

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
April 13, 2016**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, April 13, 2016.

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: Sandy Whitman and Phillip Ruckle of the Coastland Times.

Others Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for April 13, 2016 at 6:34 p.m.

**PUBLIC COMMENTS**

None.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**Text Amendment: Consideration of Concerns Identified by Town Council during its Recent Review of the Permitted and Prohibited Use Table**

Director Heard stated that the Town Council held a public hearing on the use table and other text amendments that the Planning Board. The Council members received advice from the Town Attorney similar to the advice the Board had received. He stated that the Council chose to adopt a simpler, alternative ordinance that includes a list of prohibited uses per the recommendations of the Board and guidelines for interpretations that the Community Development Department may be called upon to make. He stated that the thought was that there were a number of items in the use table that raised concerns for different Council members and rather than spending a meeting or two trying to resolve all of the concerns, they chose to adopt the ordinance as a stop-gap measure in order to prevent the worst case scenario.

Director Heard stated that the Council members identified a handful of uses that they would like the Board to look at and give further consideration. He stated that there may be a few uses that the Board could reach a consensus on quickly and send back to Council as a recommendation. However, there may be a number of items that will need further review in the upcoming months. He hopes to develop a plan as to how the Board wishes to look at the different uses and issues that were identified.

Council Liaison Burdick stated that Council adopted the prohibited list on the advice of Town Attorney Robert Hobbs that this was the minimum that should be done to protect the Town. He added that there was no consensus on anything beyond that other than to state that Council wanted the Planning Board to go back and look at the permitted and prohibited use table. He noted that Council wanted the Planning Board to review it and come to a consensus, addressing the problem areas that have been identified and deciding if it should be brought back to Council for consideration. Chair Blakaitis noted that the staff report made it clear what Council's position was with regard to urgency and bringing it back for review.

Director Heard stated that there is one basic question for the Board's consideration, which is if the use table the most appropriate format for the information. He thought that the table did exactly what the Board and staff wanted it to do and may have done it too well. He stated that by putting the Town's current standards in the table format, it identified issues that need to be corrected whether or not the Board recommends the use table. He added that many of the issues brought up by Council members were issues in the current ordinance standards and not with the table itself.

Member McKeithan stated that Council had a lengthy discussion on the zoning district standards. He stated that the issue seemed to be one zoning district versus another. Chair Blakaitis agreed.

Chair Blakaitis noted that the Board has two objectives – consider whether to move forward or not with the table and develop recommendations as to how to deal with the concerns identified by individual Council members. He commented that if the Board decides to move ahead with the table, and it comes to a use that is questionable and needs further explanation, the explanation could not be put in the table as it would make the table too long. He asked if there is another method that can be used. Director Heard stated that it depends on what the issue is. He stated that several issues may involve defining a particular term. If that needs to be done, he recommended discussing it at a future meeting when he would can back with several definitions.

Chair Blakaitis asked if a use in the table needs further explanation, where it will be explained. Will the explanation be in the table or an addendum to the tables that will clarify the situation. He noted that some of the potential changes are clear cut and self-explanatory. Director Heard stated that it will depend on how the Board viewed them. Chair Blakaitis thought there may be several paragraphs of an explanation. He asked where it will be put. Director Heard stated that it cannot be reasonably done for every single use.

Member Cofield asked if footnotes will be helpful. Chair Blakaitis stated that he wants to know what the mechanics are to accomplish that. Vice Chair Murray stated that it sounds like Chair Blakaitis is stating that the Board will take care of the details in the definitions section. If a use doesn't fit well within the table format, then it will have to be dealt with in the interpretation

section. He added that the Board will have to look at all of the places where it can possibly be addressed in the ordinance. Chair Blakaitis noted that staff will need to set up an interpretation section. Vice Chair Murray noted that Director Heard already has interpretation guidelines adopted at the last Town Council meeting. He guessed that any further guidelines can have notes, definitions or footnotes added to them. Director Heard stated that the guidelines are more general comments and not specifically related to a particular use. Council Liaison Burdick thought an addendum could be added.

Chair Blakaitis suggested that the Board review the table last. He asked the Board if they wished to review the list of Council concerns one by one since they need to be addressed. It was *consensus* of the Board to do so.

Vice Chair Murray asked if all of the comments with the bullet point referencing a concern about the ordinance accurately reflect the current standard in the zoning ordinance that can be eliminated from the Board's consideration at this meeting under the premise that they require further evaluation. He noted that the Board was not asked to change the ordinance, but to deal with the change in the law. Chair Blakaitis didn't think so. He thought that individual Council members still had questions regarding the expansion of a particular item. Director Heard thought that by laying the uses out in a table, it became apparent that there may be gaps or missing pieces in the ordinance with the way the Town is dealing with certain uses now. He added that there may be very logical, reasonable ways to address any necessary changes. He stated that as long as there is consensus, there are likely a number of concerns that the Board can move forward with tonight.

Vice Chair Murray stated that in the Board's earlier discussions, they were cautioned that they weren't trying to change the ordinance, but the intent has changed now that the Board has gotten a request from Council to consider certain items in the table. Director Heard stated he was correct. Council Liaison Burdick noted that Council learned that there are gaps in the ordinance.

Chair Blakaitis stated that the first item on the list is that the table does not show post offices as a permitted use in the Village Commercial (V-C) district. He added that Director Heard noted that the table accurately reflected the current standards of the zoning ordinance. He stated that it is a simple change. The Board members reached consensus to add post offices as a permitted use in the V-C district.

Chair Blakaitis stated that the second item on the list is that the table stated that residential uses (other than accessory apartments) are not permitted in commercial zoning districts. He added that the staff report states that there are presently seven properties in Neighborhood Commercial (C-1) or Village Commercial (V-C) districts that contain legal, nonconforming residential uses. Council Liaison Burdick noted that there was a lot of Council discussion on this issue regarding if the table accurately reflects the actual ordinance. Director Heard stated that it has been clarified. He added that Councilor Jon Britt was given all of the minutes regarding the establishment of these standards in 2004 and the rest of Council would have that information as well. Chair Blakaitis asked for the official explanation. Director Heard stated that this was an issue that was very specifically dealt with 12 years ago when the Town updated its zoning ordinance. He added that when the community updated the ordinances to reflect the preferences of Duck, the Planning Board spent three months working on the issue of residences in

commercial zones. He stated that the Board came forward with some recommendations to Council that recommended removing single family residences as a permitted use in commercial districts. He stated that there were public comments on this proposal and Council sent it back to the Planning Board for further review.

Director Heard stated the big objection was that people thought that their rights would be taken away if they suffered a loss. He noted that the main reason for not permitting residential uses in commercial districts was that the Town recognized that there is a very finite area zoned commercially. If further residential development is allowed, the Town might lose that opportunity to create its village commercial district. He stated that Council wanted to preserve the viability of the commercial area by not allowing further residential development in these areas. He stated that the compromise that was reached included not permitting residential uses, but making changes in the non-conformity section of the ordinance to offer very broad allowances to allow expansion, reconstruction or moving an existing residence in those areas. He pointed out that there are seven properties presently that are residential and one has 10 residences on it. All of these are technically non-conforming, but should one be destroyed by a hurricane or if an owner wishes to tear it down and rebuild, they can do so under the non-conforming clauses.

Member Forlano asked if the Town had changed the zoning on the property located across from Duck United Methodist Church. He noted that it was zoned residentially and changed to commercial because it was a residential property in a commercial district. Permit Coordinator Sandy Cross responded that it was zoned Village Commercial. Member Forlano clarified that it was zoned Village Commercial with a residential house. Permit Coordinator Cross stated he is correct. She explained that when the house next to it was to be rebuilt, it was realized that the property was in the commercial district and a residence could not be built. She added that the Town initiated a zoning map amendment to rezone these properties in the Duck Ridge Village subdivision, which was developed with the intention of being a residential neighborhood. Member Forlano asked if the homes are zoned Village Commercial. Permit Coordinator Cross stated that with the rezoning, they are now zoned RS-1.

Member Cofield asked if Councilor Britt is comfortable with the new understanding. Director Heard stated that Councilor Britt is aware that the Board is reviewing the issue and coming up with a recommendation, but he was not asked if he wanted anything changed. Member Cofield stated that it sounded like Councilor Britt was uncomfortable with what could happen to his house. He thought it a reasonable principle to not have a lot of residences in the commercial district. He thought the underlying premise for not allowing residences in commercial districts was appropriate and reasonable. Director Heard stated that if that is the consensus of the Board, he will report back to Council that the Board did not see a need to change the standard. He added that if Council feels differently, they can send it back to the Board for further consideration.

Council Liaison Burdick asked if a property changes ownership, would a new owner have the same rights. Director Heard stated that the ownership is not an issue. He added that zoning goes with the land and not the owner. Council Liaison Burdick stated that one of Councilor Britt's concerns was if he sold his property, there will be a problem once it is sold. Director Heard stated that is not an issue. Member Forlano clarified that under this premise, Councilor Britt has

the alternative to use his property for residential or commercial purposes. Director Heard stated that Councilor Britt can replace, rebuild or expand the existing residence, but cannot build a second residence on the property. He explained that if Councilor Britt wants to build additional residences in the commercial zone, it will not be allowed. Member Forlano asked if Councilor Britt can establish a commercial use. Director Heard stated that he can. However, if he removes the residence and builds commercially, then he will lose the right to build another residence.

Vice Chair Murray noted that a portion of Councilor Britt's property is being used commercially and a portion used residentially. He asked if both of the single family dwellings can be torn down on the residential lots and redeveloped as a group development or different type of residential use. Director Heard answered that he could replace like with like. If there is a single unit on the property, he will be limited to replacement of a single unit. Vice Chair Murray stated that a mixed use, such as what is allowed in the Village Commercial District, would be allowed. Director Heard stated that it would potentially be allowed.

It was *consensus* of the Board to leave the item alone and not make any changes to the standards for residences in commercial districts.

Chair Blakaitis stated that the third item on the list is that the table does not identify Bed and Breakfast Inns as a permitted use in the Special (S-1) district. The concern is that the existing Advice 5 Cents Bed and Breakfast is located on an S-1 property. Vice Chair Murray stated that the S-1 District is confusing to him. He added that it was less confusing before Town Attorney Hobbs warned the Board against spot zoning at its last meeting. He noted that it seems to be spot zoning by definition. Chair Blakaitis agreed. Director Heard stated that if someone ever challenged it, the Town has to have some type justification for treating the "spot-zoned" area differently. He thought there may be sufficient rationale to support it and noted that the S-1 district only pertains to two properties in Town. He added that this concern may be the most problematic thing on the entire list as far as the use table is concerned. He stated that he doesn't have a good answer as to how to capture the concept of "all uses are allowed in the S-1 district" in the table.

Chair Blakaitis clarified that if the table doesn't show it as a permanent use currently, it is non-conforming. Director Heard stated that the existing bed and breakfast inn isn't non-conforming and is a permitted use in the S-1 district. Vice Chair Murray asked for clarification that bed and breakfasts are not permitted uses in the S-1 district. Chair Blakaitis thought it is a non-conforming permitted use. Director Heard stated that the use is not non-conforming as it was permitted. He noted that in the S-1 District, all uses are permitted. He stated that the issue is how to capture that concept in the table. He stated that there can be a statement at the beginning of the table regarding the S-1 District. Chair Blakaitis asked if there is any future harm to the existing facility. Director Heard stated that there is not. Vice Chair Murray thought it is a non-issue. Chair Blakaitis didn't understand why it was mentioned or a problem. He wasn't sure what Councilor Nancy Caviness meant. Director Heard thought the concern was that if the table is becoming the default way at looking at land uses, bed and breakfast inns are not listed specifically on the table and might be interpreted as being not permitted. Chair Blakaitis pointed out that it is not listed as a prohibited use. He added that if it burns down, it can be rebuilt. Director Heard added that if an owner wishes to expand the inn, they will have to go through the site plan review process, but the use itself will stay the same.

Council Liaison Burdick pointed out that that particular use was defined very specifically for some districts and not others. He stated that the Town has defined which districts bed and breakfasts can and cannot be in. Director Heard stated that the Advice 5 Cents is a different use than what Council Liaison Burdick is referencing. Bed and breakfast homes are limited to three bedrooms and location on Duck Road. Councilor Caviness owns a bed and breakfast inn, which is a more substantial use. Chair Blakaitis thought bed and breakfast inns should be clarified on the table. Director Heard stated that it would be a way of dealing with the specific use.

Member Forlano asked what the difference is between bed and breakfast home and bed and breakfast inn. Director Heard explained that a bed and breakfast inn is defined as “a commercial establishment providing for the rental of dwelling rooms on a daily or weekly basis, to tourists, vacationers, or other transients where the bed and breakfast operation is conducted by persons who own and reside on the property with the assistance of not more than three full-time employees and where the permitted occupancy is 24 persons or less.” He explained that a bed and breakfast home is limited to three dwelling rooms that can be rented. He added that a bed and breakfast inn is typically a larger facility with more rooms.

Chair Blakaitis noted that only bed and breakfast homes are listed in the table. Director Heard agreed and explained that bed and breakfast inns are one of the thousands of land uses permitted in the S-1 District. Vice Chair Murray clarified that bed and breakfast homes are conditional, based on the address. Council Liaison Burdick stated he is correct. Director Heard noted that there are other conditions on bed and breakfast homes as well. Vice Chair Murray clarified that the Board is discussing bed and breakfast inns exclusively. Director Heard stated that the concern expressed was regarding the Advice 5 Cents property.

Member Forlano asked if classification as a bed and breakfast inn also had to do with how many meals are served. He further asked if lunch and dinner is served, it will put it into an inn capacity. Director Heard stated that it did not according to the Town’s definition, so meals are irrelevant. Chair Blakaitis clarified that Advice 5 Cents is an inn. Member McKeithan stated that it is. Director Heard stated that it is a bed and breakfast inn with five guest rooms.

Member McKeithan asked if it will be easier to add another line in the table for a bed and breakfast inn and allow it to be located only in the S-1 District. Director Heard stated that solution will address Councilor Caviness’ concerns. Member McKeithan thought it will be less confusing. Chair Blakaitis stated he has no objection to adding the line item. It was *consensus* of the Board to add the item as a permitted use in the S-1 district.

Chair Blakaitis stated that the fourth item on the list is how to define a night club. He added that some existing restaurants have food, drinks and entertainment similar to a night club, which might be prohibited by the ordinance. Director Heard stated that this is a use where the Board may want to look at different definitions and come up with something it is comfortable with. Vice Chair Murray asked if it was handled by the Health Department. He understood that if a liquor license is obtained, a business has to serve a certain amount of food. He added that the County as a whole as well as the Dare County Department of Environmental Health is also trying to discourage night clubs.

Chair Blakaitis noted that Director Heard can prepare some definitions to bring before the Board. Member Forlano asked if it is related to the percentage of alcohol and food. Director Heard stated that those are factors that some communities use. Member Forlano thought it was 10% alcohol and 90% food. Council Liaison Burdick thought the ABC Board already has a standard for it when a liquor license is granted. Director Heard stated that he will come back with some definitions that other agencies are using as well as some definitions from other communities. Chair Blakaitis stated that the concern is that there are places in Duck that are restaurants with bars and what the difference is between them and a night club. He added that he knows what the difference is and doesn't consider any of the restaurants in Duck to be night clubs. He wondered how it can be personalized or defined.

Member Forlano stated that he has some relatives who owned a bar/restaurant and had to serve a certain amount of food to have a bar. He added that it is all related to the volume of food to liquor. Member McKeithan thought there can be some definition of full-service restaurant or full service meal. Chair Blakaitis stated that Director Heard will come back with something. Vice Chair Murray asked if the Board agreed that it does not want night clubs. Director Heard stated that the Board proposed the recommendation about night clubs being a prohibited use.

Chair Blakaitis asked how it will be defined. Member Cofield asked if the Board is generally objectionable to what occurs in a night club. Chair Blakaitis thought a lot of people will be. Vice Chair Murray asked how one can be opposed to something that doesn't have a definition yet. Member McKeithan thought the Board is aware that they are discussing restaurants that stay open after hours and have entertainment. Vice Chair Murray asked what will happen if someone tailored the use of a night club to the Town of Duck where drinks are sold but food is not. He added that the use has to be defined. Council Liaison Burdick thought the perception is that night clubs did not fit the vision of what Council wants the Town to be. He added that it needs to be defined and it is intuitive to people that night clubs are different and do not go with the family orientation of Duck. Member Cofield stated that it doesn't have to be. He thought with the approval of several recent conditional use permits, the Town has essentially approved night clubs.

Member Forlano thought the objection is more with regard to the hours of operation. He thought the hours of operation are in conflict with the family atmosphere of Duck. Council Liaison Burdick agreed. Member Forlano thought the Town does not want people drunk and disorderly in Town. He thought it boils down to hours of operation. Chair Blakaitis reminded the Board members that the Planning Board has a list of factors that they need to apply to all of the applications. He added that there is some latitude for the lack of a definition of a night club. Member Forlano pointed out that liquor can be served either in a restaurant or a night club as well as having entertainment. He thought if the Board comes up with limits of time of operation, it will satisfy the Council's objective.

Director Heard stated that the Board may end up not necessarily regulating the use but regulating some of the side effects if the objection is that there will be drinking and entertainment. He added that when or how it is occurring can result in standards passed to regulate the use without prohibiting the use. Member Cofield thought that is better as he finds it inconsistent with approving alcohol service in restaurants. Vice Chair Murray stated that his issue is that there are ordinances in place to regulate the issues.

Chair Blakaitis clarified that night clubs are listed as prohibited uses in the table. Director Heard confirmed that they are listed as prohibited uses. Chair Blakaitis asked what should be changed. Member Forlano stated that he will consider eliminating it as being prohibited. Director Heard noted that the Town can define it any way they choose to and does not have to use a broad definition. Vice Chair Murray asked if the Board can ask Council for an example. He asked if there is somewhere in Dare County where a night club exists. Chair Blakaitis thought there is. Vice Chair Murray disagreed. Permit Coordinator Cross noted that Kelly's Restaurant and Outer Banks Brewing Station are two. Vice Chair Murray stated that by the Town's definitions, they are considered restaurants. Council Liaison Burdick agreed. Permit Coordinator Cross pointed out that they were night clubs after 10:00 p.m. Council Liaison Burdick agreed. Director Heard mentioned The Pit as another night club example.

Vice Chair Murray wondered if something can become a night club. He added that he is confused, because he feels that the Town will put restaurant owners at a major disadvantage. Chair Blakaitis agreed with Vice Chair Murray as there is a conflict with using the word night club. He thought it should be completely eliminated. He thought it was hard to define. Director Heard stated that Town Council wants clarification as to what is being prohibited when it comes to night clubs. Chair Blakaitis stated that if it isn't a prohibited use, staff and the Board still have a lot of latitude in approving something when proposed as a conditional use permit. Council Liaison Burdick asked if one of the restaurants comes to the Board saying they will have a band playing and liquor served from 10:00 p.m. until 2:00 a.m., what the ordinance will say as to if it can or cannot be approved. Director Heard stated that if it is permitted as a restaurant, they will not have to do anything in order to do that. He added that staff will discuss the noise ordinance with the applicant and if it will apply. Chair Blakaitis pointed out that if it is indoors, they can stay open as late as they want.

Member Forlano noted that there are a lot of problems in Nags Head with Kelly's Restaurant regarding noise complaints, even though the music is played indoors. He added that the music is so loud that the neighbors complain after midnight. Vice Chair Murray stated that his point is that Duck has standards in its current noise ordinance for these types of complaints. He added that anything else the Board does may be putting commercial interests in Town at a disadvantage when it isn't the use, but the symptoms of the use that have to be dealt with. Council Liaison Burdick suggested that if the Board wants to take night clubs off the prohibited list, there is a way to deal with it within the current ordinances. He added that Director Heard will have to answer the question. Chair Blakaitis thought staff has enough latitude to define it really well based on the comments received from the Board. Member Cofield asked if it is left in, will it continue to be prohibited. Council Liaison Burdick stated that it can be left in with a proposed definition and see if it works. Chair Blakaitis noted that there are no proposed definitions discussed yet. Director Heard stated that this is a use that may deserve more thought. He added that he can come back with information to help develop a definition.

Director Heard stated that even if the solution is to keep it as a permitted use and deal with the symptoms, looking at potential definitions may help the Board identify the symptoms they want to address. Chair Blakaitis asked Director Heard if he has any definitions for the Board. Director Heard stated that he does not presently, but can prepare them by the next Board meeting.

Member Cofield stated that the Board can make it permitted with a conditional use permit so that standards can be set. Chair Blakaitis stated that he would like to hear some good definitions. He added that it is okay to make it a conditional use, but the Board cannot turn down a conditional use permit if it meets all of the requirements of the zoning ordinance. He added that that can become a legal issue. Member Cofield stated that conditions can be imposed in the conditional use permit. Chair Blakaitis stated that it can work if the applicant accepts the conditions. Director Heard stated that key issues can be addressed in the ordinance and become mandatory. Chair Blakaitis asked if it will pertain to this ordinance. Director Heard stated that it can be done. Vice Chair Murray agreed with Director Heard that the Board skip this topic and bring it back at the next meeting with definitions and some standards. The other members agreed.

Chair Blakaitis stated that the fifth item on the list is that the table prohibited other entertainment/recreational facilities in all but the S-1 District. He pointed out that the question is if the standard should be more flexible to permit ideas that may be a good fit for the community. Member Cofield asked for an example. Director Heard stated that it could be a go-cart track, miniature golf course, fun parks, batting cages, etc. Council Liaison Burdick noted that Council had discussed miniature golf courses years ago. Member Forlano stated that it was not approved. Council Liaison Burdick asked how Council had prohibited it. Member Forlano stated that it is a prohibited use. Director Heard clarified that previously if it wasn't a listed use, it was a prohibited use.

Member Forlano stated that when the miniature golf course came before the Board, there were a lot of citizens against it. Director Heard stated that if something is prohibited, it doesn't mean it is prohibited under all circumstances forever. He added that an individual has the right to come before the Board and Town Council to present his/her ideas on what he/she wants to do. They can ask that the Town consider allowing the use. He noted that someone can obtain a text amendment. He added that just because the use is on the list initially to protect the Town does not mean that the Town cannot reconsider its position on specific types of uses.

Chair Blakaitis asked what the problem is with leaving it as is. Vice Chair Murray thought the use is so broad that it will have to be left as is. Chair Blakaitis stated that it can be changed. Member Forlano pointed out that structures are involved for go-cart tracks and miniature golf courses to accommodate the activities. He added that some activities do not have any structures involved, such as yoga classes. He thought this difference can be a way to get at the issue. He thought the use can be limited by prohibiting it and then having the applicant come before the Board to show that there will be no impact.

Chair Blakaitis asked the Board members how they feel about the issue. Member McKeithan feels it should be left as is. Member Cofield agreed. Chair Blakaitis thought the Planning Board feels that the prohibition of entertainment/recreational facilities should be left as is. Council Liaison Burdick asked why the facilities are permitted in the S-1 District. Director Heard stated that the S-1 District permits all uses. He noted that the adopted ordinance has this section prohibited in all districts, including the S-1 District. It was *consensus* of the Board to leave entertainment/recreational facilities as is.

Chair Blakaitis stated that the sixth item on the list is that staff housing is prohibited in commercial districts, but accessory apartments are permitted. He noted that many of the

accessory apartments are primarily used for staff housing. Director Heard stated that this concern deals with overlapping items that may be an issue. Chair Blakaitis asked what the Town's definition is for an accessory apartment. Director Heard stated that an accessory use is a subordinate use and does not have to be in the same structure. He added that an accessory apartment will typically be on the second floor of a commercial building. Vice Chair Murray asked if staff housing should be stricken or if it needs to be defined. Director Heard stated that in North Carolina, counties and municipalities have the authority to regulate land uses. He added that it is illegal to regulate ownership occupancy uses. He explained that the Town can permit a multi-family residential development, but cannot dictate that it be condominiums versus rental apartments or who lives in them. Chair Blakaitis asked if it was an explanation for ignoring it. Director Heard stated that the Town can consider removing staff housing since it could be argued that the Town cannot regulate who lives in the housing anyway.

Vice Chair Murray suggested striking staff housing as a listed use. Chair Blakaitis agreed. It was *consensus* of the Board to remove the term "staff housing".

Chair Blakaitis stated that the seventh item on the list is restricting rental property management offices and maintenance offices in the C-1 zoning districts. He noted that the newly renovated Sun Realty office is a legal, non-conforming use in the C-1 District. Director Heard stated that the use is permitted in the V-C district. Vice Chair Murray asked if it should be added to the other commercial districts. Director Heard stated his opinion that it should be considered. It was *consensus* of the Board to add rental property management offices and maintenance offices in all of the commercial districts.

Council Liaison Burdick stated that there was considerable discussion regarding the Twiddy maintenance office, because of the traffic implications in the Village Commercial district. He added that when the new Twiddy building was put in, there was a discussion that it was not wanted in the Village Commercial District. He clarified that the Board wants to add it into all of the commercial districts. Vice Chair Murray stated that it is already allowed in the Village Commercial district, the Board is now recommending that it be allowed in the C-1 District.

Vice Chair Murray asked Council Liaison Burdick if Council wants the Board to consider taking the use out of the Village Commercial district. Council Liaison Burdick stated that when the Brindley building was built, there was a significant outcry over the maintenance activities out of the building. Chair Blakaitis stated that the Board insisted that maintenance is not done there and the applicant told the Board that they are performing miscellaneous supplies to other facilities with no significant maintenance operations on site. Council Liaison Burdick agreed. Chair Blakaitis noted that a similar conversation was had with Twiddy & Company except it was outdoor storage that was the issue. Member Forlano noted that he voted against it. Council Liaison Burdick asked if the list is consistent with those two decisions. Chair Blakaitis thought it is a good question. Vice Chair Murray reiterated that the Board is not changing anything. He added that the C-1 district is lower intensity than the V-C district.

Council Liaison Burdick stated that the question is if the table is consistent with the decisions that were made by the Planning Board and Town Council in the two cases regarding the maintenance facilities. Director Heard stated that they are consistent in that both went through the conditional use permit approval process required in the V-C district. Vice Chair Murray

stated that it was consistent in the sense that the Board is not commenting on the Village Commercial district at all, but adding it to the C-1 district. Council Liaison Burdick asked if it is consistent with the position that Council and the Board took over the last few years with regard to the maintenance facilities. Vice Chair Murray wasn't sure as the applications were in the Village Commercial district. Council Liaison Burdick disagreed, adding that Twiddy was in the S-1 District. Director Heard clarified that the Twiddy property is in a Village Commercial district.

Member Forlano stated that he voted against both maintenance facilities, because he didn't think it was the highest and best use for commercial property. He stated that he doesn't look upon maintenance facilities as being a commercial type entity. He added that he is still against it. Vice Chair Murray asked Council Liaison Burdick if he is asking the Board to go back and look at the Village Commercial district. Council Liaison Burdick stated that he is not. He added that he is asking the question for consistency with previous Town decisions. Director Heard noted that the Town also has a C-2 district, which is General Commercial. He asked the Board if they want to add rental property management offices and maintenance offices in the C-2 district as well. It was *consensus* of the Board to add the use to the C-2 districts.

Chair Blakaitis stated that the eighth item on the list is prohibiting smoke and vapor shops. The concern is how limiting these uses affects the sale of products by Wee Winks, Handee Hugo's and other local businesses. Director Heard noted that it is not something that is easily defined, but there was a point at which something is a primary use and something else is an accessory use. There can be a point at which the lesser use becomes the primary use, which would then be prohibited. He noted that it was not the intent or function of how the ordinance worked to completely prohibit something that was a minor piece of a business. Chair Blakaitis thought the concern is to not make a lot of non-conforming uses and to make sure that the Town is not prohibiting something that may come up in the future. He thought Director Heard's explanation was a reasonable application of the standards. Member Cofield thought Council will be satisfied with the explanation. Director Heard stated that if the Board was satisfied with the explanation, it did not have to recommend any changes. Vice Chair Murray stated he was fine with leaving it as is. It was *consensus* to leave smoke and vapor shops as a prohibited use.

Chair Blakaitis stated that the ninth item on the list is regulating outdoor storage. He added that boats, kayaks and other products are stored and displayed at businesses year round. Director Heard noted that the zoning ordinance contains standards for displays and storage. The use being addressed is commercial storage facilities. It was *consensus* of the Board to not make any changes, leaving outdoor storage as a prohibited use.

Chair Blakaitis stated that the tenth item on the list is the requirement of a conditional use permit for the Public Safety building in the C-PR zoning district. Director Heard stated that he isn't sure anything needs to be done, but the ordinance can be clarified if deemed necessary. Chair Blakaitis suggested that Director Heard come back with a very brief statement clarifying it. Director Heard stated that he could clarify that it is permitted under the broader category of Town Uses and Facilities. Member Cofield suggested leaving it alone with the clarification. Vice Chair Murray added that the clarification will be that it was a permitted use. The remaining Board members agreed.

Chair Blakaitis stated that the eleventh item on the list is that the table prohibits churches from being in the Village Commercial district and other commercial zones. He noted that Duck United Methodist Church is located in the Village Commercial District. Chair Blakaitis asked Director Heard if he made corrections to the table. Director Heard stated that it was his error in putting the wrong symbol in the table. He noted that it was listed as a prohibited use in the table presented to Town Council, but should be listed as a conditional use. He added that he made the correction. He wasn't sure if there is anything else that needs to be done.

Vice Chair Murray clarified that it is not uncommon for communities to limit churches in commercial districts. Director Heard stated he is correct. He stated that unless the Board feels there should be additional changes, it would remain as is. It was *consensus* of the board to leave it as is, with churches as a conditional use in the V-C district.

Chair Blakaitis stated that the twelfth item on the list is that the table permits church schools in the C-2 district while not allowing churches in the C-2 district. Director Heard explained the rationale as to why it is listed that way on the table. He added that the Town cannot prohibit a church affiliated school if it allows other public and private schools. He stated that the school has to be allowed if the Town allowed other types of schools. However, the Town does not presently permit churches in the same district. He added that the difference is the Town can have a school that is operated by a church, but it doesn't have to be on the same property. He stated that it does not mean the standards are inconsistent.

Member Cofield asked if the Board wants to change it. Chair Blakaitis didn't think so. Director Heard stated that if the Board feels there is no issue in allowing a church in the C-2 District, then it could be added as a permitted use similar to the school to resolve the perceived conflict. He added that it will also be fine to leave it as is. Member McKeithan felt it should be added. Member Forlano agreed. Vice Chair Murray agreed. It was *consensus* of the Board to have churches added as a permitted use in the C-2 district.

Chair Blakaitis stated that the thirteenth item on the list proposes to prohibit public transportation terminals, yards, and parking lots. He added that with the community's traffic issues, the question is if the option should be left open. Member Cofield thought the Town will not want to make it a prohibited use. He added that while the Town may not want to have a Trailways or Greyhound terminal, it may want to have trolley stops for visitors. He thought the Town will want to allow trolley stops. Chair Blakaitis agreed, but added that no one can predict future advances regarding transportation. He thought it should be left open. He suggested the language say "transportation terminals". Director Heard suggested defining what the term meant. He thought the intent was for a switching yard or bus terminal. He agreed that the intent is not to prohibit a trolley stop, but it could be clarified with a definition where it is clear that it won't prohibit that type of smaller scale use. He thought having a definition will work, while still prohibiting the things the Board wants to prohibit.

Member Forlano asked why the Town is prohibiting parking lots. He wondered what the Town would decide if it needed additional parking over and above what's currently in place. Director Heard stated that the prohibition is referring to parking for buses or other transportation vehicles and equipment. He added that it does not apply to a general parking lot. Director Heard asked the Board if they want him to come up with some thoughts on a definition and bring it back to

the next meeting. It was *consensus* of the Board to have Director Heard bring back some definitions at their next meeting.

Chair Blakaitis stated that the next, unnumbered item on the list is the table refers to short term rental homes as needing an administrative permit, which implies that a permit is needed to rent a residence. Director Heard noted that items 13, 14 and 15 have a common theme. Vice Chair Murray thought 13B is the easiest one. Director Heard agreed, adding that the confusion seems to be with the term he chose to use, “administrative permit”. He stated that the term can be changed to “use of right”, “administrative approval” or “permitted use” in order to make it clear that an owner does not have to physically obtain a permit in order to rent. Council Liaison Burdick asked why it would not be changed to a permitted use. Director Heard stated that the same term is used for many other uses, but for some reason, it was pointed out for this particular use. Chair Blakaitis clarified that an owner does not have to obtain an administrative permit. Council Liaison Burdick pointed out that it is a permitted use. Director Heard stated that he would clarify the table so it is clear that it is a permitted use.

Chair Blakaitis stated that the fourteenth item on the list is the question of whether the Town regulates how property owners can rent their houses. Chair Blakaitis didn’t see how it is any different than the previous item on the list. He felt there is no need to regulate it. Council Liaison Burdick noted that it is permitted use. Director Heard stated that the question is if the Town needs to further define the standards or if it was clear enough. It was *consensus* of the Board to not change it.

Chair Blakaitis stated that the fifteenth item on the list is that more property owners are starting to rent rooms or houses on a nightly basis through Airbnb and/or other online sources. He added that some of these rentals may conflict with the Town’s standards and interpretations. He noted that the Town has standards, but no definition, for allowing short-term rental homes. He pointed out that renting individual rooms on a nightly basis may result in reclassifying a residence to an inn or boarding house. Vice Chair Murray asked if there is a way to deal with it. Director Heard stated that certain aspects can be dealt with. He added that the reason 15 and 16 are last on the list is that it may be difficult to reach a definitive answer without a lot of thought and conversation on the Board’s part. He noted that these uses involve larger issues that the Board may need to take a closer look before developing standards. He stated that there are some pros and cons and there will likely be differing opinions on it from the community. He stated that many communities are struggling with this issue as far as how to handle it.

Director Heard stated that the Town cannot regulate who rents the rooms or houses but there is legal precedent for regulating the ones being rented on a nightly basis. He noted that the Town can differentiate and treat them as a different use than a long-term rental. Vice Chair Murray asked how it will be enforced. Director Heard stated that if it is something the Board wants to look at, he will provide articles and information on how other communities have enforced it. Chair Blakaitis asked about different types of enforcement. Director Heard stated that it is a zoning violation. Chair Blakaitis asked what happens to the owner. Director Heard stated that the owner can be fined up to \$500 per day and ultimately can be put in jail.

Member Forlano clarified that in order to enforce it, the Town will have to establish a bureaucratic enforcement department. Director Heard stated that strict enforcement will take up a

lot of time. He added that he will do his best to explain options if the Board decides it is something they want to get into.

Vice Chair Murray asked if the Board will need a directive from Council to consider it. Council Liaison Burdick noted that one issue is the collection of occupancy taxes, which are not a Town issue but state and county issues. Vice Chair Murray agreed, adding that it is Council's issue and not the Board's. Council Liaison Burdick stated that apart from the tax issue, he wonders if there is a negative problem with this given that 90% of the Town is rental homes. Chair Blakaitis stated that there is not a problem with it other than the tax situation. He wondered if it is important enough for the Town to prohibit it. Director Heard thought there are people who have concerns about this type of activity. He noted that there can be daily turnover, so the activity level on the property can increase as far as traffic and parking.

Member Forlano stated that any rental home is still a residence. Director Heard disagreed. He stated that once it becomes a daily rental or renting out single rooms, it can be considered a commercial use and defined as such. He added that they are competing with hotels and bed and breakfasts, taking their business by undercutting them, because they don't provide the same level of service and safety as a commercial property.

Council Liaison Burdick asked if it is a problem in Duck. Director Heard stated that there are many short-term rentals advertised in the Town. Council Liaison Burdick asked how many are advertised that way. Director Heard stated that he will look into it but added that it changes daily. Permit Coordinator Cross stated that she had heard there are at least 600 in Duck. Chair Blakaitis stated that his neighbor rents his house on a daily basis, but in the shoulder season only.

Member Cofield noted that Mayor Pro Tempore Thibodeau had brought up the issue in that it is a challenge that rental companies are facing. Director Heard stated that Councilor Caviness has also expressed concerns. Chair Blakaitis asked Director Heard if he wants to bring something back to the Board's next meeting. Director Heard stated that he will.

Chair Blakaitis stated that the sixteenth item on the list is that the Town may want to look at expanding the areas of accessory apartments, duplexes and townhouses. He noted that Duck allows large rental homes in residential zones, but restricts other residential uses which can have less impact. It was *consensus* of the Board to bring the issue back to their next meeting for further discussion.

Chair Blakaitis stated that the Board still needs to consider the prohibited/permitted use table. He added that he still feels it was a good thing. It was *consensus* of the Board to proceed with the use table as it provides clear information.

Director Heard stated that he will make the amendments that were discussed and prepare a memorandum for the Board. He will outline what he heard, make changes to the table, and forward it to the Board members for their review.

## **APPROVAL OF MINUTES**

There were no minutes to approve.

**OTHER BUSINESS**

None.

**STAFF COMMENTS**

**Summary of April 6, 2016 Town Council Meeting**

Director Heard stated that the Town Council approved the Duck Deli Conditional Use Permit with the conditions recommended by the Planning Board. He stated that Council also approved the Blue Point Conditional Use Permit with the conditions recommended by the Board. He stated that Council will be discussing the budget at their April 20, 2016 meeting.

**Project Updates**

Director Heard reviewed the project updates with 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 8:51 p.m.

Approved: \_\_\_\_\_  
/s/ Joe Blakaitis, Chairman