

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
February 6, 2019**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, February 6, 2019.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Nancy Caviness; and Councilor Jon Britt.

COUNCIL MEMBERS ABSENT: Councilor Chuck Burdick.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief John Cueto; Fire Chief Donna Black; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Director of Marketing and Special Events Christian Legner; Public Relations Administrative Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 7:05 p.m. He asked Town Manager Chris Layton to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments. He asked that any comments regarding the public hearings be held off.

Ben Vorndran of 104 Sea Hawk Drive West was recognized to speak. Mr. Vorndran stated that he wished he would have made his comments at the beginning of the previous Council meeting as it was about the larger homes. He stated that Council should think about possibly overturning or revisiting the ordinance in the future. He stated that the homes in Duck were overloaded. He stated that there were a lot of people in the houses. He stated that he has family members that want to come visit him, and he could not imagine having 20-30 people staying in one house. He stated that he thought about the septic system and it was at a minimum and was a flatline medium average. He pointed out that Duck did not have the square area, unless the Town park was torn down, to put in a septic system. He stated that he thinks about the Town's beaches and how they are overcrowded. He stated that in the last years, most of the houses were 5,000 square feet or less and it has worked. He stated that less than 1% of homes in Duck were anywhere near that figure.

Ben Vorndran stated that in 1984, Dare County created a beautification district and it was to preserve the skyline. He stated that builders can come in and replace the vegetation, but they would not be able to plant 100-year trees. He stated that in 1994 a resolution was adopted to preserve the coastal atmosphere. He wondered if when it was passed, if

anyone was thinking that 9,000 square foot homes were preserving the maritime forests. He stated that he looked at Food Lion in early 2000 and the Town petitioning thousands of signatures and without a lot of research, the Town did not want a big structure. He stated that with regard to the Town's Vision, there were words in it that he picked out such as small-town atmosphere, visual representation preserving, environmental stewards. He stated that the way he understood it was lodging unique to Duck. He stated that other places have bigger homes. He stated that the Town has a bird sanctuary. He didn't think those descriptions of a maritime forest or bird sanctuary included a 9,000 square foot home.

Ben Vorndran stated that he was trying to think of other things that came up. He stated that there were all of these bigger homes in Kitty Hawk and Nags Head that have been abandoned, leaving those towns to deal with them. He felt this could be an issue for Duck. He stated that he was thinking about reasons to pass the ordinance and the only thing that came to mind was personal property rights. He stated that his answer to that was that it was okay for people to have them, but most houses were not that big as most were 5,000 square feet. He thought the Town could grandfather homes that were built or purchased before March 2019, in that they could have a 9,000 square foot home. He thought the Code of Ordinance book could be revised. He hoped Council would revisit the ordinance and save the Town's Vision, since it has worked for the past 40 years.

There being no one else wishing to speak, Mayor Kingston closed the time for public comments.

CONSENT AGENDA

Minutes from the January 16, 2019, Regular Meeting and Budget Amendments

Councilor Britt moved to approve the consent agenda as presented.

Motion carried 4-0.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of CUP 18-010, a Conditional Use Permit Application by Duck Village Outfitters, for a Conditional Use Permit to Convert 134 Square Feet of Retail Space to a Yogurt Shop (Eating Establishment) and Add a 275 Square Foot Outdoor Seating Area on the Property at 1207 Duck Road

Mayor Kingston turned the meeting over to Town Attorney Robert Hobbs.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. He stated that anyone wishing to give testimony would have to give it while under oath with

the applicant afforded due process rights including the right to present evidence, examine and cross-examine witnesses. He asked that anyone wishing to testify come forward to be sworn in.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman proceeded to swear in the applicants and staff for the public hearing.

The following persons were sworn to provide testimony during the hearing: Joe Heard and Robert Hovey.

Town Attorney Hobbs opened the evidentiary portion of the hearing. He stated that Director Heard would give an overview.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the applicant was requesting a conditional use permit to convert 134 square feet of retail space to a frozen yogurt/smoothie parlor and add a 275 square foot outdoor seating area on the Duck Village Outfitters property at 1207 Duck Road.

Director Heard stated that the property was currently zoned Village Commercial and contained retail and storage facilities. He stated that the building was constructed in 2007 and contained approximately 1,552 square feet, including 937 square feet of retail space on the ground floor, with other areas in the building used for storage, bathrooms and a changing room. He added that the rear of the property was enclosed by an eight-foot tall solid fence and contained a storage area for outdoor equipment.

Director Heard stated that in July 2006, the Town Council granted a conditional use permit to Robert and Tanya Hovey for the construction of a new building with approximately 1,039 square feet of retail space on the ground floor and a second-floor office consisting of 315 square feet. He noted that under the Village Commercial Option, the project was granted relief from the following development standards: (1) rear building setback of 18.7 feet; (2) front parking setback of 7 feet; (3) south side parking setback of 2 feet; (4) north side parking setback of 3 feet; and (5) lot coverage of 64.8%.

Director Heard stated that the applicant proposes to convert a portion of the existing retail space into a frozen yogurt/smoothie parlor with three interior seats, which was defined as an eating establishment in the Town's zoning ordinance. He pointed out that although listed as 1,998 square feet in the Dare County tax records, the existing building appeared to contain approximately 1,552 square feet of functional conditioned space. He noted that the building size complied with the maximum building size standard of 5,000 square feet in the Village Commercial district. He added that although space within the retail area will be redistributed differently, the size of the unit will remain the same under the proposed change of use.

Director Heard stated that the property was approximately 7,493 square feet in size, which was significantly smaller than the minimum lot size of 20,000 square feet for the Village Commercial District. He stated that as an existing, nonconforming parcel, the lot

can be developed and used so long as the Planning Board finds that the lot was of sufficient size to meet the requirements of the Dare County Health Department, to provide adequate siting for structures, and to provide parking, loading, and maneuvering space for vehicles. He added that, including the building, driveway, and parking areas, the existing development covered 64.8% of the lot, which exceeded the maximum lot coverage requirement of 60%. He noted that the increase in the allowed lot coverage was granted during the project's original approval under the Village Commercial Development Option and the lot coverage would remain the same with the proposed change of use.

Director Heard stated that the property currently has a single ingress/egress driveway of 24.5 feet in width off Duck Road, which complied with the maximum width standard of 30 feet. He stated that the driveway width of 27 feet at the road edge also complied with the Town's maximum requirement of 40 feet and the existing access would remain the same under the proposed change of use. He pointed out that the parking area has a drive aisle that was 20 feet in width, which was the minimum recommended for 90-degree parking by generally accepted traffic standards. He added that seven of the parking spaces along the northern side of the property access directly into the drive aisle and the eighth space as well as a loading area were located along the southern side of the building. He pointed out that since the development presently contained eight parking spaces, the amount of parking on the site complied with the minimum requirement.

Director Heard stated that the parcel was required to install and maintain vegetation equal or exceeding 10% canopy coverage since it was a commercial development. He noted that the development has preserved one large canopy tree near the northwest corner of the property and planted several understory trees in the existing stormwater infiltration basin on the northern side of the building. He added that the trees were sufficient to satisfy the minimum canopy coverage requirement. He stated that in an arrangement approved for the original development in 2007, Duck Village Outfitters shares a trash dumpster located on the PNC Bank property. He pointed out that larger boxes and recycling materials were placed in the Town's recycling dumpster by the playground.

Director Heard stated that at its January 9, 2019 meeting, the Planning Board voted unanimously to recommend approval of the conditional use permit subject to the following conditions:

1. The Building Inspector and Fire Department must review and approve the proposed improvements for compliance with applicable codes.
2. The applicant must obtain a permit from the Dare County Environmental Health Department for the design and installation of the proposed wastewater treatment system improvements prior to issuance of a building permit.
3. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.

4. The applicant must obtain approval from the Community Development Department for any exterior lighting in the outdoor seating area, which must comply with the Town's lighting standards and may require a building permit.
5. This conditional use permit will expire in 12 months from the date of approval if the approved change of use has not been initiated.

Mayor Kingston pointed out that Waste Management shares a dumpster with the applicant and PNC Bank. He added that PNC Bank would be closing later this month. He asked what the solution would be in regard to that. Director Heard stated that he did not know the answer and thought the applicant would be able to provide an answer.

Mayor Pro Tempore Thibodeau asked what changes will have to be made to the septic system. Director Heard stated that a grease trap would need to be installed.

Town Attorney Hobbs asked the applicant to make a presentation.

Robert Hovey of Duck Village Outfitters was recognized to speak. Mr. Hovey stated that Duck Village Outfitters was going into its 21st season. He stated that with regard to the trash dumpster, they do use it behind PNC Bank and the Town has allowed them to use their recycling dumpster. He stated that they use less than a can for trash, which gets picked up. He stated that with regard to septic, he was in contact with the Dare County Health Department and was approved for up to six seats, but he had no desire to have that many. He noted that the outdoor area would only be eight feet wide with one small picnic table currently there. He added that he may add a few more.

Town Attorney Hobbs asked if any sworn witnesses wished to address the application. There were none.

There being no one else wishing to speak, Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston.

Mayor Pro Tempore Thibodeau stated that the Hoveys worked very hard to bring things together. She thought it was a good plan and a fine use of the property. She added that she was in favor of the conditional use permit.

Councilor Britt echoed Mayor Pro Tempore Thibodeau's comments. He noted that it reflected a change in nature of their business. He added that he was in favor of the conditional use permit.

Mayor Pro Tempore Thibodeau moved to approve Conditional Use Permit 18-010 as presented with the findings and conditions.

Motion carried 4-0.

Public Hearing/Discussion/Consideration of Ordinance 18-08, an Ordinance Amending the Zoning Ordinance of the Town of Duck, North Carolina, by Establishing Allowances and Standards for Accessory Dwelling Units

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs stated that Director Heard would give an overview.

Director Heard stated that the proposed amendments were intended to eliminate discrepancies between Section 156.126 and 156.140 that were created by the adoption of Ordinance 18-06, which changed the manner in which the Town limits the scale of single-family residential development from standards based on occupancy to standards based on building size and septic capacity. He noted that the current standards for accessory dwelling units required that the addition of an accessory dwelling unit not cause the property to exceed its maximum permitted occupancy or density. He pointed out that maximum occupancy standards for single-family residences was recently removed from the ordinance and replaced by standards for maximum house size and septic capacity. He added that the proposed ordinance was intended to make changes clarifying that the addition of an accessory dwelling unit could not exceed those standards.

Director Heard stated that at its December 12, 2018 meeting, the Planning Board voted unanimously to recommend approval of the proposed text amendment.

Town Attorney Hobbs asked if there were any comments from Council or the Planning Board members. There were none.

Town Attorney Hobbs asked if anyone from the audience wished to address the proposed ordinance. There were none.

There being no one wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston.

Councilor Caviness moved to adopt Ordinance 18-08 as presented.

Motion carried 4-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Presentation of Fiscal Year 2018 Audit

Lisa Murphy from Johnson, Mizelle, Straub and Murphy was recognized to speak. Ms. Murphy went on to give an overview of the Town's financial statements for the year ended June 30, 2018 to Council and the audience.

Councilor Britt moved to accept the FY 2018 Audit as presented.

Motion carried 4-0.

Mayor Kingston thanked Lisa Murphy for her presentation.

NEW BUSINESS

Discussion/Consideration of Ordinance 19-01, an Ordinance Amending Section 130.02 "Firearms, Explosives and the Like" of the Town Code of the Town of Duck, North Carolina, to Clarify the Types of Restricted Firearms and to Add the Discharge of Arrows to Prohibited Activities

Town Manager Layton stated that the ordinance was basically a housekeeping item that was intended to clarify that the discharge of guns, shotguns, rifles, pistols or any other firearm, or air rifles, spring guns, spring pistols, compressed air rifles, compressed air pistols or similar devices was prohibited within the corporate limits of the Town. He explained that the ordinance also makes it unlawful to shoot or discharge, by bow, crossbow, or similar device, any arrow or similar projectile of deadly force within the Town's corporate limits. He noted that archery practice on private property was excepted from the prohibition, provided that any arrow or similar projectile used in the archery practice does not leave the boundaries of the private property on which the archery practice is taking place.

Councilor Caviness asked if the Fire Department was included in the ordinance under Section E. Town Manager Layton stated that it was.

Mayor Kingston asked if the posting of the prohibition was anywhere in Town Hall. Town Manager Layton stated that it was not posted in Town Hall as there have not been any issues that staff was concerned about. He noted that it was something that Police Chief Cueto has discussed in the past, but it has not been posted. Councilor Caviness asked if a posting would be put up in Town Hall. Town Manager stated that there would be. Mayor Kingston asked if it would be posted in the Town Park as well. Town Manager Layton stated that it could be posted there as well. Councilor Caviness asked if it would be posted at the Fire Department. Town Manager Layton stated that he did not have control over that building.

Mayor Pro Tempore Thibodeau asked if Police Chief Cueto was exempt from the ordinance. Town Manager Layton stated that he was.

Mayor Pro Tempore Thibodeau moved to adopt Ordinance 19-01 as presented.

Motion carried 4-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that he had no report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Update on Departmental Activities

Police Chief John Cueto was recognized to speak. Police Chief Cueto gave a brief overview of the past month's police activities to Council and the audience.

Director of Public Information, Marketing and Special Events Christian Legner was recognized to speak. Director Legner gave a brief overview of upcoming activities to Council and the audience.

Fire Chief Donna Black was recognized to speak. Fire Chief Black gave a brief overview of the past month's fire activities to Council and the audience.

Director Heard gave a brief overview of the past month's permit activities to Council and the audience.

Council Retreat February 20 and 21, 2019

Town Manager Layton reminded Council that the annual Retreat would be held on February 20 and 21, 2019.

FY 2020 Budget Adoption Schedule

Town Manager Layton reviewed the recommended budget schedule for FY 2020 with Council and the audience. He noted that in February, budget requests would be issued from established departments and agencies; in March the requests would be due to him and he would develop revenue estimates and then meet with the departments and agencies to review the requests; in May he would submit the proposed FY 2020 budget to Council and then schedule work sessions as well as publishing the Notice for Public Hearing; and finally in June, a public hearing and adoption of the budget would be done. He reminded Council that there would not be a mid-month meeting in April, which was why he was presenting the budget in May.

Mayor Kingston moved to approve the Proposed FY 2020 budget adoption schedule as presented.

Motion carried 4-0.

Update on Public Safety Building

Town Manager Layton stated that there was nothing substantial to report except that there was movement in a positive direction. He stated that staff met with representatives from

the Army Corps of Engineers along with staff from VHB for the environmental assessment that was being required as an item that the Town has to complete in order for the Army Corps of Engineers to consider the Town's request for additional space related to the Public Safety building. He stated that no issues were brought up at the meeting and it was very positive. He stated that staff did not see any issues related to any unexploded ordnances. He added that VHB determined that there were no wetlands in the area, which was also positive. He stated that due to the backlog from the government shutdown, it may take months for the Army Corps of Engineers to get through everything, so it can't be expected that there will be a quick decision after the environmental assessment is completed.

Town Manager Layton stated that staff on the Army Corps of Engineers made it clear that their desire was to get the lowest possible ranking person to sign off on the project because the higher it goes up the ranks, the longer it will take to sign off on it and was more likely to run into issues. He stated that the local Army Corps of Engineers staff were very positive about wanting the police and fire department to be there and the real estate and environmental people were also very positive about the project. He didn't think there would be any significant delays with regard to the project.

Financial Statement for month of January for FY2019

Town Manager Layton reviewed the financial statements with Council and the audience.

MAYOR'S AGENDA

Mayor Kingston stated that he had his mayors meeting on February 19, 2019 in the Town of Manteo. He stated that former Mayor Dave Wessel is in Town for the winter and due to that, he was planning a mayor's lunch for all of the former mayors the week of February 11, 2019 along with Town Manager Layton. He stated that he was invited to a meeting on stormwater issues with the other mayors in Kill Devil Hills on February 19, 2019. He stated that he and Town Manager Layton were talking recently about beach nourishment. He noted that the Town was in the planning phases and next year would be the drop-dead from the standpoint of what the Town would be doing moving forward. He added that there hasn't been a meeting with Dare County or the other towns with respect to beach nourishment, so it was suggested that a meeting be held on February 27, 2019 for the mayors and managers to discuss plans for moving forward. He stated that he had a North Carolina League of Municipalities meeting on February 20, 2019 in Raleigh, which he would not be attending due to the upcoming Retreat and had a video conference finance meeting the week of February 11, 2019. He congratulated Director Legner and Public Relations Assistant Betsy Trimble of the recent winter celebration. He added that he was looking forward to the upcoming Retreat.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau stated that she had her CurrenTV meeting earlier in the day and reminded Town staff that the LPDI grant request needed to be submitted. She

stated that it was difficult to get a quorum for the meetings, so there was talk about holding them every other month, but not until after the LPDI grant requests were done for the year. She stated that Wally Overton of Dare County had brought up the idea that there would be a housing meeting and the need for housing for students and faculty for the Coastal Studies Institute. She stated that she didn't have the date at this time, but it would be coming up soon. She stated that the recent holiday party was wonderful. She stated that she was excited to see all of the building that has been going on in Town and noticed that two of the four properties were four-bedroom homes. She pointed out that the Town has been operating since 2015 with the current regulations and the new set of rules that was added on was just to set maximums. She was hopeful that people would not build to the maximum as there was evidence of that in January. She added that the Town has been operating for the last three years with similar limitations and now there was just a cap on it, which she felt was a good idea.

Councilor Caviness thanked Town staff for the hard work on the recent holiday party as well as all of the work for the upcoming Retreat.

Councilor Britt thanked Town staff for a great holiday party and was looking forward to the upcoming Retreat.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments.

Ben Vorndran of 104 Sea Hawk Drive West was recognized to speak. Mr. Vorndran stated that the recent presentations that have been held on Saturdays were well attended and he recommended people attend the ones that will be held in the future. He stated that lifeguards were the ones that were around tourists and thought the Town should hire some top-notch lifeguards as it would be beneficial to Duck.

There being no one else wishing to speak, Mayor Kingston closed the time for public comments.


Mayor Kingston noted that the next meeting will be the Retreat on Wednesday and Thursday, February 20 - 21, 2019 at 9:00 a.m.


ADJOURNMENT

Councilor Britt moved to adjourn the meeting.

Motion carried 4-0.

The time was 9:04 p.m.


Lori A. Ackerman, Town Clerk

Approved: *March 14, 2019*

Don Kingston, Mayor

