

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
May 11, 2016**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, May 11, 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 Town Clerk Lori Ackerman.

Others Present: Sandy Whitman.

Others Absent: Permit Coordinator Sandy Cross.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for May 11, 2016 at 6:32 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 he reviewed the list of items from the April 13, 2016 Board meeting and found that the Board reached consensus on 13 items in one manner or another. He noted these recommendations in the staff report. He added that in the cases where a decision resulted in a change to the proposed ordinance, he made the changes in the ordinance that will be forwarded to Town Council. He stated that there are two items addressed more thoroughly in the staff report – one involving the definition for the term “night club” and the other involving the definition for the term “transportation terminal”. He added that the Board had requested information from staff for further review of these terms. He stated that items 16 and 17 on the original list were identified as larger issues that will likely need more study and consideration, so there wasn’t anything specific on these issues in the staff report delivered to the Board members last week. He added that he was able to put together some information on these issues, which

was placed in front of the Board prior to the meeting. He stated that it is his intent to discuss these items at tonight's meeting, but not to move those items forward to Council.

Chair Blakaitis directed the Board to review the list item by item.

Chair Blakaitis commented that Item #1 states that the table does not show post offices as a permitted use in the Village Commercial (V-C) zoning district. Council Liaison Burdick noted that he had asked that the Board review this item. He noted that the standards for the V-C zoning district do not list post offices as a permitted use. Director Heard stated that post offices were added to the table and in the ordinance. It was *consensus* of the Board that post offices were properly added as a permitted use in the table and list of uses for the V-C zoning district.

Chair Blakaitis noted that Item #2 states that the table does not show residential uses (other than accessory apartments) as being permitted in commercial zoning districts. There are presently seven properties in Neighborhood Commercial (C-1) or V-C districts that contain legal, nonconforming residential uses. It was *consensus* of the Board that concerns about repair, expansion, and replacement are addressed in the Nonconformities section of the ordinance and no changes are recommended.

Chair Blakaitis stated that Item #3 states that the table does not identify Bed and Breakfast Inns as a permitted use in the Special (S-1) zoning district. He noted that the existing Advice 5 Cents Bed & Breakfast is located on an S-1 zoned property. Director Heard pointed out that the only wording needed to be changed was in the table under the S-1 District. It was *consensus* of the Board that "Bed & Breakfast Inns" was properly added as a permitted use in the table under the S-1 zoning district.

Chair Blakaitis stated that Item #4 asks how to define a night club. Some of the Town's existing restaurants have food, drinks, and entertainment similar to a night club, which may be currently prohibited by the ordinance. Member Cofield stated that he likes staff's recommendation regarding a definition for night clubs. Chair Blakaitis noted that staff's recommendation is similar to the City of Charlotte. He added that he liked staff's recommendation as well, but wished to add the term "primarily" in the definition for Charlotte so it reads as follows: "Any commercial establishment serving primarily alcoholic beverages..." Member Cofield asked how Chair Blakaitis feels about Asheville's definition. Chair Blakaitis thought Asheville's definition is good.

Vice Chair Murray noted that at some point in the staff report it said that, according to most of the definitions researched, many restaurants that currently exist in Duck would be classified as night clubs. Vice Chair Murray asked if adopting the definition will create nonconformities. Director Heard stated that there are two steps to resolving this issue – the first is for the Board members to agree on a proposed definition and the second is to consider removing night clubs from the prohibited use list. Vice Chair Murray asked why the term needs to be defined if it is going to be removed from the prohibited list. Member Forlano agreed. Director Heard stated that the term "night club" clearly has different meanings to different people.

Vice Chair Murray said it seems like the Board has to remove night clubs from the prohibited list to allow current operations. He reiterated his previous question as to defining the term if it is

going to be removed. Chair Blakaitis asked Vice Chair Murray for his thoughts about the definition. Member Cofield suggested adding hours of operation. He noted that night clubs tend to stay open later than restaurants. He asked if the Town restricts the hours of operation. Council Liaison Burdick noted that there isn't a Dare County restriction. Member Forlano stated that the Town does not restrict hours. He added that Sunset Grille has been open until 2:00 a.m. and asked if the Town really wants further restrictions.

Chair Blakaitis stated that in reading the staff report, it seems that the Town does not want a true night club in Duck. Member Forlano asked why. Chair Blakaitis stated he isn't sure. He stated that it seems from the last discussion that the Board does not want them in Town. He added that if the Board puts night clubs on the prohibited list and uses one of the other municipality's definitions, it will classify all restaurants as just restaurants and not night clubs, because they won't be considered establishments that primarily serve alcohol. Member Forlano agreed. He thought it removes the distinction. Vice Chair Murray thought it might, but the details in the definitions began to encompass most of the restaurants in Town.

Member Cofield stated that he has been to some extremely nice jazz night clubs in various cities and seen some of the best jazz musicians in the country. He added that no one in Duck would have an objection to these types of night clubs. He doesn't find them objectionable and feels that they are consistent with the vision of Duck. He thought, just like other uses, night clubs need to be controlled.

Chair Blakaitis stated that there is no need to have night clubs on the prohibited list. Member Cofield agreed and explained that the difference is that the primary item sold in a night club is alcohol and the primary item sold in a restaurant is food. Chair Blakaitis agreed. Member Cofield noted that it was the only real distinction. Vice Chair Murray stated his issue is that one can only eat for so long and after 10:00 p.m. the primary function of a night club will be to sell alcohol.

Council Liaison Burdick stated that there are two items that the Board may wish to consider. The reason Council started discussions on the issue is that "night club" does not sound like a family oriented term and Duck prided itself on being a family oriented town. He added that the second item was that the Alcohol and Beverage Commission defines what a restaurant is. He noted that it is a straight forward definition regarding the minimum percentage of food and alcohol that can be sold. Member McKeithan agreed. Council Liaison Burdick concurred that all of the restaurants in Town that have ABC licenses because of it. Chair Blakaitis clarified that they were fine with the existing businesses in Town. Council Liaison Burdick added that the restaurants are not the problem, but it is a question of whether the Board wants to address the other side of the ABC definition, which is primarily a business for entertainment and liquor sales.

Member Forlano asked why night clubs are bad considering that Duck is a family resort. He added that families go to night clubs. Council Liaison Burdick didn't think that is consistent with the vision of the Council.

Member McKeithan stated that there is a great chance that there will not be a night club atmosphere that Member Cofield described. He thought the Town is fortunate that there haven't been a lot of late night, heavy metal crowds. He stated that he was at a voter registration event at

a restaurant in Kill Devil Hills and noted that there were a number of taxi cabs coming and going, people in the streets, and even a drunken brawl. He stated that it was entirely different than what Member Cofield had described and was not a family oriented feeling. He pointed out that the Jolly Roger Restaurant is open until 3:00-4:00 a.m., has bouncers at the entrance, taxi cabs in the parking lot, and people loitering in the street. He thought the Town cannot say that night clubs are allowed only as Member Cofield described. He added that there can be the younger, louder beach crowd at them and not a family environment. Council Liaison Burdick stated that that is what Council is trying to stay away from.

Member Cofield stated that in thinking through it, he recognized Member McKeithan's point. He didn't think that any of the Board members would have a problem with many of the jazz night clubs in the cities he's visited. Member McKeithan stated that if the Board authorizes night clubs and there are a few nice ones and not so nice ones, it will be hard to say that one will be permitted while the other is prohibited. He stated that it is the atmosphere as well as what they provide in terms of entertainment.

Chair Blakaitis asked if night clubs are permitted with a Conditional Use Permit. Director Heard stated that they are. Chair Blakaitis asked if it would be somewhat controlling. He added that the Town could not deny a CUP of the applicant if they met all of the other regulations. Director Heard stated that when he looked at the other communities and the issues that they were trying to regulate, the issues boil down to noise and raucous behavior. He explained that both of those are items that the Town already regulates and enforces through its police powers. He noted that if night clubs are not allowed at all, it will remove the activities that are occurring right now at many of the restaurants. He added that what the Town really wants to regulate are outdoor activities that neighbors can hear, such activities will have to end at 10:00 p.m., which is already a law in Duck.

Vice Chair Murray thought he had a clear way to explain things to Council. He explained that where the Planning Board's responsibility stops and the Council's responsibility begins is that the concerns that the Board is discussing are activities that happen between the hours of 9:00 a.m. and 5:00 p.m. He pointed out that they are items such as parking spaces, building issues, inspections, etc. He stated that they are conditions that always exist on a property. He stated that when the Board gets into the behavior realm of things, such as people behaving well or badly, it is a Council and Police Department responsibility, by having ordinances that regulate behavior and not use. He stated that the Town does not want to hinder local business with a ham-handed definition. He added that if Council wants to eliminate behavior that isn't family friendly, it is on the civil side of the coin. Council Liaison Burdick disagreed. He thought it is something that the Board needs to deal with and what the discussion is trying to deal with it. He added that Chair Blakaitis had a good point that the Board may not need to do anything. At the same time, he thought Town Attorney Robert Hobbs should be asked if the Town will be safer having at least a bare bones definition, similar to the ABC definition, in order to eliminate the Town's problems with its restaurants falling into that category.

Vice Chair Murray pointed out that if a restaurant acts as a night club at night and needs to be policed, it is already regulated. Council Liaison Burdick agreed. Vice Chair Murray didn't think that Duck needs to be so family friendly that it keeps families that want to have a good time from coming to Town. Council Liaison Burdick didn't think that is the question. He thought the

families that come to Duck will go to Kitty Hawk or Nags Head to visit night clubs. Member McKeithan stated that they will stay in Duck if the night clubs are provided in Town. Vice Chair Murray pointed out that they are already doing it in Duck. Council Liaison Burdick disagreed, adding that the current activities aren't occurring to the extent that Duck has a problem. Vice Chair Murray agreed.

Vice Chair Murray stated that Sunset Grille is often open until 2:00 a.m. Some people in Town that want to visit a place open that late and it hasn't been a problem so far. Member McKeithan responded that in addition to what is in place now, the concern is letting another place open that will not be serving food and will be a night club only that opens at 10:00 p.m. Vice Chair Murray disagreed. He stated that when the Board creates the definition, it cannot hinder Sunset Grille or any additional restaurants that already exist. Council Liaison Burdick stated that he isn't sure about Sunset Grille, but thought restaurants can have entertainment up to 10:00 p.m. only. Chair Blakaitis noted that the restaurants have no time limitations on inside activities. Council Liaison Burdick noted that during the summer months, the entertainment is often outdoors. Member Cofield noted that the primary entertainment activity at Sunset Grille is indoors.

Member Forlano stated that he personally likes the City of Fayetteville's definition. He noted that Fayetteville set age limits so night clubs will be restricted to people 21 years or older. He stated that there isn't a restaurant in Duck that has an age limit as all restaurants allow children. He stated that he likes Fayetteville's determination as to what is considered a restaurant and what is considered a night club. He thought it covers everything. Chair Blakaitis agreed, adding that it is very similar to the other communities listed in the staff report. He noted that a business with a Class A restaurant license isn't considered a night club. Member Forlano agreed, adding that he is still in favor of allowing night clubs in Duck.

Director Heard cautioned the Board with regard to Fayetteville's definition. He noted that #2 in the definition will conflict with the operation of some of the restaurants in Duck. He added that the Board will probably want to tweak it if the Board decides to use that definition. Member Cofield stated that he likes Asheville's definition because it is broader and not as defined.

Member Forlano thought there are facets of each of the municipality's definition that are good. Vice Chair Murray stated that if the Board uses Asheville's definition, a caveat can be put in excluding restaurants. He asked what is required for a Class A restaurant license. Member Forlano stated that the restaurant has to have a commercial kitchen and has to be inspected by the health department periodically. Vice Chair Murray stated that he likes Asheville's definition and suggested adding the caveat; "excluding establishments with a Class A restaurant license". He thought this solution will satisfy Member McKeithan's concern. Member McKeithan stated that he liked the definition where a restaurant has to have 30% of gross receipts coming from food, a kitchen, and an inside dining area with seating for 36 people. He stated that he likes that definition better than other cities. Member Forlano pointed out that it is an ABC requirement. He explained that if alcohol is served, the receipts have to be shown at the end of each year. Member McKeithan agreed with this approach.

Member Cofield stated that he has been to some pretty nice jazz night clubs that serve food and thought that some likely collect less than 30% of their sales on food. Chair Blakaitis noted that it is a quicker, snack-type food in other night clubs.

Chair Blakaitis pointed out that the Board is trying to pick a definition, but hasn't decided whether the use should be kept in the prohibited use table or allowed. He added that if it is to be kept on the prohibited table, then a definition needs to be chosen.

Vice Chair Murray stated that he was fine with permitting night clubs. Member McKeithan stated that he wants to keep it as a prohibited use. Member Forlano stated that he wants to have it as a permitted use. Chair Blakaitis offered that the Board can ask Council to decide that issue and send it back to the Board. Vice Chair Murray asked if it is removed from the prohibited list, will there be a compelling reason that the term be defined. Director Heard stated that if there is an instance where something will not fall under the ABC Commission definition, it may not be clear how to deal with it.

Vice Chair Murray noted if the Town requires a Class A restaurant license, it guarantees that any piece of real estate in the Village Commercial district will be used for a use that the Board thought is appropriate. He added that if a restaurant converts to a night club environment in the evenings, it may be a good thing. He stated that by defining it and making the condition that they have a Class A restaurant license, the Board has accomplished two things – they haven't limited the existing restaurants in Town from doing what they want to do after 10:00 p.m. and requires that any new development in the Village Commercial district have some sort of useful daytime activity. Chair Blakaitis stated that there is nothing wrong with the suggestion, except that the Town is not stopping the existing restaurants from doing anything and it will not make them nonconforming. Member McKeithan agreed with Vice Chair Murray's suggestion from the standpoint if there is limited space and a restaurant went out of business and someone might buy it for use only as a night club.

Vice Chair Murray stated that it could be detrimental to the Town if an establishment in the Village Commercial district was only open after 10:00 p.m. He thought it can have a negative effect on business activity. He added that if a Class A restaurant license is required, it will be the only requirement and after 10:00 p.m. they can do what they want. Member Cofield thought that if Aqua Restaurant and Sunset Grille want to become night clubs, it will likely be done in a nice manner and be wonderful. He stated that he is not offended by the notion that a night club be a restaurant. Vice Chair Murray didn't think it is unreasonable to require night clubs to have restaurant operations. Member Forlano agreed. Member McKeithan noted that it needs to be qualified that night clubs aren't allowed, but will not restrict what a restaurant can do as an extension of the business. He added that if night clubs are allowed in Duck, a business may end up being used exclusively as a night club and he is not in favor of that. Member Forlano stated that he doesn't want a night club such as Headlights in Currituck County. Chair Blakaitis agreed, adding that night clubs such as the one in Currituck County are covered under the Town's adult entertainment ordinance.

Member Cofield thought his suggestion will get at Member McKeithan's objection. Member McKeithan agreed. He added that he is not advocating opening it up to a new business that will only be a night club. He stated that if Sunset Grille is a restaurant that stays open until 2:00 a.m. and is not bothering the public, he isn't taking exception to it. He added that he is not voting for Sunset Grille to go out of business as a restaurant and then become solely a night club.

Chair Blakaitis clarified that Vice Chair Murray is suggesting prohibiting night clubs, but putting a requirement on it. Vice Chair Murray stated that he is suggesting that night clubs can be prohibited, but making the definition of night clubs so narrow that it doesn't exclude what is currently happening in Town. He stated that Asheville's definition can be used, but suggested adding "...excluding Class A restaurants..." Member Cofield stated that he doesn't want to exclude night clubs in the definition. He added that he wants to include them.

Member Cofield noted that jazz clubs advertise themselves as jazz clubs and not restaurants. Member McKeithan pointed out that a restaurant has to do 30% of its business based on food sales. Member Forlano stated that Fayetteville's definition covers that issue. Vice Chair Murray agreed, but noted that Fayetteville's definition also includes an age requirement. Director Heard pointed out that #1 in Fayetteville's definition states that an establishment is not a night club if it has a Class A restaurant license. He suggested that if that statement was added to Asheville's definition, it will achieve what the Board has been discussing. Member Forlano suggested adding the following wording: "...maintain a full service restaurant on the premises at all times when it is open to the public for business..." Vice Chair Murray disagreed, noting that many restaurant kitchens close at 10:00 p.m.

Chair Blakaitis clarified that the Board wants night clubs left on the prohibited list, with the addition of a definition. Member McKeithan agreed. Vice Chair Murray stated that he is fine with it if the Board uses Asheville's definition and adds the stipulation regarding Class A restaurant licenses. He suggested that following wording: "...an establishment is not a night club if the establishment has a Class A restaurant license..." Members Forlano and McKeithan liked the suggestion. Member Cofield asked how such a place will market itself to the public. Chair Blakaitis thought it will be a jazz night club with a full service menu. Member McKeithan noted that most establishments advertise that they have entertainment.

Council Liaison Burdick thought the idea is to not prohibit them from having entertainment. Vice Chair Murray agreed. Chair Blakaitis thought that families that come to Duck are smart enough to know if there are jazz night clubs open after 10:00 p.m. that aren't advertised as night clubs.

Director Heard confirmed that the Board wishes to leave night clubs as a prohibited use and defining night clubs using a combination of Asheville's definition and the one sentence from Fayetteville's definition – "a place of entertainment, generally open primarily in the evenings, offering entertainment such as music, space for dancing and/or stage area, and usually serving alcoholic beverages and some food for consumption on the premises. Chair Blakaitis stated that it left room for modification of the definition. Director Heard stated that it also adds the following statement: "an establishment is not a night club if it has a Class A restaurant license from the State of North Carolina." Vice Chair Murray suggested striking the comments regarding cabarets and lounges, so that the final sentence of the definition will be the addition from the Fayetteville definition. It was *consensus* of the Board to recommend this solution.

Chair Blakaitis said that Item #5 states that the table prohibits other entertainment/recreational facilities in all but the S-1 zoning district. He added that the question is if the standard should be more flexible to permit entertainment activities that may be a good fit for the community.

Vice Chair Murray asked if the concern is that the use is in the S-1 district or the use itself. Director Heard stated that it is the use itself, noting that recreational facilities can include batting cages, miniature golf courses, and fun parks. Vice Chair Murray asked if it covers activities offered on the Town Green. Director Heard stated that the term is so broad that the Board decided not to go into it at the last meeting. Chair Blakaitis clarified that the uses are allowed in the S-1 district. Director Heard stated he is correct. Vice Chair Murray stated that the Board had recommended prohibiting it in the S-1 district to make it uniform with everything else.

Chair Blakaitis asked if the Board was in agreement. Vice Chair Murray stated that he does not understand the S-1 district. Director Heard stated that all of the uses that are listed as prohibited ought to be prohibited everywhere. Member Cofield asked what is allowed in the S-1 district. Director Heard stated that it permits all uses. Council Liaison Burdick asked why the S-1 is set up the way it is. Director Heard stated that he does not know the history of it. Member Forlano stated that he can't remember why the Board did it. Chair Blakaitis thought it was due to Advice 5 Cents Bed and Breakfast. Director Heard noted that the definition states that it's a transitional zone that generally serves as a buffer between commercial and residential areas. Council Liaison Burdick asked if it is reasonable to leave the S-1 district as it is or if it should be better defined. Director Heard thought the intent might be better served by defining what can and cannot go in the S-1 district. Chair Blakaitis added that the Board cannot change the standards of the district now. Council Liaison Burdick thought it can be an agenda item for a future meeting. Chair Blakaitis stated that if Council is interested in it, they can ask the Board to look at it. It was *consensus* of the Board that the use table properly lists entertainment and recreational facilities as prohibited uses in all districts.

Chair Blakaitis noted that Item #6 states that the table lists staff housing as prohibited in commercial districts, but supported accessory apartments in commercial districts. It was pointed out that many accessory apartments are primarily used for staff housing. Director Heard noted that the Board recommended eliminating staff housing at the last meeting. It was *consensus* of the Board that the reference to staff housing had been properly removed from the proposed use table.

Chair Blakaitis stated that Item #7 stated that the table restricted rental property management offices and maintenance offices in the S-1 and V-C zoning districts. He added that the newly renovated Sun Realty office was a legal, nonconforming use in the C-1 district. Per the Board's recommendation, he added rental property management offices and maintenance offices as a conditional use in the C-1 and C-2 zoning districts. It was *consensus* of the Board that these changes were consistent with the Board's recommendation.

Chair Blakaitis outlined that Item #8 asks a question about how prohibiting smoke and vapor shops impacts the sale of these products by Wee Winks, Handee Hugo's and other local businesses. Director Heard described the differences between primary and secondary business uses. It was *consensus* of the Board not to make any changes.

Chair Blakaitis stated that Item #9 states that the table regulates outdoor storage, yet boats, kayaks, and other products are stored and displayed at businesses year round. It was *consensus* of the Board that this concern is already addressed and no changes are recommended.

Chair Blakaitis noted that Item #10 states that the table requires a conditional use permit for the Public Safety building in the C-PR zoning district. Council Liaison Burdick stated that having a conditional use permit for the public safety building does not make sense. He asked why Public Safety is separately listed if everything else is classified as part of Town uses and facilities. He noted that the Fire Department is its own corporation and is private. Vice Chair Murray noted that the Town funds the Fire Department. Chair Blakaitis stated he was correct but it also falls within the Town's uses. Council Liaison Burdick disagreed and pointed out that if it is the Public Safety building, it needs a conditional use permit, but if it is classified as a Town use or facility, it is a permitted use. Chair Blakaitis stated that it was a permitted use that requires a conditional use permit. It was *consensus* of the Board that this concern is properly addressed in the table and no changes are recommended.

Chair Blakaitis said that Item #11 states that the table prohibits churches from being in the V-C district and other commercial zones. He noted that Duck United Methodist Church is located in the V-C district. Member Forlano stated that he is confused on Items #11 and #12 and needs clarification. He noted that a conditional use permit is required in the V-C district, but churches are presently not permitted in a C-1 or C-2 district. Director Heard stated that he is correct. He added that Items #11 and #12 deal with two different uses in that #11 deals with churches and #12 deals with church schools.

Member Forlano asked why churches require a conditional use permit in the V-C but are prohibited in the C-1. Director Heard stated that he cannot explain the rationale, but it is in the Town's current ordinance. Council Liaison Burdick pointed out that the V-C district is generally dedicated for commercial use. Director Heard stated that part of the consideration for V-C is likely because of the existing Duck United Methodist Church.

Director Heard asked if the Board wishes to recommend adding churches and religious institutions as a conditionally permitted use in the C-1 district or as a permitted use. Member Forlano clarified that it is permitted in the C-2 district. Director Heard stated the Board had previously made that recommendation, adding that it is conditionally permitted in the V-C district. He asked if the Board wants to choose one of the options for C-1 or leave it as it is.

Chair Blakaitis stated that the Board had decided to put it in the C-2 district at the last meeting. Vice Chair Murray asked where the C-1 district is located. Director Heard stated that it includes Sun Realty, Portside Condominiums, and North Duck Water Sports. Vice Chair Murray clarified that it does not include the Sanderling Inn. Director Heard stated that Sanderling is in the C-2 district.

Member Cofield stated that in many cities, churches have been located in downtown, prime commercial real estate areas. He stated that he is not offended by having a church in a prime commercial area. He noted that there is a church in the Wall Street district in New York. Chair Blakaitis stated that St. Patrick's Cathedral is also there. Vice Chair Murray thought if the economics work out for building a new church in the Village Commercial, the Town will have a much larger problem than the church being built. He wondered if the Board needs to regulate it. Director Heard stated that the conversation isn't about changing the allowances in V-C, but that churches aren't also permitted at all in the C-1 and other commercial districts. He added that Member Forlano's question is whether the Board wishes to consider adding it to the C-1 district.

Council Liaison Burdick suggested making them all the same. Director Heard stated that it has been recommended as a permitted use in the C-2 district and is a conditional use in the V-C district. Vice Chair Murray thought that a conditional use will be the way to go. Council Liaison Burdick stated it will give more control. Vice Chair Murray agreed.

Director Heard clarified that the Board wishes to change it to conditional use in both the C-1 and C-2 districts. Chair Blakaitis noted that it would cover Items #11 and #12. Member Forlano disagreed. Director Heard corrected that it would cover only Item #11. Member McKeithan stated that he likes the idea of making it a conditional use.

Chair Blakaitis asked the Board if they wished to make it a conditional use permit in all commercial zones. Vice Chair Murray thought it makes the most sense. He felt that churches should be allowed wherever they are willing to build. Chair Blakaitis agreed. It was *consensus* of the Board to recommend that churches and religious institutions be added as conditional use in the C-1 and C-2 districts.

Chair Blakaitis asked if Item #12 will still be necessary since the change was made to Item #11. Vice Chair Murray thought Item #12 was addressed as the church schools are now allowed in the C-2 district.

Chair Blakaitis outlined that Item #13 states that the table proposes to prohibit public transportation terminals. He added that the question is if this option should be left open with the community's traffic issues. Director Heard provided the Board members with a definition for "Transit Stops" and suggested that they be allowed. The Board felt that the definition was fine and should be added to the ordinance. Council Liaison Burdick asked if transit stops should be a conditional use. Director Heard stated that a transit stop can have an impact based on where it is located or how it is designed. Chair Blakaitis felt it should be a conditional use. It was *consensus* of the Board to continue to prohibit public transportation terminals, yards, and parking areas, but add transit stops as a conditional use permit in all zoning districts.

Chair Blakaitis stated that Item #14 states that the table refers to short term rental homes as needing an administrative permit, which implies that an actual permit is needed to rent a residence. Director Heard stated that the concern stems from the term that was used on the table. Rather than saying "permitted uses", the wording suggested that the use will require an administrative permit. The question was raised if someone had to obtain a permit from the Town in order to rent their home. He noted that the answer is no. To clarify this issue, the table has been simplified to reference "permitted use". He stated that there isn't a need to change anything in the table itself, but the change was made to the section prior to the table where permit processes are defined.

Chair Blakaitis asked how short term rentals are defined. Director Heard stated that the term was specifically adopted in 2004 with the probable intent to clarify that the Town permits people to conduct weekly rentals. He noted that there are communities that limit that type of activity.

Chair Blakaitis stated it was decided at the last meeting that the Town cannot regulate how people rent houses. He asked why Item #14 or #15 were needed. Director Heard stated that the

change to Item #14 was brought up during the short term rental discussion, but the correction applies to many other uses throughout the ordinance. He stated that it is a broader change than just addressing short term rentals. Regarding #15, he commented that the term “short term rental homes” is referenced in the Town’s ordinance and needs to be addressed.

Council Liaison Burdick stated that one problem is that people are now renting in periods less than a week. Chair Blakaitis understood and stated that he is curious as to why the term was not changed to short term weekly rentals or weekly rentals. He wondered if someone will question what a short term rental is, especially after the Board discusses Items #15 and #16. Director Heard stated that the Board will cover that issue extensively in Item #16.

Vice Chair Murray stated that he saw Item #14 as more of a housekeeping issue in order to make it clear in the ordinance that a permit is not needed for a short term rental. Director Heard pointed out that the intent of Item #14 is to clarify that an owner is not physically required to obtain a permit. It was *consensus* of the Board that the amendment was clear and addressed the issue.

Chair Blakaitis stated that Item #15 asks if the Town can regulate how property owners rent houses (seasonally, weekly, yearly, and who is in them). Director Heard stated that Town Attorney Hobbs does not feel that the Town would be in a strong position to regulate the length of time that someone can rent an entire residence. He noted that the Board will review this issue more extensively as they review Item #16.

Chair Blakaitis thought the answer to Item #15 is no. Director Heard stated that based on the Town Attorney’s comments, he is correct. Chair Blakaitis clarified that it will not be anywhere in the table or the use. Director Heard stated that it may involve striking the term “short term rental homes” in its entirety as the Board moves forward. It was *consensus* of the Board that the Town cannot regulate the length of single-family residential rentals and no changes are recommended.

Director Heard stated that Items #1 through #15 were the items that the Board had expressed an interest in moving forward to Town Council. He added that the other two items may require a little deeper study before they are moved forward. He asked if it was the desire of the Board to have an ordinance prepared and move it forward to Town Council for Items #1 through #15. Chair Blakaitis thought it made sense, but asked for clarification.

Member Cofield didn’t think Items #14 and #15 addressed Item #16. Vice Chair Murray and Chair Blakaitis agreed. Vice Chair Murray clarified that the Board will be making a motion that, with the changes that were made for Items #1 through #15, Director Heard can draft an ordinance and take it to Council including all of the recommendations the Board has already adopted. He added that the Board will take Items #16 and #17 for further consideration. Director Heard stated he is correct. Chair Blakaitis clarified that Items #16 and #17 will drop off the list as they need further study. He asked if the Board is in agreement with this proposal.

Member Cofield thought the Board could deal with Item #17 at this meeting. He suggested that the Board discuss it at this meeting. Vice Chair Murray asked if the Board had a directive from

Council. He wondered if it will be on the next agenda if the Board does not discuss it at this meeting.

Council Liaison Burdick noted that post offices are permitted in the C-1 district, recommended to be added in V-C, and left out of C-2. He asked why. Director Heard confirmed that they are not presently allowed in the C-2 district. Chair Blakaitis confirmed that it was added to V-C and prohibited in C-2. Vice Chair Murray noted that the C-2 district is the Sanderling Resort. Director Heard stated he is correct. Vice Chair Murray asked if it is conceivable that the Town will need more than one post office when it doesn't even have its own zip code. Council Liaison Burdick stated that that is not the reason he asked the question. He added that if the post office department decided to combine Currituck, Corova and Duck, the C-2 district might be the place to go.

Chair Blakaitis asked why the Board cares where the post office is located. Council Liaison Burdick stated that that is why he asked the question. Member Cofield felt it should be left as is. Vice Chair Murray stated that he does not care and thinks it would be fine to have it added to the C-2 district. Member McKeithan noted that the Town is restricting where it can be presently. Chair Blakaitis agreed, but asked why it should be unrestricted. Vice Chair Murray felt it should be via a conditional use permit in the C-2 district. Director Heard stated that he will add it to the C-2 district if the Board wishes. Member McKeithan thought they should all be in the commercial districts based on traffic flow. Council Liaison Burdick stated he doesn't care.

Vice Chair Murray asked if the post office will be permitted with a conditional use permit or just permitted. Director Heard stated that the others are simply permitted in all other districts. Vice Chair Murray stated that it doesn't make sense to permit a business in the V-C where every other business has to obtain a conditional use permit while the post office can do whatever it wants. Director Heard clarified that not every business has to obtain a conditional use permit. Member Cofield stated that it is consistent with wanting the V-C to envision something that allowed it to move up as far as Sanderling. He added that it should be in the V-C district.

Council Liaison Burdick reiterated that he does not care what the Board does. Chair Blakaitis suggested that the changes be made. Vice Chair Murray stated that he thinks post offices should be allowed with a conditional use permit rather than as a permitted use. Council Liaison Burdick asked why. Vice Chair Murray asked why it shouldn't. He added that the post office is only a use and doesn't own a building. He added that it also needs to be a CUP in the V-C district. Council Liaison Burdick disagreed, but added that the Board can make that decision. Chair Blakaitis thought there is a simple solution. He stated that the Board can look at how it is used, what the property is, and where the parking is located. He added that it isn't the same as approving a night club. Member Cofield thought it should be left in the V-C district only and not permitted in the C-2. Chair Blakaitis stated that it is a choice and can be located in either district. Council Liaison Burdick stated that he asked the question for consistency. Members Cofield and Forlano felt it should be left alone. Member McKeithan clarified that it should be restricted from the C-2 district.

Vice Chair Murray stated that he can see the point where it can be useful to have a post office in the C-2 district if it needs to move. He added that a CUP is the Board's opportunity to have more control over the development. He wondered what will happen if it is no longer a contract

post office, but becomes a U.S. Postal Service post office. He stated that it makes sense to have it come before the Board for CUP review. Member Cofield thought a post office will better serve the Town's needs in the V-C district as opposed to the C-2. Vice Chair Murray agreed, but can see an instance where it can grow to a size such as the Kitty Hawk Post Office. He added that he will want to be able to review such a change.

Council Liaison Burdick noted that up to now, the post office has not been permitted in the V-C district even though that is where it is located. Member Cofield thought it can be a permitted use in the V-C district and CUP in the C-2. Chair Blakaitis didn't think they should be treated differently. He thought it should be permitted in either zone and it should be via a CUP. Member Forlano agreed. Council Liaison Burdick agreed. It was *consensus* of the Board to have the post office be allowed through a CUP in the C-1 and V-C districts, while leaving it out of the C-2 district.

Council Liaison Burdick pointed out that under uses in the table; fire stations, jails, prisons and other public institutions, it listed "U.S. Government and uses and facilities". He asked about county or state. Director Heard stated that other public institutions are presently permitted only in the S-1 district. Vice Chair Murray thought it should be left as is. Director Heard noted that it doesn't mean that every iteration of a use will be prohibited.

Chair Blakaitis outlined that Item #17 states that the Town may want to look at expanding areas allowing accessory apartments, duplexes and townhouses. Duck allows huge rental homes in residential zones, but restricted other uses which can have less impact. He didn't think there is anything wrong with Item #17. Member Cofield stated that he is a proponent of including mother-in-law suites. Chair Blakaitis asked why the Town would not. Vice Chair Murray stated that he agrees with Member Cofield regarding Item #17. Member Cofield stated that mother-in-law suites are not something that are typically rented out. Director Heard stated that there isn't a choice in allowing them to be rented – the units are either allowed or not allowed. Member Cofield asked if there is more information available that could be brought back to the June 8, 2016 meeting. Director Heard stated that there isn't a lot available. Member McKeithan stated that he would rather wait to discuss the issue. Chair Blakaitis suggested that it be discussed at the next meeting.

Member Forlano asked if there will be further discussion on Items #16 and #17. Chair Blakaitis stated that there will. Member Forlano noted that the Planning Board recommended no changes to the standards as per the last issue with regard to how and who rents a home. He asked if that is correct. Chair Blakaitis stated that it is confusing. Director Heard agreed, adding that he was just passing along the list of comments that he had received from Council members. He noted that there are similarities in both and if the Board is covering Item #16, it is also covering Item #15 as well. Vice Chair Murray clarified that they should recommend Item #1 through Item #14. Chair Blakaitis disagreed, adding that Item #15 encompassed a legal opinion. He wondered if the Town can regulate how and who and Items #16 and #17 needed to be discussed. Director Heard stated that it boiled down to two issues – one being if the Town can regulate the length of the stay. He added that the concern is that short term rentals are now competing with hotels and bed and breakfasts. He stated that the answer that staff has been given is that the Town cannot regulate the daily rental of entire homes. He stated that the other item that could be dealt with if the Town chose is what is being rented. He explained that it entails people who are renting

rooms in a house as opposed to renting the entire house. He stated that the difference is that by doing that, they are changing the use of the property from single family residential to something else, similar to a boarding house. He added that the Town can define it as a different type of use and regulate it differently. Chair Blakaitis noted that Item #16 covers that issue. Director Heard agreed.

Member Cofield asked Director Heard if someone comes to the Town and wants to rent rooms in their house, what will be done. Director Heard stated that the Town has cited people for violations for that very reason and may be citing some others shortly. He clarified that there are a couple homes in Duck that are being advertised for rent as a duplex. He explained that at least one other owner is renting out part of her house that appears to be functioning as a separate dwelling unit and is not permitted to do so. He stated that as staff becomes aware of issues such as these, they contact the owners from an enforcement standpoint. Member Cofield asked how it comes to staff's attention. Director Heard stated that these recent situations came up as he was researching background information for the Board for this meeting and ran across these situations on the internet.

Member Forlano asked what the difference is between renting rooms and a mother-in-law suite. Member McKeithan didn't think there is any difference. Director Heard stated that, if approved, a mother-in-law suite will be a legal, separate dwelling unit. Member Forlano clarified that it can be located inside one structure. Director Heard stated that it will function as a separate dwelling unit. He added that the Board may want to limit such arrangements, but many communities allow them either in a building, as an addition to a building, or as a separate cottage or garage apartment.

Chair Blakaitis noted that Town staff is going after these uses from an enforcement standpoint simply because the use isn't permitted and will need approvals to comply before they can do it. Director Heard stated he is correct. Vice Chair Murray asked if there have been any complaint-driven enforcement. Director Heard stated that there has been in the past, but not on the ones that staff currently identified.

Member Cofield stated that the issue came up in a Council meeting, because Mayor Pro Tempore Monica Thibodeau raised it from the standpoint of competition with rental properties and the Town not receiving the income they would typically receive from occupancy taxes. Director Heard stated that some of these businesses may collect the taxes, but the Town doesn't know whether they do or not. Vice Chair Murray clarified that, when the Board examines the issue, taxes are under the purview of the County. Director Heard stated that the County collects the taxes for Duck and if it is not being reported to them, they may or may not be aware of the rental property. Chair Blakaitis pointed out that some local towns collect their own taxes and pass them on to the County. Vice Chair Murray clarified that it will be something, from an enforcement perspective, the Town will report to Dare County and rely on the County to enforce since Dare County was the tax collection body for the occupancy taxes. Director Heard noted that Duck does not get all of those taxes, but does receive a percentage based on tax revenue.

Member Forlano noted that the rental companies are coming into play in that many are doing rent by owner and not paying the occupancy taxes. He added that all of those tax dollars are lost, because the owners are not paying occupancy taxes.

Chair Blakaitis thought it may be best to gather more information on the issue. He wasn't sure if it should be discussed at the next meeting. He thought it is a complex issue and the Board needs to wait and see what other big cities are doing. Vice Chair Murray thought it is a complex issue, but thought the tax issue for Duck is a red herring because it is not taxes that the Town collects. The tax income to the Town is at risk of being taken away by the General Assembly at any point. He thought the driving force should be the CAMA Land Use Plan and whether the Board wants to allow this type of use. Chair Blakaitis agreed. Vice Chair Murray didn't think the Board should get hung up on the taxes, because it is a battle that the Board cannot win, a battle that cannot be fought, and a battle that should not matter.

Chair Blakaitis stated that the only comment that can be made regarding taxes is that the Board recommends that the Town do something about collecting the taxes. He added that it isn't up to the Board to figure it out. Member McKeithan and Council Liaison Burdick agreed. Chair Blakaitis stated that Items #16 and #17 will come back to the Board for further discussion at a future meeting.

Chair Blakaitis moved to send forward to Town Council the recommendations previously identified by Planning Board during its recent review of Items 1 through 15 only, as discussed. Member McKeithan seconded.

Member Forlano asked for confirmation that night clubs will be left in the Commercial Uses as prohibited. Member McKeithan stated that he is correct. Vice Chair Murray added that they will be prohibited unless they have a Class A restaurant license. Director Heard stated that, per the Board's direction, a definition will be added to clarify what a night club is and is not.

Vice Chair Murray noted that microbreweries are not on the adopted list of prohibited uses. He asked if the table had been adopted. Director Heard stated that the recommended table of permitted and prohibited has not been adopted. Member McKeithan noted that the table has not been considered by Council yet. Director Heard stated that the list of prohibited uses is what the Council adopted.

Chair Blakaitis amended his motion to recommend that Council adopt the draft ordinance as written by staff with the changes made at this meeting pertaining to Items 1 through 15 only. Member McKeithan seconded.

Motion carried 5-0.

## **APPROVAL OF MINUTES**

### **Minutes from the March 9, 2016, Regular Meeting**

Vice Chair Murray had a correction to Page 5 of the minutes.

Member McKeithan moved to approve the March 9, 2016 minutes as amended. Chair Blakaitis seconded.

Motion carried 5-0.

**Minutes from the March 23, 2016, Lunch & Learn Meeting**

Vice Chair Murray moved to approve the March 23, 2016 minutes as presented. Member Cofield seconded.

Motion carried 5-0.

**Minutes from the April 13, 2016, Regular Meeting**

Chair Blakaitis moved to approve the April 13, 2016 minutes as presented. Member McKeithan seconded.

Motion carried 5-0.

**Minutes from the April 21, 2016 Lunch & Learn Meeting**

Member McKeithan moved to approve the April 21, 2016 minutes as presented. Vice Chair Murray seconded.

Motion carried 5-0.

**OTHER BUSINESS**

None.

**STAFF COMMENTS**

**Summary of May 4, 2016 Town Council Meeting**

Director Heard gave an update on the May 4, 2016 Council meeting to the Board and audience.

**Project Updates**

Director Heard reviewed the project updates with the Board and audience.

**BOARD COMMENTS**

None.

**ADJOURNMENT**

There being no further business to discuss, Member Cofield moved to adjourn the meeting. Member McKeithan seconded.

Motion carried 5-0.

The time was 8:41 p.m.

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