

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
November 9, 2011**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices on Wednesday, November 9, 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: Council Liaison Chuck Burdick, Scott Foster of Coastal Cantina, Stuart Harvey of Baldie's Burgers, Stacey Walters of Sweet T's, Peter Raskin of Wave Pizza, Mark Copeland of Roadside Grill, and Pat Pettit and Karen Mazik of Sunset Grill.

Absent: None.

Chairman Britt called to order the Regular Meeting of the Planning Board for November 9, 2011 at 6:30 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

None.

NEW BUSINESS

Ordinance Regulating Eating Establishments

Director Garman stated that the Planning Board had a public input session at their last meeting and discussed the ordinance for eating establishments. He stated that a lot of good comments were received. He stated that at the end of the meeting, the Board decided to have staff look a second time at the parking requirements for eating establishments for outdoor dining areas in order to clarify the language. He stated that it was the Board's intent to state that one parking space would be required for every 150 gross square feet of floor area for the outdoor dining area, excluding the first 150 square feet. He added that any eating establishment would not have to include the first 150 square feet of outdoor dining area in the parking calculations. He went on to review the language and examples with the Planning Board and audience.

Member Fricker noted that with the new language, outdoor parking would end up being about 2/3 less than what would be required for indoor dining. He noted that an eating establishment would end up with seven parking spaces for 80 potential customers.

Peter Raskin of Wave Pizza was recognized to speak. Mr. Raskin noted that the outdoor dining areas for eating establishments were transient places especially in the summer months as people are looking to be inside and not outside. He didn't think it was an environment that would be conducive to people wanting to sit outside for a long time.

Mark Copeland of Roadside Grill was recognized to speak. Mr. Copeland stated that he was confused and thought the seating was based upon the water usage. He thought that a restaurant should be able to seat as many people as they want as long as they don't exceed the water capacity. Director Garman stated that water usage was a significant actor for restaurants. He added that the discussion the Board was having was regarding parking. Chairman Britt stated that the Board was trying to relax some of the standards for eating establishments. Director Garman went on to show additional examples of decks with outside dining and the parking requirements for them to the Board and audience.

Peter Raskin asked how the parking would work for to-go establishments. Director Garman stated that donut and ice cream shops have traditionally been treated as retail space with one parking space for every 200 square feet. He added that as long as nothing changes with the business, it would be grandfathered; however, if a new business came in, they would have to meet the new standards.

Director Garman asked the Board members for their comments on the revised language. Member Fricker thought the language was clear. Chairman Britt did as well. Vice Chair Blakaitis stated that he was fine with it.

Member Forlano noted that certain decks have a roof or breezeway over them. He asked if they would not be considered outdoor dining. Director Garman stated his initial thought was to treat them as outdoor dining areas. Chairman Britt suggested that language be added to Section C of the ordinance that read: "Outdoor dining areas may be covered but shall not be enclosed with sidewalls."

Mark Copeland noted that he had heaters on the patio of his restaurant. He asked if he could get rid of his umbrellas and put a canopy over his patio as long as it could be put up and taken down and did not include sidewalls. Director Garman stated that he could put in the patio, but that the difference would come into play with regard to the parking standard. Member Forlano stated that Mr. Copeland could put a hard roof on his patio as long as he left the sides of the patio open. Director Garman noted that Mr. Copeland would have to go through the process to have a hard roof approved. Peter Raskin pointed out that Mr. Copeland's space heaters allowed him an additional month of outdoor seating. He added that he would love to have heaters at his business as well.

Chairman Britt asked the Planning Board what they thought about sidewalls. Vice Chair Blakaitis stated that he did not have any objection to allow temporary sidewalls for weather but would not be willing to go along with heating and cooling the area. He thought the intent was

not to make it an indoor dining area and not see the sidewalls put up permanently. Member Forlano stated that he did not have a problem with a roll down screen for the afternoon sun or driving rain, but had a problem with enclosing a patio with curtains. He felt it was a slippery slope of getting into heating and air conditioning the areas. Member Fricker thought if the Board was discussing fashioning porches with curtains and such, it becomes an enclosed area. He wondered if the Board was now backing off where they were last month. He stated that if the Board was inclined to allow sidewalls, the Town would need to stand firm in not allowing heating or air conditioning.

Member Forlano asked how the Town would address screens. He wondered how an eating establishment would handle screens on a deck in order to keep the flies away. He asked if a temporary screen would be considered an enclosure. Vice Chair Blakaitis thought it was. He wondered who decided what was considered temporary. Member Forlano thought the whole point of the ordinance was to encourage outdoor dining. He stated that he wanted to make things comfortable for people that would be eating outdoors.

Vice Chair Blakaitis thought Director Garman had made a statement about sidewalls at the last meeting and the Board never discussed it. He asked if the sidewalls would become an enforcement issue and who would decide what would be considered temporary. He wondered if it would put a burden on the Town staff. Member Fricker thought the issue was broader. He thought the Board was talking about trying to balance the interest of the business community, while being consistent with it not creating a problem of inadequate parking. He stated that at this stage of the discussion, outdoor eating establishments should not be enclosed since this would create a higher demand for parking.

Chairman Britt thought it was a tough balance. He stated that he had no problem with temporary sidewalls. He noted that it was the Board's job to look at loopholes in the regulations. He stated that he did not have a problem with heated outdoor space as this should be encouraged.

Vice Chair Blakaitis asked if the draft ordinance would prevent heaters from staying on the outdoor deck of Roadside Grill with the way it was written. Chairman Britt thought it would not. Director Garman stated that if Mark Copeland wanted to change his existing situation and add seating, the new standards would need to be applied. Scott Foster of Coastal Cantina was recognized to speak. Mr. Foster felt that outdoor heaters were a fire hazard and thought there should be language in the ordinance that stated that they were temporary. Mr. Copeland noted that space heaters automatically shut off when tipped over. Chairman Britt thought "removable heaters" could be put in the language. Director Garman suggested the following language: "...these areas shall not be air conditioned..." Chairman Britt suggested the language read: "...shall not be cooled..."

Chairman Britt suggested striking the language regarding canopies, awnings and umbrellas. He noted that if a hard roof was permitted, it would invite itself to be considered indoor space. He stated that he was fine with the temporary sidewalls and the new language that outdoor areas cannot be cooled. He added that heating as an option should be kept in the language. Vice Chair Blakaitis thought canopies, awnings and umbrellas should stay in the draft ordinance. Chairman Britt agreed. Director Garman and the Board went on to discuss enclosing spaces for outdoor dining and porch roofs.

Member Fricker suggested that the Board discuss how the next generation of eating establishments would be regulated since some of the existing ones were grandfathered. Chairman Britt noted that if an eating establishment wanted to make any changes, they would have to come before the Town. He added that he didn't want to make something that would be a glaring problem. He asked the Board if they were comfortable with allowing solid roofs and temporary sidewalls without air conditioning. Member Fricker stated that he was.

Director Garman noted that the eating establishment ordinance needed to be changed to Section 140 instead of 139 and all references to it will also need to be changed. It was *consensus* of the Board to have the changes made.

Member Fricker moved to recommend approval of the amendments to ordinances 156.002, 156.033, 156.036, and 156.140 as amended. Vice Chair Blakaitis seconded.

Motion carried 4-0.

APPROVAL OF MINUTES

Planning Board Meeting October 12, 2011

Chairman Britt directed the Board to review the minutes from the October 12, 2011 meeting.

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

Motion carried 4-0.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

Member Fricker congratulated the new incoming Town Council members.

ADJOURNMENT

There being no further business to discuss, Chairman Britt moved to adjourn the meeting. The time was 7:56 p.m.

Approved: _____
/s/ Jon Britt, Chairman