

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
July 8, 2015**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, July 8, 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: Ken Forlano, Ron Forlano, Jr., Mark Copeland, Sandy Whitman, John Klamut, and Town Manager Christopher Layton.

Others Absent: Council Liaison Chuck Burdick.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for July 8, 2015 at 6:32 p.m.

PUBLIC COMMENTS

None.

It was *consensus* of the Board to move New Business up on the agenda.

NEW BUSINESS

Text Amendment: Proposal to Amend Subsection 156.129(C)(5) of the Town Code to Eliminate a Requirement that Outdoor Dining Areas Cannot be Located in a Septic Area

Member Forlano asked for the Board's permission to recuse himself from the discussion and vote on the text amendment since it was directly related to Conditional Use Permit 15-004, based upon his family's relationship with the applicants. He added that he wished to have the Board's permission to sit in the audience to answer any questions pertaining to the two issues.

It was *consensus* of the Board to recuse Member Forlano.

Director Heard stated that there were two items that are back to back on the agenda and submitted in concert with each other. He stated that a Conditional Use Permit application was submitted to establish an outdoor dining and entertainment area at Duck Deli. He stated that during the review of the project, it was noticed that the proposed area for outdoor dining was

located on top of the septic area for the restaurant, which is in conflict with a current standard of the zoning ordinance.

Director Heard stated that the applicant submitted the text amendment for the Board's consideration. He emphasized that these are two independent applications and the Board could approve one and not the other, should the facts lead to that decision. He stated that the Conditional Use Permit approval is dependent on approval of the text amendment as it could not otherwise be approved. He added that the text amendment could be approved separately and asked that the Board consider the items as two separate issues.

Director Heard stated that what was proposed was a revision to the ordinance that would remove the following wording: "...outdoor dining areas shall not be located in septic areas..." from the standards for outdoor dining areas.

Director Heard stated that in January, 2012, the Town Council accepted recommendations from the Planning Board and adopted a text amendment that included requirements relating to the location and use of outdoor dining areas for eating establishments. He stated that in the staff report, a copy of what was approved was included. He added that the particular subsection the Board was discussing was Subsection 5. He stated that it currently read as follows: "...outdoor dining areas shall not be located in required front yards, landscape or buffer areas and septic areas..." He reminded the Board that the proposal would be to remove "septic areas" from the ordinance.

Director Heard stated that the minutes from the Planning Board and Town Council meetings leading to the decision in 2012, did not reference the specific rationale for the septic area requirements. He had wondered why septic areas were included in the ordinance, but couldn't find any reference about it. He inquired if some of the Board members have a recollection on the discussions in order to provide some insight on the issue.

Director Heard stated that staff did some further research to look into if there were valid reasons and why it would be an important factor for the Town to consider this as a standard. He added that he had a conversation with Josh Coltrain of Dare County Health Department and he explained that the County Environmental Health Department did permit outdoor dining activities to occur on top of septic systems, subject to certain criteria – which were not rules that are adopted – but more of a policy as to when they allow it. He stated that the Health Department looked at if the septic system had the capacity to accommodate an increase in seating from the outdoor dining area; would not permit any permanent structures to be placed on the septic system such as a shed or covered structure; the outdoor furniture, such as tables or chairs, must be relatively light and can be readily moved; and nothing can be dug or inserted into the ground such as posts. He stated that the Health Department has previously approved outdoor dining activities over septic areas under these conditions.

Director Heard stated that in consideration of the factors, staff looked at the proposal and did not identify a specific public purpose that was addressed by this standard in not allowing it over a septic system. He noted that the Town's standards were more stringent and won't be required by the Dare County Health Department, adding that staff was recommending approval of the proposed text amendment to eliminate the requirement.

Director Heard stated that Town Attorney Robert Hobbs was recommending that the Planning Board proceed with a recommendation regarding the text amendment so that it could remain on track for a series of meetings with Town Council. He added that Town Attorney Hobbs was recommending deferral on the recommendation of CUP 15-004 until the meeting in August.

Chair Blakaitis clarified that Director Heard meant the deferral was until the Planning Board could meet in August. Director Heard stated he was correct. Chair Blakaitis stated that if the Board considered the CUP, no action would be taken at this meeting. Director Heard stated that that was Town Attorney Hobbs' recommendation. Chair Blakaitis clarified that the CUP would come before the Board as written or with any changes at their August 12, 2015 meeting. Director Heard stated he was correct.

Vice Chair Fricker asked if Town Attorney Hobbs explained why he recommended the approach as opposed to the Board potentially deciding on both items tonight, in favor of the applicants, but simply have the CUP not presented to Council until after Council has acted on the text amendment. He asked why the Board needed to look at it twice. Director Heard stated that Town Attorney Hobbs had discussed the idea with other members of his staff and came back with the recommendation.

Chair Blakaitis asked why the issue wasn't delayed until the Board's August 12, 2015 meeting. Director Heard stated that the CUP was submitted first and the text amendment came afterward, so it was already scheduled for this meeting. Chair Blakaitis clarified that the Board would take their final action in August. Director Heard stated that is what was recommended for the CUP application.

Member McKeithan asked if the Board would review the CUP at this meeting if it was going to look at it again at its August meeting. Chair Blakaitis stated that it could be done and felt it would be to the Board's advantage to do it. Vice Chair Fricker wasn't sure if the Board was governed by either and thought that since the matter was on the agenda, the Board should deal with it.

Member Murray stated that if the Board was supposed to find facts and the fact of the text amendment has not been approved by Council, it would make it harder for the Board to approve the CUP until the text amendment has been approved. He added that by discussing it, the Board could make any changes they felt necessary so the applicant could move forward.

Vice Chair Fricker asked what notice was sent out with regard to the CUP. Director Heard stated that the notice was published as a legal ad in the local newspapers, a notice was mailed to all adjoining property owners and it was put on the Town's website. Vice Chair Fricker asked if staff received any response from any of the property owners that were sent a notice. Director Heard and Permit Coordinator Cross stated that no responses were received. Vice Chair Fricker asked if any of the property owners that received the notice were year-round residents or not. Director Heard stated that he was not sure. Permit Coordinator Cross stated that the owner of the Waterfront Shops was a year-round resident. Vice Chair Fricker asked if any residential property owner behind Duck Deli was mailed a letter. Permit Coordinator Cross stated that

letters were sent to three residential property owners. Vice Chair Fricker clarified that the letter was received. Permit Coordinator Cross noted that the letters were not sent via certified mail.

Member Murray thought the text amendment seemed fine as it was presented. Chair Blakaitis asked why the language was in the ordinance. Permit Coordinator Cross stated that she reviewed the minutes from past meetings and the only thing she could think of was that it was to preserve open space. Vice Chair Fricker thought there was nothing in the written record and didn't recall the rationale behind the language. He asked if any staff member contacted former Director of Community Development Andy Garman regarding the ordinance. He thought it may have been that Mr. Garman had found some other municipality that was dealing with the same issues. He asked if Mr. Garman was asked. Director Heard stated that he was not contacted. Vice Chair Fricker stated that he did not remember anyone speaking to that particular subparagraph in the ordinance. He stated that it may be that Andy Garman or others felt it didn't make sense to serve food to people sitting on a septic system. He stated that it wasn't an unreasonable position to take and he would like to think that members of the Board weren't just passing an ordinance just for the sake of passing one and thought there was a rational basis for including the original standards. He thought that if there was some imposition to the restaurant industry as a whole, then he would be interested in amending the ordinance. He added that to do it for one restaurant, which may have greater problems than this with the CUP, he wasn't inclined to change the ordinance. Permit Coordinator Cross read a portion of the Town's Vision Statement to the Board and the audience.

Member McKeithan agreed with Vice Chair Fricker's comments. He didn't think the wording should be eliminated, adding that it was put in the ordinance for a reason. He stated that if the Board decided to approve, there could be some stipulations, such as an extra sturdy septic tank cover, as to what could and could not be done. He agreed with Vice Chair Fricker in that if the Board did anything, it needed to be amended and not eliminated just because someone asked to have the language removed.

Member Murray thought the Vision Statement would show that it encouraged commercial development that reflected Duck's coastal village character. He noted that it was part of the language in the Land Use Plan that was in favor of striking the wording. He pointed out that the Dare County Health Department has complete jurisdiction over septic systems, so they would address any safety issue of the eating area being over a disposal field. He felt it was the responsibility of the Dare County Health Department.

Vice Chair Fricker stated that the Vision Statement had the following language: "...and discouraging over-commercialization and intensive land use developments that are not compatible with the Town's residential nature..." He stated that it was one of several considerations and thought it dovetailed into the whole issue of using every piece of land possible. Eliminating the language regarding the septic would mean there would be two uses for one piece of property.

Chair Blakaitis stated that he had a vague recollection on the original discussion of the ordinance. He thought it was an all-inclusive statement because the Town was dealing with it on the boardwalk at the time and the Board was trying to think of future activities. He thought it

was added but wasn't sure why. He wished that Andy Garman had been contacted but wasn't sure if Mr. Garman would have the same explanation.

Vice Chair Fricker thought it would be one thing if there had been a more complete inquiry and thought by talking to Andy Garman, it could have a benefit. However, Mr. Garman may not have any recollection either. He added that this was not a situation where there wasn't a source of information regarding the language because it hadn't been checked.

Chair Blakaitis understood that if the Board decided not to take action because it wanted further information, it could be done but it would push the CUP application back. He added that if the text amendment was delayed until the Board's August 12, 2015 meeting, the CUP would not be reviewed until September. He stated that if the Board felt strongly enough with deferring the items, he would not object. He noted that he had no objection to striking the language in the text amendment.

Ron Forlano of 1378 Duck Road was recognized to speak. Mr. Forlano stated that there were three members present that were on the Planning Board at the time the ordinance was reviewed. He added that all three members could not remember the reason for having the language regarding septic systems in the ordinance. He stated that the Board was talking about trying to look for further input and he wasn't sure how they would research. He added that Director Heard had already talked to the Dare County Health Department about the issue and they did not see a reason for locating moveable objects on a septic system. He noted that there were contingencies of not putting up stakes in the septic field. He stated that Andy Garman would probably have the same issue with recalling the original discussion as to why the language was put in the ordinance. He thought the language was something that should have been questioned at the time of the original discussion.

Vice Chair Fricker stated that the Board has rarely looked at Dare County as a paradigm on anything that has to do with local governments, ordinances, zoning, etc. because they were a little lax before the Town incorporated. He stated that even if they had the power and authority, he didn't think they were always in the right.

Member Murray stated that the proposed area was not over the disposal field, adding that the dining area was proposed to be placed over the septic tanks. He stated that it needed consideration. He thought that people were encouraged by the Health Department to not allow trees to grow in the waste disposal field and tank area. He thought if the Board did not strike the language prohibiting business owners from using an area that was already devoid of trees, it would potentially send them to an area with trees. He stated that when the Board thought of intensive land use, it was possible that these two uses could go well together, considering the lack of trees over a drainfield. Chair Blakaitis didn't think it was a reason why the Board had picked it for the original ordinance. He added that putting it in the ordinance to preserve vegetation would not have been the Board's reason.

Member Murray moved that the Planning Board recommend approval of the text amendment as presented by Town staff. Chair Blakaitis seconded.

Motion carried 3-1 with Vice Chair Fricker dissenting.

Conditional Use Permit 15-004: Application by Forlano Properties, LLC, for a Conditional Use Permit to Expand the Duck Deli at 1223 Duck Road by Establishing an Outdoor Dining Area with up to 30 Seats

Director Heard stated that the Board had before them a proposed Conditional Use Permit to add a seasonal outdoor seating and entertainment area for Duck Deli in the south side yard of 1223 Duck Road. He stated that the proposal included an addition of five picnic tables with seating for up to 30 people in the south yard. He stated that there was approximately 800 square feet that the proposed seating and entertainment area would sit on and would also involve the installation of an 84 square foot wooden deck that would go up against the retaining wall near the rear of the property for use as an entertainment stage.

Director Heard stated that the property had some prior history to it in that the building was originally constructed in 1981 and over the years has evolved into the current restaurant. He stated that in 2012 the Town Council granted approval of a Conditional Use Permit for a project that would combine the subject property with the adjoining residentially used property at 1221 Duck Road for the purpose of demolishing the existing restaurant and residence, then constructing a new 44-seat restaurant and 17 space parking area. He stated that the applicant did not proceed with the approved project. However, earlier in 2015, the applicant made significant renovations to the existing restaurant that including the installation of a new septic system in the proposed project area.

Director Heard stated that a good portion of the property was presently grandfathered and was a legally non-conforming parcel. He stated that the parcel size was approximately 8,103 square feet, well below the minimum lot size of 20,000 square feet for the V-C district. He added that the property could be developed in a manner consistent with the Town's current development standards. He noted that it would not receive any special treatment just because it happened to be smaller.

Director Heard stated that the proposed project would not change the existing lot coverage on the site. He added that only tables and a wooden deck would be added and these are not items that are considered lot coverage. He stated that the only site plans staff has to reference show the two parcels combined as part of the 2012 application. That site plan showed existing lot coverage of a little over 31%. He explained that in the V-C district, it allowed up to 60%. However, staff wasn't sure what the current lot coverage is on only the subject property. He stated that it was going to be more than 31%, but staff didn't know whether or not it is non-compliant with regard to the 60% because staff did not have the information. He stated that since the applicant was not proposing to increase the lot coverage, it is a moot point. Chair Blakaitis asked if staff could have obtained the information from the last plat that just showed Duck Deli on it. Director Heard stated that staff looked at the files and none had an as-built survey that showed the existing development. Chair Blakaitis clarified that the conceptual drawing of the combined properties was all that the Board had to work with. Director Heard stated he was correct, adding that he had all of the information that was submitted as part of the 2012 proposal.

Member Murray stated that there was an inconsistency in that the application in that the total acreage was 0.58 and the staff report shows it as 0.19. He asked if the staff figure was only regarding the triangular lot. Director Heard stated that it was.

Director Heard stated that the proposed project would not change the location of the building, nor is there a specific setback requirement for outdoor furniture in the Town's ordinance. He stated that in looking at the setback distances, the existing building presently complies with the setback requirements for both side property lines and does not comply with the setback for the rear property line. He noted that the project would not change the building setbacks in any way.

Director Heard stated that there were no changes to the way the property would be accessed, adding that the subject property was non-conforming. He stated that the entire frontage of the property was basically one large curb cut with the parking accessed directly off of Duck Road. He stated that the proposed project would have an impact related to parking. He stated that in doing measurements and looking at the property, the existing minimum parking requirement would require 17 parking spaces on the site to accommodate the existing restaurant. He stated that the site plan submitted by the applicant showed a total of 15 parking spaces, but in measuring it, not all of the spaces shown on the plan were usable parking spaces as there either wasn't enough depth or were narrower than nine feet. He stated that the total amount of available parking available on the site was 13 spaces according to the Town's standards.

Director Heard stated that the proposal does increase the minimum parking requirements. He stated that with 800 square feet of gross floor area for the outdoor dining area, it would increase the need for parking by 4.3 spaces, bringing the total required parking spaces to 22 on the site. He stated that the applicant outlined a few things in their cover letter, such as a symbiotic relationship with the Waterfront Shops and a reference to approval of future parking improvements in 2012. He stated that the applicant was approved to add additional parking on the adjoining lot at 1221 Duck Road in 2012. However, the project has not occurred yet. He stated that there wasn't a particular timeline on when additional parking could be potentially considered on the property. He stated that due to the non-conforming number of parking spaces and no definitive plan to provide additional parking, the proposed project did not comply with the Town's minimum parking standards.

Director Heard explained that, in addition to compliance with traditional development standards, outdoor dining areas were subject to specific standards for this type of use. He went on to review the criteria with the Board and audience.

Director Heard stated that staff was recommending denial of the Conditional Use Permit for the following reasons:

1. Due to the nonconforming number of existing parking spaces on site and no definitive plan to provide additional parking to accommodate the proposed outdoor dining expansion, the proposed project does not comply with the Town's minimum parking standards.
2. As the proposed outdoor dining/entertainment area is located on top of the septic system, it does not comply with the Town's locational standards for outdoor dining.

Director Heard stated that staff had two other issues with the application. He stated that the applicant was working with the Health Department to identify whether the existing septic system could support the proposed expansion. He stated that if the applicant proposed to add 30 seats in the outdoor dining area. The Health Department needs assurance that the proposal could be accommodated by the existing septic system or be improved to comply. He stated that the other issue was a location question. He stated that there was some work done recently at the site with regard to the placement of gravel in an area and some of the gravel is on the subject property at 1223 Duck Road. However, some of the gravel is also on the property at 1221 Duck Road. He stated that the application noted that the improvements would only be on the restaurant property, but in looking where the improvements have occurred, it appeared that some have gone over to the residential property. He felt that the applicants need to better define the proposed location.

Vice Chair Fricker clarified that the area in question was 800 square feet in order to figure out how many additional parking spaces the applicant would need. Director Heard stated he was correct. Vice Chair Fricker asked if the 800 square feet was currently graveled in or just the area north of the property line. Director Heard stated it was the area north of the property line.

Member McKeithan asked if it had to be inside the side yard setback. Director Heard stated that it did not. He added that it was not a structure or building so it did not have to comply with the building setbacks.

Member Murray clarified that the square footage of the outdoor dining area as figured was the square footage of the gravel, regardless. Director Heard stated that the gravel was added after the submittal of the application. He added that staff was not defining the proposed project as the area of gravel, but it raised the question about the intent and location of the area that is being proposed, since the gravel area encroaches onto the adjoining property. Member Murray asked if it was what staff was using for the parking calculation. Director Heard stated that the 800 square feet was what was being used. Member Murray stated that the parking seemed to be the issue. Member Murray wondered if the square footage of the gravel were was used to determine parking requirements. Director Heard stated that staff was using the information submitted by the applicant that stated that their dining area measured 20x40 in size. He added that the gravel area was established after the application was submitted.

Member Murray clarified that the dining area was separate from the gravel that was on-site. Vice Chair Fricker noted that it was significantly over the property line and went almost to the adjoining residence. Member Murray clarified that the square footage of the gravel was irrelevant to the parking concern. Vice Chair Fricker thought that, according to the applicants, the 800 square feet did not include all of the graveled area that existed but only that north of the property line. He asked if that was correct. Director Heard stated that it was.

Ken Forlano of 1221 Duck Road was recognized to speak. Mr. Forlano stated that the continuation of the gravel was part of the landscaping. Vice Chair Fricker stated it was nothing more than trespassing on another property even though Mr. Forlano owned both. He asked what would happen if he were to sell one of the properties. Ken Forlano stated that the drainfield for Duck Deli has been behind the adjoining property since 2011. He added that the two lots were

“joined together” due to the septic issue they had a few years back. He noted that it was all encroaching on the adjoining property.

Chair Blakaitis asked what existed on the adjoining property before the house was built. Ken Forlano stated that it was an empty lot with the septic field for the restaurant.

Member Murray asked if the house used the same septic system that Duck Deli used. Ken Forlano stated that they did not share a septic system. Member Murray asked if there was a deeded agreement even though the property owners were the same. Ron Forlano stated that in 1986, the septic field was installed without any kind of permission by Sammy Moore and the owner of the Duck Deli at the time. He stated that when he bought the property in 1986, he inherited a triangular property with a deli on it and the septic field for the deli was on the adjoining property at 1221 Duck Road.

Member Murray clarified that the tanks have never been moved. Ron Forlano stated that they weren't moved, but were upgraded during the last renovation. He stated that the tanks will accommodate a 200 seat restaurant as long as the field was upgraded for the same. He added that they chose not to upgrade the field at this time, but would probably do it next year.

Chair Blakaitis asked where the septic field was located. Ron Forlano stated that it was behind the house at 1221 Duck Road. He explained that there is one septic tank, one grease tank and one pump tank that pump the effluent up the hill to the field. Chair Blakaitis asked if the field was just for Duck Deli. Mr. Forlano stated that it was. Chair Blakaitis clarified that the septic field for the house was in the front of the property. Ron Forlano stated he was correct.

Chair Blakaitis asked if the applicant was only using the portion of the gravel that's on the restaurant property for parking calculation, what would happen to the adjacent lot. He asked if it should be included in the parking calculations. Director Heard thought that was the question at hand and if it would be intended to be used in that manner. Chair Blakaitis clarified that the figures in front of the Board did not include that area. Director Heard stated he was correct.

Member Murray asked why the Town would not be figuring parking based on seats rather than square footage. Member McKeithan stated that it was the formula for outdoor seating. Member Murray clarified that it was only for outdoor seating. Chair Blakaitis stated he was correct, adding that the first 150 square feet of the outdoor seating area does not require additional parking.

Member McKeithan clarified that there were going to be 30 more seats for the outdoor dining area, requiring four additional parking spaces. He noted that it would mean there would have to be seven people in each vehicle. He stated that for 44 indoor seats, it would require 15 parking spaces as well as more spaces for the employees. He stated that he didn't understand if 30 more seats were added, how it would only require four additional parking spaces. Member McKeithan understood the standards, but noted that the formula was not set up for a high density of seating for outdoor dining. Member Murray pointed out that the only reason the Board was discussing the issue was because the applicant chose to use gravel for landscaping as opposed to grass. He added that if the landscaping surface was grass that ran from the side of the restaurant to the house, the applicant could tell the Board what they wanted.

Vice Chair Fricker asked if a reasonable person discussing the issue would assume that whatever the activity was outside, it would be limited to the applicant's property and not the applicant's property plus a portion of the property next to it. He pointed out that there was no effective way of ensuring that only the graveled area north of the property line would be utilized for outdoor dining. He added that there was some history as to how the envelope has been pushed with this property. He noted that Ron Forlano had set up large tents in the past and there were issues as to where they were erected as well as whether if they were properly permitted. He stated that the notion of relying on the applicant's word made no sense in his opinion.

Vice Chair Fricker stated that this was a Conditional Use Permit and the Board was discussing approving something that, as drawn, had no property line. He noted that there wasn't a detailed site plan presented. He thought if the application was approved at the Council level, there was a risk since CUP's run with the property. He stated that if they decide to sell one property or are forced to sell one, he thought it would cause an issue with the way the CUP was being proposed.

Chair Blakaitis asked if it wasn't the applicant's intention to just use the 800 square feet. Director Heard stated that was what the applicant presented. Chair Blakaitis asked why it was drawn the way it was. Director Heard stated that the area that was between the sidewall of the restaurant and the property line was 20 feet in width and extended back. Member Murray asked if the wood deck was straddling the property line the way it was drawn on the plan. Director Heard stated that it was.

Chair Blakaitis asked when the applicant would hear from the Health Department regarding whether the structural integrity of the tanks would be sufficient. Ron Forlano stated that it would happen if they get an approval from the Town for the picnic area. He added that if they were granted approval for the picnic area, they would then address the issue regarding upgrading the septic field. He stated that if the field was adequate according to gallon usage per day, it would be 1,756 gallons per day. He stated that at the present time, the restaurant was using approximately 1,100 gallons per day. He stated that the Health Department may tell them that they have enough gallon usage overage and would not have to upgrade the field. He added that the septic field is 13 years old and will probably have to be upgraded in 2016. He stated that if it is upgraded, he would have additional lines put in to take the additional gallon per day usage. He stated that it was almost a given that the field would have to be redone.

Chair Blakaitis asked if the Health Department calculated the additional gallons required for the tables and people. Mr. Forlano stated that they were using 1,100 to 1,150 gallons per day. Chair Blakaitis clarified that the Health Department had not provided the applicant with a number for the additional tables. Ron Forlano stated that they would give them a number for additional seats. Chair Blakaitis asked Mr. Forlano if he knew what the number was. Mr. Forlano thought it was 1,787 gallons per day for a 44 seat restaurant and it was 40 gallons per day per seat. Chair Blakaitis asked if the Health Department would calculate the outdoor area. Ron Forlano stated that if he put 30 seats in and multiplied it by 40, it would come to 1,200.

Member Murray acknowledged that Duck Deli may be over the standard, but a usage study in which the Health Department may allow a lower standard due to the level of usage. Chair Blakaitis clarified that the number was up in the air at the present time. Ron Forlano agreed. He

explained that even though they were calling it a dining area, his sons intended to use it as a picnic area. People would get their food in a bag from the restaurant and take it to the tables. He added that dishes will not be used. He stated that the septic people may look at that scenario and calculate it based on how many people use the restrooms.

Chair Blakaitis asked the Board if they were to consider approval of the CUP, which conditions should be placed upon the applicant based upon what they had in front of them. Vice Chair Fricker stated that he wanted to see a formal site plan with two scaled drawings showing how they would move and downsize the wooden deck which was currently halfway on each property. He added that he would want fencing or something of a semi-permanent nature along the property line so there was no question as to which areas would be used and not used for outdoor dining.

Member Murray stated that it was clear that the applicant was using both properties in concert to a degree with regard to landscaping. He asked if it would be impossible to have a recombination plat done and vacate the property line. Chair Blakaitis thought it was the applicant's intention. Ken Forlano stated that when the Town approved the previous project, they were under the assumption that they would join both lots the way they should be since the septic issue has been in place. He thought that could be a solution to the current problem. He stated that if the lots were joined as a single unit, the property line issue would be eliminated. Chair Blakaitis thought it could be a condition so the applicant could move forward.

Vice Chair Fricker asked Ken Forlano if he had mortgages on both properties. Ken Forlano stated that he did. Vice Chair Fricker asked if the lenders were different. Mr. Forlano stated that they weren't. Vice Chair Fricker asked if the prospect of combining both properties into one property was agreeable to the lenders. Ken Forlano stated that he would have to research it. He added that the new project with the tear down was not agreeable to one of the lenders. Vice Chair Fricker thought that was an indication of the answer to the current question.

Member McKeithan asked Ken Forlano if he was able to combine the two properties legally, could additional parking be provided on the adjacent property. Ken Forlano stated that the house sitting on the adjacent property was useless. He added that it's been used as a rental, but ultimately he would like to see the house torn down so the lot could be used as additional parking for Duck Deli. He stated that, financially, he wasn't sure what would happen and could not give the Board a firm answer. He stated that he envisions having the house torn down and using the lot for parking in the future. Member McKeithan thought the most difficult item to get around was the shortage of parking. He thought it was a problem due to the nature of the existing parking. He stated that he could not figure out how to approve additional parking when the applicant was already deficient. He added that there would be a lot more vehicles coming onto the property with 30 additional seats. He felt that the parking was the biggest issue. Ken Forlano agreed, but added that the parking spots were not delineated so the issue wasn't as bad as Town staff made it. He stated that he could fit 15 cars in the current parking spaces and six employees at the adjacent property. Member McKeithan asked if the two lots were recombined, it could be zoned or approved for additional parking with the house still existing. Ken Forlano stated that he did not know.

Director Heard stated that the adjacent lot would actually be able to park more cars as a residential lot as the Town allows stacking vehicles for residential parking. He stated that it would be interesting for the Board and Town Council to consider if the adjacent lot was limited to employee parking, where stacking may not be an issue. He noted that if the site at 1221 Duck Road was being used for commercial parking, there would still need to be four required parking spaces on the site to serve the residence.

Chair Blakaitis clarified that the parking requirements for the restaurant are presumed to be on the restaurant property. Director Heard stated he was correct. Chair Blakaitis stated that all of the calculations were done for the restaurant property, but the applicant was using the adjoining residence for employee parking. However, the parking lot was still being filled, which still created a problem with the parking.

Chair Blakaitis asked the Board where they wish to head as far as the August 12, 2015 meeting. He asked if the recommendation would be to approve or deny the CUP application. Vice Chair Fricker stated that while trying to draw the property line, it prompted his comments about moving the decking since it straddled both property lines. He stated that it appeared to him in using the scale on the bottom of the drawing, north of the property line had 20 feet from the southern edge of the building to the property line and the 40 feet running east to west from the back of the wood deck down to an area east of where the steps stop. He stated that if there was going to be a designated area outdoors, he thought it should be well documented and well delineated on the site plan so that there was no question as to what will and will not be used.

Chair Blakaitis asked the Board for their opinion on the parking issue. He asked if any attempt has been made to suggest a correction for it. He thought it was a dominant problem in Member McKeithan's opinion. Member Murray agreed. Chair Blakaitis wondered how the Board could approach the parking issue. He added that he hadn't heard anything to suggest a resolution on this issue. Vice Chair Fricker stated that the reference to the symbiotic relationship with the Waterfront Shops may be cordial but the Board recently heard a special exception request for the Waterfront Shops and they were short even with the new parking lot based upon the calculations. He added that the Waterfront Shops did not have any parking spaces to give. He didn't think using the Waterfront Shops was an answer. He wasn't sure how long the adjacent house would remain vacant, but thought if it was rented, Ken Forlano would lose the ability of having his employees park on that property. He noted that the applicant was proposing to go from a deficit of four parking spaces, based on the existing use of the property, to a deficit of nine spaces with no real way of knowing what the future plans are, because there aren't any. He stated that the Board could not approve something based upon intentions. He added that the applicant intended to tear down both buildings originally and build a new restaurant, but that never happened.

Chair Blakaitis stated that the Town encourages shared parking when possible between businesses. He asked if it required an agreement. Director Heard stated that the Town requires a formal agreement of some type, such as a recorded document.

John Klamut of 123 Duck Landing Lane was recognized to speak. Mr. Klamut thought the ordinance also indicated that parking, whether purchased or off-site, must be on the same side of Duck Road. Chair Blakaitis stated he wasn't sure about that. John Klamut stated that he was positive it was in the ordinance. Vice Chair Fricker stated that the Board was aware of the

relationship between other businesses where the parking was across the street. He added that it was another aspect of the CUP application. He stated that, potentially everything the Board does, whether it was done right or wrong, can be argued as precedent for the next applicant. He thought it was important that the Board do things right.

Chair Forlano thought that the Board had certain conditions they needed to look for with regard to the CUP application if it was to be approved. He thought the main condition was parking as well as delineation of the usage and property uses in the rear. Vice Chair Fricker agreed.

Ken Forlano realized that parking is a big issue, but wondered if the Board would consider the amount of pedestrian traffic that occurs in Town. He stated that when seats are counted, parking is also counted with regard to the number of seats per parking space. He stated that a lot of his customers walk or ride bicycles to his restaurant. He stated that these issues are being faced now more than ever in Town. He thought pedestrian traffic could be considered. He stated that there is never an issue where the right-of-way is blocked in order to prevent people from moving on the road. He stated that the limited parking limits his business. He added that if his parking lot is full, people will either find a place to park, wait to find a parking space, or drive by and not come in. He stated that all businesses in Duck faced the same issues.

Chair Blakaitis thought Ken Forlano made an excellent point. He recalled that the Board has applied in the past a consideration for walk-in traffic. He added that it was done for the Paper Canoe Restaurant as well as other businesses. He thought that in the parking requirements, a lot of it was taken into consideration, and allowances were made. He stated that in Mr. Forlano's case, he was already under his minimum parking requirements and isn't sure where the solution lies. He thought the Board would consider it if good reasons were given, but he wasn't sure how. He asked Director Heard to research past parking approvals.

Chair Blakaitis directed the Board to provide comments to the applicants so they know what to do for the next meeting. Vice Chair Fricker thought there needed to be a decision made as to whether the applicant will step back and only use the Duck Deli property for the outdoor eating area. He stated that if the applicant wants the flexibility of using the residential property as well, the applicant would need to contact a lawyer as well as their lender to find out what they could do. He suggested that the applicant talk to Director Heard and have a new application submitted on behalf of the residential property as well as the commercial property. He asked Ron Forlano if the properties are owned by the same corporation with the principals being Mr. Forlano's sons. Ron Forlano stated that he did not own the properties and gave them to his sons about 10 years ago under Forlano Properties, LLC. Vice Chair Fricker asked if there was a legal document about the properties. Mr. Forlano stated that there was, adding that his sons owned the two properties, which are zoned Village Commercial and not residential. He stated that two years ago, the Board approved both of the properties having a bulkhead straddling them. He added that they were not co-joined legally by deed at that time.

Vice Chair Fricker pointed out that the Town does not know if there is an issue until someone raises it or it's quite obvious. Ron Forlano stated that there are separate deeds and a separate mortgage on each property. He explained that in order to join them legally, it would probably mean a telephone call to a lawyer as well as contacting a refinancing company, who would jump at the opportunity to tie in the more valuable property, which was the Duck Deli property. He

thought the refinancing could be done before the Board meets again, eliminating the problem of where the gravel was on the two properties. Vice Chair Fricker stated that if something wasn't done, the Board would want to have it limited and with some assurances. Ron Forlano stated that one of the septic tanks and half the pump tank was on the other property, along with the septic field. He stated that they were already using a residential property for a commercial entity.

Vice Chair Fricker stated that if the decision was to have all activity on the Duck Deli property, he recommended that the applicant present a clear site plan drawn to scale with the exact area to be used for the outdoor dining. He didn't think it was a picnic area and pointed out that it wasn't referenced as a picnic area in the application. He thought it would need to be fenced to delineate the dining area.

Member Murray thought that having a survey to scale would be helpful and added that he would like to see something that located the tanks in the septic area.

Member McKeithan asked that if the Board approved a 30 seat outdoor dining area, should the Board or Council be involved in making sure the septic system was approved for that amount of seats. Chair Blakaitis stated that the applicant was moving forward with it, which could mean an end to the project or updating the septic tank. Chair Blakaitis stated that he would encourage the applicants to find out more information.

Vice Chair Fricker stated that he would modify the second condition to read as follows: "...or be upgraded to accommodate the restaurant's outdoor 30-seat expansion..." so it was very clear as to the size of the expansion.

Chair Blakaitis thought it was a good summary of what the Board was looking for from the applicant with what needed to come back at the next meeting.

Vice Chair Fricker asked the applicants if they needed more clarification on what the Board was looking for. Ken Forlano stated that they did not.

Chair Blakaitis called for a five minute recess. The time was 8:22p.m.

Chair Blakaitis reconvened the meeting.

OLD BUSINESS

Text Amendment: Proposal to Amend the Definition of "Building Height" and Add a New Definition for "Average Finished Grade" in Section 156.002 of the Town Code

Chair Blakaitis reminded the Board that they appointed a committee comprised of him, Permit Coordinator Sandy Cross, Director Joe Heard and Member Murray. He stated that they had a good meeting.

Director Heard stated that the committee held two meetings and there were also a handful of emails exchanged afterward as the committee put together some draft ideas. He stated that Chair

Blakaitis had asked him to incorporate a proposal into a draft form for discussion by the full Planning Board before coming up with a formal proposal.

Director Heard reviewed the rationale for changes with the Board. He noted that they were the guiding principles that the committee chose to look at as they were looking at potential amendments to recommend to the Board. He stated that the committee was looking to reorganize and clarify the standards in flood zones. He added that they did not want to do anything that would allow higher density, particularly the potential of allowing a fourth story to buildings.

Director Heard stated that the committee discussed encouraging construction above the required flood plain elevations. He stated that they were not referring to living area, which would not be allowed there anyway. He stated that the committee discussed allowing more traditional roof slopes and architecture; providing greater flexibility when dealing with existing non-conforming buildings, not only as it applies to new buildings but to existing situations as well. He stated that the committee discussed maintaining consistency with the Town's CAMA Land Use Plan.

Director Heard stated that the Board had before them the current ordinance with the draft changes. He stated that they could be broken into two different categories – combining the references to finished grade or average finished grade so it would read average finished grade since it was what the Town was using now; and providing a definition for *average finished grade*.

Director Heard stated that the committee started talking about the bottom of a building and how it change where it's measured from. He stated that the committee ended up not making significant changes from where a building is measured from, but rather changes to where height is measured to at the top of a building. He stated that the significant change as to how height was measured was the wording in the ordinance that read: "...average elevation of the top of the eaves and the ridge or peak of the main roof..."

Director Heard pointed out that the Board had some questions at their last meeting regarding measuring from the bottom. He stated that the committee broke them into three scenarios where there was a V zone, which would be measured from the two foot free and clear of obstruction. In an A zone, the measurement differs on the type of building constructed and whether the building is above or below the required flood protection elevation.

Director Heard explained if a lot is five feet above sea level and the required flood protection elevation is at nine feet, the way the ordinance reads is if a house was built that had a finished first floor with a slab, then it would be measured from the slab to the top of the roof. He added that if the house was built on pilings, the height measurement would begin above the nine foot elevation. Member McKeithan thought both examples were of the same height above sea level. He thought one would be higher. Director Heard stated that the difference is in how it would be measured. He noted that it was the current standard and not a proposed change. Member McKeithan clarified that one house could be four feet higher. Director Heard stated that it could.

Member Murray stated that he had felt that the ordinance was a little cumbersome to the casual observer in that two houses that looked the same height would be measured differently. He

stated that, during their discussions, Permit Coordinator Cross had pointed out that what the Town wanted to do was discourage enclosures, even storage enclosures, in the flood zone. He added that for new construction, one building that Director Heard was showing could build a storage room at nine feet or finish the space and it would be allowed to be elevated because there would not be a ground floor enclosure.

Director Heard stated that the next scenario would be where the required flood plain elevation was less than the height of the lot. He stated that, while it was in an A-flood zone, the lot or even a portion where the house would be built would be above the required flood plain elevation. He stated that if the structure was on a slab, it would be measured at the slab; however, if it was a structure without a slab, it would be raised up and measured at the average finished grade. He stated that in this scenario, the height measurement would be consistent with regard to where the measurement started from at the bottom of the structure.

Director Heard reiterated that houses in V-zones would always be measured from the lowest horizontal member consistent with the free and clear of obstruction.

Director Heard stated that as the committee discussed the best way to work with existing buildings, they ended up talking about the top of the building rather than the bottom. He added that the committee looked at a concept similar to what Currituck County does. He explained that their measurement would go to the average of the peak of the roof and the eaves. Chair Blakaitis noted that they measured to the mean elevation between the eaves and the ridge. Director Heard stated that the wording the committee came up with was the average elevation to the top of the eaves and the ridge or peak of the main of the main roof. He stated that there was a lot of discussion as to where the bottom part was. He added that the committee originally discussed the possibility of using the top plate to the ridge or peak, but the issue with that was that a top plate can be measured easily during construction, but is hard to measure after construction. He stated that if the surveyor could not get in at the right time to perform the measurement, it would be hard to go back to check on it since it would be covered up during construction.

Member Murray stated that he contacted a surveyor to discuss the issue. He explained that the reason he liked the top plate was because there was a requirement for a hurricane tie and it would be easy to define it. He added that it was a code required piece of hardware that could be used. He stated that while the surveyor agreed with him, he stated that if he were taking the elevation at the completion of construction, he would measure the drywall inside and have to interpolate as it wouldn't be a visible point. He stated that he had made the suggestion to go with something more similar to what Currituck County did, a soffit, eave, or other an external point that can always be accessed.

Vice Chair Fricker asked what the eave was in the drawing that the Board was discussing. Member Murray explained that it was the top of the fascia where the shingle bends over. Vice Chair Fricker clarified that it was also known as the drip edge. Member Murray stated he was correct. Vice Chair Fricker clarified that the drip edge was the top of the eave. He further clarified that the eave was the diagonal member. Chair Blakaitis thought the committee was originally thinking about a lower point, the bottom of the fascia plate. Member Murray thought that was where the committee was with regard to the email exchanges, but when Director Heard consulted with Building Inspector Cory Tate, the proposal changed to the eave.

Member Murray stated that the issue with external measurement is that, even though it is external and can always be seen, it is much easier to manipulate. He explained that if the eaves are extended, the elevation of the eave would be lowered. Even though it is generally considered an attractive design feature, it could become excessive. Permit Coordinator Cross noted that there would be some self-limiting factors. Member Murray agreed.

Member Forlano stated that he was confused. He added that the Board was discussing the height of a structure, but were looking at where the eave came in. He thought there was a big issue over pitch of roof a few months back with the Sanderling Inn project. Vice Chair Fricker stated that the greater the pitch, the higher the average between the two points will be. Member Forlano agreed. He asked if the Board was concerned about the height allowed by the proposal. Vice Chair Fricker stated that they were, because it was measured from the average between the elevation at the top of the eaves and the ridge or peak of the main roof.

Vice Chair Fricker noted that the spot where the hurricane tie is installed is basically at the top of an eight foot wall. He pointed out that it could be substantially higher than the point of the end of the eave. Member Murray agreed, which was why one would take the average. Vice Chair Fricker asked if the average between the two points was at one level. Member Murray disagreed. Vice Chair Fricker clarified that it would be higher. Member Murray agreed.

Vice Chair Fricker asked for the pros and cons from the approach Member Murray discussed. Member Murray stated that the ordinance as it was currently written had the intent of limiting development to some degree. However, as it is written, a builder could build a four story flat top structure. He added that the new definition encouraged a more coastal style of development. Vice Chair Fricker asked Director Heard if he was satisfied from an enforcement point of view and from the person having to deal with it that it would prohibit a flat top structure. Director Heard stated that it did not prohibit flat top structures, but would prohibit a four story flat top structure. He added that it encouraged people to build a more traditional, pitched roof as opposed to trying to squeeze in an extra foot and having a lower pitched roof.

Member Murray stated that he had pointed out to the committee that a traditional, 30 foot wide building with 6/12 pitched roof was currently not allowed in Duck as per the ordinance. He explained that whenever the calculation was done that came up with the 35 feet, the thickness of the rafter itself was not taken into consideration. He stated that because it's a two by twelve member and is cut on an angle, it would add one foot. He stated that a very traditionally designed house with the Land Use Plan and the Town's ordinances was not technically allowed, so developers and homeowners are forced to do other things such as shortening a wall or flattening the roof pitch. Chair Blakaitis noted that these were the kind of things that Council will have a hard time understanding as they will result in changing the allowed height of a house. He wondered how the average elevation that the Town will use will stay within the Town's desire to keep a 35 foot house.

John Klamut clarified that if there was a 30 foot wide house with a 45 degree roof pitch, the ordinance would allow the ridge line of the house to be 7.5 feet higher. He added that it would be measured to the mid-point. Director Heard stated that Mr. Klamut was correct for a 12/12 pitch roof. He added that a traditional roof was 6/12 and worked out to be 3.5 to 4 feet taller.

John Klamut noted that it was a big change in the height of a building. Vice Chair Fricker thought it would be a deal breaker at the Council level. He added that the draft ordinance would allow a building structure to be four feet taller than under the existing ordinance.

Vice Chair Fricker asked what the trade-off would be that would be advantageous to the Town and the stakeholders in allowing the revised ordinance. Member Murray stated that it would encourage more traditional roof slopes and architecture; it helped with dealing with existing non-conformities; it would be possible to execute as opposed to making the concession of making the house unattractive; and eliminated the possibility for the four story flat top house. Member McKeithan asked if it was feasible to consider lowering the house to 32 feet so that it would still be in the same relative height with regard to the ridge line. Member Murray thought it could be considered, but in all of the committee's examples, they used gable roofs. He added that a hip and gable roof are treated the same and what he heard a lot in their discussions was the preservation of the viewscape. He stated that the committee was trying to take the ordinance in a direction where they were trying to preserve viewscales, limit density and limit building height without being overly encumbered and creating a situation where they were encouraging 3/12 pitch roofs.

Member Forlano stated that he still did not see where the Board was addressing the issue of height. He added that by doing what was discussed, it would accomplish a few aesthetic features of the roofline and created a view pattern, as well as eliminating flat roofs, which were considered unaesthetic. He stated that he had not heard any discussion regarding limiting a house to 35 feet. He stated that he heard that it was possible to go up in height. Member Murray thought it was important to remember that the limit was staying at 35 feet, while the effect was that the ridge or a portion of the roof may be higher than 35 feet. He added that it was an acceptable method of measurement in Currituck County, which also had the 35 foot height limit. He stated that the committee was asking Council to think of something in a different way than they thought about it in the past. He didn't think it was an unreasonable request. Vice Chair Fricker thought the key was to have an excellent, written, pre-Council write up, explaining in simple terms what the trade-offs were and what the practical implications will be. Chair Blakaitis agreed and felt it could work as it had good possibilities and thought it had a hard row as well. He stated that the Board could talk about the issue as well as how to present it to Council. If it's determined that it's not a good thing, the Board could revert to the old method and leave it alone. He stated that the Board could offer Council the opportunity to review the new ordinance. Member Murray felt that the committee was tasked with working out the technicalities, which they have brought before the Board. He stated that the absurdity that the Board felt with regard to the special exception request for the addition in Sanderling. He noted that this new ordinance dealt with that issue in a consistent, codified way.

Member Forlano thought the committee did a great job, but thought Council would be amenable to 35 feet and no more. Chair Blakaitis stated that the way Member Murray was presenting it, with the reasoning, started to make sense, which was why the committee felt it would be worth sending it to the Board to review. Member Murray agreed with Member Forlano's comments, but noted the direction the Board was given in the beginning was where the ridge height was not the height of the building. He pointed out that the current ordinance defined two houses of the same height and space as different heights.

Vice Chair Fricker stated that the problem he was having with the illustrations presented were that the house on the right, the person was building a house as tall as they could under the existing regulations. However, the house on the left was not being built as tall as it could under the existing regulations. Member Murray stated he was correct. Vice Chair Fricker felt the Board was comparing apples to oranges. Member Murray disagreed and explained that the illustrations were of two 35 foot tall houses, which was not what the committee was suggesting. He stated that he was trying to illustrate that two houses that looked to the naked eye as the same height, according to the Town's ordinance, were not according to the Town's height measurements. He stated that everyone was stuck on the 35 foot height limit and it was not a hard and fast reality. He stated that how the Town chose to measure the 35 feet, needed to be done in such a way as it encourages good development, limits the possibility for four story flat top houses, and encourages more traditional rooflines and architecture.

Chair Blakaitis asked if rooflines in Duck currently suffer due to the way they are measured. Member Murray stated that Sanderling was a great example of that. Vice Chair Fricker asked if there was a residential example in Duck. Member Murray stated that there are many. Chair Blakaitis asked what the problem was. Member Murray stated that 3/12 was the limit that could be used for a composite asphalt shingle. Chair Blakaitis asked Member Murray if he encountered situations that would require such a roof. Member Murray stated that he did. Chair Blakaitis asked what was done. Member Murray stated that he tried to put fake eaves on the outside of the house. Chair Blakaitis stated that from a contractor's standpoint, they don't care. Member Murray stated that they do care because each property is like a business card for the next project.

Member Forlano asked how flat roofs were eliminated if a homeowner wanted to have four stories. Chair Blakaitis stated that flat roofs were not eliminated. Member Forlano asked what the new language was. Vice Chair Fricker noted that it wasn't in the current ordinance. Member Forlano agreed, but asked what technicality would stop someone from constructing a flat roof. Director Heard stated that they would not gain any additional height by having a roof pitch. The four foot that the Board had been discussing would not be there because there isn't an eave or roof peak.

Director Heard stated that if the Board is considering creating greater flexibility at the top and incentivize people to use pitched roofs, then he wondered if there was a counter-balance to going down to a 32-33 foot maximum height limitation. Director Heard thought the intent of the new language was to allow a little bit of flexibility, but if it was a deal breaker to the Board, then that could be a way of solving the issue.

Member McKeithan asked if the height was reduced to 32-33 feet, it would be more palatable to Council while still accomplishing what the Board wanted to do. Chair Blakaitis guessed that this procedure could allow a roof of 39 feet, but to compensate for it, the average maximum limit would be 31 or 32 feet. Member Murray stated that if the height was to be reduced, it should be reduced to a workable number. He added that it was difficult to build a 35 foot house and went on to illustrate a typical construction scenario for the Board and audience.

Vice Chair Fricker stated that he was happy Member Murray was on the Planning Board as he added dimension and perspective. He thought Member Murray's thinking was outside of the

layperson's box, but not outside of a contractor, architect or designer's box. He thought the concept was something that he could recommend, but wouldn't recommend it unless he was satisfied that there were people behind it that prepared to put together a professional PowerPoint presentation. He added that if it could be professionally done, it could be something that the Board could be thinking about over the next month and come back with some specific ideas as to the kind of approaches, either visual, written or photographs. Vice Chair Fricker thought the key thing the Board would have to figure out was how to say convincingly to Council that the Board has not changed what they found to be an acceptable height of a building, they have simply changed the method of measuring it. He stated that it could be pointed out that Currituck County has the same limitation and measured the way the Planning Board would recommend that Council adopt.

Chair Blakaitis asked Director Heard if he contacted Currituck County to see if they were having any problems with the way they measure height. Director Heard stated that he did contact them and they have not had any issues with the way they measure height.

It was *consensus* of the Board to bring the issue back at the August 12, 2015 meeting.

APPROVAL OF MINUTES

Minutes from the June 10, 2015, Regular Meeting

Member Murray had corrections to Page 9.

Vice Chair Fricker had a correction to Page 7.

Vice Chair Fricker moved to approve the June 10, 2015 minutes as amended. Member McKeithan seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of July 1, 2015, Town Council Meeting

Director Heard stated that Council had approved the outdoor seating for Red Sky Café with conditions. He stated that in addition to the conditions recommended by the Planning Board, the Council added conditions regarding the placement of a fence between the property and the adjoining Duck Landing Property Owners Association property, as well as review of an access easement to determine if there were issues related to access. He stated that there was also a public hearing on the wireless telecommunications ordinance, which the Council unanimously approved. He noted that Town Attorney Robert Hobbs had made a recommendation for some changes in the wording regarding decommissioning of a tower.

Director Heard went on to give a short update on the various projects going on in Town to the Board and audience.

BOARD COMMENTS

None.

ADJOURNMENT

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

The time was 10:01 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman