

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
November 12, 2015**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Thursday, November 12, 2015.

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

Absent: None.

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

Others Present: Ron Forlano, Jr., Ken Forlano, Ed Sadler, Carol Garrett, Pat Pettit and Laura Pratt.

Others Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for November 12, 2015 at 6:31 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Conditional Use Permit 15-004: Application by Forlano Properties, LLC for a Conditional Use Permit to Expand the Duck Deli at 1221 and 1223 Duck Road by Establishing an Outdoor Seating and Entertainment Area with up to 18 Seats

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

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

Director Heard stated that the applicant was requesting approval of a Conditional Use Permit to add a seasonal outdoor seating and entertainment area for Duck Deli in the yard between the restaurant at 1223 Duck Road and the adjoining residence at 1221 Duck Road. He stated that the proposal included the addition of three picnic tables seating up to 18 people in the proposed outdoor dining area.

Director Heard stated that, as part of the proposal, the applicant was including a reduction in the amount of indoor seating for the restaurant from 44 seats to 37 seats. He added that the outdoor entertainment area would include an 84 square foot wooden deck that would back up against the retaining wall at the rear of the property to be used as an entertainment stage. He stated that the proposed changes also include the addition of two parking spaces in front of the residence and included abandonment of the septic system for the residence, which was presently located in the front area, and connection of the residence to the existing commercial septic system that serves the restaurant.

Director Heard explained that the two properties were recently combined into a single parcel of land that contains both the restaurant and the residence. He added that the two buildings will maintain the same individual addresses but on a single parcel.

Director Heard stated the adjoining property to the south contains a single family residence at the corner of Marlin Drive. To the rear of the subject property are several parcels that also contain single family residences and are zoned Single Family Residential. He noted that the properties are at a substantially higher elevation and above the subject property. He stated that directly across Duck Road are the offices for Stan White Realty as well as the Waterfront Shops. He stated that the subject property was zoned in its entirety as Village Commercial.

Director Heard stated that presently the restaurant had 44 seats and a total of 13 parking spaces serving the restaurant. He added that the residential portion of the property has three existing parking spaces for a total of 16 parking spaces between both properties.

Director Heard stated that the lot coverage on the property would be changed by the proposal. He explained that in order to accommodate traffic coming into and leaving the site, the project would widen the driveway to 20 feet so there would be entrance and exit lanes. He stated that the additional two parking spaces would consist of a semi-permeable surface, which would give the applicants some credit in the lot coverage calculations. He noted that the applicant had an area of concrete that was being removed and replaced with turfstone. He stated that the applicants were adding in a 10 foot concrete apron in the front of the property.

Director Heard explained that the site presently has 31.1% lot coverage. Under the proposal, it would increase to approximately 32.5% lot coverage. As a commercial property, the applicants were allowed to have up to 60% lot coverage and were well below it.

Director Heard stated that the proposal did not change building setbacks. He added that what currently exists will remain and there were no additional structures proposed for the site. He stated that the residence was fully compliant with all of the setback requirements and the restaurant was compliant from three directions, as it encroached slightly in the rear setback. He noted that this existing situation is considered to be a legal non-conformity and is grandfathered.

Director Heard stated that with regard to parking for the restaurant, it is not proposed to change, adding that there are currently 13 parking spaces. He added that there are a number of the spaces that would not meet the Town's current standards; however, the applicant has a legal non-conforming situation. He stated that with the proposal, the applicant has chosen to reduce the number of seats in the restaurant. He understood that the applicant needed to do that to obtain

Health Department approval, but it was also important to comply with the parking requirements for the proposal.

Director Heard stated that the applicant has received approval from the Dare County Environmental Health Department to disconnect the residence from the septic system and tie into the commercial septic system. He noted that he had a copy of the permit as well as the subsequent approval from the Health Department.

Director Heard stated that since the proposal was for an outdoor seating area, there were a number of other criteria in the Town's ordinance under eating establishments that outlined certain standards for outdoor dining and seating. He reviewed the outdoor dining standards with the Board and audience.

Director Heard stated that with everything that was outlined, staff was recommending approval of the Conditional Use Permit to establish the outdoor seating and entertainment area at 1221 and 1223 Duck Road, subject to the following conditions:

1. The lot coverage calculations and the boundaries of the outdoor seating area must be added to the site plan before it proceeds to Town Council.
2. The applicants must submit an as-built survey documenting all of the site improvements prior to the use of the outdoor seating and entertainment area.
3. The applicants must obtain approval from the Community Development Department prior to installation of any exterior lighting, which must comply with the Town's lighting standards and may require a building permit.
4. Any signage to be added must comply with the Town's Zoning Ordinance and be permitted by the Community Development Department prior to installation.
5. Entertainment activities must comply with all applicable Town standards, including the noise ordinance.

Member Cofield stated that in reading through the agenda packet, he did not see information regarding staff having a conversation with the neighbors before making a recommendation on the Conditional Use Permit. Director Heard stated that the neighbors were notified as required. He added that adjoining property owners received letters regarding the Planning Board meeting as well as the public hearing for the Town Council. Member Cofield asked whether staff spoke to the adjacent property owners before making the recommendation. Director Heard stated that staff did not have discussions with adjacent property owners. He added that staff had conversations with the Saltaire Homeowners Association as well as a property owner in the Saltaire neighborhood. Member Cofield questioned whether staff did not generally speak to adjoining owners when considering a Conditional Use Permit application. Director Heard stated he was correct. Member Cofield asked if the staff report was complete without such consideration. Director Heard stated that the staff report is a technical document and not something that represented other opinions. Member Cofield stated that he was surprised and

thought Town staff was being somewhat remiss in the recommendation that a Conditional Use Permit could be considered without conversation with adjacent property owners.

Chair Blakaitis stated that it was not staff's job to have conversations with adjacent property owners. He added that it was not typically done because the notifications were extremely detailed. He added that adjacent owners were encouraged to attend the meetings. Member Cofield understood, but added that the staff recommendations did not include conversations with adjacent property owners. Chair Blakaitis stated that staff makes its recommendations pending how the Conditional Use Permits fit into the Town's standards.

Vice Chair Murray clarified that the waste water approval was no longer pending. Director Heard stated he was correct and added that the actual permit has been obtained.

Member McKeithan asked if the permit was based upon the 37 seats or the 44 seats. Director Heard stated that it was based on the reduction to the 37 seats and the addition of 18 seats for the outdoor dining area, as well as the three bedroom residence.

Chair Blakaitis asked how the applicants were handling the reduction of the seats. Ken Forlano of 1221 Duck Road was recognized to speak. Mr. Forlano stated that it was not the number of seats, but spreading them out and moving them around to make things more comfortable. Chair Blakaitis asked how they would physically reduce the number of seats. Ken Forlano stated that they would take one or two tables out.

Member McKeithan asked for an interpretation on the calculation with regard to coming up with the restaurant being allowed 18 seats in the outdoor area prior to having to account for more vehicles. Director Heard explained that there is an existing restaurant with 44 seats, which is the baseline. He stated that 25% of that is 11 seats. The ordinance does not say that a restaurant cannot add more than 25%, but that it shall not increase the seating capacity by more than 25%. He stated that the applicants chose to reduce the seating capacity of the existing restaurant by seven and added 18 outdoor seats, for a total increase of 11 new seats. He noted that it was coincidentally 18 seats and no matter how it was calculated, it ended up being 18 seats. He further explained that if a restaurant had 44 spaces and were adding 25%, it would bring the total seating capacity to 55 seats. He added that under the proposal, the applicant reduced the existing seating to 37 seats and added 18 new seats, equaling the maximum increase of 55 seats. He noted that either way, the 25% equals 18 seats in the outdoor seating area.

Chair Blakaitis clarified that, according to the calculation in the staff report, 18 was less than 25% using the other figures. Director Heard clarified that the two were equal as they both added up to 18 seats. Chair Blakaitis asked if the numbers were in the ordinance as a result of the Waterfront Shops expansion. Director Heard stated that it wasn't, adding that this part of the ordinance has been on the books since at least 2004. Chair Blakaitis recalled that the Town added rules for outdoor seating before the Waterfront Shops expansion. Permit Coordinator Cross didn't think it impacted parking. Chair Blakaitis noted that the Town used square footage. He asked if it was added to it. Director Heard stated that the parking standards being referenced were in place in 2004. Member McKeithan stated that he understood Director Heard's explanation but thought it was too much seating for the site.

Member Cofield stated that given the comments about parking, he thought the turfstone parking material for the new parking spaces was a great idea. He added that he has received comments from two people that ride their bicycles on the Duck Trail and felt that the gravel in the right-of-way was a problem. He noted that he has witnessed two accidents because of the gravel in the right-of-way, one at Sandy Ridge Road and the other in front of the Osprey Landing Shops. He added that gravel in the right-of-way presents problems. Chair Blakaitis noted that it was troublesome in sloped areas, which was why the Town encouraged concrete aprons. Member Cofield asked if this was an occasion to talk about parking more generally. Director Heard thought the Board could have that conversation with the applicants and see if they were willing to consider any suggestions.

Chair Blakaitis asked how the public would know that there were new parking spaces at the restaurant and the residence were available for use for the restaurant. Ken Forlano stated that it was not something they had thought about. Chair Blakaitis asked how people will know that they could park in the new spaces at the residence. He thought something should be done to make those areas more apparent to visitors. He stated that the residence was required to have three parking spaces and they were included in the parking calculation. He asked if using the parking spaces for two uses was permitted. Ken Forlano stated that the total parking spaces for the restaurant were 15. Director Heard stated that they were not doubling up on the spaces. He added that there were 15 spaces required for the restaurant and three for the residence. He added that they weren't being counted toward both uses. Chair Blakaitis clarified that the three parking spaces at the residence were technically not available to the public. Ken Forlano stated that those spaces are intended for employees, so public use would be limited.

Member Cofield stated that he wanted to hear about the discussion regarding the entertainment. Director Heard stated that the location of the stage was tucked up towards the rear of the property. He added that they would be able to use it to have someone perform in that area. He noted that the applicants were limited by when they could have it by the Town's ordinance, which coincided with the Town's noise ordinance as far as the timeframe for outdoor entertainment. Chair Blakaitis stated that it was similar to the several other entertainment areas in Duck. Member Cofield asked if there was a general discussion about entertainment and noise. Director Heard stated that staff has received comments and has responded to a couple of complaints over the years. He stated that there have been a lot of comments regarding the atmosphere that many people enjoy with the outdoor seating areas.

Chair Blakaitis asked Member Cofield if he was in favor of a concrete apron across the front parking lot at the restaurant. Member Cofield stated that the problem that was brought to his attention was the gravel in the right-of-way. Chair Blakaitis noted that it was brought to the Town's attention by a lot of people over time. He added that vehicles seem to kick the gravel out into the right-of-way. Ken Forlano noted that the gravel has been an issue for many years at his restaurant and that they have been trying to find a solution over the years. He stated that they recently met with the sidewalk committee about the future plans of the sidewalk expansion. He explained that they felt that the best option was to wait until the sidewalk project is started. He noted that in the future, he would love to do something about the gravel and the apron as well as using turfstone. He stated that he would be open to any suggestions from the Town. He thought it could be something that could be looked at in the future.

Chair Blakaitis thought it was a good point because the Council had just briefed the Board and the public on the pedestrian plan, adding that it may have a major impact by the applicant's property. He wasn't sure how things would work out. Member Cofield stated that the problem was that the fix could be ten years away. Vice Chair Murray thought the Board had asked about the Duck Deli specifically and it sounded like if the sidewalk encroached on the restaurant's property, it would only be a matter of inches and not feet. Director Heard agreed. He added that it was an area that got tighter than a lot of the other areas in the Village Commercial district, so the design would have a five foot sidewalk directly adjoining the apron as a bicycle lane. He noted that there would not be a landscaped area between, plus five feet. Chair Blakaitis clarified that what was currently in existence would remain, plus five feet, like much of the sidewalk design. Director Heard stated that some of the existing apron would be within the five feet.

Chair Blakaitis asked if the project in the area of the Duck Deli was 10 years away. Director Heard stated that it was difficult to say at this point and depended on the funding. He explained that it was an approved plan and NCDOT had adopted the plan and the project has scored consistently highly but there was not a lot of bicycle and pedestrian money available. He stated that the projects that have been approved at the district were five years out and Duck was not on that list.

Chair Blakaitis stated that the question before the Board was to proceed with this issue or let it go with the pedestrian plan. He added that it was good idea and he had no objection, but felt there was no sense discussing it if the Board didn't want to pursue it. He thought it should be deferred until the pedestrian plan shows what will happen in that area. Council Liaison Burdick pointed out that it was at least five years away.

Member Cofield stated that since the Board had the comprehensive plan in front of them, he thought they would be remiss not to consider it with this application. Chair Blakaitis stated that the only thing that can be done is to ask the applicants if they are willing to put an apron in or whether the Board wanted to make it a condition of approval. Member Cofield thought the turfstone could also be included as a condition of approval.

Ron Forlano stated that it wasn't a matter of inches but a matter of feet with regard to the apron. He added that he could install an apron but then in five years, possibly close to four feet would be removed because of the pedestrian plan. Chair Blakaitis asked what would be put in the apron area. Director Heard stated that the planned sidewalk would be installed in the proposed apron area. He added that if the applicants were being asked to construct it now, they would have to tie into the existing apron, which would be about four to five feet into the right-of-way in front of their property. He stated that it could then be taken out at the time that the project was done.

Member Cofield noted that Duck Deli would not have to make the future improvements, but NCDOT would. Ron Forlano stated that they would be making the improvements now and would be installing five feet of apron by 185 feet and then five years later the apron would be taken up and be replaced with a sidewalk. Member Cofield clarified that it would only be a one-time cost to Duck Deli. Mr. Forlano agreed. Council Liaison Burdick stated that even though the Town was going to reclaim the right-of-way, at some point installing a concrete sidewalk, any apron that was installed now would potentially become the sidewalk.

Vice Chair Murray thought the bottom line question was whether the Board was going to require Duck Deli to put something in to retain their gravel or if it was going to wait until another party does it for them. Chair Blakaitis stated that what he was hearing was that the Board was satisfied with waiting at this point. Member Cofield disagreed and thought the Board needed to have further discussion about it. Chair Blakaitis stated that if the Board chose to add a condition on acceptance, it needed to be stated now. Member Cofield wasn't sure the Board needed to do that. He stated that he was suggesting that Town staff and the applicant discuss the concept and bring the item back at a future meeting. Chair Blakaitis didn't think the application should be postponed as it has gone on for a long time.

Vice Chair Murray asked if the gravel was enough of an issue for the Board to ask the applicant to pay for the border. Chair Blakaitis asked for other Board members opinions. Member Cofield stated that it wasn't a problem for people that walked or drove on Duck Road, but thought it was a problem for people on bicycles. He added that the Board was looking at a fairly comprehensive plan and thought the Board would be remiss by not addressing it.

Laura Pratt of 104 Marlin Drive was recognized to speak. Ms. Pratt thought the improvement would be a nice gesture on the business to put in the apron. She thought it would be good for the Board to require it as a condition of the application.

Vice Chair Murray asked what stage the pedestrian plan was at. Director Heard stated that the pedestrian plan has been adopted by the Town and the State. He added that Town directed the engineers to prepare designs to implement the plan and VHB (the engineers) has been working on it for many months. He noted that the engineers will be presenting the preliminary designs to Council at the November 18, 2015 Council meeting. He stated that they weren't totally finished but were close. Chair Blakaitis asked if the Town was going to be dealing with generalities or if it was specific. Director Heard stated that the designs will be very specific. He added that approximately 30 business and property owners were directly contacted over the course of four days. He stated that the funding for the proposed improvements is still unknown but the Town was looking to be in a permit ready position so that when the funding opens up, the Town will be ready to construct the project.

Member Cofield felt that the Board still needed to have a discussion regarding the gravel. Chair Blakaitis stated that he wanted to move forward with the rest of the project but thought it was good not to make a decision on the gravel and not talking the entire meeting about the gravel. He added that if the Board thought it should be a condition then it should be added now. He thought a four to five foot concrete apron would do the job. He asked the Board if they liked the idea. Member Cofield thought the applicant should do something and that the Board needed to discuss it more to come up with the best solution.

Ken Forlano asked the Board if they were going to make him redo the whole parking lot. He stated that there have never been any accidents in front of his restaurant. Chair Blakaitis thought it would be unfair to force the applicant to redo the entire parking lot. He stated that he wanted to move the application forward and didn't think the Board should delay it.

Vice Chair Murray asked if deferring the issue would put the applicant in a position to design the improvements based on their budget as opposed to the Board designing it for the applicant by

requiring them to put in an apron. He asked if the applicant had time or not. Ken Forlano stated that they had time. Vice Chair Murray asked if the application was deferred for another month, it would affect the applicant. Mr. Forlano stated that it would not have a significant impact. Vice Chair Murray asked if the applicant would prefer extra time to figure the apron out instead of the Board mandating something to them. Mr. Forlano stated that he would like the extra time. Member Cofield noted that Vice Chair Murray was making the point he was trying to make.

Member Cofield asked the applicant if they would not be in a better situation to come up with a formula to keep the 44 seats in the winter. Member McKeithan stated that they couldn't do that because they would exceed the parking requirements. Ken Forlano stated that attraction from the outside entertainment and the limited indoor seating would far exceed the loss of seats inside.

Member McKeithan asked if the parking would have a three foot concrete walk to allow guests to move from the parking lot into the restaurant without having to go into the street. Ken Forlano stated he was correct. He added that the walkway was already in existence. He stated that some topographical work would need to be done, including bulkheading to create a flat parking area.

Chair Blakaitis asked if there would be signs for the new seating area. Ken Forlano stated that the only sign he will likely put out would be a small informational sign listing the entertainment or the food specials. Chair Blakaitis referenced the cover letter that the applicants submitted for the Conditional Use Permit. He didn't know if there was a legal reason to either eliminate the letter or edit it and make it correct to reflect the proposal in front of the Board. Director Heard stated that it could be corrected.

Member McKeithan stated that he wanted to make a requirement that the new parking at the residence be assigned to the restaurant staff only. Ken Forlano stated that he would do that.

Pat Pettit of 128 Marlin Drive was recognized to speak. Ms. Pettit stated that she was confused about the parking spaces. She asked how many parking spaces the restaurant needed. Director Heard stated that the total amount of parking would be 18 spaces for the restaurant and residence. Pat Pettit noted that of the 18, two were assigned to staff parking. Chair Blakaitis disagreed, adding that there weren't two additional spaces assigned. Pat Pettit clarified that there were 16 spaces for the restaurant and the residence. Chair Blakaitis stated that the applicant was required to have available parking for the employees. Director Heard stated that the part of the requirement for the restaurant was based on the employees and was included in the total count. Pat Pettit clarified that the three spaces at the residence were not required for the restaurant. Director Heard stated she was correct. Pat Pettit clarified that there were 13 parking spaces for patrons. Director Heard stated she was correct. Ms. Pettit asked if the proposal met the Town's ordinance. Director Heard stated that it did.

Vice Chair Murray stated that he was willing to move forward with the apron recommendation if that's what the applicant wanted.

Laura Pratt stated that she was curious about the entertainment platform. She asked if it currently existed or if it was being built. She added that there was entertainment previously and wasn't sure why it was in the proposal. She asked if the restaurant had drinks and entertainment

over the summer. Ken Forlano stated that there was entertainment on one evening. Ms. Pratt thought that three businesses have outdoor entertainment in Duck. Director Heard and Chair Blakaitis stated that there were several others. Ms. Pratt asked which restaurants had the outdoor entertainment. Chair Blakaitis stated that Coastal Cantina, Cravings, Roadside Bar and Grill, and Blue Point Restaurant all had outdoor entertainment.

Laura Pratt noted that Red Sky Café was recently approved for outdoor entertainment. She added that while the music level has been fine, she wondered when the Town would draw the line and say enough is enough with regard to outdoor entertainment. She didn't think the Town needed any more outdoor entertainment. Director Heard explained that the Town has the ability to regulate land use and activities so there is an option of permitting something, not permitting it, or permitting it under certain conditions and standards. He stated that as long as outdoor entertainment is permitted, it would be a very slippery slope to only allow a certain number of businesses to have outdoor entertainment, while excluding others.

Laura Pratt stated that she didn't want to get to the point where she has to call the Town to see about the music levels being reduced. Ken Forlano stated that he didn't understand why Ms. Pratt wanted to limit it to some, but not to his business. He felt she was being selfish. Ms. Pratt stated that she wanted to know why the original plan for the applicant never happened.

Ron Forlano stated that he and his wife live in the residence next to the restaurant and will be impacted by noise more than anybody else. He stated that Ken Forlano has guaranteed that the music would be acoustic and not loud, amplified music.

Ron Forlano asked if it would be possible to pass the plan of action contingent upon making improvements to the parking lot within a certain period of time, such as 12 months. He added that at the end of 12 months, if the applicant did not make the improvements, the Conditional Use Permit could be pulled. He stated that he was looking to spread out the expenditure for the project. Chair Blakaitis thought the issue was a little bit larger than what the Board usually does. He added that he did not want to be in a position to pull the Conditional Use Permit a year from now. Director Heard stated that such a condition would be no different than any other condition except that there is a timeframe on it. He added that it was legal to do it the way Ron Forlano suggested. He stated that if they don't meet the conditions, it would invalidate the permit. Chair Blakaitis didn't want to have the permit be vague and have loose ends.

Vice Chair Murray stated that he would feel more comfortable with a designed plan. Chair Blakaitis agreed. Ken Forlano stated that he did not want to make a decision without researching things. He agreed to defer the application to study the parking improvements. Chair Blakaitis stated that it seemed that the Board wanted to see some kind of improved apron and come back to the next meeting to consider the application.

Member McKeithan moved to table the Conditional Use Permit application for further discussion at the December 9, 2015 meeting. Member Cofield seconded.

Motion carried 4-0.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Minutes from the October 14, 2015, Regular Meeting

Vice Chair Murray had a correction to Page 6.

Member McKeithan moved to approve the October 14, 2015 minutes as amended. Vice Chair Murray seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of November 4, 2015 Town Council Meeting

Director Heard gave a summary of the November 4, 2015 Council meeting to the Board and audience.

Project Updates

Director Heard gave 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 second or vote.

The time was 8:08 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman