

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
June 8, 2011**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices on Wednesday, June 8, 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; Council Liaison Chuck Burdick; and Permit Coordinator Sandy Cross.

Others Present: Miles Thomas.

Absent: None.

Chairman Britt called to order the Regular Meeting of the Planning Board for June 8, 2011 at 6:35 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

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

Director Garman stated that he had prepared a staff report that tried to frame what the Board would be discussing; summarized the existing Town regulations as they pertained to restaurant uses; made several points about updating the Town's ordinances to reflect the different restaurant uses that exist and made sure that there were items in the existing ordinances that would help staff permit them as they come forward. He added that the outdoor dining issue was one that the Board would want to discuss. He stated that he included ordinances from other communities that had dealt with outdoor dining, but also had other information about restaurant uses to help the Board get an idea of the different type of issues they may want to focus on.

Director Garman stated that he had prepared a matrix based on previous direction from the Board. He stated that it summarized the types of restaurants that the Town has and the standards that would apply as well as the issues that the Board could focus on with regard to outdoor dining.

Director Garman noted that drive-through restaurants were regulated in the Village Commercial District, but in the other districts, there were permitted by right. Member Fricker clarified that it would prevent a drive-through restaurant operating in the Village Commercial District. Director Garman stated that it did. Member Fricker disagreed and noted that the language stated the following: "...a restaurant shall not feature a drive through window..." He added that the word "feature" in the verb form meant that it would give special prominence to or make it to appear pertinent. He stated that the language did not state that: "...a restaurant shall not have a drive through window..." He didn't think it precluded it. Director Garman stated that the intent of the ordinance was to preclude them. He suggested that if the Board's intent was to preclude them, perhaps the language should be tightened up. He went on to show the Board the existing ordinance that addressed drive-through restaurants.

Member Fricker clarified that while a drive-through was intended to be prohibited, a drive-in was not. He further clarified that there didn't appear to be an intent in the existing ordinances to prohibit drive-in restaurants. Director Garman stated that there was a parking standard for drive-in restaurants, but nothing for some of the other items. He added that the standard was onerous making it likely that drive-in restaurants would not operate in Duck. He stated that the Town did allow carry out restaurants, which are treated primarily as retail establishments because they do not have seating.

Director Garman stated that the two primary items were take-out and full service restaurants and assumed that the Board would want to keep them in the ordinance. He thought there were still questions about drive-through and drive-in restaurants and whether the Board wanted to see them addressed in the ordinance.

Vice Chair Blakaitis wondered if the Board should take each item in the matrix, address it and see how it turns out. He thought it would eliminate going back and forth on the issues. Chairman Britt agreed with Vice Chair Blakaitis' comments. Director Garman stated that the Board could look at the matrix in terms of what they want to do. Chairman Britt agreed and felt it was a good way to start things. Director Garman went on to review the matrix with the Board.

Chairman Britt asked the Board if they wanted restaurants treated as a CUP in the Village Commercial District and handled administratively in the C-1 and C-2 Districts. Director Garman thought they should be based on the use and not necessarily the district. Chairman Britt and Member Fricker agreed. Chairman Britt stated that he would like to see all restaurants fall into the CUP process as there weren't very many. He thought putting them all through the CUP process would be consistent and didn't see a reason to differentiate them by district. Vice Chair Blakaitis asked if it would be too onerous for staff. Director Garman stated that it would not. Member Fricker agreed with Chairman Britt and Vice Chair Blakaitis regarding restaurants handled via CUP.

Director Garman asked the Board if they wanted to specifically exclude drive-through and drive-in restaurants in the list of allowable uses. Member Fricker didn't think there was anywhere in the C-1, C-2 or Village Commercial District where one could operate. Director Garman stated that one could if a site was redeveloped, but noted that the ordinance addressed items that the Town did and did not want to see. He added that by limiting things, it discourages certain types of businesses. Chairman Britt stated that if the Town prohibited drive-in and drive-through

restaurants, then it needed to be more accommodating for take-out restaurants. Director Garman thought there could be a distinction made with drive-in versus take-out restaurants. Chairman Britt agreed, but added that take-out restaurants were needed in Duck. Member Forlano noted that drive-through restaurants have pros and cons to them. He stated that if a full service restaurant installed a pick up window, it could cause traffic backups. He added that, on the plus side, it may not create a parking problem as there would not be as many parking places needed. He thought the cons needed to be considered. Chairman Britt noted that a lot of chain restaurants have specific parking spaces for take-out orders. Member Fricker thought that the CUP factor combined with some guidelines the Board makes to put into an ordinance would result in people wanting to do business in Duck, especially those looking for specialized layouts for shops and parking facilities.

Member Forlano thought drive-through and drive-in restaurants were two very different uses. Chairman Britt agreed. Member Fricker recommended that drive-in restaurants not be allowed to operate anywhere in Town. Chairman Britt agreed, but wasn't sure if drive-through restaurants would have that much of an impact. Director Garman noted that a distinction could be made between drive-through and carry out restaurants.

Director Garman thought that drive-through restaurants were counter to encouraging pedestrian traffic as an area would be added to accommodate the vehicles for the drive-through and there would be a lot of vehicular circulation on site. Member Fricker stated that the Town may be encouraging pedestrian traffic in the Village Commercial District, but was not saying that the goal was to make it exclusively pedestrian. Director Garman agreed. Member Fricker stated that he did not have a problem with drive-through restaurants, but added that not everyone would walk or bike to a business to pick up food. He thought they should be permitted. Member Gilbreath disagreed as it would cause traffic backups. Member Fricker felt that if there weren't any identifiable issues related to traffic, the drive-through business should still be allowed to operate. Chairman Britt stated that he wanted the Board to discuss the drive-through restaurants, but also agreed that Council made a statement that they did not want to see those types of restaurants in Town. It was *consensus* of the Board to not allow drive-in restaurants in Town.

Chairman Britt stated that the question before the Board was whether they wanted drive-through restaurants permitted in Town. Member Fricker noted that they were allowed in the C-1 and C-2 Districts and grandfathered in the Village Commercial District. Chairman Britt thought that whatever the Board came up with needed to be consistent in all of the commercial districts. Member Fricker asked if an ordinance could be passed that would allow a drive-through restaurant if the CUP application presented clear and convincing evidence that it would not cause an adverse impact to traffic. Chairman Britt stated that a specific set of criteria would have to be drawn up in order to make it work. Director Garman stated that a lot of ordinances state that the lane up to the menu board for a drive-through had to be a certain length to allow a certain amount of vehicles to queue prior to ordering. Member Fricker thought that criteria could be set up.

Chairman Britt thought the Board should either allow or prohibit drive-through restaurants. Vice Chair Blakaitis asked if they weren't allowed, the existing uses would remain. Director Garman stated that if they weren't allowed, nothing would change and the existing businesses would be allowed to continue to operate as long as they do not shut down or reconfigure.

Chairman Britt asked the Board for their thoughts on drive-through restaurants. Member Forlano thought from a practical standpoint they should not be allowed due to the traffic back up they would cause. He thought it would be best for people to park in designated areas on the property and pick up their food inside the building. He didn't think that drive-through and drive-in restaurants had a place in Town. Chairman Britt clarified that it would apply to all of the commercial districts. Member Forlano stated he was correct. Member Fricker agreed with Member Forlano's comments.

Chairman Britt asked the Board for their thoughts on take-out restaurants. Member Fricker asked how they were currently defined. Director Garman stated that they were not really defined. Member Fricker asked if take out restaurants were designed to have no food consumed on the premises. Director Garman stated that there wasn't a definition. Member Fricker wondered what an appropriate definition would be. He stated that the Board already determined that the definition for a full-service restaurant, cafeteria and fast food restaurant would all be the same. Chairman Britt asked if a coffee shop, fudge shop or bakery should be encompassed in the definition. Director Garman stated that there were distinctions between those preparing meals versus serving coffee and muffins. Chairman Britt disagreed. Member Fricker pointed out that when meals were served on the premises or had seating, it potentially got into the same situation experienced at the Waterfront Shops. Member Forlano agreed and added that it was considered an eating establishment. Member Fricker thought that any place that had seating inside was considered an eating establishment. Chairman Britt agreed. He thought the Board was looking at take out establishments with no seating at all. He asked if standards needed to be established for them.

Member Fricker asked Director Garman what issues he would still have to deal with in regard to take-out restaurants. Director Garman stated that trash and parking would be the issues. Chairman Britt agreed and asked if the same parking requirements should be in place for take-out restaurants that are designated for retail establishments. He wondered if it was comparable. Director Garman noted that a lot of places have a minimum number of parking spaces for take-out restaurants. Chairman Britt thought it should be something simple and added that he did not want to make things difficult for the existing places that haven't caused the Town any issues. Vice Chair Blakaitis thought the parking should be one space per 200 square feet if it was retail space.

Member Fricker thought that any group development should have the owner of the development held responsible in ensuring that they do not have tenants come in that have parking needs that could not be met by the property. Chairman Britt thought parking for any type of business could become a problem. Member Fricker thought a distinction could be made between a take-out restaurant and a retail establishment. Director Garman noted that take-out restaurants could generate a lot of traffic in a small amount of space. He thought the question before the Board was if the parking standard based on square footage was appropriate for take-out.

Chairman Britt asked Director Garman if he thought take-out restaurants were a problem. Director Garman thought that take-out restaurants should have a minimum number of parking spaces. He added that he was not taking the existing businesses into consideration, but only in situations where a tenant space is changed to a take-out restaurant. He noted that the situation

needed to be managed based on what was allowed. Member Fricker thought that the way to handle the issue would be for Director Garman to look at each group development over the next several months and evaluate them to see if there were problems.

Chairman Britt stated that he liked Director Garman's point regarding changing take-out restaurants based on a minimum number of parking spaces. He recommended that Director Garman come back to the Board with a minimum number of parking spaces for take-out restaurants. Director Garman stated that it could be via a CUP where the restaurant owner would have to show a site plan of the property and the common space; designate specifically what exists and have the Town review what their plan would be and what would not be used. He gave an example of the position of picnic tables relative to the front door of the restaurant. Director Garman and the Board went on to discuss issues with common areas of group developments.

Chairman Britt suggested that Director Garman come back at the next meeting with definitions for bars and nightclubs. Director Garman stated that he would. Chairman Britt stated that the Board wanted take-out restaurants to be via a CUP process to be consistent across all districts in Town. He noted that the big change with that will be the minimum number of parking spaces as opposed to addressing it through the square footage. He added that the big issue for the Board was to look at standards for outdoor dining. He thought the Board needed more direction on it. Director Garman stated that he could come back with a list of the issues and suggested that the Board decide which ones would be a concern that they would like for him to review.

Member Forlano wondered if the Board came up with a list of items to review, how it would affect the music that happens at the Waterfront Shops on Tuesday and Wednesday evenings. He asked if it was grandfathered. Director Garman stated that once the Board finishes its review of the ordinance, Coastal Cantina would come back with a CUP amendment and review everything they are doing and make sure that they comply with the ordinance. Member Fricker asked why they weren't grandfathered. Director Garman stated that it was never officially approved. Member Forlano suggested having the restaurant owners involved in the ordinance discussions to keep open the lines of communication. Director Garman stated that he had specifically invited the owner of Coastal Cantina to the Board's July meeting and was told that he would attend. Member Forlano stated that he would like to have all the restaurant owners invited to the meeting. Chairman Britt suggested having the July and August meeting spent with coming up with items the Board was comfortable with as all of the restaurant owners would not show up for the meetings. He further suggested waiting until the Board had something finalized before inviting the owners to a meeting in September or October as they are too busy during the summer.

Chairman Britt summarized what the Board had discussed – (1) the Board agreed with the definitions reviewed; (2) discerned on-premise eating establishments and fixed those definitions; (3) decided to process eating establishments as CUP applications across the board; (4) define take-out as part of the CUP process in all zones; (5) institute a change to include a minimum parking requirement for take-out restaurants vs. a square footage standard. He added that Director Garman would come to the Board with definitions for bars and nightclubs. Director Garman and the Board went on to discuss outdoor seating/dining area requirements, including outdoor seating areas, parking, dining buffer distance, hours of operation, the difference between

common areas and stand-alone restaurants with regard to nighttime outdoor entertainment, size restrictions and the percentage for outdoor and indoor seating areas.

Chairman Britt suggested that the ordinance include language for outdoor dining in group developments, common areas, or shopping centers. Member Fricker suggested that stand-alone restaurants be excluded from the language. Chairman Britt thought it should be researched to make sure there aren't any problems with those types of restaurants. Member Gilbreath agreed but felt it should be limited to eighteen seats for outdoor seating. Chairman Britt thought the Board could come up with standards for outdoor seating for the existing restaurants and marry it. Director Garman asked the Board if they wanted to look at size restrictions or encroachment on adjacent uses. Member Fricker thought there was a third way to quantifying how much space a tenant would be able to use for outdoor dining on a deck. He stated that the first one was a number of seats; the second was square footage in relation to another element; and the third was to measure the linear feet of the frontage of the leased space and make it a function of that. Chairman Britt thought the Board was trying to create an outdoor dining area that was not necessarily connected to the leased space. Member Fricker stated that the only reason to apply the type of standard he was referencing was because of a tenant in a group development.

Director Garman clarified that the Board wanted him to come back with an ordinance that speaks of group developments; establishing the customer service area for outdoor dining that is contiguous to the storefront. Member Forlano stated he was correct. Chairman Britt asked if there should be a standard for a business owner that wanted to establish a common area for outdoor dining for multiple restaurants together. Vice Chair Blakaitis thought it would be confusing. Chairman Britt thought the Board was already addressing it. He thought that a general rule for outdoor dining would encompass all of the other situations. He stated that he liked one specific set of rules for outdoor dining that could be applied to any situation based on the different shopping centers.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Planning Board Meeting May 11, 2011

Chairman Britt directed the Board to review the minutes from the May 11, 2011 meeting.

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

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

None.

ADJOURNMENT

There was no motion, second or vote to adjourn.

The time was 9:00 p.m.

Approved: _____
/s/ Jon Britt, Chairman