

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
October 10, 2012**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, October 10, 2012.

Present were: Vice Chair Joe Blakaitis, John Fricker, Ron Forlano, Tim McKeithan and Marc Murray.

Absent: None.

Also present were: Director of Community Development Andy Garman, Council Liaison Chuck Burdick, and Permit Coordinator Sandy Cross.

Others Present: Mayor Don Kingston, Woody West and Joe Cross.

Absent: None.

Vice Chair Blakaitis called to order the Regular Meeting of the Planning Board for October 10, 2012 at 6:31 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

None.

NEW BUSINESS

Welcome New Members – Marc Murray and Tim McKeithan; Election of Chair and Vice Chair

Vice Chair Blakaitis welcomed Tim McKeithan and Marc Murray as the newest members of the Planning Board. He suggested that the Town send something to former member Randy Gilbreath, thanking him for his service on the Planning Board. Director Garman stated that he would coordinate it.

Vice Chair Blakaitis opened the nomination for Chair of the Planning Board. Member Fricker moved to nominate Joe Blakaitis. Member Forlano seconded.

Motion carried 4-0.

Chair Blakaitis opened the nomination for Vice Chair of the Planning Board. He moved to nominate John Fricker. Member McKeithan seconded.

Motion carried 4-0.

Discussion/Consideration of CUP 12-07, an Application by Joe Cross on behalf of the Ships Watch Association, Inc. for a Conditional Use Permit for the Ships Watch Private Club, Located at 100 Ships Watch Drive

Director Garman stated that Conditional Use Permit was to add a recreational/community pavilion at the pool area located at 100 Ships Watch Drive. He stated that it would be a facility used for community functions and available to the patrons of the Ships Watch community. He noted that this was a Conditional Use Permit and would come before both the Planning Board and the Town Council, adding that the Planning Board would make a recommendation on it to be forwarded to Council.

Director Garman stated that the applicant was proposing a 1,122 square foot covered pavilion at the northeast corner of the site. He noted that there was an existing pool building in that area. The applicant is also proposing to extend the pool deck further to the north and in order to do that would be removing the solar panels in that area.

Director Garman stated that Town staff looked at all the various components of the Town ordinances that would apply to the use and felt that it met all of the standards of the ordinance. He stated that they would have to remove some of the asphalt parking and replace it with permeable pavement in order to meet the lot coverage requirements. He stated that staff would recommend that the vegetation be preserved on the north side of the site and that the applicant should clearly delineate the parking spaces with striping or curb stops when the asphalt is removed and replaced with gravel. Director Garman also stated that comments were received by an adjacent property owner asking that the Planning Board consider specific conditions that should apply to the use if approved. The Planning Board went on to review each of the specific conditions requested.

The first request involved placing a time limit on the conditional use permit. Member McKeithan asked if it is normal to have a time limit on issuing a CUP. Director Garman stated that it wasn't typical, but it would allow the CUP to come back before the Planning Board and they would hear how the use has worked and evaluate whether there were any issues that would need to be tweaked.

Vice Chair Fricker asked if the review after two years was necessary. Director Garman stated that several other associations have facilities, but the Town receives very few complaints about them. He felt that out of the five conditions listed, the last one would be the least recommended.

Chair Blakaitis noted that lighting was not shown on the drawing. He asked if there would be additional lighting installed at the site. Woody West was recognized to speak. Mr. West stated that there would not be any more lighting except for inside the perimeter of the fence. Joe Cross was recognized to speak. Mr. Cross stated that he did not anticipate installing any pole lighting and that lighting would only be on the building.

Vice Chair Fricker asked if there was any need required for the permanent markers on the survey. Chair Blakaitis asked if the adjacent development or Ships Watch was being referenced with regard to the markers. Vice Chair Fricker thought it was Ships Watch. Joe Cross stated that the lot was pinned and the survey was completed with the permanent markers. Director Garman stated that he did not see any issues.

Vice Chair Fricker clarified that the wooden decking on the north side of the property went up to the property line. Joe Cross stated that he was correct. He added that the other side would be the pool for the Sandy Ridge subdivision. Vice Chair Fricker asked if it complied with the ordinances for setbacks. Director Garman stated that the setbacks are 10 feet and the proposal is compliant, adding that the decking would be placed where the solar panels currently exist.

Vice Chair Fricker asked what the hours of operation would be. Woody West stated that the bathhouse closes at 5:00 p.m. and the pool lights turn off at 11:00 p.m.

Member Forlano thought that the Board could put a time limit on the CUP request, but added that it didn't affect the current operation. Chair Blakaitis stated that if a two year time frame was requested, it would not have an impact on the owners 15 years later. Vice Chair Fricker stated that he would be opposed to that provision since there haven't been any issues in the past with other facilities. He wasn't sure why this one should deserve a different approach. Director Garman thought this was a small facility compared to some of the others.

Member Murray asked if the Board would see the building plans at some point. He added that having a solid wall up to the buffer would do a lot to mitigate any noise. Director Garman stated that the building plans were not typically requested for this type of process, but would be if it was considered a commercial project. Member Murray asked if the wall was open or closed. Woody West stated that the wall was not solid, but would be phased with the removal of the solar panels first, then the extension of the deck and finally the construction of the pavilion.

Chair Blakaitis noted that the deck next to the parking lot was elevated above the deck next to the pool. He stated that the new pavilion would be situated behind the existing one to the north. He asked if the proposed new decking was at pool or pavilion level. Joe Cross stated that there would be two levels to the deck and pool, a lower level for the pool and the upper level for the pavilion. Chair Blakaitis asked if the proposed deck would be at the pavilion level or the pool level. Mr. Cross stated that the pavilion would be on the upper level, at the same level of the deck. Chair Blakaitis clarified that the applicant was proposing an extension of the deck at the pool area. Mr. Cross stated that it would be two different levels. Chair Blakaitis clarified that the new deck would be at the pool level. Mr. Cross stated that it would not. Chair Blakaitis asked if the end of the proposed pavilion would be open or would the decking have safety rails. Mr. Cross stated that rails would be installed.

Chair Blakaitis thought that based upon the comments received from Joe Cross, everything was pretty well covered. He felt that the surveys took care of Item 1; the hours of operation should not be an issue; the vegetative buffer was probably the only real item that needed to be discussed; and the lighting seemed fine, but thought Town staff may wish to require a schematic

of the fixtures. Director Garman didn't think an entire photometric plan would be required, but thought the type of fixtures to be installed could be looked at.

Director Garman stated that there was a 10 foot wide buffer requirement in the town's commercial design standards. He added that if staff could look at that as the standard to be applied as well as any vegetation that the applicant keeps to count towards the requirement, staff could look at what would be left to fill in.

Chair Blakaitis asked if the solar panels would be reinstalled in the future. Joe Cross stated that they would be reinstalled at some point. He added that it would be a separate design project.

Member McKeithan asked if there would be access into the adjoining community or if a fence would be erected. Joe Cross stated that there was a 10 foot vegetative buffer between the two properties. Director Garman noted that the applicant would have a pool barrier around the pool.

Vice Chair Fricker moved to recommend approval of the Conditional Use Permit with the following conditions: (1) that the applicant leave the vegetative buffer intact and/or ensure that it was consistent with the commercial design standards; (2) that the applicant clearly delineate the parking spaces with striping and curb stops; (3) that the gravel parking area have some type of concrete apron for where the sidewalk meets the road; (4) that the hours of operation should be limited to no later than 11:00 p.m. nightly; and (5) that all lighting should be down lit on the applicant's property so as to increase night sky visibility. Member Murray seconded.

Motion carried 5-0.

Discussion of Regulating Internet Sweepstakes Uses

Director Garman stated that the issue was referred to the Board by the Town Council. He stated that other towns have been discussing the issue which has been circulating all over the state with some communities having more of a sense of urgency to draft regulations concerning them than the Town did. He stated that some of the other towns in the state have regulated these uses heavily by allowing them as an accessory use to an existing business. He noted that banning them outright was not recommended since the state has determined that to be unconstitutional. He stated that he wanted a general discussion with the Board on how they wanted to proceed, whether they agreed with some of the other town's approaches or whether they wanted to try not allowing them in Town.

Council Liaison Burdick thought there was concern over the issue at the Town Council level. He understood that there has been some interest to establish this type of business in Duck. Vice Chair Fricker asked if Council had received an opinion from Town Attorney Robert Hobbs regarding the legality of banning this use outright. He thought if there was a sense of urgency; Town Attorney Hobbs should have been asked for a legal opinion as to whether it was a viable option. He added that if Attorney Hobbs would recommend against banning the use, the Board would not have this option. Mayor Don Kingston was recognized to speak. Mayor Kingston recommended that the Board follow the lead of the other towns by limiting their use at this point.

Council Liaison Burdick stated that Town Attorney Hobbs had indicated that he would be happy to consult with the Board on the issue, but wanted some direction first. Vice Chair Fricker thought there was no point in the Board discussing an issue that Town Attorney Hobbs legally would advise against. Council Liaison Burdick suggested that they work parallel with Town Attorney Hobbs – put something together like the rest of the towns have done and at the same time, talk to Town Attorney Hobbs regarding options to ban the use.

Vice Chair Fricker stated that while reading the information, he was thinking about some of the Town's zoning areas. He asked where the C-1 zoning district was located. Director Garman stated that it was located at North Duck Watersports, Beach Realty and included the Paper Canoe and Left Bank restaurants as well as the properties that are part of the Sanderling Resort on the west side across from the Sanderling Inn. Vice Chair Fricker felt if the Board wanted to limit the issue to a certain district, the C-1 district would be the most restrictive. Director Garman stated that C-2 would be the most restrictive as it was just the Sanderling Inn on the east side of Duck Road. He added that another restrictive district was S-1, which included the Advice 5 Cents Bed and Breakfast and the residential property across the street from it. Vice Chair Fricker thought the C-1 district would be the logical place. Member Murray agreed.

Member Forlano stated that he liked the tactic of allowing two machines per primary facility and not worrying about the Village Commercial, C-1 or C-2 districts. He thought that the limiting factor of putting two machines where the primary business was located with video games or gambling would be restrictive enough. He pointed out that they were no different than lottery ticket machines. Chair Blakaitis thought the two machine limit was not a bad idea.

Council Liaison Burdick thought the regulations could be eased down the road but felt that something needed to be in place sooner rather than later. He added that they should not be allowed to proliferate in Duck. Vice Chair Fricker agreed with Council Liaison Burdick and thought the Town should limit them to the district with the least area in which they could proliferate. Director Garman stated that he could draft an ordinance that defined the use for internet sweepstakes cafés as well as a second portion that would indicate which districts they would be allowed to operate and then the Board could decide on the appropriate district at its next meeting. He added that he could talk to Town Attorney Hobbs to get his opinion on not allowing them in any district.

Chair Blakaitis stated that instead of tabling the issue until the next meeting, he suggested that Director Garman draft an ordinance for discussion at the Board's November 14, 2012 meeting. Vice Chair Fricker asked if the Board should hold a mid-month meeting instead of waiting until the November meeting. Mayor Kingston thought a mid-month meeting would be better. Council Liaison Burdick agreed.

Member Murray asked if the Board could make a motion to enact a moratorium until a decision was made. Chair Blakaitis stated that only the Town Council could enact a moratorium. Director Garman reviewed the process to enact a moratorium.

It was *consensus* of the Board to hold a mid-month meeting to discuss the draft ordinance.

APPROVAL OF MINUTES

Planning Board Meeting August 8, 2012

Chair Blakaitis directed the Board to review the minutes from the August 8, 2012 meeting.

Vice Chair Fricker had a correction to Page 3 of the minutes.

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

Motion carried 3-0.

OTHER BUSINESS

Chair Blakaitis reminded the Board that there would be a mid-month meeting. Director Garman stated that he would contact the Board regarding the date and that the meeting would be appropriately advertised. He noted that the Planning Board mid-month meeting was generally held on the fourth Wednesday of the month at 6:30 p.m.

Vice Chair Fricker welcomed Members McKeithan and Murray to the Planning Board.

Chair Blakaitis noted that the mid-month meeting would be held on Wednesday, October 24, 2012 at 6:30 p.m.

STAFF COMMENTS

None.

BOARD COMMENTS

Member Forlano asked if there was a reason for the Board to hold their meetings at 6:30 p.m. each month. He thought the time was chosen because a former member had a difficult time with it being held at 7:00 p.m. He wondered if the Board felt that holding it at 6:30 p.m. was fine or if it should be moved to 7:00 p.m. Chair Blakaitis pointed out that the Planning Board meetings used to be held on Fridays. Member Forlano asked the Board members for their thoughts on changing the meeting time to 7:00 p.m. Chair Blakaitis stated that he did not have a problem with changing the time. Vice Chair Fricker agreed. Permit Coordinator Cross thought a motion had to be made to amend the Board's by-laws.

Chair Blakaitis suggested that Director Garman research the by-laws and have the Board consider it at their mid-month meeting.

ADJOURNMENT

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

The time was 7:46 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman