

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
May 11, 2011**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices on Wednesday, May 11, 2011.

Present were Chairman Jon Britt, Vice-Chair Joe Blakaitis, Ron Forlano, John Fricker and Randy Gilbreath.

Absent: None.

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

Others Present: Karen Power and John Harris.

Absent: None.

Chairman Britt called to order the Regular Meeting of the Planning Board for May 11, 2011 at 6:36 p.m.

PUBLIC COMMENTS

John Harris of Kitty Hawk Kites was recognized to speak. Mr. Harris stated that he wanted to comment about the Segway ban. He stated that his business does Segway tours in Duck and added that he was not aware of the ban until it was mentioned to him last week. He stated that he read the ordinance but had not had a chance to read all of the minutes regarding the discussions about the ordinance. He encouraged the Planning Board and Town to look at ways to enhance business within the Town. He reminded the Board that commercial investment built the Town of Duck and made it what it is today. He thought by working with any type of operator, rules could be developed to make things safe and work well with the public. He noted that all recreational activities have safety issues but as long as they were managed and led properly, the public would enjoy them safely. He hoped the Board would consider allowing Segways and tour operations in other parts of Duck.

Chairman Britt noted that the ordinance was accomplished on the Town Council level and was passed in December 2010. He added that the Board had discussed at their last meeting additional ordinance language regarding Segway tours and usage. They had decided that additional language was not necessary. He added that it was more of a Council issue. Council Liaison Burdick noted that Council had agreed to table the issue until the end of the season and review it then. Chairman Britt stated that the only ban was in the Village Commercial District.

John Harris asked if it was possible for his business to sign people up at his Duck location and take them along with the Segways to another area to operate. Director Garman stated that people

could sign up at his business and they would have to meet, depart and tour outside of the Village Commercial district.

Member Forlano asked John Harris if the fact that he could not operate his Segway tours in the Village Commercial District was restrictive to that aspect of his business. John Harris stated that he did see it as being restrictive but didn't have anything to judge against it to know for sure if it would be. Council Liaison Burdick asked Mr. Harris if he had operating rules for the Segway tours. John Harris stated that he did and that people were trained on the Segways before they can operate them and tours were also done with a guide.

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

NEW BUSINESS

Discussion/Consideration of CUP-2011-001, a Conditional Use Permit Application Submitted by Karen Power to Authorize a Major Home Occupation within her Residence at 103 Duck Ridge Village Court

Karen Power of 103 Duck Ridge Village Court was recognized to speak. Ms. Power stated that she would like to open an art studio in her garage. She added that she would have regular business hours.

Director Garman stated that Ms. Power was applying for a major home occupation and met all of the requirements of the ordinance. He stated that she would need two parking spaces in addition to the residential requirements and her home currently has seven parking spaces. He added that because she is a permanent resident, the Town's ordinance allows a deferral of all but two parking spaces for the residential use. He stated that staff would recommend approval of the Conditional Use Permit with the recordation of a parking deferral.

Member Fricker moved that the Planning Board recommend to Town Council the approval of CUP-2011-001 as set forth in staff's findings and conditions. Vice Chair Blakaitis seconded.

Motion carried 5-0.

OLD BUSINESS

Consideration of Ordinance 11-04, an Ordinance Regulating Erosion Threatened Structures

Director Garman stated that he re-drafted the ordinance with a typical preamble that's provided in an ordinance which established the purpose and intent. He added that he made some minor revisions as requested by the Board at their April 13, 2011 meeting. He thought the Board understood the intent and objective of the ordinance.

Member Fricker noted that in the minutes, Chairman Britt had asked about the situation where the Town may be considering a moratorium in the case of a significant storm event and structures that were already in violation at that time. He noted that it was not addressed in the

draft ordinance and thought it would have been listed under Item G. He stated that he did not know if there was a consensus with the Board or if it was just something that Chairman Britt mentioned and then the Board had moved on. He wasn't sure it was something the Board felt should be addressed. Chairman Britt stated that he just brought it up and didn't think the Board had any discussion on it. Director Garman and the Board went on to discuss the issue of a moratorium.

Member Fricker had a correction to the Definition section. He suggested that the following language be stricken from the Definition section: "...improved walkover structure..." Director Garman stated that he would strike it. Member Fricker suggested that Section D(4) have the parenthetical stricken. Chairman Britt suggested that it read: "...in no instance shall any structure be located in the wet sand beach..."

Vice Chair Blakaitis asked if "Public Trust" should be defined as a separate definition since ocean beach and dry sand beach were defined in the draft ordinance. He stated that he was fine with the ordinance but was confused with public trust not being defined. Member Fricker thought it was defined in an earlier draft of the ordinance. Director Garman suggested the following language: "...to the toe of the slope of the primary front dune..." Vice Chair Blakaitis thought it would make the language more clear, but noted that the Board had discussed public trust of the beach at length but not ocean beach and now that was in the draft ordinance. He asked if it was the same. Member Fricker thought public trust had been defined. Member Forlano thought it should be in the draft ordinance. He thought the definition of public trust should be added as a separate definition. Director Garman changed "vegetation" to "first line of stable natural vegetation" for #1 under the Ocean Beach definition and changed "toe of the slope" to "the primary or frontal dune" for #2.

Vice Chair Blakaitis moved to recommend that Town Council approve Ordinance 11-04 with the changes made. Member Fricker seconded.

Motion carried 5-0.

Discussion/Consideration of Town Ordinances Related to Restaurants and Eating Establishments

Director Garman stated that there had to be a balance with regard to parking for restaurants and eating establishments. He stated that in too many cases, cities and towns require too much parking and end up with spaces that are never utilized. He stated that a municipality really needs to look at its parking regulations to see if they were realistic, met the needs and were not overly burdensome.

Member Fricker thought that it seemed like the only feasible solution with regard to parking would be to encourage walking and biking to the various locations in Town. Vice Chair Blakaitis stated that some towns accomplish that by having a boardwalk. He wondered how that could be wrapped into good management of parking. He asked if the Town was requiring too many spaces. Member Fricker stated that the impetus did not have anything to do with parking, but with one business owner's appropriation of space as though it was his own for a large restaurant. Vice Chair Blakaitis noted that the seating area had increased since the Planning

Board's last meeting. Member Gilbreath agreed. Council Liaison Burdick thought the issue was how the Town could handle take out restaurants as opposed to parking. Member Fricker stated that it was phrased in terms of parking at the last meeting, but he was having trouble with the concept. Chairman Britt thought looking at parking was the only way to deal with the issue.

Director Garman stated that based on what is currently required by the ordinance with regards to restaurants and the approval process, parking would be the primary issue that needed to be addressed when this situation is brought forth to the Planning Board for review. Member Fricker noted that the business owner was not in compliance with regard to running a restaurant. Director Garman asked if parking was not an issue, what other impacts would have to be looked at. Member Fricker stated that Director Garman wasn't concerned with parking, but with what the business owner was doing on the deck. Chairman Britt pointed out that in the future, other business owners may do the same thing. Director Garman stated that the business owner has not added any lot coverage, has not expanded the footprint of any building, but the only two things he was in violation of was the Conditional Use Permit process and substantively he has violated the Town's parking ordinance. Member Fricker stated that Director Garman was buying into the business owner's approach. He noted that the Conditional Use Permit was for seating for three people and has morphed into a restaurant with approximately twenty seats on the common area on the deck. He added that the business owner was in violation of the Conditional Use Permit and should be told that he needs to come into compliance. Director Garman stated that he has spoken to him. Member Fricker stated that if the business owner did not do anything, compliance should be enforced. Director Garman stated that that was the reason the Board was trying to work through the issue.

Member Fricker asked how Director Garman had ascertained that the parking issue was because of people coming to the business owner's restaurant. Chairman Britt noted that there could be a lot of people that come to the Waterfront Shops that do not come to the restaurant. Director Garman admitted that it was hard to ascertain. Member Fricker thought Director Garman should be focusing on what concerned him such as putting out extra seating and adding new tables. Council Liaison Burdick asked if a person is granted a Conditional Use Permit and they violate it, what can staff do. Director Garman stated that staff could issue a Notice of Violation, which would require the person to come into compliance. Council Liaison Burdick thought there needed to be something else in place to manage the issue.

Member Fricker thought that even if there was something in place, and going from the point of view of a parking problem, it would make the situation more unmanageable. Chairman Britt agreed. Member Gilbreath noted that the business owner was assigned a certain number of parking spaces as per the Conditional Use Permit. Director Garman stated that he could tell the business owner that he needed to come into compliance with the letter of the law, he would temporarily do what was necessary, but then will likely come back to the Planning Board and Council for an amendment to the Conditional Use Permit. Member Forlano noted that it would then be up to the Board to approve or deny it. Vice Chair Blakaitis stated that the Board would have to deal with the parking issue at that time as well. Director Garman stated that it would be clear cut and would mean that he would have to shut down everything he has done. He wondered if that was what the Board wanted. Council Liaison Burdick didn't think that everything would have to be shut down. Director Garman disagreed and pointed out that the business owner was only allowed three seats.

Chairman Britt stated that the Board was not at the meeting to discuss one specific business. He added that the Board was at the meeting to discuss ordinances that the Board writes and looks at. He stated that the point of the issue was that the Town would be seeing more take out restaurants and what the Board wanted to do to address it. He cautioned the Board not to focus on one particular situation, adding that it was Director Garman's job to enforce the rules.

Director Garman stated that the Board could come up with a specific standard that would apply to any business that wanted to do the same thing; have them come back through the Conditional Use Permit process; designate what they want to do; apply the appropriate ordinance and determine if they can meet it and if they can't they would have to reduce some things to meet it. He added that it would give a business owner some potential to keep things going. Chairman Britt agreed. He thought the Board's goal should be to work on something over the summer and have an ordinance ready in the fall.

Member Gilbreath asked if Scarborough Faire would be allowed to do the same thing the business owner at the Waterfront Shops did. Vice Chair Blakaitis didn't think they could if the issue was addressed as a whole. Chairman Britt stated that the whole idea was to address it to make it fair for everyone. Member Forlano noted that if seating was to be added, parking spaces would need to be available for each of the seats. Chairman Britt thought a less strict parking regulation could be done.

Member Forlano stated that he had operated a pizza place twenty years ago and had put out a single park bench in front of his property. He added that Dare County told him to remove the bench since his business was not a restaurant.

Member Fricker thought that no one business should be allowed to expand their capacity within a development unless it was uniform throughout the development so as to keep an even playing field among all of the businesses. Member Forlano agreed. Director Garman thought the idea was to develop an ordinance and get it to a point where a business owner may be able to apply for an amendment to their Conditional Use Permit under it so that whatever is designated outside would be properly permitted. Chairman Britt thought it was a good idea and noted that there will always be one person that pushes the envelope.

Member Fricker stated that there were two standards in Town – group businesses and stand-alone businesses. Vice Chair Blakaitis agreed and thought the Board could easily expand on it. He added that he did not want to single out one merchant. Member Fricker thought the problem was that the business owner did not realize how big his business would become and saw multiple opportunities to expand. He thought the Board needed to be forward thinking. Director Garman noted that the existing parking ordinance came from Dare County and thought the Board could look at it and see what changes could be made. Member Gilbreath thought residential parking standards should be discussed as well.

Director Garman stated that one of the questions he had was whether outdoor seating was desirable to the Board and if so, the kind of parking standard that would apply to it. He added that the Board could come up with a different standard for take-out restaurants than other restaurants. Chairman Britt cautioned that if the Board was not careful, some of the successful

businesses could be hurt. Director Garman stated that it was something the Board could be cognizant of in their discussions.

Council Liaison Burdick asked what standards the Board wanted to hold the businesses to. Chairman Britt thought the businesses had to take some responsibility for their impacts in the common areas. He thought the whole issue was about addressing the impacts. Director Garman and the Board went on to discuss parking standards and the existing parking ordinance.

Member Fricker suggested that the Town not have any parking regulations based upon number of seats whether it was retail or restaurant. He added that a stand-alone restaurant could be told they could not have any additional seating than the amount of space they had available for parking. He felt that beyond that, it would not be the Town's problem because no one would park or shop in an area where there wasn't any available parking. Director Garman noted that the people could always go to an adjoining parking lot to park and walk to the shop. Member Fricker thought they would only if there was available space in the adjoining parking lot. He wondered if the Board was attacking the whole issue from the wrong end and thought they should be looking at the use of the existing properties and deciding whether or not the parking lot could accommodate the vehicular traffic. Director Garman pointed out that uses and tenants change and thought there should be some guidelines.

Chairman Britt asked the Board how they wished to proceed. Member Fricker thought the Board should identify how they want to approach the subject of take-out restaurants. He didn't think it should be done by looking at an existing ordinance and deciding what wasn't liked. He thought the Board should start looking at what the community's needs were; what should be seen by way of a definition of a take-out restaurant; and then have Director Garman come up with language that the Board could decide on. Chairman Britt thought the Board needed a vision for what they were trying to do and where they wanted the issue to go; what should be encouraged and discouraged; and major and minor problems to help give Director Garman guidelines. Member Fricker suggested that Director Garman come up with a matrix. Chairman Britt agreed.

Director Garman stated that he would come up with a matrix that speaks to the different uses, what they may encompass, what the Board would like to see; and develop an exercise for it. Member Forlano asked if the Board should include restaurant owners and food vendors in the meetings so they could give their opinions. Director Garman stated that it could be done. Member Forlano suggested that they be invited to the meeting after the matrix is developed and discussed. Chairman Britt agreed.

Chairman Britt stated that Director Garman would come back to the next meeting with a matrix that will have ideas for the Planning Board to discuss restaurants and definitions.

APPROVAL OF MINUTES

Planning Board Meeting April 13, 2011

Chairman Britt directed the Board to review the minutes from the April 13, 2011 meeting.

Member Fricker had a correction to Page 5 of the minutes.

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

Motion carried 5-0.

OTHER BUSINESS

Chairman Britt thought the Board had to discuss re-appointments. Member Fricker move to re-appoint Chairman Britt and Vice Chair Blakaitis to the Planning Board in the same capacity. Member Gilbreath seconded.

Motion carried 5-0.

STAFF COMMENTS

None.

BOARD COMMENTS

None.

ADJOURNMENT

Chairman Britt moved to adjourn. There was no second or vote.

The time was 8:36 p.m.

Approved: _____
/s/ Jon Britt, Chairman