

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
March 11, 2015**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, March 11, 2015.

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

Absent: None.

Also present were: Director of Community Development Joe Heard and Permit Coordinator Sandy Cross.

Others Present: Council Liaison Chuck Burdick, Sandy Whitman and Tom Yurasek.

Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for March 11, 2015 at 6:30 p.m.

**PUBLIC COMMENTS**

None.

**NEW BUSINESS**

**Conditional Use Permit 15-001, Application by C.S. Friedman, on Behalf of Four Seasons Resort, Inc., to Consider a Conditional Use Permit to Establish a 28-Seat Restaurant in the Existing Duck Commons Shopping Plaza at 1211 Duck Road**

Director Heard stated that the Board had before them an application for a conditional use permit to convert 2,770 square feet of retail space in the Duck Commons Shopping Plaza from a retail use to a restaurant and store. He stated that the space would be broken up with 1,400 square feet of restaurant space; 400 square feet for an arcade/game room; and 970 square feet of storage space.

Director Heard noted that the property was approximately  $\frac{3}{4}$  of an acre in size; zoned Village Commercial and the building was 6,700 square feet in size in total. He added that it presently contained four units – Sweet T's, the former Savvy Home Furnishings, Duck Cycle, and an office on the second floor occupied by the Outer Banks Real Estate Group.

Director Heard stated that the unit formerly occupied by Savvy Home Furnishings is the proposed location for the new restaurant and is 3,770 square feet. He added that the applicant

was proposing to use only 2,770 square feet. He stated that the remaining 1,000 square feet would be separated by a new wall to be built, creating a fifth unit for future use.

Director Heard stated that the building was originally approved and developed in 1987 under the jurisdiction of Dare County. In 1994, the County approved a conditional use permit to establish a restaurant in the front unit of the building that currently houses Sweet T's. He noted that this unit has remained permitted for restaurant use. He stated that in July, 2009, the Town considered a special exception to allow a shared parking arrangement for the shopping center between Duck Commons Shopping Plaza and the Duck United Methodist Church. He pointed out copies of the documentation and the approval had been provided in the Board's packets.

Director Heard stated that there were no changes being proposed to the actual site as part of the project. He added that one use would be removed and a different type of use would be coming in. He explained that the main difference between the two uses (retail and restaurant) is the parking requirements. He stated that with this case, the requirements will result in a net increase in the amount of parking required to serve the proposed uses on the property. He noted that the only other issue was the potential location of a dumpster.

Director Heard pointed out that the building is not compliant with the Town's standards for setbacks on the side or rear of the property. He added that the building is a legal nonconformity and is grandfathered. He stated that the applicant expressed an interest in obtaining a dumpster instead of the rollout trash carts that were used in the past. He stated that if approved, there would need to be a location for the dumpster to be established on the site. He stated that the site plan in the Board's packet was pretty old, because nothing about the layout of the property has changed. There was, however, an approved location for a dumpster on the site plan. He pointed out that if the applicant wished to propose another location for the dumpster, it would potentially take up an existing parking space or two and change the parking calculations.

Chair Blakaitis asked if the location on the site plan is where the applicant proposes to put the trash dumpster. Tom Yurasek, owner/operator of the proposed restaurant, was recognized to speak. Mr. Yurasek noted that there was a provision for a dumpster on the property. He stated that the owner of the shopping center had indicated that there was a concrete slab on the original site plan. He added that he could not locate the slab on the property, but intended to put in a small dumpster for his business with the proper screening, subject to change.

Vice Chair Fricker asked what would be subject to change – using a dumpster or the size of it? Mr. Yurasek stated that the size could change depending on the anticipated volume of trash, but the location would not change. He stated that he expected to use a small dumpster with stockade fencing around three sides to screen it.

Vice Chair Fricker asked which side of the dumpster screening would not be screened. Mr. Yurasek stated that the side facing Schooner Ridge Drive would not be screened in order to allow a truck to access the dumpster. Director Heard recommended that the driveway side of the screening be open, making the dumpster less visible from the road. Mr. Yurasek stated that he wasn't sure how the truck would access the dumpster if it was screened on Schooner Ridge Drive. He added that there were water meters and piping in that area. He thought as an

alternative, the truck could access the dumpster with it facing the building. Chair Blakaitis suggested that Mr. Yurasek work with Town staff on how the dumpster would be screened.

Director Heard stated that the main thing that the review was focused on was the parking. He stated that staff calculated a requirement of 33 parking spaces for the site, which was an increase from the current requirements, 3.4 more parking spaces than when the unit was used for retail space. He stated that the site plan showed 24 parking spaces on the site currently, which left a shortfall of 9 parking spaces to serve the existing and proposed uses on the property. He stated that the applicant did have an existing, recorded easement with Duck United Methodist Church as well as a shared parking agreement that was completed as part of the special exception approval in 2009.

Director Heard stated that based upon the previously approved special exception, staff believed that this conditional use permit could be approved because there was nothing that specifically limits the amount of shared parking with the Duck United Methodist Church in any of the easement, agreement, or special exception documents. He added that staff was recommending approval with the following conditions:

1. Duck Commons Shopping Plaza must operate in a manner consistent with its shared parking agreement with Duck United Methodist Church and the special exception permit granted by the Town of Duck in 2009.
2. The dumpster is to be added, the location must be shown on the site plan. Prior to installation, screening for the dumpster must be constructed.
3. The applicant must obtain approval from the Dare County Environmental Health Department that the existing septic system can accommodate or be upgraded to accommodate the restaurant prior to issuance of a building permit.
4. The applicant must obtain necessary permits from the Dare County Environmental Health Department for establishment and operation of a restaurant prior to the issuance of a building permit.
5. Any new signs or changes to existing signs must be reviewed and approved under a separate permit by the Community Development Department.
6. This conditional use permit will expire twelve months from the date of approval unless construction has commenced with the required building permit.
7. The applicant must submit a revised floor plan showing the use, size, and dimensions of each unit in the shopping center, including the upper floors.

Member Forlano asked what the tanks were on the site plan. He asked if they were the septic tank and grease tank. Director Heard stated that they were the septic tanks that connected to the septic field to the west. Member Forlano clarified that there wasn't a grease tank on the property. Director Heard stated that he wasn't sure if there was or not. Chair Blakaitis asked if Dare County would have to approve it. Member Forlano stated that they would have to, but he

was trying to figure out where the grease tank could be placed on the property. Director Heard thought one could have been added in 1994 when Cravings Coffee was established. Member Forlano clarified that it was unknown where it is located in relation to the dumpster pad. Director Heard stated he was not sure if or where one is located. Chair Blakaitis added that it must be located between the septic tanks and the building.

Member Forlano asked Tom Yurasek if he had completed any preliminary work with Dare County to figure if he would have enough room to add another drain field line on the property. Tom Yurasek stated that he would be submitting the information the next day, on March 12, 2015.

Member Forlano stated that he was involved in the 2009 determination and there was a long discussion regarding where the repair area was located and the parking spaces across the street. He asked if that issue has been resolved to the Town's satisfaction. Director Heard stated that the special exception was approved and recorded and there was a recorded agreement between Duck United Methodist Church and the property. Member Forlano stated that he was referencing the parking across Schooner Ridge Drive. Director Heard responded that the parking across the street was never built and, under the Town regulations, is no longer eligible for use as it is zoned residential. Member Forlano clarified that the shortfall of nine parking spaces was based on just the shop. Director Heard explained that the shopping center property has 24 parking spaces and the other nine would be accommodated through the shared parking arrangement with Duck United Methodist Church.

Member Forlano stated that he was in favor of shared parking. He added that the church approved the parking in 2009 and things have changed since then. He asked if the agreement would carry on no matter what use would be in the building. Chair Blakaitis thought the agreement was open ended with no dates listed. Permit Coordinator Cross noted that the agreement was recorded. Member Forlano clarified that it was basically an easement. Director Heard stated that it was. Director Heard and the Board went on to discuss the agreement.

Member McKeithan stated that there was the potential for a shortage of parking. He noted that the conditional use indicated that in order to solve the parking issue, it would require employees of the Duck Commons Shopping Center to park across the street in the designated spaces behind Duck United Methodist Church. He thought it was important to enforce this during the busy season. He thought the employees should be parked across the street instead of patrons. Tom Yurasek stated that he could request or even require his employees to park at the church.

Vice Chair Fricker clarified that the shared parking agreement was an effective solution to deal with the parking shortage at the property. Vice Chair Fricker clarified that if they lose a few parking spaces to accommodate the dumpster, it would not be an issue because of the agreement with the church. Director Heard stated he was correct.

Chair Blakaitis asked what kind of arcade would be in the building, specifically inquiring about electronic gaming. Tom Yurasek stated that it would be approximately 400 square feet and the family oriented games would be something that would keep children entertained while they are waiting for their food. Chair Blakaitis thought it was a good thing. He asked if the 1,000 square foot unit be converted to a restaurant in the future. Mr. Yurasek stated that it could, but it wasn't

his intention at this time. Director Heard pointed out that that area was not part of Mr. Yurasek's business, but an extra space that the owners had.

Member Murray asked if Condition 2 should have the dumpster location noted on the site plan. Chair Blakaitis thought Waste Management would tell the applicant where the dumpster should be located so they could service it. Mr. Yurasek wasn't sure who the waste company will be for his business. He stated that he would have a discussion as to where the dumpster can be placed for easy access. Chair Blakaitis suggested that the language read as follows: "...shown on the site plan and approved by staff, as per and in accordance with the recommendations of the waste hauler..."

Vice Chair Fricker suggested that additional language read as follows: "...prior to installation, three sided screening for the dumpster must be constructed so that the dumpster cannot be seen from either Duck Road or Schooner Ridge Drive..." Chair Blakaitis thought the suggested language was fine. Vice Chair Fricker clarified that Condition 7 would read as follows: "The applicant must submit a revised floor plan showing the use, size, and dimensions of each unit in the shopping center, including the upper floors." He asked if it was correct. Director Heard stated that it was.

Chair Blakaitis moved to recommend approval to Town Council as per the conditions set forth in staff's recommendations and modified by the Board for Condition #2 and the addition of Condition #7. Vice Chair Fricker seconded.

Motion carried 5-0.

**Text Amendment: Proposal to add Subsection 151.23(B), Defining the Activities that Constitute "Commencement of Work"**

Director Heard stated that the text amendment was for Section 151.23(B) of the Town Code. He noted that it was the building ordinance and not the zoning ordinance. He stated that staff was looking to define the term "commencement of work". After some discussion, staff was proposing to define the term so there would be no interpretation involved since everyone would know when construction begins. He went on to review the items in the staff report with the Board and audience. He explained the rationale behind six construction activities that staff had asked for the Board to consider as commencement of work.

Chair Blakaitis asked what the ordinance stated with regard to commencement of work. Director Heard stated that it did not presently define the term. Chair Blakaitis thought it made sense to add the items to the ordinance. The Board went on to discuss what other municipalities do with regard to commencement of work as well as the process for permitting and starting work.

Member Murray understood the benefits of defining commencement of work, but questioned if several of the options offered by staff need to be included on the list. He noted that typically when a permit is picked up, the contractor wants to immediately schedule the temporary power pole inspection. Permit Coordinator Cross noted that a temporary pole permit can be pulled separately and apart from a building permit on the same day as installation. Member Murray

agreed, adding that clearing and grading were also items that could be dealt with via a separate permit.

Chair Blakaitis clarified that Member Murray was saying that installing a temporary power pole was a key thing that needed to be done as soon as possible. Member Murray stated that in other jurisdictions, it was typical that when a building permit was picked up, to request a temporary pole inspection and a piling inspection. He added that before those inspections, the contractor also had to have batter boards and strands up. He stated that he saw this as a pitfall for contractors who work on the Outer Banks, that the Town's standards would not only be different, but contrary to other towns. Member Murray explained several examples of when land disturbance and batter boards and strings may be preparatory for building, but preliminary in nature.

Permit Coordinator Cross asked about putting in pilings that would be permanent on the site. Member Murray stated that materials were delivered to the wrong sites on an almost constant basis. He asked if that would be a violation. Vice Chair Fricker didn't think so as it was a mistake. Member Murray stated that the situation could be fixed by making a telephone call.

Vice Chair Fricker asked if the intent of the changes is a matter of wanting to know what was going to happen before it happened. Permit Coordinator Cross responded that if work starts without a permit, there is a substantial penalty. She stated that before staff imposes the penalty, they want make sure that everyone is on the same page that the contractor should be penalized.

Chair Blakaitis asked what the problem was with having the Town describe what some of the conditions should be. Member Murray stated that every builder has a client with a construction loan that accrues interest. It is in the client and contractor's best interest to move forward as expeditiously as possible. In many cases, he can come to the Town and apply for a land disturbance permit, but cannot apply for a building permit because the Building Inspector cannot review the plans until they are engineered. He may be able to submit a site plan with pre-disturbance elevations and explain what would be done to prepare the site for the building. He stated that, upon looking at the conditions, after he's obtained a permit, he could not have materials delivered. He stated that this was an issue for him with regard to material delivery and temporary pole installation.

Chair Blakaitis asked Permit Coordinator Cross how she saw the scenario that Member Murray presented. Permit Coordinator Cross stated that it happens very rarely. She added her opinion that the temporary pole wasn't necessary to distinguish as commencement of work. Vice Chair Fricker opined that Paragraph 5 regarding temporary utilities should be removed. Chair Blakaitis agreed and added that the other conditions did define commencement of work in his opinion. Vice Chair Fricker noted that work could not begin without the materials being on the site, so once they were delivered, it would mean construction has started.

Member Forlano asked what would be considered demolition, an entire building or work within structure. Permit Coordinator Cross stated that there was an instance where a contractor submitted a permit to demolish a deck and rebuild in the same location. Before staff could get out to verify the location of the deck, it was demolished, so staff had no way of knowing if the deck would be put back in the same place. Member Forlano stated that most demolition permits

are probably for remodeling homes. He asked if gutting a kitchen would be considered demolition. Permit Coordinator Cross stated that Building Inspector Tate would consider it demolition. Member Murray asked about glazing removal for demolitions in the AEC District. Permit Coordinator Cross stated that it would require a permit. Member Forlano asked if anytime a dumpster is on-site at a property, a permit is needed. Permit Coordinator Cross stated that when she sees a dumpster on site, she checks to see if a permit was issued. If not and the work is being completed appears to be enough to need a permit, she will send Building Inspector Tate to check it out.

Chair Blakaitis suggested that the six items discussed be changed to clarify the standards. Permit Coordinator Cross thought the Board wished to delete the installation of temporary utilities. Chair Blakaitis suggested it be removed. Several other members agreed.

Chair Blakaitis asked for other suggested changes. Vice Chair Fricker suggested that under proposed A – it should read as: “...if any person undertakes the commencement of work regarding a building or structure before obtaining the necessary permits...” Director Heard noted that A was the wording of the existing ordinance. Vice Chair Fricker suggested that B should read as follows: “...commencement of work shall include any of the following activities relating to a building or structure:”

Vice Chair Fricker moved to recommend the text amendment to Town Council as amended by the Board. Chair Blakaitis seconded.

Motion carried 5-0.

**Text Amendment: Proposal to Amend the Definition of “Building Height” in Section 156.002 by Clarifying how Building Height is Measured in Different Flood Zones**

Director Heard stated that if he had recognized what the proposed change involved, he would have paired this amendment with the changes for “free and clear” standards in the flood damage prevention ordinance. He stated that the amendment was consistent with the flood damage ordinance in its intent to not penalize owners for having to raise their structures to meet the flood elevation requirements. He stated that the intent was to clarify how it would be applied. He added that there would not be any changes in the way the ordinance has functioned in the past.

Director Heard stated that he was proposing to break up the subsection into 1 and 2 for clarity. Section 1 deals with A flood zones and Section 2 deals with standards in the V flood zone. He stated that there were no changes proposed to the standards for A flood zones. He added that the change to the V flood zones was to clarify that the two feet would be measured above the highest adjacent grade and measured from the bottom of the lowest, horizontal member. He stated that the height would be measured from the bottom of the lowest horizontal member. He stated that the change was intended to clarify the intent as well as to be sure everyone understands what they can and can’t do.

Chair Blakaitis asked what the lowest horizontal member was in a house in a flood zone with the two foot free and clear. Member Murray thought it was the girder. Chair Blakaitis noted that a house could have a couple girders and asked if it was the first floor girder. Director Heard stated

it would be the lowest. He explained that the piling would raise the house to the elevation needed and the next piece it would sit on would be the lowest horizontal member.

Member Murray clarified that there wasn't a provision for measuring building height from base flood elevation in the A zone. Director Heard stated that it would be covered in subsection 2A of the ordinance. Member Murray asked if finished grade and average finished grade would be determined by the surveyor. Director Heard stated that one would take the average elevation of the four corners.

Member Murray inquired about how the proposed change would impact situations where a residence has an elevator, dry entry, or garage below the living area. Would the height be measured from the concrete slab for those areas or the lowest horizontal member for the living area? Staff present could not answer how that situation would be dealt with. Vice Chair Fricker asked if the clarification regarding elevators and dry entries should be tabled until the next meeting so Director Heard could discuss it with Building Inspector Cory Tate. Director Heard thought it was a good idea. It was *consensus* of the Board to table the text amendment until the next meeting.

## **OLD BUSINESS**

### **Text Amendment: Proposal to Amend Tree Preservation Standards in the Town's Zoning Ordinance, Section 156.115, Design Standards for Landscaping and Open Space, and Section 156.137, Tree and Vegetation Preservation and Planning**

Chair Blakaitis thought Director Heard had done a good job of summarizing what was discussed at the Board's last meeting. He asked Director Heard to highlight some of the areas that needed additional attention.

Director Heard stated that there were several specific issues that the Board spent time on at the last meeting. He stated that one of the main items was consideration given to lowering the size of regulated trees from 24 inches to a lower figure. After discussion, the majority of the Board agreed that the size should not be reduced. He added that there was no proposal in the draft to change the size.

Director Heard stated that the second item had to do with measuring multi-stem, multi-trunk trees. He stated that the formula was the same as what the Board had seen previously based on U.S. Forest Service guidelines. Per the Board's recommendation, staff added a reference so people would know the formula came from a reputable source and not something the Board just came up with.

Director Heard stated that the third item was developing greater requirements for mitigation/replanting of trees in cases where trees were removed without a permit. He stated that staff tweaked the proposal to refine and remove items on Page 10 of the ordinance.

Director Heard noted that three other items were brought up that were minor in nature – having the correct term on Page 10 to tie it back to the beginning of the ordinance; provisions on Page 6

eliminating the option of replacing trees with shrubs; and eliminating a provision not allowing pruning or topping of trees on Page 8.

Vice Chair Fricker commended Director Heard for his work on making the changes to the ordinance. He stated that on Page 10, subsection 5A, the word “tree” was put in. He noted that 5B had “vegetation”. He thought it should be trees instead. Director Heard thought it would be best to use both terms. Vice Chair Fricker asked if it should be the same with Subsection 6. Director Heard thought it should.

Chair Blakaitis thought everything was covered. He thought the only thing that was left was the initial reason Council wanted the Board to look at the ordinance - the fines for violations. He thought the fines should be more stringent. He suggested \$1,200 or \$1,500 instead of \$1,000. He asked the Board members how they felt.

Vice Chair Fricker thought at the last meeting, Member Murray stated that he would rather deal with remediation and replanting than fines. He thought by not discussing it in depth, the Board agreed with him. Chair Blakaitis stated that he wanted to make sure that the Board met the goal of what Council had asked of them, which was to make it more difficult to remove a tree. He noted that replanting requirements had been increased, which provided more costly penalties. Vice Chair Fricker noted that Council Liaison Burdick told the Board what his understanding was of the charge given to the Board by Council. Council Liaison Burdick agreed.

Council Liaison Burdick asked if there was any fine level that would stop the removal of trees that should not be removed. Member Murray thought the reason this happened was due to the ignorance of the regulations. He wondered if anyone had removed a tree before and was indifferent to the fine imposed. Chair Blakaitis stated that the Board had discussed the fact that someone may find the fine less imposing than doing what they wanted to do. Vice Chair Fricker added that it could be considered a cost of doing business. Chair Blakaitis stated that the remediation part of the ordinance and increased replanting costs nullify that thought.

Council Liaison Burdick thought that Council wanted to see an ordinance that would make people think twice before removing a tree. He didn't think the fine was anywhere near what the remediation would cost. He thought it would be more costly to replant trees to fix the issue. Chair Blakaitis agreed. Council Liaison Burdick stated that if the Board proposed a higher fine, he thought Council would go along with it.

Vice Chair Fricker moved that the proposed text amendment as presented to the Board by staff be recommended to Town Council for their approval with one minor change on Page 10 – vegetation and trees in Subsection 5b. Member Forlano seconded.

Member Murray stated that he would not vote in favor of the ordinance due to not taking care of the consideration of allowing trees to be cut down for development but not for non-development purposes.

Motion carried 4-1 with Member Murray dissenting.

### **APPROVAL OF MINUTES**

## **Minutes from the February 11, 2015, Regular Meeting**

Member Murray had corrections to Page 6 and 7 of the draft minutes.

Chair Blakaitis moved to approve the February 11, 2015 minutes as amended. Member Fricker seconded.

Motion carried 5-0.

### **OTHER BUSINESS**

None.

### **STAFF COMMENTS**

#### **Proposed CAMA Land Use Plan Rule Changes**

Director Heard stated that he had forwarded an email to the Board regarding the proposed CAMA land use planning rule changes. He stated that the N.C. Division of Coastal Management was asked to look at their rules and regulations, evaluate them, and classify each standard as something that was necessary, in the middle, or unnecessary; with the goal of streamlining the regulations. He stated that the Division of Coastal Management held several meetings where they invited all local governments that were subject to CAMA regulations and had them sit down and discuss the rules and requirements for CAMA land use plans. He stated that he was invited to speak at one of the meetings and let DCM know that the Town of Kitty Hawk uses approximately 17 pages out of the 200 pages in the document. He stated that he and many others also talked with about items that he felt were unnecessary and didn't need to be a part of the plan. He stated that input was received from communities throughout the State and DCM went back and spent several months putting together changes to the plan requirements and planning process. He added that they submitted a more streamlined draft document. He stated that the DCM is giving a two month window for communities to comment on the proposed changes before it moves forward to the State legislature for consideration and adoption.

Director Heard stated that he wanted to make the Board aware of the effort. He stated that if any member had an interest in discussing the changes further, he would be happy to sit down with them. He stated that comments weren't due until April 26, 2015.

Director Heard gave a short update on the commercial projects going on in Town to the Board.

### **BOARD COMMENTS**

None.

### **ADJOURNMENT**

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

The time was 8:49 p.m.

Approved: \_\_\_\_\_  
/s/ Joe Blakaitis, Chairman