

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
April 11, 2012**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, April 11, 2012.

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, Council Liaison Chuck Burdick and Permit Coordinator Sandy Cross.

Others Present: Lisa and Danny Newbern of Dockside N Duck, James Braithwaite, Pat Pettit of Sunset Grill, Scott Foster of Coastal Cantina, Mark Copeland of Roadside Bar and Grill and Lisa Mann of Beach Essentials.

Absent: None.

Chairman Britt called to order the Regular Meeting of the Planning Board for April 11, 2012 at 6:36 p.m.

**PUBLIC COMMENTS**

None.

**OLD BUSINESS**

**Discussion of Regulations Pertaining to Special Events and Itinerant Merchants/Vendors**

Director Garman stated that the Planning Board had discussed the issue at their March 14, 2012 meeting. He stated that the Board decided to invite the business community to provide input on this issue. He noted that the invitation went out to all of the business owners as well as the Town's email distribution list. He stated that he had comments to give the Board from the owners of Wee Winks Market regarding special events and itinerant merchants. He went on to give a short presentation on the issue to the Board and the audience.

Chairman Britt asked for comments from the audience.

Danny Newbern of Dockside N Duck was recognized to speak. Mr. Newbern clarified that three additional parking spaces were required per vendor in addition to the parking that is required for each permanent business. Director Garman stated that was correct. He wondered if there would be some type of exemption for a special event with regard to parking. He thought it was a question the Board needed to answer during their discussions.

Lisa Mann of Beach Essentials was recognized to speak. Ms. Mann noted that vendors parking on the same side of the street could be an issue, as it could be a safety issue for people trying to cross the street. Vice Chair Blakaitis asked Ms. Mann if she was concerned about the itinerant merchants and the people crossing the street. Lisa Mann stated that she was concerned about a special event with several merchants as it could be a traffic and safety issue.

Vice Chair Blakaitis asked if there was a general feeling that permanent merchants would not want to see any itinerant merchants in Duck. Lisa Newbern was recognized to speak. Ms. Newbern stated that on behalf of the DCBA, it was their position that itinerant merchants would not benefit any of the businesses in Duck. She added that they did a random survey of other towns and did not receive any positive feedback.

Jim Braithwaite was recognized to speak. Mr. Braithwaite asked if an itinerant merchant was someone that came and went with a cart or someone that has a more permanent structure, such as a gazebo or kiosk. Director Garman stated that if they went through the process to have it approved as a permanent use, it would not fall under the definition of an itinerant merchant. Mr. Braithwaite thought that people would not have a problem with small, fixed stands. He added that itinerant merchants were viewed as competition for permanent business owners.

Member Fricker asked the members of the audience if they had a sense as to whether their fellow business owners would make a distinction between an itinerant merchant and seasonal special events. Danny Newbern stated that if a permanent business wanted to have a special event, especially if it pertained to the use of the business holding the special event, it would be fine, but to have a once a year sale selling items that have nothing to do with the permanent business would not be okay.

Member Fricker asked if the audience felt there was a distinction between a special event by a business for a season and a special event sponsored by a group development to bring in outside itinerant vendors once a year. Lisa Mann felt there was a distinction. She stated that she likened them to the banner permits in that owners are allowed to have them a certain number of weeks per year and that it became ordinary instead of being a special event. Danny Newbern thought the businesses should encourage special events in the shoulder season.

Scott Foster was recognized to speak. Mr. Foster stated that as far as ice cream trucks and other food vendors, his biggest issue was sanitation and food safety. He thought they were not needed in Duck and wondered how they could be reprimanded or held accountable with regard to sanitation and safety.

Pat Pettit was recognized to speak. Ms. Pettit stated that she understood the issue with regard to ice cream trucks and thought they needed to be limited to just one or two trucks in Town, but did not think that hot dog trucks should be driving up and down the streets. She thought there was a distinction between encouraging special events in the shoulder season and one that occurs every week.

Director Garman noted that the business owners felt there was a big distinction between itinerant merchants and special events. He thought the Board may want to discuss farm stands and added that there were currently three in Duck – one at the Waterfront Shops, one at Wee Winks Square

and the Tomato Shack. He added that they were all permitted through the zoning process. He stated that if any type of stand were to be allowed, the Town should allow them using the same zoning process as the three farm stands instead of issuing temporary permits. He stated that the Board will need to look at special events and define what constitutes a special event. He noted that if the Board wanted to add any additional language to allow itinerant merchants to operate at special events; that should be discussed as well. He stated that it should be defined how frequently they could occur.

Member Fricker stated that he was hearing that there wouldn't be a great deal of objection if the Town were to prohibit itinerant merchants except in times of special events. Chairman Britt agreed. Member Fricker noted there were two separate definitions for an itinerant merchant and for an ice cream vendor. He suggested that the ice cream vendor be added to the definition of an itinerant merchant.

Member Forlano stated that he was confused about special events. He clarified that there were two types of special events – one was if a shop owner had a tent sale and was selling their product and the other was similar to an art festival, where there were several merchants from all over the area selling their merchandise. Chairman Britt stated that Member Forlano was correct in his interpretation. He suggested that Director Garman come up with some language and bring it back to the Board to discuss. Director Garman stated that he would come back with some draft language. Member Forlano felt that that the Board had one obligation – to the people, businesses, residents and visitors of Duck. He didn't think the Town owed anything to the outside itinerant merchants.

Chairman Britt noted that Director Garman would work on some language and bring it back to the Board at their May meeting. Member Fricker suggested that Director Garman tighten up the language in terms of the definitions to include goods and services.

**Discussion/Consideration of Ordinance Modification to the Flood Damage Prevention Ordinance and Building Height Regulations to Provide Consistency with the 2012 North Carolina Residential Building Code**

Director Garman stated that the 2012 edition of the North Carolina Building Code now required one foot of freeboard for new structures or substantially improved structures in the Special Flood Hazard Area. He stated that previously, the Town did not have a freeboard requirement and the new version of the Building Code would require homeowners to elevate their structures a foot higher than required under the flood insurance rate maps.

Director Garman stated that Council asked the Board to accomplish two things – to acknowledge the new requirement in the Town's flood damage prevention ordinance and to adjust the zoning ordinance so people would not be penalized based on the height regulations. He stated that he had drafted two provisions to deal with the issues and went on to review them with the Board and audience.

Vice Chair Blakaitis moved to approve the draft ordinance with the provisions as presented. Member Fricker seconded.

Motion carried 4-0.

## **NEW BUSINESS**

### **Discussion/Consideration of an Application by Jim Braithwaite on behalf of Allis Holdings, LLC, Property Owner, to Consider a Conditional Use Permit Amendment for the Waterfront Shops, located at 1240 Duck Road**

Director Garman stated that Jim Braithwaite was requesting an amendment to his previously approved Conditional Use Permits in order to permit an eating establishment in place of the carry-out deli that currently exists at the Waterfront Shops. He stated that the ordinance for eating establishments was amended recently to accommodate outdoor dining areas and other restaurant uses not recognized by the previous ordinance. He stated that Scott Foster, the owner of Coastal Cantina, was before the Board to amend the CUP to accommodate the evolution of his restaurant at the Waterfront Shops. He noted that staff believed that the proposal met the requirements under the new ordinance with regard to parking. He went on to review the application with the Board and the audience. He pointed out that the ordinance stated that the dining area must be directly contiguous to the frontage of the restaurant. He stated that he had a discussion with Mr. Foster and Mr. Braithwaite regarding the outside tables and added that the staff report noted that staff wanted clarification on what would remain on the deck if the CUP was approved since there were other tables that were not contiguous to the frontage of the restaurant.

Member Fricker asked Director Garman if he had received the clarification regarding the tables. Director Garman stated that Jim Braithwaite would do whatever was required. He added that they were still looking for clarification as to what could remain on the deck. He went on to show the deck area at the Waterfront Shops to the Board and audience, which indicated which picnic tables would be contiguous to the restaurant.

Vice Chair Blakaitis thought it made sense to remove the trash bar so there would be more space for the tables. Scott Foster stated that trash has been an issue for him with the amount of people that frequent his restaurant. He added that if he had a more service oriented staff that would bus the tables; he would not have an issue with the trash.

Member Forlano asked Jim Braithwaite if he had received any complaints from other shop owners. Jim Braithwaite stated that he had not received any.

Vice Chair Blakaitis asked how the live music was going to fit in the area. Director Garman stated that the ordinance only addressed the time that the music could be played.

Director Garman stated that there were two options that the Board could consider – (1) to move the tables further west, closer to the railing and allow the egress to be between the pilings and the tables, and (2) have the trash bar removed and allow the egress between the counter and the tables. Member Fricker thought the condition should be that the egress be east of the tables and have the access west of the dining area. Chairman Britt agreed with Member Fricker.

Vice Chair Blakaitis asked what was being done with the breezeway. Scott Foster stated that it would remain as is. Chairman Britt suggested removing the trash bar. Director Garman suggested that there be a six foot pedestrian way between the outside deck railing and the tables and removing the trash bar.

Member Fricker moved that the Conditional Use Permit be recommended to Town Council for approval with the condition that a six foot wide pedestrian egress west of the dining area be maintained, that there will be no service for tables outside of the service area directly adjacent to the unit and the trash bar removed. Vice Chair Blakaitis seconded.

Motion carried 4-0.

### **APPROVAL OF MINUTES**

#### **Planning Board Meeting March 14, 2012**

Chairman Britt directed the Board to review the minutes from the March 14, 2012 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**

None.

### **ADJOURNMENT**

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

The time was 8:11 p.m.

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