

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
June 12, 2013**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, June 12, 2013.

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

Absent: None.

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

Others Present: Mark Copeland.

Absent: Council Liaison Chuck Burdick.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for June 12, 2013 at 6:34 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion/Consideration of CUP 13-01, a Conditional Use Permit Amendment Application by Mark Copeland on behalf of Big Momma, LLC, Property Owner at 1193 Duck Road to Allow an Accessory Bar Service Building and Outdoor Entertainment Area to be Located on the Property of the Roadside Bar and Grill for the Purpose of Accommodating Special Events

Director Garman stated that at the last meeting, the Planning Board had several concerns about the information that was provided. He added that the applicant has come back and provided a more detailed narrative with the application, focusing on the dates and number of events that would be occurring at the property as well as what would specifically happen with regard to the shed, based on the north side setback encroachment that was noted on the original site plan. He stated that the applicant referenced the timeframe that the events would run, the purpose of the bar facility and other details as to what would be done to the rear of the property.

Director Garman stated that the application suggested that the applicant would be holding a total of seven events. He pointed out that Chapter 95 of the Code of Ordinances spoke to the Town's ordinance for special events. He explained that the ordinance for special events allowed up to seven events per year but no more than one for every 30 days during the summer. He stated that

Mark Copeland was proposing that in his application. He stated that staff believed that the application was consistent with that portion of the special events ordinance. He added that Mr. Copeland was proposing to eliminate the side yard setback encroachment from the shed on the north side of the property and was requesting that the Board allow him to keep the rear portion of the new part of the shed since there was a large hill in the back and buffered the building from the rear property to the east.

Director Garman stated that there was an overflow parking area that was being used by employees consisting of gravel and shells. He stated that it appeared to be lot coverage based on the Town's ordinance and did not seem to be a permeable paving product, but more of a crush and run type product. He added that it was a concern that was noted in the staff report. He added that there was an issue with using that area from the health department since it was a repair area. He stated that the health department had indicated that they would allow Mr. Copeland to keep certain things on the repair area so long as he agreed to remove them if it was required in order to support the active drainfield.

Director Garman stated that staff received some comments that were sent in regarding the application. He noted that the applicant provided staff with a petition for the Board to review. He believed that Mr. Copeland had addressed some of the concerns that were raised at the Board's last meeting.

Chair Blakaitis stated that it looked as if most of the areas of concern had been addressed but the two remaining areas that needed to be discussed were the gravel parking area and the rear setback. He clarified that the setback would be fine due to the hill in the rear of the property. Director Garman stated that the Board had looked at it last time and the shed already existed in that location so it was encroaching in the rear setback. He added that when the shed was expanded, the expansion was in line with the rear plane of the shed and thought it was considered an expansion of a nonconformity since the shed was already in the setback. He stated that the ordinance normally required a 20 foot rear yard setback and in cases where there were topographic differences, it may serve in lieu of having a strict 20 foot setback.

Chair Blakaitis clarified that if the Board moved forward, they would be providing an exception to the rear yard setback for the shed. Director Garman stated he was correct.

Chair Blakaitis asked Mark Copeland if he had addressed the gravel parking area. Mark Copeland was recognized to speak. Mr. Copeland stated that he had planted grass seed. He added that it was composed more of sand and oyster shells with some stone mixed in. He noted that there wasn't any crush and run in the employee parking area. Chair Blakaitis pointed out that it didn't correspond with Director Garman's recommendation that something be done with the gravel area. Director Garman stated that he had looked at the area and it appeared to be a mixture of shell, gravel and fine, crushed material. He stated that it seemed to be significantly compacted so it was definitely not a permeable paving product.

Vice Chair Fricker stated that at the previous meeting, Director Garman felt there was no rational basis to approve or recommend approval of what Mark Copeland had wanted to do. He added that Director Garman was quite clear and specific in the areas he felt were not addressed, however at this meeting, it was in the staff report that the only concern was the existing gravel

surface of the overflow parking area on the repair area and continued enforcement of the proposed use. He added that in the last paragraph of the staff report, it was noted that if the Planning Board agreed to recommend approval, staff would suggest a Town notification of each event. He noted that Director Garman was not suggesting or recommending improving the overflow parking area to provide pervious pavement. He asked why it was not being suggested or recommended. Director Garman thought the condition was not spelled out in the last paragraph but if the Board agreed with him in the statements he made, he would recommend a condition to address it. He added that he had other conditions that were not in the staff report just to address items that were discussed between the last meeting and this one.

Member Murray clarified that the Health Department stated that it was a repair area and if it was required to be used as one, the repairs would have to be made by removing the gravel. Director Garman stated he was correct. He thought the reason the Town allowed 60% lot coverage for commercial uses was because that there would be some sort of stormwater management designed into the project and in this case, Mr. Copeland was getting close to 60% but there was no stormwater management on the site. He stated that if the Board wished to approve the area to be used for overflow parking, it should meet the stormwater management objectives so a higher coverage percentage could be allowed.

Member McKeithan clarified that the bulkheading of the hill on the back of the lot was installed. Mark Copeland stated that he had the permit but had not installed it yet. Director Garman noted that the bulkhead would only be about four feet tall, making it a fairly minor improvement. He added that a permit was issued for it because staff didn't feel like it was something that was outside of the normal administrative portions of the Town's ordinances. Member McKeithan pointed out that there was some deterioration on the bottom and thought a bulkhead would help, especially since the building was closer than it was supposed to be. Mark Copeland agreed.

Chair Blakaitis stated that the remaining concern from staff was continued enforcement of the proposed use. He asked if it would come under the ordinance for special events and further asked why it would be a problem. Director Garman stated that Mr. Copeland put in the narrative what he proposed to do and it was stated in the staff report that it met the number of events that could be permitted under the special events ordinance. He added that most of the businesses in Town, from time to time, do special events. He stated that staff would not restrict Mr. Copeland from doing the same thing, as long as it didn't go beyond what he proposed. He stated that staff was ok with the proposal to have the events but wanted to make sure it didn't go beyond that. Chair Blakaitis clarified that enforcement of it would not be any more problematic than enforcement of any other special event. Director Garman stated he was correct. He added that a condition could be added to the conditional use permit that stated that Mr. Copeland was allowed to have a certain number of events per year as proposed on certain dates. He stated that if Mr. Copeland wished to modify the date of an event; he would have to notify Town staff. Chair Blakaitis thought it should be a condition of the conditional use permit.

Chair Blakaitis stated that Mark Copeland was proposing to eliminate the north side setback. He asked how that would be accomplished. Mark Copeland stated that he has a carport and could cut it back so he would have ten feet. Chair Blakaitis clarified that it would have to be cut back by eight feet. Mr. Copeland stated he was correct, adding that it would get him back to his original shed. He added that he has an offer on the neighboring property. He asked if the offer

was accepted, he could build the shed back. Chair Blakaitis thought he could if he combined both lots.

Member Forlano stated that there were several references to the health department and Mark Copeland had in his letter that the health department had no concerns regarding the parking. He asked if the health department had any concerns about anything on the property. Mark Copeland stated that they did not. Member Forlano asked if there was letter to that effect. Director Garman stated that the letter was in the last packet and spoke primarily to the drainfield issue and repair area. He added that the health department indicated that as long as Mr. Copeland agreed to remove any improvements over the drainfield in the future, should they ever need to use it, then it would fine to keep it there for now. He stated that the health department has been out to the site to discuss the events themselves because Mr. Copeland was doing some outdoor cooking and in order to do that, a temporary food service permit was required every time they do that fourteen days in advance of the actual event. He added that in the case of oysters, Mr. Copeland would have to save the oyster tags in case of any issues. He stated that the health department will allow the events as well as the cooking of the oysters, but certain procedures have to be followed to do so.

Member Forlano clarified that the Board did not have to be involved in what the health department required concerning events. Director Garman stated that technically the Town can't since it's not the Town's issue. Member Forlano stated that the only issue would be the repair area. Chair Blakaitis stated he was correct.

Vice Chair Fricker asked how it was being adequately supervised and handled. He asked why the Town had to be involved. Director Garman stated that the Town did not enforce the rules for the health department, but staff was closer and if there was an issue, the health department could be notified. He added that the health department was notified when Town staff originally investigated the issue and went to the site with them to review all of the issues with Mark Copeland.

Member Forlano clarified that the only issue with the repair area, on the Town's part, was the permeability of the repair area. Director Garman stated he was correct. Member Murray added that it was from a stormwater prospective. Chair Blakaitis noted that it was making it more pervious than it presently was. Member Forlano stated that whether it was shell, clay, sand, stone or oyster on the repair area was a moot point and irrelevant. He added that the entire rear parking lot was permeable. Director Garman stated that there was a stone top coating on the rear parking area but it was never designed to be permeable pavement. Member Forlano clarified that water was not running off the property. Director Garman stated that he wasn't sure. Member Forlano thought the entire property was permeable.

Member Murray asked what happened to the north and south of the property with regard to major rain events. Mark Copeland stated that when he first bought the property, it was wetlands in those areas and he brought in dirt and sand to fill in the wetlands. He added that there were still wetlands to the north of this property. He stated that his parking lot slopes so that water does not drain onto the drainfield, but was caught in a basin and then absorbed into the ground.

Chair Blakaitis asked Director Garman to review his list of conditions. Director Garman stated that a lot of the conditions related to the application and what was submitted. He went on to review the list with the Board and audience:

1. The conditional use permit would be limited to the events described in the narrative that Mark Copeland provided.
2. The north side shed encroachment be removed.
3. The overflow parking be addressed with some sort of permeable paving product.
4. Provide port-o-johns for each event.
5. Install a fence on the southeast property line to address trespass concerns during events.
6. Notify the Town with any proposed changes to the dates of events.

Member McKeithan pointed out that a letter was received that spoke of the proposed summer movies on the lawn. He asked if it was in addition to the seven other events that were authorized. Mark Copeland thought a special event consisted of 100 or more people. Director Garman stated that it was and added that staff had asked Mr. Copeland what events would be happening. He stated that in the narrative, it was indicated that only the seven events would be held but nowhere did it talk about movies on the lawn. He noted that it was an inconsistency from what staff was provided in the narrative and was an issue. He explained that the whole issue with the rear area was whether it would be something that would be routinely used as part of the normal business or just for special events. He stated that if there were events held three nights a week, that was more than just for special events.

Chair Blakaitis stated that if there were less than 100 people, it was not a special event. Director Garman agreed and added that Mr. Copeland did not technically have to meet the ordinance. He stated that the zoning issue came into play with regard to the use of the property and what the permanent use of the property was. He stated that a comment received was that Mr. Copeland has as many seats as he was allowed at the restaurant and if they were going to add more uses to the property, then it would grow beyond what could be authorized. Mark Copeland thought the seating came under the health department's regulations. Director Garman stated that it also came under parking. He added that Mr. Copeland had noted that he had parking problems and wondered why the parking problem was being created. He asked if it was because there were too many seats in the restaurant, too many things going on and if more uses were added to the property, would there be more parking problems. He thought if this was considered a use for special events, it wasn't an issue, but the question was what would be occurring.

Chair Blakaitis thought that some of the other events listed that weren't considered special events would come into play. Mark Copeland stated that it had not been opened since he held his Full Moon party in May and added that he hasn't had over 100 people since the new year.

Member Murray thought that in addition to the special events listed in the conditional use permit, Mark Copeland would have to specify the number of other events. Chair Blakaitis didn't think it was necessary. Mark Copeland asked if a birthday party or rehearsal dinner would be considered a special event. He added that he had several rehearsal dinners with an oyster roast and didn't obtain a permit from the health department. Chair Blakaitis asked if the rehearsal dinners were held outside on the lawn. Mark Copeland stated that they were. Chair Blakaitis asked if tables

were set up for the dinners. Mr. Copeland stated that one big table was set up with hay bales and plywood. Chair Blakaitis asked if the Board had addressed this issue with Coastal Cantina. Director Garman stated that they had.

Mark Copeland asked if a permit was needed if he wanted to hold a wedding. Director Garman stated that it was a difficult issue to address since there were other businesses that do outdoor music, but did not exceed 100 people and did not need a special events permit. He stated that in those cases, the businesses did not build a bar in the rear of their property.

Vice Chair Fricker stated that he was trying to understand the principal motivation of staff from the first time the Board addressed the issues. He thought it was mainly stormwater management. He added that at this time, it seemed to be a concern about adequate parking and concern about whether the use was going to be deemed special events and having the means of making sure there was no more than the allotted number. He didn't know if anything Mark Copeland talked about was considered a special event, but simply providing food to people. He thought the question was whether Mr. Copeland was complying with the existing zoning requirements that pertain to the number of seats he could have, outside seating and parking spaces. Director Garman asked if the Board was talking about going back to the genesis of the whole issue. Vice Chair Fricker stated that if it had been done by the numbers and Mr. Copeland had come to the Town first, these discussions would not be happening. He thought there was an institutional distrust regarding whether Mr. Copeland would comply with what he had proposed and it was unfortunate.

Chair Blakaitis asked Vice Chair Fricker if he was troubled by the fact that the Board had to do anything with the conditional use permit. Vice Chair Fricker wasn't sure if he would go that far, but thought the number of people at the proposed events would probably be less than 100. He didn't think it was an unreasonable condition for Mark Copeland to give a 60 day notice before each event.

Member Murray asked what the definition of seating was and who defined it. He wondered if the health department defined it. He stated that the Town had a parking requirement attached to it. Mark Copeland stated it was based on the water usage. Member Forlano added that septic also played a part. Director Garman stated that the Town defined seating two ways – physically counting seats inside a restaurant and for exterior spaces, it was done based on the area. He stated that an outdoor dining area was counted as one parking space for every 150 square feet of area with the first 150 square feet exempted. He added that it was done to make it easier for businesses that have outdoor dining areas. He stated that the question was then what a dining area was. He thought the question was when it became a permanent use versus something that was used occasionally for special events. Vice Chair Fricker pointed out that it was not a special event, it was just moving the dining area out onto the grass.

Member Murray asked if patrons of the restaurant went outside for the events that were being held to participate. Mark Copeland stated that they did. He added that when he obtains permits for the oyster roasts, people will come out for that and then head back inside to eat a meal.

Member McKeithan clarified that if a wedding was held in the rear of the property, the restaurant would still be completely full with other customers. Mark Copeland stated he was correct.

Member McKeithan noted that it would be a lot of people eating at one time. Mr. Copeland stated that he cooks the food outside because the kitchen was not big enough to support the outside event. He added that his kitchen would never be able to support the restaurant plus 200 people outside. Member McKeithan noted that there would be a significantly greater number of vehicles to accommodate with regard to parking. Mr. Copeland agreed. He added that in the winter months, there wasn't an issue but in the summer 40-50% of his business was walk ins.

Chair Blakaitis stated that he saw the conditional use permit as an attempt to correct some deficiencies in the property as well as to address the concerns of the use of the property. He added that Director Garman seemed to be concerned about the use of the property over and above what has been stipulated in the application. He asked how the Town would control it and further asked if there was some doubt that the property would be used as it was stated. Vice Chair Fricker asked if staff had doubts. Director Garman stated that he did not want to make judgments about people or what they may do but thought if Mr. Copeland were to put on the seven events listed in the application, he would be reducing the number of events that he currently has. He thought there were other things that they were doing such as the movie night or other things that were in addition to the seven listed in the application. He stated that he was not trying to accuse Mr. Copeland of doing more than what he indicated, but it would always be an issue. He added that the Town had asked Mr. Copeland to tell the staff what he was going to do.

Chair Blakaitis noted that the events seemed to be structured, major events that Mr. Copeland wanted to have. He asked how the other things would impact the conditional use permit. He asked if movie night or bachelorette parties would be counted against the seven events even though they were not listed in the application or if they would be in excess of the seven events. Director Garman stated that it was the same problem that was had last time in that staff wanted to know what was going to happen in the rear of the property and last time it was felt to be an unknown because the applicant did not provide enough information. He added that now staff was provided with the application stating they would be putting on seven events but nothing about the other events that were brought up at this meeting, so he was questioning that there were other events that were not presented to staff. He stated that he did not know how to evaluate something that may or may not exist. He added that he wasn't sure what would happen beyond what was listed in the application as he was not at the site on a daily basis. He stated that the only issue he had all along was if the use was occasional or permanent. He wondered where the line should be drawn and felt it wasn't an easy question to answer. He stated that all that was needed was information on what would be happening in the rear of the property before staff could say if it was occasional or permanent.

Director Garman stated that the building inspector may be concerned about the events because there may not be enough restrooms for the amount of people in attendance because it may be insufficient for the number of people. He added that parking, wastewater and adjacent properties would all be concerns. He stated that what Mark Copeland was proposing to do may be fine but it was hard to know based upon what was received.

Chair Blakaitis asked if other businesses in Duck put on special events without having a permit to allow a fixed number of events. Director Garman stated that they do and there were businesses in town that have bands performing, which normally generated more traffic than the

business itself. Chair Blakaitis asked if they had a special set up. Director Garman stated that the reason the issue with Roadside was generated was due to Mark Copeland constructing a bar in the setback without obtaining permits. He added that the other businesses that do similar events occasionally did not construct a bar.

Member Murray thought the permit issue should be kept separate from the use. He stated that if someone did something that required a permit and did not obtain one and it was obvious that one should have been obtained, they should pay some kind of fine associated with the building permit cost and apply it to the permit and then have the proper inspections. Director Garman stated that Member Murray was correct in cases where the Town could issue a permit; however, the Town could not issue a permit in this case. Member Murray thought it was an unknown at this point. Director Garman agreed and clarified that he could not issue the permit for it as it would require the Planning Board and Council's approval because of the issues that were beyond the ordinance, such as the setback encroachment.

Member Murray thought that in all fairness, the Board should completely ignore the fact that Mark Copeland built without a permit. He added that if the Board approved what was there, it was as if they were imaginarily approving the project for the bar; fine Mr. Copeland and have him pay the fee and that would remove the problem with constructing without a permit. Director Garman stated that he was not asking the Board to focus on the fact that there were no permits obtained, but felt that the Board should look at what was built and what they were doing that was associated with what was built, which were being introduced as new things on the property. Member Murray stated that it was more concern on the use. Director Garman stated he was correct.

Chair Blakaitis asked how much did a business's use through minor events evolve. He thought it was reasonable to ask a business owner what they expected to do with their property, but thought it was equally reasonable to accept it and was possible to imagine another business having an event and becoming very popular. He stated that it was hard to project how the use of an area will evolve. He asked if there was any recourse if it became inappropriate, such as more vehicles anticipated and getting the Police Department involved to deal with it. Director Garman stated that the Town did have recourse as there would be things that the Town could do. He stated that it was easier to define it up front than retroactively determine what may or may not be a violation. He added that it was a tough issue because there were special event criteria as well as items that fell below the threshold.

Vice Chair Fricker stated that he was still questioning what was considered a special event. He thought it was a matter of dining. He didn't know why the Board was putting the other uses into the special events criteria. Director Garman thought it could be called additional uses of the property. He wondered if Mark Copeland was generating additional use of the property that did not currently exist that needed to be accounted for. He added that the question should be if the events were to happen so frequently that it would become an additional expansion of what was approved that needed to be accounted for.

Chair Blakaitis stated that he understood that Director Garman had concerns over and above the seven events that were mentioned in the application. He asked if the Board approved what was in front of them with some changes and instead of seven events, Mark Copeland has nine as well

as a few movies and a bachelor party, how it would affect him. Member Murray thought there were some things that were easy to define that could be put in as conditions on the permit as well as periodic monitoring. Vice Chair Fricker thought it would give the Town a means of monitoring the site. Director Garman thought it could be done.

Member Murray asked Mark Copeland how he felt about the periodic monitoring. Mark Copeland stated that if he was going to hold special events in the rear yard, he would use port-o-johns so he would stay well below his usage as far as his restaurant was concerned.

Director Garman clarified that the Board did not want to narrow the conditional use permit down to the specific special events listed. Chair Blakaitis disagreed. He agreed with Vice Chair Fricker's comments but wasn't sure what the Board was supposed to do.

Member Forlano stated that he was fine with the conditional use permit but when the issue came up regarding specific events such as the oyster roast, and then expanding to rehearsal parties, he questioned how parking would be handled. He added that because he has been in the wedding business for the past nine years, he knew that 50 people attending a rehearsal party would require extra parking. He stated that he wanted Mark Copeland to maximize the property as much as possible, but had an issue with regard to the parking. He noted that the eight events listed happen around Thanksgiving so parking would not be an issue then. Mark Copeland agreed and added that he has been holding the events for 20 years and never had a problem. He stated that if he started receiving complaints then it would need to be addressed. Member Forlano stated that people walking to the restaurant would not add to the parking issue, but if Mr. Copeland expanded to other events that would cause parking problems, it would be a concern.

Chair Blakaitis agreed with Member Forlano's comments and was comfortable with the changes until the expansion of use was brought up. He stated that he hadn't heard anything that addressed whether it was exceeding the number of events that were allowable or if there was an issue with the parking. Member Murray wondered about the small events. Chair Blakaitis agreed and wondered if the Board needed to worry about them as to if they would create a parking issue.

Vice Chair Fricker asked if Aqua Restaurant had 20 tables on their front lawn. He asked if it would not be allowed. He thought it would be allowed since it was considered dining. Member Murray asked what would happen if Aqua Restaurant set up one table for an oyster roast. Chair Blakaitis asked what would happen if it was called a special event. Vice Chair Fricker asked what would happen if it was standing dining, without any tables. Director Garman pointed out that Mark Copeland's events were in the rear of the property and not in the front. He wondered if it would be perceived differently with regard to Aqua Restaurant if it were held on the front lawn with a movie screen set up, hay bales, etc.

Vice Chair Fricker asked what would happen behind Coastal Cravings if they removed the driveway and used the area for people to use behind the restaurant. He asked why it was any different than having more dining space than would otherwise be permitted. Chair Blakaitis asked if it would be on a routine basis. Vice Chair Fricker stated that it would not be, but for what Mark Copeland has been doing. Mark Copeland noted that if he was able to purchase the adjacent lot, there would not be an issue, but there would be more people on the site. He added

that he has held events for over 20 years and never had an issue. Chair Blakaitis thought the additional events that weren't really events needed to somehow be worked into the conditional use permit. Member Forlano stated that the Town would never be able to control it. Chair Blakaitis agreed. Member Forlano stated that, in the restaurant business, extra chairs and tables seem to appear out of nowhere, even if the restaurant was zoned for only 20 seats. He added that rules could be set, but they could not be controlled.

Member Murray stated that there were criteria and ordinances, with the ordinances as an effort to keep things organized and proceeding smoothly. He added that there would be minor violations where there would be too many tables as well as major violations that create other problems. He stated that the ordinance has created a blurred line with a point that the violation becomes very extreme. Vice Chair Fricker stated that the minor violations which were continuous were cited as precedent for someone else to do the same. Member Forlano stated that an exception could be made with the conditional use permit, and if the permit was violated, the contract would be pulled. Member Murray thought Mark Copeland needed to provide an enumerated description of all of the events – large and small – in order for the Town to determine how much parking each event would require. Chair Blakaitis asked if there was one event over the seven, it would not be allowed. Member Murray thought if it was one special event with more than 100 people over the seven, it would not be allowed. He stated that the question became if it would be worth the trouble if there were only seven total events. Mark Copeland stated that the seven events may have 100 people, but he doubted there would be that many at each one.

Vice Chair Fricker thought, if Mark Copeland was left to his own devices, he would potentially hold an oyster roast at least once a week. Mark Copeland disagreed. Vice Chair Fricker thought Mr. Copeland would find something to attract a significant number of people during the summer months to the rear of the property on a regular basis. He added that if staff had their way, they would want it restricted to a finite number of events with specific dates as a means to inhibit Mr. Copeland's inclination to expand his business. Director Garman stated that he has to enforce the zoning ordinance for the Town. Vice Chair Fricker asked Director Garman to review the revised conditions with the Board. Director Garman reviewed the conditions with the Board.

Chair Blakaitis asked what sort of changes Director Garman wanted to be notified about. Director Garman stated that he suggested that if Mark Copeland was going to change the dates of the events, that Town staff be notified.

Vice Chair Fricker wasn't sure if the condition regarding installing some sort of permeable paving product was enforceable. Mark Copeland asked if grading and planting grass or sod would be sufficient. Vice Chair Fricker wasn't sure as he didn't have any facts on which to base the condition. Director Garman stated that for a commercial parking lot, if a permeable pavement was installed, it would be something that would have specifications associated with it and would be certified that it was permeable. He added that it would be similar to the GravelPave that the Town had in the parking lot. He stated that he had mentioned in the staff report that Mr. Copeland could use a geotextile reinforced soil with grass, which has been used in other areas that weren't considered high traffic areas for fire access.

Chair Blakaitis wondered if the lot could be scraped and then have gravel installed. Member Murray noted that it wasn't technically parking and wondered why the Town would require a

durable area that wasn't considered parking. Chair Blakaitis clarified that if it was grass, there wouldn't be an issue. Director Garman stated he was correct. Chair Blakaitis thought the Board would allow Mr. Copeland to use whatever was most cost effective.

Vice Chair Fricker stated that he was in favor of eliminating the condition altogether. Chair Blakaitis agreed. Mark Copeland noted that his staff has parked in the rear of the property for many years.

Member McKeithan asked if there were special events, would additional guests park in the area where staff currently parked. Mark Copeland stated that his staff parked in that area. Member McKeithan asked if other people would park there for the special events. Mr. Copeland stated that if his employees were already parked there, there wouldn't be room for other vehicles. Member McKeithan clarified that the employees fill up the lot with their vehicles. Mr. Copeland stated that they did, adding that there were usually seven to eight vehicles in that area.

Chair Blakaitis asked how many employees worked for the restaurant. Mark Copeland stated that he had 25 employees but not working at the same time. He added that he had two cooks, two dishwashers, three wait staff and a bartender.

Chair Blakaitis directed the Board to make a decision on the permit. He stated that if the conditions were fine with the applicant and there were no further problems with them and if Director Garman felt he could enforce it, the permit should move forward. He agreed with eliminating the one condition. Member Murray clarified that if the condition was eliminated, Mark Copeland didn't have to do anything. Chair Blakaitis stated he was correct. Mark Copeland stated that he did not want to have to plant grass. Chair Blakaitis stated that if staff was comfortable with the permit and the applicant felt he could work with it, there was no other discussion needed.

Member Forlano asked what designated an event. Vice Chair Fricker stated that it was defined in Mark Copeland's narrative as follows: "The area will be to host events. New Year's Eve crab pot drop, Jazz Fest party, Full Moon party on June 23, July 22, August 21, and September 19. He added that there was nothing else listed. He stated that if Mr. Copeland wished to hold more events, he needed to indicate as such with sufficient specificity so that the Board could add it as a condition. Member Murray asked if the Board did, would they be creating a use that would require more parking. Vice Chair Fricker stated that Director Garman could not address something that had not been enumerated. Director Garman stated that as long as it was defined and staff was comfortable with what was defined, it could be added. Member Murray asked if Mr. Copeland could add minor events that did not create a change or increase in the use. He further asked if the Board should give Mr. Copeland guidance on the threshold for parking.

Member Forlano suggested that the language read: "...limited to seven events of 50 to 100 and considered to be a major event, then minor events under 50..." Member Murray stated that he liked the no permanent seating condition. Vice Chair Fricker asked if the issue would be solved by saying that a maximum number of patrons could be on the property under the zoning ordinance. He pointed out that the use of Coastal Cantina was handled that way. Director Garman stated that it was defined as an outdoor dining area with tables and chairs allowed. Vice Chair Fricker asked why it wasn't covered under the existing ordinance, stating that a business

could not have a certain number of square feet of outdoor dining space. Director Garman stated that it was the issue that was originally brought up. He added that it would not be allowed unless it was being used specifically for special events. He stated that all of the businesses in Town have special events from time to time that were not part of their normal business. He noted that it was not very well defined in the ordinance how the events were treated but what was basically being said was if it would be used as a permanent facility, such as an outdoor dining area, or would it be opened for occasional use. He thought that was what the Board was trying to define.

Director Garman stated that the Board could define a certain number of nights for events or they could choose to use the suggested language and at that point it would become complaint driven with enforcement. Member Forlano thought the Board needed to define more detail about the events because there were issues with Coastal Cantina due to the Board not being specific on what was allowed to happen. Vice Chair Fricker added that the problem became very similar to the issue at hand in that it was in part how much the adjacent decking area of the boardwalk would be utilized for their outside dining. Mark Copeland pointed out that it was different because his property was private property.

Chair Blakaitis asked if there were other suggestions with regard to enforcement of the conditions. Director Garman stated that other than enumerating the exact events and when they would occur, there weren't any others. Chair Blakaitis asked if the applicant would need to enumerate the smaller events. Member Murray thought that they could be listed under the definition section as a frequency limit. Vice Chair Fricker thought it missed the point. Member Murray thought if there needed to be an enumeration of the smaller events, the wording of the information needed to be very narrow. Vice Chair Fricker didn't think the Board needed to know about the smaller events, just that Mark Copeland could not have more than 80 patrons at one time. Member Murray asked how it would be enforced. Vice Chair Fricker stated that it was complaint driven. Member Forlano thought the smaller events would be impossible to enforce. He felt that the only problem with any event would be the parking.

Member McKeithan stated that the Code of Ordinances stated that for an event to be considered a special event, it needed to be advertised and open to the general public. He added that the category of wedding rehearsal parties did not fit into that category as it did not classify as a special event. Member Forlano agreed. Chair Blakaitis wondered if a sentence could be added to the third paragraph that would state: "...shall not become permanent expansion of the restaurant use for main events..." Member Murray thought limiting the number of events so as not to exceed the number would be a good suggestion. Chair Blakaitis pointed out that it was already listed. Member Murray noted that they were special events and the non-special events needed to be defined.

Chair Blakaitis wondered what direction the Board should move considering they did not have enough information. He added that if it was the Board's desire to include the smaller events so that there could be enforcement with regard to parking issues, then it should be included. Member Murray thought it should not be the Board's desire to do anything and if Mark Copeland wanted to apply to do something, he needed to explain in the narrowest terms possible to the Board and if they needed to add contingencies to make it even finer, that would be the Board's job. Chair Blakaitis agreed but reiterated that he still wasn't sure what direction the Board should move.

Member McKeithan noted that the Board had discussed whether the seven events would be the only things that could take place in the rear yard, now they were discussing the issue of the other events. He asked if they would be included or excluded from restricting the events to seven. Chair Blakaitis noted that it was core of the Board's discussions. He added that it was relatively easy if the Board was only discussing the seven events. Vice Chair Fricker suggested that unless Mark Copeland wanted additional time to identify the additional events, one of the conditions could be that there shall be no food served outside of the restaurant property except in connection with the six enumerated events. Mark Copeland pointed out that no food was served at his Full Moon party.

Member Murray thought the events were being defined as seven special events or events open to the public. He wondered if Mark Copeland wanted to cater an event that may have 95-100 people, what would be done. He asked if Mr. Copeland wanted to serve food, he would have to apply to the Town or just let Town staff know. He thought the Town was making a good faith effort but noted that there were ordinances that said whether or not an applicant could do something. He stated that it was the applicant's job to create a narrative that would explain how they would be complying with the ordinance and then the Board could vote yes or no on it. Vice Chair Fricker agreed.

Mark Copeland asked if he put on an event and served food, Town staff should be notified. He added that he did not serve food at his events except for the ones where he roasts oysters. Vice Chair Fricker thought the Board was bending over backwards to accommodate Mark Copeland, but added that it was not being fair with the other restaurants because the Town did not allow them to expand their business. Mark Copeland stated that he could not handle any more seats inside and could not expand the restaurant. Director Garman pointed out that all Mark Copeland had asked for was approval of the seven events.

Member Murray thought a motion could be made to approve the conditional use permit as expressed in the narrative, but if Mr. Copeland wanted to expand it to include movie night and any other event outside of the seven, he should provide additional information that explained clearly how movie night was not an expansion of the dining area, no food would be served and that the area would not be used every evening.

Vice Chair Fricker asked if there was something in the ordinances related to bars. Director Garman stated that bars were not allowed and the definition of a bar is in the ordinance. He explained that it was to prevent a bar without a restaurant associated with it. Vice Chair Fricker wondered whether the back of the lot would be used as an outdoor bar. Director Garman stated that if they were serving food in the restaurant, he wasn't sure it could be called a bar because it was an added service.

Member Forlano thought the Board should stay on target with the seven events as it was spelled out in the conditional use permit. He added that as far as other events, he thought Mark Copeland didn't need to obtain a permit or registration if there would be less than 50 people. He stated that it would present a parking problem but not as much as an event with 100 people. Chair Blakaitis stated that based on the information the Board had, he didn't think they could act on anything other than the seven events. Member Forlano agreed.

Vice Chair Fricker suggested adding the following language to Paragraph 1: "...together with occasional minor events not involved in the service of food..." Member Murray stated he was in favor of the suggested language.

Director Garman asked if there should be anything added with regard to permanent seating. Chair Blakaitis thought the language was fine as it was written. Director Garman stated that enforcement with the conditions noted would be complaint driven.

Vice Chair Fricker moved that the Planning Board recommend the adoption of conditional use permit 13-01, with the seven conditions noted. Chair Blakaitis seconded.

Motion carried 5-0.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Planning Board Meeting – May 8, 2013

Member Murray had a correction to Page 8.

Member Forlano moved to approve the minutes from May 8, 2013 as amended. Member Murray seconded.

Motion carried 5-0.

Planning Board Special Meeting – May 22, 2013

Member McKeithan moved to approve the minutes from May 22, 2013 as presented. Vice Chair Fricker seconded.

Motion carried 5-0.

OTHER BUSINESS

Director Garman noted that he would be out of town the week of the July 10, 2013 meeting. He suggested that the Board choose a different date for their monthly meeting. He noted that Council will be holding a mid-month meeting on July 17, 2013 at 1:00 p.m. He added that the Board could meet that evening. It was *consensus* of the Board to have their regular meeting on Wednesday, July 17, 2013 at 6:30 p.m.

STAFF COMMENTS

None.

BOARD COMMENTS

None.

ADJOURNMENT

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

The time was 8:57 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman