

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
November 13, 2019**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, November 13, 2019.

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 and Permit Coordinator Sandy Cross.

Absent: Council Liaison Jon Britt.

Others Present: Michael Gibson, Joseph Speight, Mark Leahy, James Blose, John Chenowith, Patti Bossert, Luke Baer, Tommy Karole, Teresa Cullen, and Jeffrey Blinken.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for November 13, 2019 at 6:36 p.m.

PUBLIC COMMENTS

None.

NEW BUSINESS

Conditional Use Permit 19-004: Application for Conditional Use Permits to Establish Two Types of uses in the Existing Building at 1566 Duck Road: (1) Bicycle, Watersports, and Beach Gear Rental Business (including Display/Storage and an on-site Kayak Launch); (2) Take-out Ice Cream Shop with Outdoor Seating

Director Heard stated that the applicant is requesting conditional use permits to establish two types of uses at 1566 Duck Road: (1) bicycle, watersports, and beach gear rental business, which includes display/storage and an on-site kayak launch; and (2) take-out ice cream shop with outdoor seating.

Director Heard stated that the existing 654 square foot seafood market building will be converted for use as a customer service area for the rental business, small retail area, and take-out ice cream shop. He stated that the site will also contain 488 square feet of outdoor display and storage racks for rental equipment. He added that an existing boat ramp/watersport launching area is located at the rear of the property on the Currituck Sound. He noted that the only physical site changes proposed are the installation of bicycle/kayak racks and construction of a new handicap ramp in compliance with ADA accessibility standards.

Director Heard stated that the property is presently zoned Neighborhood Commercial (C-1) and contains a small building that was previously used as a seafood market. He stated that the original portion of the structure was built around 1935 and used as a hunting club, making it one of the oldest remaining structures in Duck. He pointed out that an existing deck wraps around the building and connects to a large cooler that was previously used to store seafood. He noted that there is an existing storage shed and boat ramp near the rear of the property and a gravel parking area at the front of the property that contains 12 marked parking spaces, including one ADA compliant space.

Director Heard stated that Dare County tax records showed that the subject property is approximately 55,500 square feet. The northern portion contains a gravel parking area leased to the Sanderling Resort. The unleased portion under consideration contains 20,266 square feet. He stated that the abutting property to the south contains the Paper Canoe Restaurant as well as a two-bedroom accessory apartment. He stated that to the east across Duck Road was the Sanderling Resort. Kimball's Kitchen Restaurant is located to the north.

Director Heard stated that a special exception application, SE 08-006, previously approved by the Town for the adjoining property at 1564 Duck Road for the Paper Canoe Restaurant in 2008 impacts the use and development of the subject property today. He stated that the two-story building at 1564 Duck Road was originally developed as an office building under the auspices of Dare County in 1992. He pointed out that the downstairs portion of the building was converted to a 42-seat restaurant – the former Duck News Café – in 1994 and the upstairs portion of the building was later converted to a two-bedroom apartment. He noted that neither the Town or Dare County have records related to the apartment conversion. He stated that following a fire in 2005, the restaurant closed. When the property owner sought to reestablish the restaurant in 2008, the applicant proposed to increase the amount of seating in the restaurant from 42 seats to 60. He noted that the increase required the evaluation of the on-site parking and as several aspects did not comply with the standards at the time, the owner obtained approval of a special exception offering relief from the following standards:

- Shorter length of certain parking spaces from 20 feet to 19 feet
- Narrower width of certain parking spaces from 10 feet to 9.5 feet
- Narrower width of certain drive aisles from 24 feet to 22 feet
- Use of a gravel, rather than paved, parking surface
- Reduction in the number of required parking spaces from 24 to 23 spaces

Director Heard stated that during the review of the special exception application, it appeared that the two abutting properties under the same ownership were treated as one for the purposes of the review. He noted that seven of the required parking spaces for the restaurant and several of the waivers granted were located on the subject property at 1566 Duck Road. He added that even though the seafood market and boat ramp were in operation at the time of approval in 2008, their needs were not included in the parking calculation for the site.

Director Heard stated that the applicant is now proposing to convert the previous retail space into a bicycle, watersports, and beach gear rental business, including an on-site kayak launch and take-out ice cream shop, which is defined as an eating establishment in the Town's zoning ordinance. He added that the boat rental/launching business and eating establishment are

conditional uses in the C-1 zoning district. He noted that the existing cooler adjoining the building and storage shed at the rear of the property will continue to be used for the storage of personal items by the property owner.

Director Heard pointed out that the existing deck is located as close as 8.3 feet from the south side property line, which encroaches 1.7 feet into the minimum side setback. He added that the cooler structure on the deck is approximately 11 feet from the property line and that the location of the deck is a legal, nonconforming setback, which was grandfathered and can remain in this location unless removed and replaced. He noted that the other setbacks comply with the Town's standards and will remain the same under the proposed change of use.

Director Heard explained that per the applicant's submitted site plan, the existing lot coverage is calculated using the much smaller 20,266 square foot lot size for the southern portion of the parcel. He noted that it does not include the northern portion of the property leased to the Sanderling Resort, which includes wetlands and parking for Kimball's Kitchen Restaurant. He stated that the total lot coverage complies with the maximum lot coverage requirement of 50% in the C-1 zoning district and the existing lot coverage will remain the same under the proposed change of use.

Director Heard stated that the current development has two gravel driveways for ingress/egress from Duck Road and these driveways serve the subject property and provide access to the adjoining property at 1564 Duck Road. He added that with a width of 22.5 feet, the southern driveway complies with the maximum width standard of 30 feet. He added that although wide enough to accommodate traffic in both directions, the driveway does have a sign declaring it to be an entrance only. The second driveway to the north has a narrower width of 15 feet and is designated as an exit only. He pointed out that the existing access drives comply with Town standards and will remain the same under the proposed change of use.

Director Heard pointed out that when the special exception that was granted in 2008, the two parcels at 1564 and 1566 Duck Road were under a common ownership and have been treated as a single parcel for the purpose of applying development standards for access and parking. He noted that the site plan approved in 2008 showed 16 of the 23 required parking spaces for the restaurant/apartment on the property at 1564 Duck Road and the remaining 7 spaces in the front parking lot on the subject property at 1566 Duck Road. He stated that with the bulk of the seafood market/boat ramp operations occurring during the day and Paper Canoe Restaurant only open for dinner, the arrangement has worked for the parking needs. He added that the proposed ice cream shop will have later hours of operation that overlap with the Paper Canoe's hours during the summer months. However, there will be enough parking to accommodate both uses simultaneously without a shared parking arrangement.

Director Heard stated that staff is recommending approval of the conditional use permit, subject to the following conditions:

1. The access and parking area are subject to the limitations and conditions outlined in the approval of Special Exception 08-006.

2. The applicant must obtain approval from the Dare County Environmental Health Department prior to issuance of a building permit for construction of the handicap ramp, building renovations, and establishment of the proposed uses.
3. The applicant must obtain a CAMA minor permit prior to issuance of a building permit for the proposed ADA accessible handicap ramp.
4. The Building Inspector and Fire Department must review and approve the proposed improvements for compliance with applicable codes.
5. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
6. This conditional use permit will expire in 12 months from the date of the approval if the approved change of use has not been initiated.

Member McKeithan noted that the staff recommendation stated that the applicant must obtain a CAMA minor permit prior to the building permit being issued for the ADA accessible handicap ramp. He asked if the kayak racks and bicycle racks have to receive CAMA approval. Director Heard stated that they do not. Member McKeithan asked why they don't. Director Heard stated that they are not considered structures in the same manner as the ADA ramp. Member McKeithan asked why they are not structures if the applicant was going to put kayaks and bicycles there. Director Heard that they are not permanently affixed structures that fall in the same category as ADA accessible ramps.

Chair Blakaitis asked if the owner or a representative is present for the meeting. Director Heard stated that he is.

Member McKeithan asked if the seafood market is currently operational and if so, what the hours are. Director Heard stated that the market is not operating, but there are a couple of structures on the site that the owner of the property will continue to use for personal use - the storage shed on the northwest corner of the property and the cooler that sits on the deck to the left of the subject building.

Member Whitman asked if consideration was given for parking related to the storage building. Director Heard stated that no consideration was given as it is personal storage use. He noted that there isn't a requirement for parking in the Town's ordinance. Member Whitman pointed out that there is a boat ramp on the property and asked if boats will be launched from there. Director Heard stated his understanding that they will rent kayaks and other equipment that will be launched from the boat ramp. Member Whitman clarified that it will not be used for launching boats during the day. Director Heard stated that is not his understanding, but the applicant can speak to the question.

Member McKeithan asked if the five proposed parking spots to be used by the new business are currently being used by the shared parking agreement of the adjoining restaurant. Director Heard stated that it is highly likely during the summer season that the Paper Canoe Restaurant will use the spaces for overflow parking, but as far as the approval, they are only approved for seven parking spaces with the other five parking spaces dedicated for use by the previous seafood market.

Chair Blakaitis asked how late the bicycle rental facility will be open. Director Heard stated that the applicant can speak to that issue.

Chair Blakaitis asked the applicant to speak about the proposal.

Michael Gibson of 4044 Poor Ridge Road in Kitty Hawk was recognized to speak. Mr. Gibson stated that he and his wife have worked in Duck for a number of years. He stated that the rental business has changed so much and he realizes that he needs to change his business model. He stated that the things that they have to change as far as access to the water as well as open an ice cream shop cannot be achieved at their current location. He stated that he worked at Duck News Café 20 years ago before it closed, and he knows how the business worked. He added that he is looking for a place that will fit in well and be symbiotic for him. He stated that the facility his business is currently in does not work well with the other businesses. He thought he will be one of the better fits for the new location as his rental business is 80-90% through the telephone or internet. He added that there are not many people that will be coming into his business. He stated that the watersports business will work well with the Paper Canoe Restaurant. He stated that there is a lot of competition in Duck with regard to ice cream shops and he is looking to carve out a niche located away from Duck Village.

Chair Blakaitis clarified that Mr. Gibson planned to relocate his business. Michael Gibson stated he was correct as his current lease ends on January 1, 2020. Chair Blakaitis clarified that Mr. Gibson proposed to operate the ice cream facility as well. Mr. Gibson stated that he will. Chair Blakaitis asked how the parking overlap will work. Mr. Gibson stated that parking for his business is usually quick with people coming and going within minutes. He stated that his business would be symbiotic with the other business in that customers will come to his business and leave there and go to the Paper Canoe restaurant. He believes that businesses work better when they are clustered and knows that parking at certain times could be an issue. He thought his business can add to the Paper Canoe's business and increase their revenue.

Chair Blakaitis asked when the business would be closed on a daily basis. Michael Gibson stated that most ice cream shops close after dark so he is thinking it will be around 8:00 p.m. Chair Blakaitis asked when the bicycle rental aspect will close on a daily basis. Mr. Gibson stated that traditionally, he closes his business at 6:00 p.m.

Member McKeithan clarified that a customer can park their car at the business, rent a kayak and be out on the water for several hours before coming back. He asked how late in the evening it will be open. Michael Gibson thought it will close at 6:00 p.m.

Member Whitman asked what time customers will be expected back in from the water after they rent a kayak. Michael Gibson stated that he hasn't worked out the particulars on that at this point, but thought it will not be past 6:00 p.m. Member Whitman asked if a customer rented a kayak at 4:00 p.m. the time they should be back. Mr. Gibson stated that it is up to the customer as the rental is on an hourly basis. Member Whitman clarified that a customer could be out past 6:00 p.m., especially if they want to watch the sun set. Mr. Gibson stated he is correct. He stated that he thinks people will be back by 7:00 p.m.

Member Cofield asked where the boat trailers will be parked for people launching boats. Michael Gibson stated that boat launching is not part of his business. Member Cofield asked if the boat ramp will be available for people launching boats without a place to park their trailer. Mr. Gibson reiterated that it is not part of his business, adding that he is only renting kayaks that customers will launch from the beach. Member Cofield questioned if the boat ramp will be available for non-kayak/boat launching. Mr. Gibson stated that it will not as part of his business.

Member Whitman asked if there is another business that will use the boat ramp to launch boats. Michael Gibson stated that in the past the seafood market used it. He added that in his lease he does not have exclusive use of the boat ramp, instead having a small launch area that will be used for the kayaks.

Member Cofield asked if it is possible that in addition to his use of the property, someone else may use it to launch boats. Michael Gibson reiterated that it is not part of his business.

Vice Chair Murray asked if boat launching would have to be permitted separately or if it is a use that is currently allowed. Director Heard stated that it is a use that has existed on the property for a very long time, so it is not something that will require any additional permitting to continue. However, the point is well taken regarding the function of the site. He added that he has no idea as to the extent of the use and how it worked in the past or today, or if it will continue.

Chair Blakaitis asked who will allow boat launching. Director Heard stated that the owner, Joseph Speight, could potentially allow it as he is maintaining some of the other buildings for storage on the property. Member McKeithan asked if Mr. Speight is present for the meeting. Director Heard stated that he is.

Joseph Speight of 160 Holly Trail, Southern Shores, was recognized to speak. Mr. Speight stated that he uses the boat ramp during hunting season. He added that there are a few people in the neighborhood that use it because the sound is shallow. He noted that they usually launch their boats in the water and take their boat trailer back home. He stated that he owned the seafood store for 36 years and when it closed in September, there were people that were launching their boats for the day and then came back.

Chair Blakaitis wasn't sure if it should be a concern of the Planning Board's. He noted that he is familiar with the boat ramp and launched his own boat there several times. He added that the water is so shallow most of the time that one cannot launch a 7-8-foot boat from it. Joseph Speight agreed. Chair Blakaitis didn't know if launching boats there will be a problem.

Member McKeithan thought the Board is worried about the number of parking spaces compared to the requirement of the restaurant and the new proposed business. He stated that it is a concern if the applicants are adding other activities. Joseph Speight stated that, except for a few people in the neighborhood that he allows to use the ramp in the winter, the boat ramp will not be used.

Member Cofield asked if the storage facility will be used only by Mr. Speight. Joseph Speight stated that it will only be used by him. He stated that he used to rent jet skis from there for 32 years. Member Cofield clarified that no parking will be required for the use of the storage facility. Mr. Speight stated that he keeps nets and decoys in it.

Mark Leahy of 105 Bunting Lane was recognized to speak. Mr. Leahy stated that he sent an email earlier in the day regarding the conditional use permit application. He stated that he is opposed to the permit due to the lack of parking available and went on to read his email to the Planning Board and audience asking the Board to deny the application since there are simply not enough parking spaces for the two business to work together.

James Blose of 105 Waxwing Court was recognized to speak. Mr. Blose stated that he agrees with everything Mark Leahy said to the Board. He stated that he patronizes the Paper Canoe Restaurant on a regular basis and parking has always been a problem there. He strongly encourages the Planning Board to deny the application.

John Chenowith of the Sanderling Resort was recognized to speak. Mr. Chenowith stated that he wants the Planning Board to consider the safety aspects of crossing the street for the business. He stated that currently there are two crosswalks available at the Sanderling Resort and no crosswalks at the subject property. Chair Blakaitis asked John Chenowith if he would be interested in seeing another crosswalk installed. Mr. Chenowith stated that it should be considered due to the traffic in that area.

Member Cofield stated that he is a patron of the Paper Canoe Restaurant and has never found any excess parking spaces available when he visits the restaurant. He stated that the comments regarding the adequacy of parking may look good on paper, but in reality, it does not match. He thought there is a parking inadequacy between the restaurant and the proposed business.

Patti Bossert of 102 Pelican Way was recognized to speak. Ms. Bossert echoed John Chenowith's comments regarding the concern of bicycles and pedestrians in that area. She asked what the safety consideration will be to get the bicyclists across the street safely as well as for the people renting the bicycles at the proposed business. She asked if the applicant is requesting a crosswalk to be installed as it will be a consideration with regard to the flow of traffic in that area. She stated that she is under the impression that Sanderling Resort rents bicycles and kayaks. She asked if that is true. Chair Blakaitis stated that he isn't aware of it. John Chenowith stated that Kitty Hawk Kites runs the pool, paddleboard and kayak rentals at the resort.

Luke Baer of Kitty Hawk Kites was recognized to speak. Mr. Baer stated that they have kayaks and stand-up paddleboards on the ocean and soundside at the Sanderling Resort for both Sanderling guests and the general public. He added that they offer sunset kayak tours from 6:00 p.m. to approximately 8:00 p.m. in the summer. Chair Blakaitis asked where the kayaks are stored on the soundside. Luke Baer stated that they are kept on the grass. He inquired how many kayaks and bicycles the applicant will have on their property. Mr. Baer noted that they keep a low number because of the parking at Sanderling Resort.

Tommy Karole of the Paper Canoe Restaurant was recognized to speak. Mr. Karole stated he is the owner of the restaurant, adding that the he knew Town staff advertises on the website and in the local newspaper, but there was no sign posted about the meeting. Director Head disagreed and stated that he had a photograph of the sign that was posted. Tommy Karole stated that he knew the sign was there but only the frame was standing now. He added that his point is that he didn't have as much time to prepare.

Tommy Karole stated that Duck News Café opened on the property in 1994 and the first person to lease the property from Joseph Speight was Tommy Gardner. He noted that there were no successful restaurants on that property until the Paper Canoe opened because he was privy to court proceedings on what happened to the businesses. He stated that even though there appeared to be a long-standing business, each owner was sold on the fact of a cute name and concept and it had a few owners until the fire at the restaurant in 2008. He stated that his process started then with a huge investment and a lot of time working with the Town so he could open the business in 2011. He pointed out that the shared parking arrangement was a misnomer because he has a lease agreement of 13 years with exclusive rights to the Paper Canoe and 16 parking spaces. He added that to look at it as shared and to look at the property as being treated as one property is not true. He stated that it was treated as one property so he could get the parking spaces that were required by the Town to meet the parking requirements. He reiterated that he is not sharing any parking spaces. He stated that he has rights to seven of the 12 parking spaces on the subject property.

Tommy Karole stated that he understood the applicant is looking to open a business and applauded him as he owns his own business. He noted that the applicant would not like having a business there as Joseph Speight may be friendly now but is only looking out for himself. He reiterated that he has exclusive rights by contract to the 16 parking spaces and has seven parking spaces that were required by the Town, which leaves the applicant with five parking spaces. He added that the applicant has two employees and one of the parking spaces was ADA compliant, leaving only two parking spaces for customers.

Tommy Karole stated that he has run the Paper Canoe Restaurant since 2011 and built a strong, successful business. He stated that he has a significant number of long-term employees. He stated that the restaurant is a thriving business and the Town is very good to him, which he appreciates. He stated that the inevitable problems that he knows the spirit of his lease and agreement with Joseph Speight. He stated that he is confident that there should be no other business on the property.

Tommy Karole stated that he has 16 employees that work every night in his restaurant – eight in the kitchen and eight in the main part of the restaurant. He stated that the apartment can house two to four people. He added that all the employees that work for him are very well compensated. His business is strong and good for a lot of people. He stated that the potential problem is policing the parking spaces. He asked what kind of message he will be sending if he has signage that says “Paper Canoe Parking Only, All Others Will Be Towed by Seto’s” on his parking spaces. He wondered what kind of message that would send to the citizens and visitors as it would make him look like the bad guy.

Tommy Karole stated that he turns over customers three times each evening in the summer. He stated that it’s usually 5:00-5:30, 6:30-7:00, and 8:30-8:45 p.m. He wondered what will happen if someone comes in to have ice cream but doesn’t leave, but walks around Town. He noted that the applicant’s parking spaces are shorter, and the area is already tight with nowhere to move. He asked how the Planning Board wants him to handle a child walking on his deck with ice cream where there are people with alcoholic drinks. He stated that he will have to tell the child

that he cannot run on the deck because he can potentially run into someone. He stated that he has to protect his business and everything he's invested in it.

Tommy Karole wondered what would happen if he decides to start serving breakfast at his restaurant. He stated that everyone is assuming that the seafood market and his restaurant co-existed over the years and that it is a great relationship. He stated that he told his employees to park on the applicant's property, but it is not a good plan. He stated that he has the same situation with the public restrooms. He noted that there will be ice cream and kayaks at the proposed location and asked if there will be public restrooms in the shed. Joseph Speight stated that there are restrooms in the building. Tommy Karole stated that the restroom has to be ADA compliant and he is planning to make sure it is as he has to protect his business.

Tommy Karole asked how the pier that Joseph Speight uses to run his crabbing business will work. He asked if the Town will send a cease and desist letter as there cannot be a third business on the property. He stated that if Town Council approves this request, he will get an injunction as the Paper Canoe Restaurant will go out of business if the new business is approved.

Member Cofield stated that he was at the property recently and saw Joseph Speight there. He stated that even though the property line is not drawn out into the sound, the pier appears to be on the property used by the Paper Canoe Restaurant. He was puzzled about the use of the pier for the kayak business. He stated that it is clear to him that the pier is on the restaurant property. Chair Blakaitis asked how Member Cofield's point would affect the discussion. Member Cofield stated that the kayak and watersports business need the pier for their use. Chair Blakaitis asked if that is true. Vice Chair Murray stated that the applicant did not propose that. Michael Gibson confirmed that he does not intend to use the pier.

Vice Chair Murray asked if the total parking requirement of 10.3 spaces includes the Paper Canoe Restaurant's spaces in the calculations. He further questioned if the only parking spaces required for this application were the 3.3 spaces for the equipment rental. He added that, considering what the Board just heard, the applicant has one extra space. Director Heard stated he was correct, adding that even if a higher standard is used and the Board wants to consider the entire operation as an eating establishment, the applicant still only needs five parking spaces, which is available on the subject property. He stated that with regard to the shared parking, the Paper Canoe Restaurant is getting parking from another property. He added that he is not talking about shared parking, nor is shared parking necessary for these two businesses to overlap hours of operation as the applicant still complies with minimum parking requirements. He pointed out that it seems there is an existing parking problem with the restaurant and the amount of parking necessary to serve that, not for the proposed business. He understands that the proposed use might potentially exacerbate what is happening on the site but the challenge with parking is that the Paper Canoe is taking up the applicant's parking and not the reverse. He thought the Board needed to keep this in mind as it is not the role of the Board to penalize someone else for an existing situation. He advised the Board to evaluate the conditional use that is being proposed and not the Paper Canoe and how it functions.

Vice Chair Murray pointed out that it is a conditional use permit where the applicant has met the parking requirement. It isn't to say that parking at the site isn't a problem, but a deficiency in the Town's ordinance or a previous permit is not something the Planning Board can remedy at the

expense of the applicant. He asked if the parking calculations for the C-1 and the V-C districts are the same. Director Heard stated that they are, but added that one of the differences is that in the C-1 district, the applicant does not have the Village Commercial Development Option in order to seek relief from parking requirements, which is why in working with the applicant's proposal before they submitted it, staff had to make sure it complies fully with the ordinance as part of the proposal. Vice Chair Murray asked if that is why a special exception was used for the Paper Canoe. Director Heard stated he is correct.

Member Whitman asked if the Board doesn't look at what the applicant is doing outside but is looking at what was happening inside the building in order to determine parking. Director Heard stated he was correct, adding that it is not a unique business in Duck as there are a handful of companies that perform similar types of operations.

Vice Chair Murray asked who controls the safety aspect of a crosswalk over Duck Road. Director Heard didn't think there is any intention of adding a crosswalk as it would go against the Town's pedestrian plan. He stated that it is not part of the intention but is an interesting and valid point. Chair Blakaitis asked if NCDOT will not allow another crosswalk. Director Heard stated that the Town would not recommend it to NCDOT.

Chair Blakaitis stated that this application presents a unique problem and is concerned about the safety aspects that were brought up and Tommy Karole's concern for his business, adding that he doesn't think the Board has ever had anything like this in front of them. He stated that the property has history as he was on the Board when they gave the original approvals for the parking and restaurant. He stated that he is a little troubled by the proposal and would rather not see the operation in place.

Member McKeithan stated that he is concerned as it will be an untenable situation when there are only five parking spaces assigned to the proposed new business as well as the restaurant already having a parking problem with protecting its seven parking spaces. He thought the community is demonstrating there is a problem and if the Board approves the new business, regardless of what the figures state, there will be a bigger problem. He stated that it is a bad problem for both businesses as the new company doesn't want to come in and be faced with an untenable parking situation. He stated that there is just not enough parking for both businesses.

Member Cofield thought the problem is not unique as the Board has looked at other proposals for conditional use permits where the use of the property created some density and parking problems. He stated that, regardless of what the Town's ordinance sets out in terms of parking standards, as a patron of the Paper Canoe Restaurant, parking is a definite problem. He stated that the fact that the Town's ordinance will allow the restaurant and a new business with the demands and requirements of parking is not in sync with reality. He thought what is on paper does not square with the real world. He thought the Board needed to be cognizant of it. Member Whitman stated that he has the same problem that the other Board members had.

Vice Chair Murray stated that the applicant mentioned in his presentation that he is applying for the conditional use permit because he is adding the ice cream shop. He asked what the other component was. Michael Gibson stated that it is the watersports. Vice Chair Murray inquired if Mr. Gibson's intention is to run the rental business for bicycles and kayaks out of there or off-

site. Michael Gibson stated that Director Heard had told him that the business that they are currently running is administratively approved for it, so they moved forward and signed the lease thinking they did everything right and worked hard with their business. He stated that he doesn't want his business to just survive but to thrive, so the new location makes sense. He stated that he is shocked at the amount of pushback he is hearing. He pointed out that Sweet Tea's gets crushed every night because the Tap Shack does more business. He added that all the businesses overlap and it works out. He understood the concerns, but he has tried to make things work for the past 19 years. He read the Town's ordinance thoroughly and signed the lease for his new business. He added that he has tried to be as candid as possible with everything they want to do and have families that have worked for him for many years, just like the Paper Canoe does. He stated that they have been very good for the Town as well as the Paper Canoe Restaurant. He thought the parking problem won't be an issue. He thought Tommy Karole has a great situation with his restaurant, but adequate parking spaces are there for the other businesses. He stated that as far as safety, he likes the fact that there is a crosswalk nearby and the sight lines are really good for road crossings.

Vice Chair Murray understood that there was an issue with the parking. He asked what kind of precedent the Board will be setting when they tell an applicant about the ordinance and the requirements they need to meet for approval, the applicant meets them, and then the Board denies the approval. He stated that he is not comfortable with the precedent being set. He realizes that there is an existing parking issue but isn't sure how the Board should deal with it in this application. He understood that there is some legal obligation to approve projects that meet the requirements and putting conditions on them to try to mitigate problems, but when an applicant is not asking for a special exception, there is an obligation.

Chair Blakaitis stated that it troubles him as well. He asked how the other Board members feel.

Member Cofield stated that he expressed his view on the matter and doesn't see a reason to repeat it. Vice Chair Murray wondered if his question had any bearing on that. Member Cofield stated that he doesn't feel the need to comment further on the issue.

Tommy Karole asked if the applicant is going to use a trailer for the bicycles and where the trailer will be parked on the property. He reminded the Board that jet skis can be launched from the property. He asked where the trailer for people launching jet skis will park. He noted that trailers do not take up just one parking space. He asked if there is any validity to requiring an ADA restroom.

Patti Bossert pointed out that her safety question was never answered. She stated that she walks past that area regularly and there is a culvert that runs along Duck Road. She stated that in terms of walking, it is difficult to navigate safely with a bicycle.

Mark Leahy pointed out that he asked how many bicycles and kayaks will be at the site and never received an answer. He stated that if there are going to be bicycles there, there needs to be a trailer. He assumed that every kayak will have a vehicle associated with it. He understands Vice Chair Murray's concern of how to navigate through the process but in fact, the reason why the requirements currently work is because in the Village core when businesses are busy, people can park in multiple areas, but there is no overflow capacity outside of the Village area. He

asked again how many bicycles and kayaks will be at the site. Chair Blakaitis asked Mr. Leahy what number would be too many. Mark Leahy stated that currently there is inadequate parking at the Paper Canoe Restaurant, so the number would be one for him.

Teresa Cullen of 122 Martin Lane was recognized to speak. Ms. Cullen pointed out that the lot and area is under water a lot. She stated that it currently has a permeable driveway. She commented that if are trailers coming in with bicycles, one would assume that there will be a request to pave the driveway as it would have much heavier equipment on it. She asked if the kitchen for the ice cream shop is up to code and if it will affect the septic system. Chair Blakaitis stated that required building upgrades will have to be completed before the business can open. He stated that as far as the permeable surfaces, the parking area is currently permeable, and the Board is not going to request the applicant to change the surface.

Michael Gibson stated that he does not use trailers, but uses a rack system on a pickup truck. Chair Blakaitis asked about the kayaks. Mr. Gibson stated they are also on the pickup truck. Vice Chair Murray asked if Michael Gibson delivers kayaks. Mr. Gibson stated that he does.

Vice Chair Murry moved to recommend approval of Conditional Use Permit 19-004 with the conditions listed in the staff report. There was no second.

Motion failed.

Member Cofield moved that the conditional use permit before the Planning Board for 1566 Duck Road for a bicycle, watersports, and beach gear rental business and ice cream take-out shop be denied. There was no second.

Motion failed.

Member Whitman suggested the issue be postponed until the next Planning Board meeting so that Director Heard can research whether a business with outside storage or usage for kayaks or bicycle rentals has requirements for parking. Chair Blakaitis agreed with postponing it but does not think those are things that Director Heard will need to consider because he already used the Town's requirements from the ordinances and came up with the answer that it is permissible. He stated that the Board cannot do anything about that issue at this point.

Director Heard pointed out that the Board needs to come to some resolution on how they wish to move forward. He noted that the Board is tasked with making a recommendation whether it is to approve or deny. If the members feel they need additional information or that there are key pieces of information that are unclear, the Board also has the ability to table the conversation until their next meeting.

Chair Blakaitis clarified that Member Cofield's motion was to deny the application. Member Cofield stated he is correct. Chair Blakaitis clarified that Vice Chair Murray's motion was to approve the application. Vice Chair Murray stated he is correct, adding that he will amend his motion to approve with almost any conditions the Board wants to discuss. He didn't understand why the Board is not discussing conditions with the applicant about the requirements of the ordinance. He understood the comments that were stated, but the Board has an obligation to

approve projects that meet the requirements of the ordinance. He saw the issues with the parking calculations outside of the Village Commercial District and believes that anyone can apply for a zoning text amendment. Director Heard stated he is correct. Vice Chair Murray thought if the Board wants to see more stringent parking requirements in the C-1 District, he encourages the applicant to apply for a text amendment to change the calculations that the Town has to use.

Chair Blakaitis agreed with Vice Chair Murray and Member Cofield's comments. He stated that if he knew the answer to the question, he would second Member Cofield's motion to deny the application. However, he does not know the answer. He wondered if the Board is obligated to have an answer. He stated that he wants to postpone things until Director Heard brings back these answers at a future meeting. He thought it is all that can be done.

Vice Chair Murray asked what the Board is asking Director Heard to do. Director Heard outlined his understanding that he will be researching with Town Attorney Robert Hobbs to clarify if the Planning Board must recommend approval of something that complies with all standards, what the Board can and cannot do. He noted that there are prior legal cases that deal with this issue.

Member McKeithan suggested seeing if there is any possibility of working something out with the leased parking for the Sanderling Resort to negotiate some of that parking for the use of the two businesses. Joseph Speight didn't think it is possible. Director Heard noted that that parking is used by the restaurant to the north. Member McKeithan understood but wants to see if there is any possibility of something being worked out. Mr. Speight thought the Sanderling Resort needs that parking for their restaurant to the north.

Tommy Karole asked if Joseph Speight planned to continue to run his crabbing business off the subject lot. Chair Blakaitis stated that it isn't the Planning Board's business for this issue. Mr. Karole thought it should require another parking space. Member Cofield thought it should be part of the package that is in front of the Board. Chair Blakaitis asked if it is because of the three parking spaces. Member Cofield disagreed, adding that it is a different question that had been asked. He stated that he wants to see a more definitive comment regarding the use of the portion of the property that Joseph Speight is going to continue to use. He stated that he wants a more definitive comment regarding whether there are other parking requirements associated with use of the storage shed. Chair Blakaitis thought it is a good point but pointed out that the Board does not have the answer right now. Member Cofield directed Director Heard to make it one of the questions to respond to when the issue comes back before the Planning Board.

Member Whitman stated that Tommy Karole had stated that he has the right to the seven parking spaces. He asked if there is an agreement that those spots belonged to him or not. Director Heard stated that he has not seen a private agreement, but the Town's approval that spells out which parking spaces are dedicated to which uses. He stated that Tommy Karole mentioned he has some leases, but he has not seen them. He noted that either way, the Town's previous approval in 2008 spells things the parking situation very specifically.

Chair Blakaitis stated that the discussion will be postponed until the Board's next meeting.

Ordinance 19-09: Text Amendment Proposal to Consolidate Provisions Relating to Firearms

Chair Blakaitis clarified that the ordinance is something that Town Attorney Hobbs crafted for the Planning Board. Director Heard stated he is correct. Chair Blakaitis clarified that it is crafted to comply with State law. Director Heard stated he is correct, adding that the main point is to bring the various sections regarding firearms into one section and then make some minor changes that keep the ordinances in compliance with applicable State law.

Director Heard stated that as part of this, Town Attorney Hobbs found one item that is located in the zoning ordinance. Therefore, even though all of the other changes have been approved by the Town Council, this one change requires the Board's approval and recommendation to Council to make the final change. He explained that there is one sentence in the section that deals with electronic gaming, stated as follows: "Firearms are prohibited in establishments conducting electronic gaming operations." He noted that this provision illegal as the Town does not have the authority to regulate firearms in private establishments. So, Town Attorney Hobbs is recommending striking that sentence in its entirety while leaving in place the remaining standards for electronic gaming.

Member Cofield moved to recommend approval of the proposal to strike the sentence from the draft ordinance. Member McKeithan seconded.

Motion carried 5-0.

OLD BUSINESS

Ordinance 19-04: Text Amendment Proposal to Establish Review Standards for the Village Commercial Development Option as a Special Exception

Director Heard stated that at Council's November 6, 2019 meeting, they voted to send this ordinance back to the Planning Board for additional discussion on Subsection 156.065(B)(7). He stated that the Council members seemed comfortable with everything else in the ordinance. He stated that a couple of Council members brought up that there is one suggested requirement stating: "...the requested modification cannot be used to remedy existing violations on a property..." He noted that the Town Council is asking the Board to reconsider this standard. He added that the Board does not have to make the change, but the Council wants the Board to give it some consideration or see if there is another option.

Chair Blakaitis stated that it is clear what the Planning Board wants to see this requirement in the ordinance. He added that three options listed in the staff report are as follows:

1. Amend the requirement in some way – this could involve limiting only certain types of violations or adding a "first time forgiveness" provision.
2. Eliminate the requirement entirely – this would allow applicants to potentially resolve violations through the VCDO process.
3. Leave the requirement in the ordinance as written per the Board's previous recommendation.

Chair Blakaitis, who attended the Council meeting, stated that Council was split 2-2 with the vote and Town Attorney Hobbs stated that there needed to be 4 unanimous votes to pass the ordinance.

Member Cofield stated that he was unable to attend the meeting when the original vote was taken, but there was a lot of discussion leading up to it at the Board's September meeting, during which he participated and had comments. He stated that the draft ordinance expresses the sentiment of most of the Board members in the months leading up to the vote. He commented that he is not sure there is anything that changes his view, adding that the Board specifically discussed the issue that the Board does not want to see the approval as a way of getting around violations and previous violations on a property.

Chair Blakaitis agreed with Member Cofield's summation and thought that the Board's recommendation is consistent with community input and thought Town Council was generally agreeable with what the Board did until a Council member changed his mind during the meeting.

Member Cofield stated that he wishes to add his weight and sentiment to the vote at the September meeting. Member McKeithan added that in the regular meeting of the Planning Board on April 10, 2019, the Town Council had received input from business owners saying that they feel they have done things the right way rather than committing a violation and coming in afterward to ask for forgiveness. He noted that it was stated by business owners that they expect everyone to play by the rules. That is what the Board is trying to do with the section in question.

Member McKeithan moved to go with Option 3 and leave the requirement in the ordinance as written per the Board's previous recommendation. Member Cofield seconded.

Vice Chair Murray thought the Board's intent is to not allow people that violated the rules either purposely or through irresponsibility. He added that the question that seems to come up with Council is if an owner inherited the violation through purchase of the property. He asked if that has been dealt with. He saw it as a relatively simple change to that condition. He asked if there is a grandfathered situation if the ownership changes. Director Heard stated that if it is grandfathered, it will not change with the ownership and the Planning Board does not have the right to make it change. He explained that it doesn't change with ownership but changes with use or improvements that are being made. Vice Chair Murray asked if someone that owns a restaurant adds extra chairs but then sold the restaurant, and it appeared that the owner is in compliance, would the new owner be issued a notice of violation by the Town. Director Heard stated that the remedy is simple in that the extra chairs would need to be removed to come into compliance.

Motion carried 5-0.

APPROVAL OF MINUTES

Minutes from October 16, 2019, Regular Meeting

Member Cofield moved to approve the October 16, 2019 minutes as presented. Member Whitman seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of November 6, 2019, Town Council Meeting

Director Heard gave a short overview of the November 6, 2019 Council meeting.

Project Updates

Director Heard gave a short overview on various projects going on in Town.

Jeffrey Blinken of 287 Hillcrest Drive in Southern Shores was recognized to speak. Mr. Blinken stated that with regard to the conditional use permit 19-004, everyone knows that parking is an issue on the Outer Banks and while business was a necessity, he wondered how many ice cream shops the Town of Duck needs. He pointed out that Duck Village Outfitters wants to open a second business and their parking is inadequate for the amount of business that is generated on their property. He noted that a substantial amount of parking is done illegally on the adjacent property at the gas station. He pointed out that during the summer months, quite a few customers of Duck Village Outfitters are parked at the gas station and having an ice cream shop there adds to the parking congestion. He stated that a person that sells what Duck Village Outfitters does should not be selling ice cream and there will eventually be a dispute and complaint between Duck Village Outfitters and the gas station regarding the parking situation. He noted that Duck Village Outfitters is one of the smallest sites in the Town of Duck and adding an ice cream shop will be the equivalent of “putting six gallons of water into a five gallon can”.

Chair Blakaitis remarked that the Planning Board is not considering any application that Duck Village Outfitters had submitted. He added that everything the Planning Board did with them was finished a while back. He appreciated Jeffrey Blinken’s comments about what is going on. Jeffrey Blinken asked if the application for Duck Village Outfitters was completed. Director Heard responded that the frozen yogurt at Duck Village Outfitters was approved over 10 months ago.

