under staff comments, consistent with Town Code and with the specific findings of fact as required by 156.118(b)(6) and 156.096.

Member Yarbrough seconded.

Motion carried 5-0.

OLD BUSINESS

Discussion of Renewable Energy Survey; Review of Draft Kitty Hawk Wind Turbine Ordinance

It was *consensus* of the Board to defer the issue to the next meeting.

Member Fricker moved to authorize staff to complete the survey and send it out via email to the Planning Board for final copy.

Vice Chair Blakaitis seconded.

Motion carried 5-0.

APPROVAL OF MINUTES

Planning Board Meeting October 8, 2008

Vice Chair Blakaitis directed the Board to review the minutes from the October 8, 2008 meeting.

Member Fricker had one change to Page 5 of the minutes.

Member Fricker moved to approve the minutes as amended.

MINUTES WERE NOT VOTED ON OR APPROVED

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

Chairman Britt noted that he may not be able to make the December Planning Board meeting.

ADJOURNMENT

Chairman Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:44 p.m.

Approved: _____
/s/ Jon Britt, Chairman