

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
June 10, 2009**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices at 6:30 p.m. on Wednesday, June 10, 2009.

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

Absent: None.

Also present were Director of Community Development Andy Garman, Council Liaison Dave Wessel and Permit Coordinator Sandy Cady.

Others Present: Chip Friedman and Dan Newbern.

Absent: None.

Chairman Britt called to order the Regular Meeting of the Planning Board for June 10, 2009 at 6:30 p.m.

PUBLIC COMMENTS

None.

Chairman Britt stated that he would like to move the Special Exception permit item up on the agenda. It was *consensus* of the Board to move the item up in the agenda for discussion.

NEW BUSINESS

Discussion/Consideration of SE 09-02, a Special Exception Permit Application submitted by Chip Friedman on behalf of Four Seasons Resort, Inc., Property Owner of 1211 Duck Road, Lot 1, Section 1 of the Schooner Ridge Subdivision, Dare County PIN #985912759221, to request a Special Exception for Parking pursuant to Town Code Section 156.096

Director Garman stated that the Board had an application submitted by Chip Friedman on behalf of the Four Seasons Resort, Inc. for a special exception to the parking ordinance for commercial properties. He stated that the majority of the development on the property showed twenty-four (24) on-site parking spaces. He added that there have not been any real modifications to the building. He stated that in 1994, Dare County approved a Conditional Use Permit for the Cravings Coffee Shop to be housed in one of the units and that the County approved eight (8) parking spaces for the coffee shop. He noted that the total parking requirement for the site was for thirty-one (31) parking spaces, with seven (7) that were to be on a separate parcel on Schooner Ridge Drive. He stated that since that time, there had been a lot of activity in the

building with BD&A as the most recent tenant. He stated that parking on the separate parcel was either never installed or installed so long ago that it has become completely overgrown and hard to tell that it was there.

Director Garman stated that the property at Schooner Ridge Drive was zoned RS-1, which was considered residential and was zoned RS-1 when Dare County approved the Conditional Use Permit. He noted that in 1994, as well as today, the ordinances do not allow commercial parking placed in a residentially zoned district. He stated that staff suggested that the applicant work to obtain a shared parking agreement to resolve the issue. He added that the applicant had a number of meetings with Duck United Methodist Church and obtained an agreement with the Church with the only real restriction being that parking not be used during Sunday services. He stated that the agreement had been a reciprocal situation and was being formalized to meet the zoning requirements for the parking issue.

Director Garman stated that as part of the analysis of the application, he and Building Inspector Tate measured the buildings to determine the total square footage of each space relative to the parking standard of each use to determine what the overall parking requirement should be. He stated that since the applicant did not have a tenant for the third office space, it would be difficult to come to the final number. He stated that there would be eight (8) parking spaces for the front building unit and ten (10) parking spaces for the middle unit. He stated that he was unsure about the back unit, but thought it would be retail. He noted that the standard for retail versus office was slightly different, adding that it was higher for office space. He stated that he expected the requirement would be between thirty-five to forty (35-40) spaces depending on what goes in the vacant unit. He stated that the applicant was looking to the shared agreement with the Church to make up the parking difference.

Director Garman stated that the Church had an easement agreement with Jerry Davis of the Wee Winks Square Shopping Center and that Mr. Davis removed three (3) parking spaces in order to provide access to the rear parking area of the church. He stated that staff did not see any conflicts with the agreement the Church had with Jerry Davis as well as the one with Chip Friedman. He didn't think there was any problem with using the Church's parking to meet the requirement, but would recommend putting in some conditions to address the concerns regarding limitations of use of the parking at 1211 Duck Road on Sunday mornings when Church is in session. He added that pedestrian safety for crossing Duck Road was another condition. He stated that the ordinance required a crosswalk in order to approve parking across a street. He noted that there wasn't a crosswalk in this location, and while there did not appear to be any site distance issues, but suggested placing a condition that would require employees to use the parking across the street first to ensure on-site parking for the patrons. He stated that the third recommendation would be that it be documented that if the exception was granted, a site plan would be submitted to the Town detailing all the uses in the building.

Member Kingston asked if the previous tenants had Conditional Use Permits. Director Garman stated that they did not. He added that staff was not aware of the entire situation until they received an inquiry from someone that wanted to lease the middle space. He stated that was when staff started discussing it with the property owner and suggested the Special Exception option to Chip Friedman.

Vice Chair Blakaitis asked what was found when staff researched the possibility of a crosswalk. Director Garman stated that it was NCDOT's decision. He stated that there would be a pedestrian plan for the Town, but before the Town makes a recommendation to NCDOT, they would want to complete the study for the pedestrian plan. Vice Chair Blakaitis asked if there needed to be a detailed explanation as to why a crosswalk would be needed. Director Garman stated that he was not familiar with NCDOT's specific criteria for crosswalks. He thought that NCDOT looked at spacing crosswalks a certain distance apart and sight lines.

Vice Chair Blakaitis thought there was a great deal of discussion regarding crosswalks and public safety when the Board approved the Aqua-S Restaurant. He asked how many employees would be working at the building if all units were rented. Chip Friedman thought it was hard to determine but thought it would be at least four (4).

Member Fricker asked when Jerry Davis and the Duck United Methodist Church entered into their shared parking agreement; it was a matter that came before the Planning Board. Director Garman stated that it did not. He pointed out that it was a lease agreement and not a parking agreement. Member Fricker asked if the Board had addressed the issue as one of public safety. Chairman Britt stated that it was not since both of them were on the same side of Duck Road. Chip Friedman noted that he had an easement to the sound on Jerry Davis' property. Director Garman stated that there was a twenty (20) foot easement on the north side of the Church property to access the sound. He stated that the Dare County tax documents showed it as being owned by the Schooner Ridge Property Owners Association with Four Seasons Resort holding an interest.

Member Forlano asked who owned the residential strip on Schooner Ridge Drive. Chip Friedman stated that he did. Member Forlano asked where the seven (7) parking spaces were located on Schooner Ridge Drive. Director Garman stated that they were non-existent but were approved to be there. Chip Friedman stated that when the Schooner Ridge Subdivision was built, sand was pushed onto those spaces and became overgrown. He pointed out that the Town had a copy of a site plan that showed the spaces. Vice Chair Blakaitis asked if the spaces were paved. Mr. Friedman stated that they weren't but were gravel. Director Garman stated that if the parking was installed at one time and became overgrown, it would be a nonconforming use. He added that the ordinance does not allow parking in a residential district once it's discontinued for a certain period of time and could not continue. Chip Friedman pointed out that he had sold another piece of land to Kelloggs, who uses it as a commercial driveway. He felt it was different standard for his situation versus Kelloggs.

Member Fricker clarified that Chip Friedman's preferred solution would be for the Town to allow him to use the original area on the north side of Schooner Ridge Drive. Chip Friedman stated that he had never given up the fact that it was his property and that he should be allowed to use it. He pointed out that Director Suzanne Cotellessa had written him a letter telling him to restore the parking when she worked for the Town.

Member Forlano asked if Chip Friedman used the dumpster. Chip Friedman stated that he did not. Director Garman stated that they were exploring a way to have the dumpster on the site rather than it sitting across the street. Member Forlano thought a dumpster would be needed instead of trash cans. Director Garman stated that there was a dumpster across the street that the

Schooner Ridge Homeowner's Association requested to be removed. He stated that it had been removed and trash carts were placed on the property for BD&A to use. He stated that at the time that BD&A had an office in the building, trash carts were sufficient. He added that once three (3) tenants were in the building, a dumpster will be needed. He stated that there was a small space adjacent to Schooner Ridge Drive that could be used for the dumpster pad. Member Forlano stated that the location would be perfect as it was protected by brush.

Director Garman pointed out that the overgrown area of the property could be rezoned. Member Fricker didn't think it would happen. He pointed out that the property was still owned by Four Seasons Resort; however the tax records showed the Schooner Ridge Homeowners Association as the current owners. Director Garman stated he was correct. He stated that the Town Attorney had stated that even though it showed up as being owned by Four Seasons Resort, there was a question as to whether the homeowners association maintained interest in the property and was shown as common property on the original subdivision plat which was recorded. He stated that if it were to be rezoned, it would be an obstacle that would have to be resolved. Member Fricker thought if the property on the tax records was deeded to the homeowners association, then they were the ones that paid the taxes. He stated that he could not see how the Board could do anything with respect to that strip of land. Director Garman stated that nothing was being requested with regard to that strip of land.

Chip Friedman asked why the issue was even being discussed. He added that he was there to discuss parking across the street. Member Fricker thought Mr. Friedman had indicated that he still maintained the strip of land. Mr. Friedman stated that he still had a legal interest in it and still had the right to do what was previously approved. Member Fricker clarified that Mr. Friedman was not asking to exercise that right in the application before the Board. Chairman Britt stated that even if Mr. Friedman was, he would still need the Special Exception. Chip Friedman stated that he had made other arrangements to resolve the situation. Mr. Friedman asked if it was possible to not have to come up with another site plan. He noted that he had already paid \$400 for the Special Exception application, even though it was a situation that was approved four (4) times by Dare County. Director Garman stated that the site plans that were approved showed the parking spaces, however the Special Exception would increase the number of parking spaces from what was approved previously. He stated that it was an increase in space and thought it was time to re-document what was in the buildings, what the uses were, and how much parking would be required. He thought the cost was a necessary requirement. Chairman Britt pointed out that it was consistent with what other applicants had to do when there were site plan issues. Chip Friedman pointed out that it would not be any different than what the Board had in front of them. Director Garman disagreed and thought the surveyor could update the site plan. Mr. Friedman stated that they could not. Director Garman thought there were ways to deal with the site plan issue.

Member Kingston asked what the square footage of the building was. Director Garman stated that based upon calculations compiled by staff, it was approximately 6,482 square feet.

Member Forlano asked if the furniture store would be receiving deliveries. Chip Friedman stated that he did not know. Director Garman stated that the furniture store was considered retail because of the small size and did not have the space to sell large furniture pieces such as a furniture showroom.

Member Forlano noted that he was a member of the Duck United Methodist Church. He stated that the front parking area was used daily. He added that the Church was composed of a lot of elderly people and thought it would be best not to use the front parking lot at all. He stated that he was very much in favor of shared parking and was happy that the Church was sharing the parking area, but asked that the employees only park in the rear parking lot. Chip Friedman felt it was unfair and thought it was too far for the employees to walk. Member Forlano pointed out that the Church women had meetings; the bible school had meetings and thought it would be unfair to ask them to walk from the rear parking lot to the front of the Church. Chip Friedman stated that he did not anticipate using the parking at the Church. He stated that it was there in case his tenants needed it. He pointed out that the Church was using his parking without an agreement and he has never said a word. He stated that he saw the issue as a live and let live one. Member Forlano agreed. Chip Friedman clarified that the Board wanted additional consideration from him. Member Forlano stated he was correct. He stated that by having the employees park across the street, it wasn't like asking the customers to walk back and forth, which may solve the public safety issue. Chip Friedman stated that he did not see where parking would be a problem. Member Forlano hoped that it wouldn't be a problem.

Member Forlano stated that the building was built in 1987. He stated that there was a spa in the building at one time. He asked if the septic system had been checked. Chip Friedman stated that the septic system was fine, but pointed out that it wasn't part of his application. Member Forlano agreed but noted that he was looking for conditions. Mr. Friedman stated he wasn't going to do anything with the septic and felt it was an unfair condition. Chairman Britt stated that no one was putting in a requirement and that Member Forlano was just asking. He added that Mr. Friedman had applied for a Special Exception and the Board would be looking at the whole piece of property. He asked Mr. Friedman to allow the Board to ask their questions. Member Forlano noted that when an applicant for a new Conditional Use Permit comes before the Board, the Board tries to get as much information as possible from the applicant, including putting conditions on the CUP. He added that most applicants receive the conditions very graciously with the result being that the property looks better.

Chairman Britt agreed with Member Forlano's concerns on where people will use the parking at the Church. He added that the front parking lot always has vehicles parked in it. He stated that he did not want to see it turn into a parking lot for people that work across the street. He thought there was a big difference between retail and office space. He stated that anyone that comes before the Board for a Special Exception has improvements asked of them to improve the property. He stated that he had public safety concerns.

Member Fricker asked if there would be a sight problem with the large mound of land on the southeast corner. Chairman Britt stated that the sight problem was alleviated when the sign was moved. He stated that he was in favor of shared parking, but not knowing what the use in the empty space will be, he was not comfortable with it.

Member Fricker asked if the Board had historically entertained applications like this without knowing who the tenant would be. Chairman Britt could not think of any others. Member Fricker wondered why the Board was being asked to consider the application when the tenant was unknown. Director Garman indicated that Chip Friedman wanted to obtain approval for the

Special Exception so he wouldn't have to wait three (3) months to approve an application once he found a tenant to rent the space. He noted that the Board has not had any other applications like this one. He asked if the Board was contemplating changing their decision based on what the use for the space would be. Vice Chair Blakaitis asked if the Board could. Director Garman thought it was possible, as it would further limit the number of parking spaces that would be required and could be a condition directly related to the approval of the application.

Danny Newbern stated that he did not understand why there was an issue. He asked why others were being treated differently than the Duck United Methodist Church with regard to the parking. Chairman Britt stated that the Board was discussing granting a permit to allow the parking. He stated that the main problem was not knowing what the empty space will be. Danny Newbern stated that no matter how many parking spaces were needed, the agreement with the Church eliminated the parking issue.

Chip Friedman pointed out that he did not know who would want to do business in Duck. Chairman Britt stated that his point was that the Board never had a case where they had to make an exception like this one. Chip Friedman felt the Board was making extra policies for the use of his building. Chairman Britt disagreed and noted that there wasn't enough parking for the uses at the building. He stated that the Board could grant a Special Exception with or without the Church agreement, but noted that the Board was still concerned about public safety and he wanted them to discuss it. Chip Friedman noted that he has shared his parking with the Church for free with no thanks. He added that he was helping Duck by letting people use his spaces without an agreement. He stated that he had to pay \$400 for the application and now the Board was asking him to come up with a site plan. He stated that he's following the rules but it still seems to be a problem. Chairman Britt thanked Mr. Friedman for his comments and stated that he wanted to hear what the Board had to say.

Member Forlano stated that he had spoken to David Lundhal who was chairman of the trustees of the Church. He stated that he expressed to Mr. Lundhal his concern over the amount of vehicles in the parking lot. He stated that Mr. Lundhal stated that he thought it was only for the coffee shop and didn't think there would be many vehicles. Member Forlano corrected him and relayed that there would be a coffee shop and a furniture retail store. He noted that Mr. Lundhal was not aware of the furniture store and that he had thought he was just signing off for the coffee shop. Chip Friedman stated that a lawyer had prepared the agreement. Member Forlano stated that David Lundhal thought he was just signing off for a coffee shop and did not know it was for other businesses. He stated that he had suggested to Mr. Lundhal that the parking still be shared but have the employees at Duck Commons park at the Church as well as not allowing them to use the front parking lot. Chip Friedman suggested that the church employees use the back parking lot. Member Forlano stated that he was suggesting a solution for Mr. Friedman's establishment and if he wanted to prohibit any Church member from parking in his parking lot, he could. He stated that he was making a suggestion to help solve the parking problem Mr. Friedman had. He reiterated that the front parking lot at the Church should be reserved for Church activities and should not be used by patrons or employees of Chip Friedman's property. Chip Friedman pointed out that there was already an agreement with Jerry Davis to use the parking area in the rear. Member Forlano understood but was discussing the front parking area of the Church.

Director Garman noted that there were forty-three (43) parking spaces in front of the Church and approximately thirty (30) spaces behind it. Member Forlano noted that if there was a funeral at the Church, all the spaces in front will be occupied. Chip Friedman noted that the Church had told him that he was nice to them when they needed the land and that Jerry Davis was nice to the Church when they needed parking. He added that there weren't any other discussions.

Vice Chair Blakaitis stated that he appreciated Chip Friedman's concerns regarding all the niceties going on in Duck. He noted that what happened with Dare County was immaterial as the zoning ordinances needed to be obeyed in Town. He agreed with Member Forlano's comments and was concerned with public safety as well as Member Forlano's concerns regarding the parking in front of the Church. He stated that he did not see what the problem would be if Mr. Friedman and the Board came to an agreement for the shared parking in that the employees at Mr. Friedman's building would have to park in the rear parking lot at the Church. He added that it would solve the problem, but noted that Mr. Friedman did not want his employees walking too far. He thought that since parking was tight throughout Duck, a lot of people walk pretty far to get where they want to go. He asked Mr. Friedman if his motive was to solve the problem. He stated that if the Board grants the request with parking in the rear of the Church, the problem is solved. He added that if the Board did not grant the request, there will still be a problem. Chairman Britt noted that the Board could make the parking requirement a condition of the Special Exception. Vice Chair Blakaitis agreed and noted that the Board had imposed conditions on other Special Exceptions.

Member Fricker agreed with the other members' comments. He stated that he was struck with the fact that the Board was asked to do something in anticipation of the future use in the third space. He stated that the only way he would feel comfortable doing it would be based on a worst case scenario, which would involve a tenant having more employees than anticipated. He stated that there should be conditions that include prohibition of employees, tenants or customers parking in the front parking lot of the Church. He stated that Jerry Davis did not make an agreement with Chip Friedman, but that Mr. Davis and the Duck United Methodist Church had an agreement. He added that the Church could not authorize Mr. Friedman's employees and customers to use those spaces. Chip Friedman agreed. He added that the Board could not put conditions for him to instruct his employees to cross Mr. Davis' land in order to use the back parking lot of the Church. He stated that the issue was between him and the Church and that Jerry Davis was not involved. Director Garman disagreed and noted that one had to cross Jerry Davis' property to park in the back parking lot of the Church.

Member Fricker suggested deferring the issue until the Board had clearer information or an easement from Jerry Davis. Vice Chair Blakaitis asked why Jerry Davis needed to be involved. Member Fricker noted that Chip Friedman had stated that the Planning Board did not have the power to require the condition that people park in the back lot as that would be giving them a right to go across a property line. He stated that if that was Mr. Friedman's position, then maybe the Board needed to defer the issue. Director Garman stated that the agreement that Jerry Davis has with the Church gave the Church the right to access that parking. He added that whoever uses the Church parking lot has the right to use it.

Member Kingston asked when the Church has an activity whether they close off the parking lot. Member Forlano stated that they did not. Chairman Britt thought that if there was an overflow

with the front parking, the natural progression was to have people park in the back lot. He stated that he could see the front lot being used by people heading to Duck Commons.

Vice Chair Blakaitis clarified that Member Fricker would be amenable to imposing the condition that whoever occupies Duck Commons satisfies the parking requirements in order to get over the hurdle of the unknown tenant. Member Fricker didn't think it was the occupant. Vice Chair Blakaitis agreed and clarified that the parking requirements satisfy the maximum. Member Fricker stated that he was correct. Vice Chair Blakaitis asked if forty (40) spaces was the worst case scenario. Director Garman stated that it was hinging upon the number of employees. Vice Chair Blakaitis felt having employees at Duck Commons park in the rear Church parking lot was a suitable condition placed upon the Special Exception.

Permit Coordinator Cady pointed out that when Atlantic Realty came before the Board for a Conditional Use Permit, they needed a parking special exception. She stated that the Board placed a condition on the Special Exception that Atlantic Realty had to come back the following year to have the Exception re-evaluated to determine whether there were parking issues. She stated that Atlantic Realty did come back and went through the process a second time with the determination that there were no parking issues. She stated that this was an option that the Board may wish to consider.

Chip Friedman asked how many seats the Church had. Director Garman stated that he wasn't sure. Mr. Friedman pointed out that the Board did not know if there was enough parking for the parishioners. Chairman Britt stated it was not part of the discussion. Mr. Friedman noted that if the Church was grandfathered, then he was also grandfathered. Member Forlano pointed out that when a use is changed, it is no longer grandfathered. Mr. Friedman stated that the Church was built as a sanctuary but they also added other activities. Member Forlano asked when that was done. Mr. Friedman stated they were done in 1989, 1992 and 1996. Member Forlano pointed out that Duck was not incorporated back when the activities were added.

Director Garman stated that the parking requirement for the tenant spaces would vary depending on the use. He stated that as long as everyone buys into the idea that the Church has enough parking to support the uses and this would be documented on the site plan, it should be sufficient to satisfy Chip Friedman's needs. Member Fricker clarified that Director Garman was recommending that the Board approve or recommend the application if one of the conditions were that when the unoccupied space receives a tenant, the applicant or owner would have to come back with a new site plan and go through the process again. Director Garman disagreed and stated that the suggestion would be that the applicant would provide a final site plan once the third tenant moves into the building.

Member Fricker stated that he would favor the Board moving forward and approving it if Director Garman could tell the maximum number of parking spaces that would be needed. He stated that he wanted proof that the public safety would not be adversely impacted by having people cross Duck Road and park behind the Church. He thought the Board needed these specifications in their findings of fact. Director Garman stated that it could be a finding that it wouldn't make the situation worse than what it was. He stated that the findings could be based on the conditions that were placed on the applicant. Member Fricker noted that it would mean

that the applicant would be agreeable to obtaining another site plan and come back to the Board. Director Garman reviewed the findings and conditions with the Board.

Member Fricker commended Director Garman as he felt he was trying to work with the business community. He stated that he had a problem with the first finding on the Special Exception. He didn't think the condition of having several employees parking in the rear of the Church would mitigate or satisfy the Board (with regards to public safety). Director Garman asked what would. Member Fricker didn't know if anything would except for a crosswalk. Director Garman asked if what the Board was saying was that the application could not be approved. Member Fricker stated that he was not saying that but thought that the Board needed to look at the property on the east side of Chip Friedman's property (on Schooner Ridge Drive) to keep the pedestrians on the same side as the property. Member Forlano stated that would require rezoning the property which would be hard to do. Member Fricker thought the issue was whether the Board was going to grant the Special Exception and felt that it would not result in a reduction of pedestrian safety.

Chairman Britt asked each Board member what conditions they would like imposed in order to approve the Special Exception.

Member Kingston stated that he would like Chip Friedman to come back before the Board once he has secured a tenant. He stated that the Board could not limit the use of the facility and agreed with Member Fricker's concern over the safety issue.

Chairman Britt asked if any Special Exception permits like this one have been approved by the Planning Board in the past. Director Garman stated that the Town has not had any requests like this one.

Chairman Britt stated that he was still uncomfortable with not knowing what the third tenant use will be. He thought it could become a busy retail space. He stated he had a problem approving the Special Exception without the third tenant being in place.

Member Fricker stated that he had an issue with approving something without knowing all of the facts.

Member Forlano stated that there were a lot of conditions that he would like to place on the applicant. He stated he would like to see the parking delineated at the property as a condition.

Chairman Britt noted that Chip Friedman left the meeting suddenly. He asked if he had to be somewhere. Director Garman stated that Mr. Friedman stated that he had to leave. Member Fricker thought it would be difficult to know if Mr. Friedman would be willing to accept the conditions if he left the meeting. Member Forlano thought that if the applicant did not want to cooperate, then he did not want to cooperate. Member Fricker appreciated Member Forlano's comments and noted that Mr. Friedman had been very argumentative with the Board. Director Garman stated that the Board had to do what was right and if they wanted to place the conditions, they should do so and Mr. Friedman could decide whether or not he wanted to sign the Special Exception and accept the conditions.

Chairman Britt pointed out that there was an unknown use and that there was a situation where the Board had never granted crossing Duck Road for a parking special exception without a crosswalk. He wondered if it was a precedent the Board wanted to set. He stated that he was not comfortable with approving the application. He asked if the Board denied the application, Chip Friedman could go before the Town Council. Director Garman stated that he could.

Vice Chair Blakaitis clarified that if the Board recommended to Council that it not be approved, the issue would be over. Chairman Britt stated that the Council could choose to affirm the Board. Chairman Britt stated that he was very pro-business but pointed out that there were too many questions.

Member Forlano asked if denying the application would stop the furniture business from moving into the building. Director Garman stated that it would not as the parking for the present uses there was fine with regard to the on-site parking.

Council Liaison Wessel stated that the two (2) current businesses at the site require eighteen (18) parking spaces and pointed out that there were twenty-four (24) spaces. He stated that if the Board denies the permit, Chip Friedman could put in a business that would only require six (6) or fewer parking spaces. Chairman Britt stated that he had a problem with Chip Friedman placing conditions on the tenant when the tenant is presently unknown. Vice Chair Blakaitis stated that it would not place a restriction as Mr. Friedman could come back before the Board. He noted that the Board probably would've granted the Special Exception if Mr. Friedman had answered the questions and not left the meeting. Director Garman stated that the main part of the Special Exception was the crosswalk not being there; otherwise there wasn't an issue.

Member Kingston stated that the Board had to deal with the crosswalk issue. He added that NCDOT will not install them everywhere on Duck Road. Director Garman thought a crosswalk in the vicinity of Duck Commons could be looked at. He stated that the Town would like to have pedestrian access behind the Church to get to the sound side boardwalk if the Church was agreeable to it.

Chairman Britt noted that Duck Commons had seven (7) parking spaces on Schooner Ridge Drive that needed to be looked at. He thought the burden to solve that problem with regard to who can use the strip of land would be on Chip Friedman and the Schooner Ridge Homeowners Association.

Member Fricker moved that the Board recommend that the Special Exception application be denied by Council as being (1) premature in that the Board did not know the nature of the use of the space that was currently vacant and therefore the number of additional parking spaces may be required off-site, and (2) because the Board felt that there remained a significant negative impact on pedestrian safety to the extent that there will be pedestrians walking from parking spaces behind Duck United Methodist Church as the shared agreement and one of the conditions the Board wished to impose would create. Vice Chair Blakaitis thought the motion was very lengthy. Member Fricker agreed, but noted that these were the issues the Board had discussed. Vice Chair Blakaitis suggested adding that it did not meet the Special Exception requirements 156.096. Member Fricker suggested withdrawing his motion. Chairman Britt stated that it didn't have to be withdrawn but could be cleaned up. He suggested that the motion include the

following: Due to the unknown use of the building, the Board could not get past the conditions to grant the Special Exception.

Member Fricker amended his motion to include unknown circumstances with regard to the anticipated tenancy (use) of the unoccupied space; the Board could not establish conditions or make sufficient findings of fact to meet the requirements. Member Kingston seconded the motion.

Motion carried 5-0.

Member Fricker thought the sense of the entire Board was that there needed to be a willingness on the part of the applicant to consider and accept the conditions before he left. Chairman Britt stated that applicants have come before the Board in the past for Special Exception permits and allowed the discussion to be a two-way street. Director Garman agreed. He stated that he would suggest to Chip Friedman that he withdraw his application and let him tell staff what he would consider to mitigate pedestrian safety.

OLD BUSINESS

Discussion/Consideration of Ordinance 09-06 – Quasi-Judicial Procedures

Director Garman stated that the Board had a discussion on the land disturbing activities ordinance and came to an agreement on the actual findings and conditions that would be put in the ordinance for granting that type of permit. He stated that it was agreed that he would bring back to the Board a complete draft document for their final review and potential recommendation to the Town Council. He stated that he was looking for final comments or questions from the Board and if there weren't any, the document would be ready for a motion to forward to Council.

Member Forlano stated that he was still looking at the phrase "reasonable and appropriate conditions". Member Fricker thought the phrase had been stricken from the ordinance. Member Forlano stated that it was in the ordinance five (5) times. Director Garman stated that the language was the same that was in the original ordinance for years. Member Forlano stated that if it was removed, then any question of ambiguity would be removed. Director Garman thought the term "reasonable" was a common one and thought it provided some limitation on Council that there wasn't unbridled discretion to impose any condition it wished on an applicant. Member Forlano stated that he was looking at it from the standpoint of a combative applicant.

Member Fricker agreed with Director Garman and also agreed with him at the last meeting. He suggested removing "reasonably" on Page 3 of the ordinance. Chairman Britt thought the sentence sounded better with "reasonably" removed. Director Garman stated that he would recommend striking "reasonably" in Section H on Page 3. Member Fricker had a grammatical correction to Page 3 and Page 9.

Vice Chair Blakaitis moved to recommend Ordinance 09-06 be approved as amended. Member Fricker seconded.

Motion carried 5-0.

Member Fricker complimented Director Garman on his hard work on the ordinance.

APPROVAL OF MINUTES

Planning Board Meeting May 20, 2009

Chairman Britt directed the Board to review the minutes from the May 20, 2009 meeting. Member Forlano had one change to Page 5 of the minutes.

Member Fricker moved to approve the minutes as amended. Vice Chair Blakaitis seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Director Garman stated that when he first discussed the Special Exception application with Chip Friedman, he had received an inquiry regarding using the middle space at Duck Commons. He stated that he pulled the site plan and looked at the parking since staff has to look at zoning compliance. He stated that he found that the last approval from Dare County was in 1994 for a Conditional Use Permit for Cravings Coffee Shop, which required thirty-one (31) parking spaces, with seven (7) spaces on the hill at Schooner Ridge Drive. He stated that a reasonable person would be able to determine that they were never installed or had been installed so long ago that it could not be determined that they ever existed. He stated that he had determined that the parking was a non-conforming use because the Town's ordinance would not allow it even though Dare County approved it. He pointed out that Dare County's ordinance did not allow it as well and Ray Sturza stated this fact in a letter to the Board of Commissioners; however, it was still approved.

Director Garman stated that there was now a use (parking) approved that was no longer in place with an applicant that wanted to install the parking spaces in a residential district and now he had to make a decision as to whether it should be allowed. He added that Schooner Ridge Subdivision was now developed and he was trying to figure out some type of solution to the problem. He stated that in order to put parking on the strip of property, it would require a rezoning. He pointed out that a use determination was a legislative matter that would need to be done through Council. Chairman Britt added that it would have to be requested by the owner of the property and he wasn't sure who that was. Director Garman stated that the property would have to be rezoned to commercial and then the applicant would have to apply for a Special Exception to put the parking there. He added that the interest in the Schooner Ridge Property Owners would then need to be resolved. He stated that it would become a very complicated issue.

Vice Chair Blakaitis noted that Chip Friedman was not willing to accept how the Board wanted to approve the shared parking.

BOARD COMMENTS

Member Forlano asked when the Board would start discussions on alternative energy again. Director Garman stated that there would be a joint meeting with the Town Council at their August mid month meeting. He added that there wasn't any urgency on it so it could be pushed to September if necessary.

Director Garman and the Board discussed the Snow Geese South lot coverage issue that had come before the Board at their last meeting.

ADJOURNMENT

Chairman Britt moved to adjourn the meeting. Vice Chair Blakaitis seconded.

Motion carried 5-0.

The time was 8:24 p.m.

Approved: _____
 /s/ Jon Britt, Chairman