

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
January 10, 2018**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, January 10, 2018.

Present were: Chair Joe Blakaitis, Vice Chair Marc Murray, Tim McKeithan, James Cofield, and Sandy Whitman.

Absent: None.

Also present were: Director of Community Development Joe Heard, Permit Coordinator Sandy Cross and Council Liaison Jon Britt.

Others Present: Reid Carter.

Others Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for January 10, 2018 at 6:30 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

None.

NEW BUSINESS

Conditional Use Permit 17-004: Application for a Conditional Use Permit to Establish a Small Eating/Drinking Establishment in the Existing Growlers to Go Store in the Loblolly Pines Shopping Center at 1187 Duck Road

Director Heard stated that the applicant is seeking to convert 270 square feet of retail space in the existing Growlers to Go store to a small area for customers to consume drinks on-site. He noted that the application requests “four to eight seats”. However, the property owner has only authorized the applicant to seek approval for four seats. In addition, the application is limited to four seats in order to meet the minimum parking requirements.

Director Heard stated that the Loblolly Pines shopping center was constructed in 1986 and contains a total of 11,051 square feet, which is greater than the maximum building size standard of 5,000 square feet in the Village Commercial District. He noted that since the shopping center was constructed long before the Town’s incorporation, the building is considered a legal,

nonconforming use and can continue to be used with its current layout and dimensions. He stated that the key standard relating to the application is the parking requirement.

Director Heard stated the minimum parking requirement based on the existing uses of the property would be 53 parking spaces. He added that there are approximately 44 parking spaces currently on site, which is a nonconforming situation. He stated that with the new eating/drinking establishment, one of the reasons the four-seat limitation is the magic number whereby it will not place a greater parking burden on the property. He explained that by converting the small space and only having four seats, the applicant's business will not require any more parking than it presently requires.

Director Heard stated that staff was recommending approval with the following conditions:

1. The applicant must obtain an On-Premise Malt Beverage permit from the N.C. Alcoholic Beverage Control Commission.
2. The Building Inspector and Fire Department must review and approve the layout of the customer area for compliance with applicable codes.
3. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
4. This conditional use permit will expire in 12 months from the date of approval if the approved change of use has not been initiated.

Reid Carter of Growlers to Go was recognized to speak. Mr. Carter stated that he's had a very successful year with his business. He commented that during the summer, people came into his establishment and asked about having drink inside, but he could not allow it. He stated that a representative from the ABC Board had suggested that he apply for an on-premise permit to serve his patrons beer in the store. He stated that he contacted the Health Department to ask if he has to make any changes to the building and he does not. He stated that he is requesting permission to set up a few chairs and tables so that people have a small area to have a drink in his store if they choose.

Member Cofield asked if Mr. Carter had a second, affiliated establishment in Kill Devil Hills. Reid Carter stated that he only owns the one in Duck, but he is aware of a similar establishment in Kill Devil Hills. He noted that he has other locations in Richmond, VA.

Member McKeithan asked Mr. Carter if he will be serving any food in the lounge area. Mr. Carter stated that he will not. Member McKeithan noted that the permit is for an eating and drinking establishment. He asked if that term is a general catch-all. Director Heard stated that it is a use category and mr. Carter's proposal falls under that broader category, but no food will be served. Member McKeithan thought if food is served, Dare County Environmental Health will need to be involved. Director Heard stated that it would need Health Department approval, depending on the type of food service.

Member McKeithan asked if people are drinking beer, will have access to the restroom in the rear of the building. Mr. Carter stated that customers will have access to the bathroom.

Chair Blakaitis clarified that there will not be any bar stools set up. Mr. Carter stated that he is correct. Chair Blakaitis noted that each bar stool would be considered a seat. Mr. Carter invited the members of the Planning Board to his establishment.

Member Cofield suggested adding a fifth condition of limiting the capacity to four seats, as proposed. Director Heard concurred with this suggestion. Member Cofield stated that it seems from the staff report that the way the Town approaches the parking issue is somewhat nebulous. He asked if there is a more definitive way to resolve the discrepancy when there are two different approaches regarding parking from the Town's perspective. He thought the Town needs a more definitive way of looking at parking issues. Director Heard stated that he would enjoy having more definitive parking figures for this property, but it is not an inexpensive proposition for an owner and there has to be something significant to trigger the need for engineered drawings and calculations. He added that if the applicant was looking at a more significant change to another unit, such as converting an entire unit to a restaurant, it would increase minimum parking requirements. In that scenario, staff would require an engineered site plan to ensure compliance with the parking standards. He stated that in this case, staff was able to determine that it is clearly a nonconforming parking situation and the applicant's proposal had to result in a net zero gain for parking requirements.

Member Cofield stated that if an applicant comes in with the same scenario as presented here and a second applicant came in with a different situation, he thinks it improper for the Town to rely on Director Heard's judgment about when to apply certain standards. He thought the Town needs to rely on the judgment of an engineer who has completed the engineering and noted how many parking spaces will be needed. He stated that he is not quarrelling with the judgment in this case, but thought from the Town's standpoint, there needs a definitive plan by a registered engineer.

Vice Chair Murray noted that in this case, there was no judgment because the number of parking spaces are irrelevant as no parking spaces are being added and no additional parking spaces are required. Director Heard agreed. Member Cofield also agreed, adding that he doesn't think it is an issue, but thought it needs to be stated in the conclusion. He added that this decision isn't stated clearly in the staff report.

Chair Blakaitis agreed, clarifying that it does not relate to the entire parking lot. Director Heard stated he was correct. Member Cofield thought it may be a way to prevent it from becoming a conflict in the future by stating that the plan does not require any more parking spaces in the current plan than what currently exists. He reiterated that the Town should not be the one making that judgment, as an engineer should have gone out and completed the work and come back to the Town. He suggested that a condition be added to state that the change does not require any more parking spaces.

Chair Blakaitis stated that what makes this proposal unusual is that the situation is already nonconforming. Member Whitman noted that the site plan is 33 years old. He asked how many more changes will be allowed under the old site plan before a new site plan is required. Director Heard stated that it could be indefinitely as long as the amendments don't trigger a change to the site layout or the need for a new site plan. He added that trading out retail for retail happens quite often and as long as it is an even trade-out with two similar uses and the same parking

requirements, it is not an issue. He stated that if it is a permitted use and not a conditional use, the Board does not review the change in businesses.

Member Cofield stated that the Coastal Cravings Restaurant is a perfect example that triggered something where he felt that the Town needed a definitive answer. He added that with regard to Cravings, when they wanted to put in outdoor entertainment, there was a site plan and the Town accepted the fact that they were adding more parking requirements to a grandfathered quantity. Chair Blakaitis pointed out that the number of parking spaces conformed with what was proposed on the Cravings property and no special exceptions were made. Member Cofield commented that the Town added to a nonconforming use. Vice Chair Murray disagreed. He explained that there were parking spaces under the gas station canopy that are not considered legal now. These spaces were not part of the use of Cravings' parking, but part of the gas station's parking, which wasn't part of the permit.

Director Heard explained that, over the years as uses change to something else, staff will evaluate those and recommend the changes. He noted that on the Loblolly Pines property, it appeared that some of the changes occurred during the early development of the site and were not looked at in that manner. He pointed out that the original plan had a grocery store where Pizzazz Pizza currently exists as well as a furniture store, which both require only one parking space per 500 square feet. He added that this proposal was approved and at some point, those units along the entire northern wing of the shopping center were converted into more traditional retail and a restaurant. Chair Blakaitis asked if there was a second restaurant on the property at one time. Director Heard stated that there may have been, but the original proposal was for a grocery store, which had a much lesser parking requirement. Council Liaison Britt noted that there were two small grocery stores on the property at one time.

Member McKeithan stated that one area that concerned him was the lack of ADA parking. He pointed out that staff went out to the site and did not see any ADA parking. He added that one of the site plans shows two handicap parking spaces. Director Heard stated that one of the site plans shows it but the other one does not. He wasn't sure when the change happened, but stated that staff will be following up with the owner about this issue. Member McKeithan stated that a fairly large parking lot without any handicap parking is something that should be looked at sooner than later. Director Heard agreed, adding that he will be working with the owners to get it corrected.

Member Cofield moved to recommend approval with the two additional conditions of limiting the eating/drinking area to four seats and that the parking requirements for the proposal are similar or lesser than what is already in existence. Chair Blakaitis seconded.

Motion carried 5-0.

APPROVAL OF MINUTES

Minutes from the November 8, 2017, Regular Meeting

Member Cofield moved to approve the November 8, 2017 minutes as presented. Member McKeithan seconded.

Motion carried 5-0.

Minutes from the December 13, 2017, Regular Meeting

Chair Blakaitis moved to approve the December 13, 2017 minutes as presented. Vice Chair Murray seconded.

Motion carried 5-0.

Member Cofield thought the discussion on the text amendment at the Board's December 13, 2017 meeting was very interesting. He added that he is sorry to have missed the meeting. Chair Blakaitis stated that Member Cofield will have a chance to comment because Council has decided to have a discussion on house size at their Annual Retreat.

Member Cofield stated that his comments are similar to Vice Chair Murray's, but for different reasons. Chair Blakaitis didn't think the Planning Board will be asked to make any comments at the Retreat as it will most likely be between Council and the public, but if so, Board members are welcome to make comments. Council Liaison Britt said he expects the Board to be involved in the discussion at the Retreat. He stated that he and Mayor Kingston feel that the Board and Council need to discuss the issue together.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of January 3, 2018 Town Council Meeting

Director Heard gave an update on the January 3, 2018 Council meeting to the Board and audience.

Project Updates

Director Heard updated the Board and audience about several Town projects.

BOARD COMMENTS

Council Liaison Britt encouraged the Board members to attend the Council Retreat when building size is discussed. Director Heard stated that it will be discussed under the Community Development presentation on February 21st.

Member Cofield stated that about a year ago, Vice Chair Murray had an objection to how the Town measures square footage. He stated that it was related to the same issue as building size. Chair Blakaitis stated that it was the same issue, adding that the Board recommended dealing

with the issue one way after the State changed the rules. Now, there is situation prodding the Board to consider another alternative where the Town can have total control.

ADJOURNMENT

The meeting was adjourned.

There was no vote.

The time was 7:21 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman