

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
October 12, 2011**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices on Wednesday, October 12, 2011.

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

Absent: Randy Gilbreath.

Also present were Director of Community Development Andy Garman and Permit Coordinator Sandy Cross.

Others Present: Pat Pettit and Karen Mazik of Sunset Grill, Ninette Bearfield of Wee Winks Market, Danny and Lisa Newbern of Dockside In Duck, Jen McCormack of The Kids Store, Stuart Harvey of Baldies Burgers, Benny Hopkins of H&H Properties and Nancy Caviness.

Absent: Council Liaison Chuck Burdick.

Chairman Britt called to order the Regular Meeting of the Planning Board for October 12, 2011 at 6:50 p.m. He noted that Randy Gilbreath and Council Liaison Chuck Burdick were not present.

**PUBLIC COMMENTS**

None.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**Public Input Session – Ordinance Regulating Eating Establishments**

Director Garman stated that the Planning Board had been discussing the ordinance for a while and wanted to obtain input from the business community before going any further. He stated that Town staff had sent out a notice to all of the business and commercial property owners in Town regarding the meeting in order to have them attend. He stated that the Planning Board was considering revisions to the zoning ordinance for restaurants and other types of eating establishments. He stated that staff has been seeing over the last few years a desire for some new types of restaurant uses that weren't spelled out in the existing ordinance. He noted that the existing ordinance was inherited from Dare County and it was brought to the Council and Planning Board's attention that there were items that staff was having trouble dealing with during the permitting process. He stated that the existing ordinance did not specifically allow

take-out restaurants, but added that Dare County had permitted several of them in the past. He thought the consensus was that the Town wanted to allow take-out restaurants and that it should be put in the ordinance.

Director Garman stated that another issue was outdoor dining. He stated that a lot of people wanted to establish outdoor dining areas and the ordinance only dealt with traditional sit-down restaurants. He added that sometimes outdoor dining areas are not exactly fixed as they have tables that can be moved or standing tables. He stated that staff wanted to come up with a different standard in order to deal with outdoor dining areas.

Director Garman stated that another reason for the discussion was to come up with a minimum parking standard for all eating establishments. He stated that in the past, ice cream shops, donut shops, etc. were treated as retail establishments and parking was calculated based on the total square footage of the building. He stated that staff wanted to provide more consistency and clear standards and wanted to eliminate the undesirable uses that have existed but were never codified, such as drive throughs and drive ins. He went on to review the draft ordinance with the Planning Board and the audience.

Chairman Britt noted that the Board had been planning the draft ordinance for a while with the intent being not to hurt any existing businesses. He stated that he would like to get some input from the business and restaurant owners regarding the ordinance.

Director Garman stated that staff had been dealing with some specific cases over the last year, but noted that the businesses in question were not represented by anyone on the audience. Chairman Britt pointed out that a lot of the problem was that the Town inherited the existing ordinance from Dare County and that the ordinance was written back in 1982.

Pat Pettit of Sunset Grill was recognized to speak. Ms. Pettit stated that she did not see anything about free parking spaces in the draft ordinance. She asked for an explanation. Director Garman read the portion of the ordinance: "Outdoor dining areas that are pertinent to restaurants located in the contiguous portions of the Village Commercial District shall require no parking in addition to the existing restaurant parking, provided that the outdoor dining areas shall not increase the seating capacity of a restaurant by more than 25% or seat more than 18 persons, whichever is less." He stated that if a restaurant had an outdoor dining area next to it, it could have up to a certain number of seats without it counting towards the parking. He added that the maximum "free" seats would be 18. Ms. Pettit disagreed and pointed out that there was nothing in the ordinance that says that there would be additional free seats. She added that, grammatically, the ordinance did not state that there were free parking spaces.

Member Fricker stated that there would probably have to be some grammatical changes made to the draft ordinance. He suggested that the language in that section read as follows: "...seating in excess of this amount in outdoor dining areas shall require one parking space for each 150 square feet of gross floor area in the outdoor dining area..." Pat Pettit stated that it still did not allow the 18 free seats without additional parking with the way the ordinance was written. Member Fricker agreed, adding that the way it was worded was that with an indoor restaurant, there was a maximum of 18 seats outside and no additional parking required, but if a restaurant owner

wanted to have more seating, the free 18 seats would be taken away and it would be calculated at one per 150 square feet.

Pat Pettit stated that what was written did not accommodate what the Board was trying to do. She stated that the way the ordinance was written; it showed that a restaurant owner would have 18 spaces (one for every six free parking spaces) and then calculating it. She stated that it showed an owner would have six free parking spaces whether they had 18 or 200 outside seats. She reiterated that there was no accommodation in the draft ordinance for free parking spaces. Director Garman thought when the Board discussed it; the intent was to provide a certain amount of parking without requiring parking for the outdoor seating and then having an owner provide parking beyond that. Ms. Pettit thought there needed to be language that clearly stated that an owner had up to six free parking spaces. Director Garman stated that it would not be automatic that an owner would have six free parking spaces. He stated that there was a standard based upon seats inside and then a standard based upon square footage outside, but they just needed to mesh together a little better.

Member Fricker didn't think an owner could keep the free spaces, but the opposite. He stated that if an owner had 100 inside seats, they could have up to 18 outside seats and those outside seats would not require any parking, but if the restaurant owner decided that they had the space and wanted to have 100 seats outside, then it would be calculated based on how much square footage was being utilized outside, divide it by 150 and that would be the number of additional parking spaces that must be provided. Vice Chair Blakaitis stated that he did not think above the 18 parking spaces that the parking would need to be accounted for.

Chairman Britt stated that the intent was to allow outdoor seating that did not require additional parking. He thought the 18 seats and 25% was too confusing and felt that maybe a certain allowable square footage needed to be established. He thought the parking, percentage and square footage were not working together. He thought it would be easier to exempt a certain amount of square footage for outdoor dining with no additional requirements for parking and beyond that, the owner would have to provide parking for whatever they were over.

Member Forlano clarified that Chairman Britt wanted to remove the 25% rule and just base it on square footage. Chairman Britt stated that a square footage should be established that would not require additional parking. Member Forlano thought 150 square foot was a very liberal consideration as an owner could get many more seats.

Member Fricker thought the concern had been that without some regulation, businesses would try to maximize the seating capacity by having large outside dining areas and at some point, the Board needed to require additional parking associated with the increased number of seating. He wondered how many outside seats should be free of the additional parking requirement and if 150 square feet could reasonably accommodate 18 people, then those numbers should be free.

Danny Newbern of Dockside in Duck was recognized to speak. Mr. Newbern thought the parking needed to be based on the inside seating. Chairman Britt thought the Board could not just go by a percentage and felt that calculating it based on the space would be better.

Member Fricker thought the question was how many additional customers that were seated outside could be allowed without requiring additional parking spaces. He wondered if 10 was the right amount or if it was too many. He added that he did not have a problem with 10 seats outside without any additional parking required. Chairman Britt thought it could be more. Vice Chair Blakaitis asked what was wrong with the 25% of the number of seats inside a restaurant. Member Fricker wasn't sure why the two needed to be tied together.

Karen Mazik of Sunset Grill was recognized to speak. Ms. Mazik thought the number was tied to the septic system. Director Garman stated that septic is a separate issue. Member Fricker stated that they were discussing the parking impact of outside dining. Ms. Mazik asked if the ordinance was being changed to accommodate something new coming in or something that already existed. Director Garman stated that it was both as there were existing businesses with outdoor dining areas as well as new businesses that want to have outdoor dining areas. He stated that the ordinance would give Town staff a standard to apply to outdoor areas which does not currently exist.

Chairman Britt suggested that Director Garman do some research to see if other towns have looked at the issue with regard to the square foot percentage.

Member Fricker thought it would be helpful to have real life examples in order to know how what was being proposed would be impacted. Karen Mazik thought Sunset Grill would be a good example. Vice Chair Blakaitis thought Sunset Grill would be both a good and bad example as the restaurant was a stand-alone one, but it would also need to be addressed in group development situations.

Ninette Bearfield of Wee Winks Market was recognized to speak. Ms. Bearfield asked if a business did not have any indoor seating, but only outdoor seating, how the parking would be calculated. Director Garman stated that it would be calculated based on the 150 square foot rule. Chairman Britt added that there would need to be a minimum of five parking spaces based upon the draft ordinance. The Planning Board, Director Garman and members of the audience went on to discuss food preparation areas for eating establishments.

Chairman Britt stated that the Board needed to come up with a square footage requirement that it was comfortable with exempting from parking regulations. Director Garman and the Board discussed some suggested language. Chairman Britt stated that he wanted the ordinance to generate a certain amount of exempt parking and then establish the enforcement of parking regulations but not be as strict as it would be for inside parking.

Nancy Caviness of 111 Scarborough Lane was recognized to speak. Ms. Caviness clarified that the Board was proposing that existing and new plans would have to go through the Conditional Use Permit process. She thought that there were so many distinct entities in Duck and felt that the CUP process was a way of dealing with the unique situations. She stated that, as an owner of a bed and breakfast, she receives a lot of repeat guests that enjoy the strides that the Town had made in making things more pedestrian friendly. She thought outdoor seating at restaurants not triggering an excessive parking requirement was a good thing. She felt if there was going to be enforcement with parking; it should be equitable across the board in Town.

Benny Hopkins was recognized to speak. Mr. Hopkins stated that there were a lot of areas in North Carolina that were pedestrian friendly, with the Town being one. He thought that parking was a problem with shopping centers such as the Waterfront Shops because there were so many stores in relation to the parking. Director Garman stated that for years, the parking ordinance in Duck was through Dare County and they did not require parking for employees in retail situations as it was one space for every 200 square feet of gross floor area. Mr. Hopkins thought the future of Duck was more people bicycling and walking. He thought relaxing the rules for restaurants was good but felt the Board needed to look at the variety of uses and the employee parking.

Chairman Britt suggested that Director Garman make the changes to the draft ordinance. He noted that the Planning Board would have another meeting in November to discuss the issue and encouraged the members of the audience to attend. Director Garman stated that he would make the changes and send out another email blast to the business owners with the revisions.

Vice Chair Blakaitis thanked the audience members for attending the meeting. Chairman Britt thought it made the Board's job easier to have people show up and give their comments.

### **APPROVAL OF MINUTES**

#### **Planning Board Meeting September 14, 2011**

Chairman Britt directed the Board to review the minutes from the September 14, 2011 meeting.

Member Fricker moved to approve the minutes as presented. Member Forlano seconded.

Motion carried 3-0.

### **OTHER BUSINESS**

None.

### **STAFF COMMENTS**

None.

### **BOARD COMMENTS**

Chairman Britt asked what the Board would be discussing at future meetings. Director Garman stated that the Board may be discussing Wee Winks Market some time in December. He added that he was not sure what was going on with regard to Duck Deli. Member Forlano thought that they may try to go through the permitting process over the next year with the construction starting in October, 2012.

### **ADJOURNMENT**

There being no further business to discuss, Chairman Britt moved to adjourn the meeting. There was no second or vote.

The time was 8:21 p.m.

Approved: \_\_\_\_\_  
Jon Britt, Chairman