

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
April 11, 2018**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, April 11, 2018.

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

Absent: None.

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

Others Present: Gunnell Rupert representing FEG Development, Keith Cummings and Jill Cummings with Weezy's Ice Cream, Mark Copeland and Ashley Copeland with Roadside Bar & Grill, Fire Chief Donna Black, Ron Forlano, Bob Fitchett, Beaman Hines, and Philip Ruckle with The Coastland Times

Chair Blakaitis called to order the Regular Meeting of the Planning Board for April 11, 2018 at 6:32 p.m.

PUBLIC COMMENTS

None.

NEW BUSINESS

Application for a Conditional Use Permit to Add an Ice Cream Shop (Eating Establishment) in the Southern End Unit in the Loblolly Pines Shopping Center at 1187 Duck Road

Director Heard stated that the applicant was requesting a conditional use permit to add an ice cream shop (Weezy's Ice Cream) in the southern end unit in the Loblolly Pines shopping center at 1187 Duck Road. He stated that in order to accommodate the parking requirements for the proposed use, Pizzazz Pizza will remove two seats from its restaurant as part of this proposal. He added that the existing ice cream shop operated by Pizzazz Pizza is being sold to Weezy's will cease operating as part of this arrangement.

Director Heard pointed out that, due to time constraints, the applicant obtained permits to proceed with interior improvements and signs for the ice cream shop. He noted that the applicant was aware that he is proceeding with the improvements at his own risk and cannot use the unit for its intended purpose if the conditional use permit application is denied.

Director Heard stated that the Loblolly Pines shopping center was constructed in 1986 and contains a total of 11,051 square feet, which is greater than the maximum building size standard of 5,000 square feet in the V-C District. He noted that since the shopping center was constructed long before the Town incorporated, the building is considered a legal, nonconforming use and can continue to be used with its current layout and dimensions. He stated that the subject unit, located on the southern end of the center, was previously occupied by Made in the OBX, which was a retail store. He explained that the unit is approximately 23 feet in width and 39 feet in depth, for a total of 897 square feet. Although the space within the unit will be arranged differently, the size of the unit remains the same under the proposed change of use.

Director Heard stated that the subject property has a driveway for ingress/egress that is 20 feet in width from the west off Duck Road. He added that the development has a secondary egress/ingress drive 20 feet in width from the southern side off Poteskeet Drive. He stated that a third, single-lane driveway 11 feet in width was added off Poteskeet Drive at some point in the past. He stated that each of the driveways has a concrete apron entering the site and the existing access will remain the same under the proposed change of use. He pointed out that in 1986 when the parking lot was approved, it was designed to have drive aisles approximately 20 feet in width, but in reality, many of the parking spaces are unimproved dirt spaces, which makes it difficult to measure the actual aisle width; however, staff was not aware of any significant problems with the functionality of the current parking layout.

Director Heard stated that the original development approval for the site included several uses with less substantial parking requirements. He noted that as units in the shopping center have been converted to other types of uses, the amount of parking on site has become nonconforming. He added that while it was difficult to determine exactly how many parking spaces exist on the site without a current survey, staff has estimated that there are approximately 44 parking spaces. He stated that there are significant discrepancies in the parking layout between the 1985 and 1986 site plans as what has been constructed on site combines elements from both plans. He pointed out that because the amount of parking on site is presently nonconforming, the proposal cannot increase the amount of parking required on the site. He stated that the proposed change of use from retail to an eating establishment alters the parking calculations. He said that the prior retail use required a minimum of 4.5 parking spaces and the proposed eating establishment requires a minimum of 5 parking spaces. He stated that in order to offset this increase, the owner of Pizzazz Pizza has proposed to remove two seats from his restaurant, which will reduce the overall amount of parking.

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

1. Two ADA compliant parking spaces must be designated and marked in the shopping center.
2. The Building Inspector and Fire Department must review and approve the proposed improvements for compliance with applicable codes.
3. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
4. This conditional use permit will expire in 12 months from the date of approval if the approved change in use has not been initiated.

Member McKeithan stated that he visited the Loblolly Pines shopping center earlier in the day and noticed that Tullio's Bakery has a four-person table inside the shop as well as additional tables outside of the establishment. He wondered why the bakery is not defined as a restaurant or eating establishment, which would create another issue with regard to parking. Director Heard stated that Member McKeithan is correct in his determination that with the seating, Tullio's Bakery would be defined as an eating establishment under the Town's ordinance. He stated that he was not sure how long it's been there. He stated that classifying Tullio's as an eating establishment would possibly result in making the existing parking a little more out of compliance. He stated that staff will review the situation and correct the staff analysis as the application moves forward to Town Council. He reiterated that it would possibly be a couple of additional parking spaces required to serve the property, which is already nonconforming. He pointed out that the proposal before the Board does not change or create additional parking requirements.

Member McKeithan stated that Director Heard is making reductions for the seating in Pizzazz Pizza to accommodate a conversion from retail to an eating establishment. He wasn't sure how crowded the shopping center got in the summer with the site being more nonconforming than originally thought. He stated that when the Planning Board approved Growlers to Go about four months ago, the identical information was in that application. Along with approval of the CUP, two handicap parking spaces needed to be established in order to comply with the ADA parking requirements. He added that as of today, that has not been done. He asked if the owner of Loblolly Pines shopping center is present for this meeting as they are the ones that need to address the parking spaces and not the individual applicants. He noted that it is a recommended requirement for this application, as well as the one for Growlers to Go and nothing has been done. Director Heard pointed out that the handicap parking spaces were not an actual condition of the permit for Growlers to Go. He added that it was brought to the attention of the owner of Loblolly Pines and they plan to comply.

Member McKeithan stated that the point he is making is that the Board is asked to make exceptions for things that are out of compliance and remembered it being discussed at the previous Planning Board meeting, but wasn't sure that it was an exact condition. He added that the Board had pointed out that it needed to be done, especially as the number of parking spaces are significantly out of compliance.

Member Whitman stated that the 1986 site plan shows the handicap parking spaces on it. He noted that the Board is looking at site plans that are over 25 years old. He suggested that they be brought up to date before the Board considers the parking issue to see what exactly is on the site and what isn't.

Member Cofield asked if the Board wanted to require and satisfy the Board's concerns regarding when the seating inside and outside at Tullio's Bakery was established. He stated that if the seating has been in place for a number of years, then it may be out of compliance, but the Board does not know that and shouldn't assume such without knowing the facts. He stated that if the seating was done one or two years ago, then it is not grandfathered and is out of compliance. He thought it begged the question as to when the seating was established. He added that the Board should not make an assumption in the absence of facts. He stated that the Board previously discussed the need for an engineered drawing that shows what parking is on the site. He thought

it was something that the Board wanted to see before another application for Loblolly Pines shopping center comes before the Board. Director Heard confirmed that the Board had expressed an interest about it. Member Cofield didn't think the Board should keep approving or disapproving things while guessing at the number of parking spaces until an engineered drawing establishes the number of parking spaces. He felt it was remiss on the part of the Board not to require it.

Gunnell Rupert of Pizzazz Pizza was recognized to speak. Mr. Rupert stated that his family built the shopping center in 1985/1986. He added that he is the owner of Pizzazz Pizza and I Scream Ice Cream. He stated that, with regard to the handicap parking spaces, he was not notified that they were required for Growlers to Go. He stated that he was sent information from Director Heard and it was discussed, but not being required at that time. Member McKeithan noted that it is on the Loblolly Pines shopping center site plan. Gunnell Rupert noted that it was the original, proposed site plan from 1985, not the as-built survey that included 53 parking spaces, but no handicap spaces. He stated that he will be happy to install the ADA compliant parking spaces. He added that the as-built survey from 1986 was how the building stands presently. The reason there has not been anything done is because that is what was approved by Dare County at the time. He thought that it was grandfathered at 53 parking spaces. He added that back in 1986 there were no land clearing requirements, so they chose to leave the trees on the site instead of taking them down to make parking spaces.

Gunnell Rupert stated the 44 parking spaces does not come from a survey, but from an estimate based on the Town. He added that the fact remained that the shopping center was built in 1986 with an approved site plan from Dare County with 53 parking spaces. He stated that the current proposal does not change the parking requirements at all.

Gunnell Rupert stated that, as far as Tullio's Bakery is concerned, he thought it was approved as retail, whether it was through Dare County or the Town of Duck. He didn't believe they applied for seating inside or outside with the Town. He wasn't sure it is applicable to this application. He stated that he could argue that Sunshine Family Pharmacy may not necessarily be classified as retail as it is very similar to a grocery store which would reduce the parking requirement by 5 parking spaces. He noted that the majority of grocery stores have pharmacies in them and there is no distinct requirement in Duck's code for a pharmacy so it may well fall into the retail category.

Gunnell Rupert reiterated that his shopping center is grandfathered with 53 parking spaces and has been since 1986 with no changes to the building or site plan. He stated that he would be happy to establish ADA parking on the site to make sure they are compliant, but as far as providing additional surveys, he felt it should not be a requirement at all considering the fact that the site plan has not changed since the building was built in 1986.

Chair Blakaitis stated that the situation with Tullio's Bakery is a different one than what the Board is looking at. He agreed that something needs to be done and thought Director Heard needs to check into when Tullio's Bakery and its seating were established. He agreed with Member Cofield that things needed to be straightened out at the Loblolly Pines shopping center. He didn't think it impacts this application.

Vice Chair Murray moved that the Planning Board approve CUP 18-005 with the following conditions:

1. Two ADA compliant parking spaces must be designated and marked in the shopping center.
2. The Building Inspector and Fire Department must review and approve the proposed improvements for compliance with applicable codes.
3. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
4. This conditional use permit will expire in 12 months from the date of approval if the approved change in use has not been initiated.

Member Cofield stated that he would like two additional conditions:

1. The Planning Board be furnished with information as to when Tullio's Bakery became an eating establishment.
2. Any future conditional use permit applications be accompanied by an engineered site plan.

Director Heard didn't think the Board has the authority to consider Member Cofield's second suggested condition included as a condition has to be related to the current application.

Vice Chair Murray wasn't sure the Board should adopt Member Cofield's first suggested condition, because the applicant is not the owner of the ice cream shop. Chair Blakaitis didn't think it would be right to include anything about Tullio's Bakery. Director Heard noted that, technically the applicant is the owner of the shopping center. Vice Chair Murray thought it needed to be on the application. Director Heard explained that the owner of the shopping center is part of the application.

Chair Blakaitis thought the Board had given instructions to staff to verify that Tullio's Bakery is or is not in compliance as well as when they started with the seating and how it affected the parking. He noted that it should not be in the motion for this application as long as the Board understood that staff has been instructed to do the verification. Director Heard stated that he will attempt to do so before the application goes before Council.

Chair Blakaitis seconded Vice Chair Murray's motion.

Chair Blakaitis asked Fire Chief Donna Black if she saw any problems with the application. Fire Chief Donna Black was recognized to speak. Fire Chief Black stated that there are no problems, only that they will have to pass the standard fire inspection.

Member McKeithan asked about the two motions that were made. Chair Blakaitis stated that the two items that Member Cofield suggested were not agreed upon as it does not pertain to this application. He added that the Board separately gave staff instructions to look into Member Cofield's suggestions.

Member McKeithan asked how the Board would ensure that the two ADA parking spaces will be installed. Director Heard stated that, presuming that Council accepts the recommendation from the Board, it will be a formal condition of this application. Member McKeithan asked if it was for the Growlers to Go application. Director Heard stated that it was discussed, but was not a condition of the Growlers application.

Motion carried 3-2 with Member Cofield and Member McKeithan dissenting.

Conditional Use Permit 18-004: Application for a Conditional Use Permit to Apply the Village Commercial Development Option Seeking Flexible Development Standards for Structure Setbacks, Lot Coverage, and Parking to Accommodate Expansion of the Outdoor Entertainment and Seating Area at Roadside Bar & Grill at 1193 Duck Road

Director Heard stated that the applicant is requesting approval of a conditional use permit to apply the Village Commercial Development Option seeking flexible development standards for structure setbacks, lot coverage, landscape buffers, and parking to accommodate re-establishment and expansion of a permanent outdoor seating and entertainment area at Roadside Bar & Grill at 1193 Duck Road. He stated that the proposal includes the following:

- Re-establishment of an outdoor seating and entertainment area approximately 5,340 square feet in size. The customer area is approximately 43x108 feet and contains seating, tables, and an entertainment area. Additional components of the outdoor area include the bar, stage, bathroom, and storage buildings.
- Relocation of an existing 40 square foot storage shed from the southwest corner of the outdoor entertainment area to a location near the bar/storage building by the northeast corner of the property. This structure encroaches approximately seven feet into the northern side setback.
- Construction of a 49-square foot addition to the bar in the storage/bar building near the northeast corner of the property. This structure complies with all minimum building setback standards.
- Construction of a 108-square foot performance stage including a tall backdrop. This structure adjoins the rear property line and encroaches approximately 20 feet into the minimum rear setback.
- Construction of a tall movie screen support structure 15 feet in length over the retaining wall in the southeast corner of the property. This structure encroaches 12 feet into the rear setback and eight feet into the southern setback line.
- Construction of an L-shaped block/stone structure 72 square feet that contains an outdoor grill/chimney, sink, and food service area. This structure almost directly abuts the southern side property line and encroaches approximately 10 feet into the southern side setback.
- Construction of a 160-square foot storage building. Since part of the fence on the southern property line appears to make up the rear wall of this structure, it encroaches 10 feet into the southern side setback.
- Placement of an 8x14.5-foot storage shed onto the southwest corner of the outdoor entertainment area and converting half of the structure to be used as a two-seat bathroom. This structure encroaches nine feet into the southern side setback.

Director Heard stated that the property is 21,735 square feet in size and zoned Village Commercial. He stated that the property is relatively narrow with a width of 75 feet, but extends nearly 300 feet deep off Duck Road. He pointed out that Dare County tax records note a construction date of 1950 for the original cottage, which was subsequently expanded and now contains a restaurant that was 1,939 square feet in size with 36 indoor seats. He stated that an additional 12 barstool seats were located on the screened front porch and a front patio of 690 square feet adjoins the public right-of-way along Duck Road that contained another 26 seats. He noted that there is an unpermitted outdoor seating and entertainment area 5,340 square feet in size that is located at the rear of the property and, even though it can accommodate greater amounts of customers at times, the outdoor seating and entertainment area was set up with 74 seats for a recent event held at the property.

Director Heard stated that the adjoining property to the north contains the Tomato Shack, which is a seasonal produce stand. He added that to the south are two parcels, with the larger parcel fronting Duck Road and containing the Loblolly Pines shopping center and the smaller parcel containing a single-family residence that fronts on Winauk Court.

Director Heard stated that in January 2013, the Community Development Department and Dare County Health Department notified the applicant of several violations on the property. Specifically, an outdoor bar addition that had been constructed onto a small storage shed without a building permit, inspections or zoning approval. In addition, the septic repair area had been covered in gravel to provide additional parking. He stated that the applicant applied for a conditional use permit to obtain after-the-fact approval for these improvements.

Director Heard stated that on July 3, 2013, Town Council granted approval of a conditional use permit allowing Roadside Bar & Grill to operate a temporary “outdoor special events area” that was subject to the following conditions:

1. The applicant must receive all necessary permits and inspections for any improvements on the property not already authorized.
2. Use of the outdoor entertainment area shall be limited to those seven events enumerated in the applicant’s narrative, together with occasional, minor events not involving the service of food.
3. That the north side yard building encroachment be removed.
4. That port-o-johns be provided during the seven events enumerated in the applicant’s narrative.
5. That the southeast corner of the property adjacent to the rear lot line of 100 Winauk Court be permanently screened by the applicant with a six-foot high opaque fence.
6. That the Town be notified when changes are proposed to the approved event dates enumerated in the applicant’s narrative.
7. There shall be no permanent seating installed in the outdoor entertainment area.
8. The permit shall be valid for a period of two years, subject to reapplication and renewal. The applicant shall submit an application for renewal no later than 90 days prior to the renewal date for processing. During the renewal period, the Planning Board and Town Council shall consider any new evidence pertaining to the experience with parking and traffic congestion

and any complaints received related to the use of the outdoor special events area during the previous two years.

Director Heard pointed out that over the subsequent years, the applicant only complied with conditions 3, 5 and 7; however, but did not comply with the remaining conditions. This conditional use permit expired on July 4, 2015. Staff notified the application of the violation, but the applicant has been operating the outdoor seating/entertainment area in violation ever since.

Director Heard stated that while staff was researching the situation following noise complaints in the summer of 2016, Community Development staff became aware that the conditional use permit had expired July, 2015 and verbally notified the applicant that the current operation was in violation and requested submittal of a conditional use permit application during the fall/winter months if he wished to have approval in time for the spring/summer season of 2017, but no application was received, so staff notified the applicant formally of the violations via letter in March 2017. He stated that over the past year, additional efforts by staff were made to have the applicant apply to bring the property into compliance, which culminated in the issue of a Notice of Violation and the beginning of fines for the applicant on February 9, 2018. He stated that a conditional use permit application was submitted shortly thereafter as the applicant is attempting to bring multiple violations on the property into compliance by seeking relief from setbacks, lot coverage, landscape buffers and parking standards.

Director Heard explained that during visits to the property over the past year, staff uncovered a variety of zoning, building code and Health Department violations within the outdoor seating/entertainment area. He pointed out the following improvements that were made by the applicant without obtaining zoning approval, building permits, building inspections and Health Department permits and approval:

- Moving an existing wooden storage shed from the southwest corner of the outdoor entertainment area to a location near the bar/storage building by the northeast corner of the property.
- Constructing an addition to the bar on the western side of the bar/storage building.
- Constructing a performance stage adjoining the eastern rear property line.
- Constructing a structure supporting a movie screen in the southeastern corner of the property.
- Constructing a large grill/sink/food service structure along the southern property line.
- Constructing a large wooden storage building along the southern property line.
- Moving a shed building onto the southwest corner of the outdoor entertainment area and converting a portion of the structure for use as a two-seat bathroom.

Director Heard stated that in addition to the lack of permits for the work, staff has concerns about the structures that have been added to the property:

- Without building plans or inspections, it is unclear if any of the structures are properly supported, structurally sound, and/or comply with building codes. From a cursory review, it is likely that a least several of the structures do not comply with applicable building codes.

- All plumbing and electrical work performed on the property requires a permit and a licensed tradesman to do the work. The Town has no knowledge of who performed the work or if it was conducted properly.
- The location of six of the structures encroaches into the minimum building setbacks.
- The additional structures have caused the property to exceed the maximum lot coverage standards for the lot.
- The additional seating and expansion of the outdoor seating/entertainment area has more than doubled the seating capacity of the restaurant without the provision of any additional parking on the site. The failure to provide adequate parking forces customers to park on neighboring properties including the Town Hall/Town Green.
- The bar addition, outdoor grill/sink, storage building and performance stage may be located within the required setback or encroach onto the existing septic field.
- The Health Department does not know if and how the bathroom, sinks, and other facilities were tied into the septic system.
- The outdoor grill structure is unsafe and does not comply with setback or separation requirements from combustible structures in the N.C. Fire Code and State Health Department standards.

Director Heard noted that the greatest concern to staff was the applicant's willful and continuing violation of numerous Town and State standards. He added that despite being informed by the Town and the Health Department that many aspects of the outdoor seating/entertainment area were not permitted, may be unsafe, and were in violation of Town and State standards, the applicant has continued to operate the outdoor seating/entertainment area in violation of these standards.

Director Heard stated that during its technical review process, the Town met with representatives of the Dare County Health Department. He stated that the representatives opened their comments by noting that the applicant failed to apply for a permit to establish any of the recent improvements on the property and that they had not specifically reviewed the circumstances and criteria for approval of any of the new uses or structures. He noted that the applicant subsequently applied to obtain approval for the use of the outdoor grill, which was denied pending approval by the Town. He stated that the representatives provided information about NC Session Law 2017-18, also known as the "grill bill", which permits restaurants to use an outdoor grill, subject to certain conditions. He stated that one of the conditions is that an outdoor grill cannot be operated within 10 feet of combustible construction. He stated that the representatives noted that the Town has been given the authority to determine if the proposed grill complied with this standard. Fire Chief Donna Black determined that there are several combustible structures located within 10 feet of the outdoor grill surface, including a wooden fence, the adjoining neighbor's wooden fence and the adjoining neighbor's wooden deck. He stated that without the Town's approval concerning combustible materials, the Health Department will not issue a permit for the use of the outdoor grill.

Director Heard stated that a representative from the On-Site Wastewater Disposal Division had concerns with the bar addition, performance stage, outdoor grill/sink structure, adjoining storage building and bathroom/storage building as they were all in close proximity to the existing septic tank and field. He added that it is possible that some or all of the improvements are situated either on part of the septic field or within the required five-foot setback from the edges of the

field. The representative also had a concern that the bar building was never approved for that type of use in 2013 and the expansion of the bar is adding to the concerns. He added that without plans or applications, there is no information about if or how some of the recently added structures tie into the septic system. He stated that the representative had concerns about the bathroom and sink by the outdoor grill as well as the generation of wastewater from the bar building.

Director Heard explained that since the applicant has not submitted any plans of the structures to review, the Building Inspection and Fire Departments cannot conduct the level of review necessary to determine which structures may be in compliance. He stated that the Building Inspection and Fire Departments could identify additional concerns as plans are submitted, permits are obtained, and inspections are conducted. He noted that Fire Chief Black could not recommend approval of the outdoor grill structure in its current location and without strict compliance with the 10-foot clearance.

Director Heard stated that Community Development staff has significant concerns about the ability of the subject property to accommodate the increased activity associated with the proposed outdoor seating and entertainment area. He stated that staff was recommending denial of the conditional use permit with the following facts to support the decision to recommend denial:

1. In general, the applicant is attempting to transform a modestly-sized restaurant on a narrow, modestly-sized lot into possibly the largest restaurant in Duck Village. If approved as proposed, the amount of seating for Roadside Bar & Grill would exceed Aqua Restaurant, Fishbones Bar & Grill, Red Sky Café and Duck Deli and could even exceed the Blue Point Restaurant. The intensity of development and activity being proposed for a relatively small parcel exceeds the capacity of the lot.
2. The applicant is proposing to provide only 21 parking spaces to accommodate 74 existing restaurant seats and at least 74 additional outdoor seats. That totals 21 parking spaces for 148 or more potential customers and 12 employees. While the Town of Duck's sidewalk project will encourage more people to walk or bike to local restaurants, the amount of parking available is vastly insufficient to serve the needs of a business of this scale. The failure to provide adequate parking forces customers to park on neighboring properties including the Loblolly Pines shopping center, Carolina Designs Realty/Red Sky Café property and Duck Town Hall/Town Green property, creating a burden on those property owners.
3. Reduction of the building setbacks to one or zero feet in several instances increases the impact of these structures on adjoining properties. Rather than an additional buffer to minimize impacts of the more intensive commercial use on adjoining residential properties, the adjoining residential properties are facing no buffer or setbacks from the commercial activities next door. Privacy, noise, lighting and safety are common concerns of neighboring property owners. These encroachments also have the potential to limit development on adjoining properties as it would effectively increase setbacks on those properties to comply with fire code separation requirements in certain instances.
4. In all previous applications for establishment of an outdoor seating/dining/entertainment area at restaurants in Duck Village, the applicants complied fully with Town standards for building setbacks, lot coverage, parking and other development criteria. Granting

approval of the substantial waivers being requested from these development standards would be unfair to prior, compliant businesses and set a difficult precedent for future applications.

5. The Town granted approval of a temporary conditional use for a similar proposal on the property in 2013. Use of the outdoor seating/entertainment area had an impact on nearby properties as evidenced by noise complaints and parking on properties in the surrounding area. In addition, the applicant disregarded conditions placed on the operation of his business under the temporary conditional use permit and subsequent violation notices issued by Town staff.

Director Heard noted that should the Planning Board decided to recommend approval of the conditional use permit, staff would recommend the following conditions:

1. The applicant must cease use of the outdoor seating/entertainment area until all permits have been obtained, all necessary work completed, and final inspections approved documenting compliance with Town and State standards for all structures added to the outdoor seating and entertainment area.
2. The applicant must obtain necessary permits from the Dare County Environmental Health Department authorizing the locations of the additional structures and finding that the existing septic system can accommodate the additional uses, additional structures, and expansion of the outdoor seating/entertainment area prior to issuance of building permits for any improvements.
3. If any structures do not comply with Health Department setback standards, then those structures must be removed, moved, or reconstructed in another location approved by the Planning Board and Town Council.
4. The applicant must remove the outdoor grill/sink structure or reconstruct it in another location approved by the Planning Board and Town Council.
5. The applicant must install bicycle racks accommodating at least 12 bicycles.
6. The applicant must submit an as-built survey documenting all of the site improvements prior to issuance of a Certificate of Compliance/Occupancy for the structures and use of the outdoor seating/entertainment area.
7. The applicant must obtain approval from the Community Development Department for any exterior lighting in the outdoor seating/entertainment area, which must comply with the Town's lighting standards and may require a building permit.
8. Any signage to be added must comply with the Town's Zoning Ordinance and be permitted by the Community Development Department prior to installation.
9. Entertainment activities must comply with all applicable Town standards, including the noise ordinance.

Vice Chair Murray stated that Director Heard gave the Board a parking calculation, which is based on the current outdoor entertainment ordinance. He thought the Town did not have an outdoor entertainment ordinance when the temporary permission was given. He stated that he couldn't remember discussing a parking deficit that is so significant. Director Heard stated that the Planning Board had two meetings – one with the original application when the Board had asked for additional information. Then, the application came back at a second meeting. He stated that it was something that former Director Andy Garman had brought up as an issue. He added that parking came up in terms of the location on the septic repair area.

Vice Chair Murray asked if, from a procedural perspective, the application is for renewal of the outdoor area. Director Heard stated that it is not. He stated that the conditions on the original permit state very specifically that it was the applicant's responsibility to apply for renewal of the conditional use permit prior to the two-year window, which did not occur. He added that that permit expired and nothing that was approved in 2013 is valid or approved today. Vice Chair Murray confirmed that when Director Heard references re-establishment in the staff report, it could also mean establishment. Director Heard thought the Board can look at it that way.

Chair Blakaitis asked if the CUP covers the entire property, including the restaurant. Director Heard stated that it does. Chair Blakaitis asked what will happen if the CUP is denied for the restaurant. Director Heard stated that the restaurant itself already exists, so what is being requested is the expansion of the restaurant by the addition of all of the outdoor seating and entertainment area. Chair Blakaitis clarified that the CUP can be denied without affecting the operation of the existing restaurant. Director Heard stated he is correct.

Vice Chair Murray asked if the current notice of violation is for use of the outdoor area and the use of the restaurant is not in violation. Director Heard stated that there are no violations related to the restaurant as all violations are related to the outdoor improvements.

Mark Copeland of Roadside Bar & Grill was recognized to speak. Mr. Copeland stated that he has had the back bar on his property since 2011. He added that former Building Inspector Cory Tate had visited the property when he had the electric installed. He stated that he had the bar built and Building Inspector Tate came to look at it and passed everything. He stated that he had an electrician pull the permit and completed all of the electrical work. He stated that as far as the seating, it is only a waiting area at night. He added that he does have bands at night that entertain his guests. He noted that the area is not open during the day and only open from 5:00-10:00 p.m. during dinner.

Mark Copeland stated that he put bathrooms in the building and it passed inspection by Building Inspector Steve McMurray. He noted that Building Inspector McMurray did not have an issue with the bathrooms, but that he needed to pull a permit for them, which he is planning to do. Director Heard pointed out that Mr. Copeland offered an incorrect statement regarding Building Inspector McMurray. He stated that Building Inspector McMurray had commented to him that the bathrooms were constructed as a pre-fabricated storage building and cannot comply with commercial building codes for use as a bathroom.

Mark Copeland stated that as far as the outdoor grill, the seats are not outside on a consistent basis and no one uses them during the day. He added that the only time he has the seating outside during the day is for special events, such as Veterans' Day, Easter, New Year's Eve and Thanksgiving. He added that he throws a big 4th of July party as well as outdoor programs for children.

Ashley Copeland of Roadside Bar & Grill was recognized to speak. Ms. Copeland noted that the permits were not obtained, because Mark Copeland used to be in the building industry. Mark Copeland stated that years ago, the rule used to be any project over \$5,000 required a permit. He stated that the rule has changed and now anything over \$15,000 requires a permit. He added that

none of the individual projects he completed on his property cost over \$15,000. Chair Blakaitis asked if any of it required electrical or plumbing work. Mark Copeland stated that the bathroom did. Chair Blakaitis pointed out that it requires a building permit. Mr. Copeland agreed. Director Heard noted that the \$15,000 figure does not apply to commercial buildings, which Mr. Copeland was aware of. Mark Copeland agreed, adding that he was only recently told about it. Chair Blakaitis asked what applied. Director Heard stated that a permit is needed for any commercial project, so the \$15,000 limit does not apply.

Mark Copeland stated that he moved the stage off the septic drain field and put it on top of the bulkhead. He stated that the movie screen has been in place since 2011 and was installed before the bulkhead was built. He stated that there was a small shed that he moved onto the property that houses all of his tools and artwork supplies. He stated that he is just trying to entertain people and make everyone have a good time. He reiterated that it is only open at night from 5:00-10:00 p.m., five days a week.

Chair Blakaitis asked Mark Copeland if there is anything that staff has stated for the items that are not in compliance, that he would be willing to change. Mark Copeland stated that he will get rid of the shed. Chair Blakaitis asked which of the six structures Mr. Copeland is referencing. Mark Copeland stated that it is the large shed that is next to the fireplace. He noted that the stage is on top of the septic drain field and has been moved on top of the bulkhead so there won't be an issue with the Health Department.

Vice Chair Murray thought it would be expedient if the Board breaks things into smaller items since there is so much to consider. He noted that the use of an outdoor entertainment area was approved temporarily before there was an ordinance allowing one. He stated that the use was approved temporarily and the noise complaints were not significant. He added that parking spaces guarantee that they will be filled with vehicles. He hasn't heard a lot of complaints regarding people parking their vehicles at other businesses in the staff report. He thought the use is something that has been ongoing, is acceptable and can be conditioned. Chair Blakaitis thought it was the other items on the property that are the issue.

Member Whitman asked Mark Copeland how many seats he had in the outdoor area at that time, adding that it wasn't as big as it currently exists. Mark Copeland stated that he had a few tables that were taken from the patio as well as Adirondack chairs. He added that he had the television screen and the bar as well. Member Whitman asked how it compares in size now to what it was. Ashley Copeland thought it was about the same. Mark Copeland agreed. Member Whitman stated that he was talking about the seating area where movies or television are watched. He noted that it does not have a movie screen, only a big screen television. He asked how many seats were there back then compared to what is there now. Ashley Copeland stated that the seating is fluid with lounge chairs in place, while at other times the chairs are put away so there is room for people to dance and other times there is hula-hooping going on. She stated that they are not designated seats. Member Whitman asked how many people are in that area at any time compared to the number of people there in 2011. Ashley Copeland stated that she isn't sure. Member Whitman pointed out that it wasn't the whole back area that was being used in 2011. Ashley Copeland stated that the area has not changed since 2011.

Vice Chair Murray asked Director Heard if he is calculating parking based on the size of the outdoor area. Director Heard stated he is correct. He explained that it is a parking space for each 150 square feet minus the first 150 square feet.

Member Whitman asked about the size of the space in 2011. Director Heard stated that he reviewed the minutes from all of the meetings as well as the staff reports and did not see any specific calculation that was done at that time. He added that there were concerns expressed by staff that parking would not be able to accommodate the number of people at the restaurant.

Vice Chair Murray clarified that the ordinance that delineates the one parking space per 150 square feet minus the first 150 square feet went into effect after the temporary approval. Director Heard stated he is correct. Member Whitman clarified that the Board is looking at the 34.6 parking spaces, whether it was 2011 or now, that would be needed for the outdoor seating area. He added that no matter what Mark Copeland had in 2011, it is now irrelevant. Director Heard stated that he is correct, adding that presently nothing on the site is approved. Chair Blakaitis noted that the Board didn't state that Mark Copeland had to come up with the 34 parking spaces yet. Member Whitman stated he was basing his statement on the calculations that is in front of the Board. Vice Chair Murray pointed out that it is what the ordinance requires and the Village Commercial Development Option allows the Board to be somewhat flexible.

Mark Copeland asked if he gave up all of his seating in the back yard, would still need to have the parking spaces. Director Heard stated that he would. He explained that the calculation is based on the square footage of that area. Mark Copeland clarified that the seats do not matter. Director Heard stated that they do not for parking purposes.

Chair Blakaitis asked if there will still be only seven events on the property. Mark Copeland stated that he has events on New Year's Eve, 4th of July, Veterans' Day, Thanksgiving and Easter. Chair Blakaitis clarified that the original application talked of seven events and some additional, occasional events. Director Heard stated he is correct. Mark Copeland stated that he will be holding his daughter's wedding on the site. Chair Blakaitis clarified that the events will not be changing. Mark Copeland stated he is correct, adding that the wedding will be an additional event.

Director Heard stated that over the course of two Planning Board meetings and one Council meeting, the original approval was discussed. He stated that the main point of discussion was the level of comfort with seven proposed events on the application but it was brought up at the meetings that there would also be other events occurring. He stated that parking was a concern and from staff's standpoint. There wasn't a problem if it was just for the seven special events, but if it was something that was going to be used regularly, there was significant concern about the parking. He suggested that the outdoor area has been used fairly regularly, adding that there may not be 100 people on the site every day, but in season the area is certainly operational more often than not.

Member McKeithan asked Mark Copeland if he was aware when he put the new structures on the outdoor entertainment area that most of them were encroaching into the setback area. Mr. Copeland replied that he was told to put up a fence. He added that he needed the storage. He noted that if he removes the large shed, he has nowhere to put his equipment or his tents.

Chair Blakaitis asked if the facility can be moved. Mark Copeland stated that he cannot put it on the septic drain field. He stated that the Health Department is coming to his property on April 12, 2018 to perform a report on his drain field. Ashley Copeland stated that the reason the structures are on the property lines is because permanent structures are not allowed to sit on the drain field. She reiterated that the seating is fluid because the drain field has to be clear. Mark Copeland stated that he has no issue with the drain field as he has his grease trap serviced every month as well as the septic tank serviced every two months.

Chair Blakaitis noted that the fireplace extended into the setback. He asked if anything can be done with the fireplace in its present location to make it safer. Fire Chief Black stated that there has to be a 10-foot separation. Chair Blakaitis asked if a fireproof structure can be put behind it. Fire Chief Black stated that she isn't sure it will be able to meet that requirement. She added that there is now a grill bill in place and she isn't sure if that issue has been investigated. She stated that the second problem is the setback. She added that wind-driven fires are a problem on the Outer Banks. She stated that the grill is within 10 feet of the fence and wooden deck. She stated that she would be happy to look at it, but added that the code states that any outdoor type of fire needed at least a 10-foot clearance from combustible structures.

Member Whitman stated that there is an LP tank in close proximity to the outdoor grill. He asked how that fits in to what Fire Chief Black is discussing. Fire Chief Black stated that she will have to check the code for separation from an LP tank. She added that it is not in compliance where it is presently located. Member Whitman asked about the gas that comes out of the septic system in proximity of the fireplace. Mark Copeland noted that it is a clean out, not a vent. Mr. Copeland stated that there are no vents for the drain field. He added that North Carolina Code R-1001.6 states that a fireplace needs to be clear two feet high and 10 feet out from the level chimney cap. He noted that it applies to any chimney on any house. He stated that the only thing combustible close to it is his chalkboard and he has already moved it. Ashley Copeland stated that the North Carolina Building Code people told them that because there is a chimney on it, it changes the dynamics of it. Chair Blakaitis stated that it will be something that Mark Copeland has to comply with if the Board approves the application.

Member Whitman asked about the notice of violation letter that Mark Copeland received regarding ceasing using the outdoor area in violation and Mr. Copeland still continues to use it, how it will affect what was going on. Director Heard stated that it does not, but there are fines accruing. He stated that it was not directly relevant to what the Board had before them and was a separate issue and process. Member Whitman clarified that it showed that Mark Copeland was defying the violation as well as what he is now asking for. Director Heard stated he was correct, but the Board was looking at the technical requirements and applying them to the proposal, not necessarily the actions of the applicant.

Member Cofield stated that he liked the fact that this is the oldest structure in Duck that is still sitting on its original site. He stated that he likes the restaurant and was struck by the number of violations and issues of noncompliance. He stated that the violations have halted him from thinking that this is an appropriate application to consider for the Village Commercial Development Option. He added that if there were only a few issues and some trade-off that can be achieved, he thinks it will be appropriate to consider granting relief to the property. He stated

that he likes the fact that if the Board does not approve the conditional use permit, it will not affect the restaurant. However, if he was sitting in the applicant's seat, he would want everything. He reiterated that he is struck by the number of violations and issues and noncompliance and thought staff's recommendation of denial is appropriate.

Ashley Copeland stated that they did not blatantly create the issues. She stated that everything has been on the property for a long time. Maybe it was their responsibility to come back to the Town after two years, but they forgot in the process of running their business. She stated that things have moved here and there on the property, which they did thinking it would help to make the business better. She stated that she feels that they are good, responsible members of the community and go above and beyond to give back to the community. She added that they participate in Town functions and they make Duck a better place for their visitors. She stated that they are not blatantly trying to disregard the Board or the Town or the rules, but trying to run their business and do the best job that they can. She stated that it wasn't like they put all of the items on the property this past winter; it has been a slow, gradual process. She stated that they moved the shed to accommodate the bathrooms because they were asked to have a port-o-john, which the tourists hated and wouldn't use, and it cost a lot of money. So, Mark Copeland decided to install the bathrooms, which also gives them more storage room. She wasn't sure what drew attention to them over the winter, but they were just doing the best job that they knew how to do. She stated that there is a laundry list of sins against them and she understands how the Board feels, but reiterated that it was not a blatant disregard for the Town rules, but that they were busy doing their thing.

Chair Blakaitis understood where Ashley Copeland is coming from. Mark Copeland stated that the bathrooms have been used by people that walk off the street. He stated that they will put a sign up noting that they are public bathrooms if the Board wanted. He stated that there need to be more bathrooms in Duck because people are constantly coming to his business to use their bathrooms. Chair Blakaitis understood that people love the restaurant. However, he agreed with Member Cofield in that there are an extraordinary number of violations on the property that do not even come close to compliance. He added that the Board has not heard from Mr. Copeland anything that he may be able to do to mitigate the number of violations, which the Board is very open to hearing. He thought the Town is more than willing to make some exceptions using the Village Commercial Development Option. He reiterated that he has not heard one suggestion. He knows that items cannot sit on the septic tank and the storage shed cannot be hung from the sky, but something productive has to be offered by Mr. Copeland. He noted that the Board will look like fools if they approve every single thing that Mr. Copeland wants. He stated that others in Duck that have violated the rules for compliance and they in turn cooperated to make things right. He stated that if there is a way that Mr. Copeland can come back with something on paper, something solid, he thought the Board will work with him. Director Heard concurred that there is an opportunity.

Member Whitman agreed with Chair Blakaitis' comments. Chair Blakaitis stated that he isn't sure where to go from here and doesn't think the Board can approve the application since there is nothing to base the approval on.

Ashley Copeland asked what it will take and what the Board wants them to do to obtain approval. She asked what needs to go and what can stay on the property. Member Cofield

thought the current posture of the Board is that they are not inclined to approve the application. He suggested going back and working with Town staff. He noted that there will be a lot of give and take because there are a lot of violations and issues of noncompliance, and just doing one thing will not solve the problem. He stated that the first step is to accept staff's recommendation to deny the application.

Vice Chair Murray stated that the alternative was to put conditions that will take care of the request for a special exception under the Village Commercial Development Option. He isn't sure that the Board is willing to try to proceed in that direction, so that would be an approval of an application with a laundry list of violations that need a special exception. He thought that attempting to resolve all the issues at this meeting is a bad idea in the sense that the applicant may be giving up things that they do not have to. He noted that all of the issues are related – the amount of parking is based on the square footage of the entertainment area. He wondered if the entertainment area can be smaller and if the entertainment area size is more important than the sheds. He stated that because the issues are all inter-related, he feels it could be to the applicant's disadvantage to try to deal with them through conditions at this meeting.

Chair Blakaitis pointed out that the applicant is asking for an exception from every single item on the application. Mark Copeland stated that he is willing to take things off his property if that is what the Board wants. Chair Blakaitis understood but isn't sure what the applicant is willing to do without or change. He isn't sure it is the Board's role to come up with a plan.

Vice Chair Murray asked if it is possible to pull everything that is in the setback out of it. Mark Copeland asked where it would be put. He stated that he cannot operate without the sheds. Vice Chair Murray stated that it appeared to be a big sacrifice and isn't sure where the Board can go from here. Chair Blakaitis noted that every setback on the property has been violated, which is too much. He pointed out that the Town previously worked with the applicant on another situation in the setback with regard to the bar. Mr. Copeland stated that it comes down to the building code.

Member Cofield moved to deny the application as recommended. Member Whitman seconded.

Motion carried 4-1 with Vice Chair Murray dissenting.

Member Whitman asked if the denial means that the applicant cannot operate the back area after today. Director Heard stated that the Planning Board is a recommending body so the recommendation of denial will proceed to the public hearing with Town Council if the applicant does not take action before the meeting. He added that use of the outdoor area is not presently approved and the violations and fines will continue. Member Whitman clarified that they will continue after this meeting up until the Town Council meeting. Director Heard stated he is correct. Member Whitman asked if the date of the Council meeting is the cutoff date if the applicant stops using the back area. Director Heard stated that it will still be a violation unless Council opts to go a different route and grant approval of the flexible development proposed. That would be one way to get out of the violations. He added that the other way will be to moving or remove the structures. If moving them, the applicant will have to come back with a site plan showing where he plans to put the structures.

Vice Chair Murray asked when staff makes a recommendation for denial, the applicant is aware of it when they attend the meeting. Director Heard stated that staff met with the applicant about two weeks ago to talk through the different comments that staff had. He added that not everything was final then and he explained that to Mr. Copeland, but staff did share that there were concerns about setbacks being in violation. He stated that in the meantime, staff went out to measure things on the property to get estimates, of which Mr. Copeland was aware.

Vice Chair Murray stated that this is not the first applicant that seemed shocked that it is not the Planning Board's responsibility to aid and design a project to some degree. He wondered if the Board should consider, moving forward in the future, making that clear in the sense that the Board can only answer yes or no with slight caveats. Director Heard stated he was correct and added that it is a slippery slope for the Board to try to design someone else's project. Vice Chair Murray noted that the applicants seemed shocked and there have been other applicants that seemed shocked, but he isn't sure if there is anything that can be done. He suggested that it can be something to look at during a future meeting.

Ron Forlano of 1221 Duck Road was recognized to speak. Mr. Forlano commended the Planning Board for putting their foot down on the issue. He added that this has been a thorn in the Town's side for close to 25 years. He noted that he likes Mark and Ashley Copeland, adding that he is very pro-business as he wants everyone to succeed. He thought the Town has reached its limit on this property and doesn't think the Board should feel bad about turning the application down. He thought they should feel good about putting their foot down and recognizing all of the violations that have happened on the property. He thought if Mr. Copeland decided to come back, he needs to do what other people have done, which is to hire an engineer, come up with a site plan and present it logically with the proper setbacks. He stated that doing it like he did tonight is not the right way to do it.

Ron Forlano cautioned the Board to be careful with regard to Loblolly Pines and how Tullio's Bakery's tables and chairs suddenly appeared. He stated that he has seen tables and chairs mysteriously appear. He stated that he has been in the restaurant business for a long time and knows that they will appear.

Chair Blakaitis stated that the Board felt bad that they could not help the Copelands, but thinks they may be able to if they come back with the right proposal.

OLD BUSINESS

Text Amendment: Setting Framework for Discussion of Maximum Residential Building Size/Occupancy

Chair Blakaitis stated he knows what the issue is about, but isn't sure it should be on the agenda for this meeting since he isn't sure how much discussion will be needed.

Director Heard stated that there were points in their discussion at their last meeting where the Board asked him to prepare draft ordinances based on certain options, but then there was discussion that the Board wanted to review all the options and decide which direction to proceed.

He stated that it will be helpful if the Board can pick a few of the options so staff can develop draft ordinances for the Board to consider in more detail.

Chair Blakaitis stated that Director Heard had listed the options that were discussed at the Council Retreat, which are good options. He noted that there is one in particular that is probably better than the others. He asked if Director Heard wants to go into more detail or if he has new options to come up with. Director Heard stated that staff has learned that the Town of Nags Head had in their ordinance a statement that is part of their building size limitation, that states that an individual is limited to a 1,080-gallon septic/wastewater system. He explained that the Town of Nags Head has established a limit on septic capacity.

Director Heard stated that he shared the Town of Nags Head's wording with Town Attorneys Robert Hobbs and Ben Gallop and received a response. They have a basic concern that by doing it, the Town is attempting to pre-empt State regulations for septic tanks. Chair Blakaitis stated that Town Attorneys Hobbs and Gallop felt there would be a risk to the Town. Director Heard stated he is correct. He added that Town Attorneys Hobbs and Gallop gave multiple reasons why it is a risk. He stated that if it is something the Board wants to consider, it will be better served as one piece of a multi-pronged approach. Chair Blakaitis stated that the Board does not have to go with what the attorneys state as there are times that things work out differently. He cited an example regarding banning sandbags and commented that it was the best thing the Town did.

Member Whitman asked how many bedrooms would support a 1,080-gallon septic system. Director Heard stated that he would have to look it up and can provide it to the Board if they want to use that approach. Chair Blakaitis asked if it was added to the Town of Nags Head's ordinance. Director Heard stated that it was one piece of the Town's standards.

As Mark Copeland re-entered the meeting hall, Member Cofield asked Mr. Copeland if he had a copy of the Planning Board packet. Mr. Copeland stated that he did not. Permit Coordinator Cross stated that she emailed Mr. Copeland on Friday, April 6, 2018 with a meeting reminder and link to the Planning Board packet. Mr. Copeland stated that the first time he saw the packet was at this meeting.

Chair Blakaitis asked if the Town of Nags Head added the language to their ordinance. Director Heard stated that they did not add it recently, but it was something that was in their ordinance adopted a couple of years ago. Vice Chair Murray thought it is also a component of the Town of Southern Shores' ordinance. Chair Blakaitis stated that theirs was a maximum size of 6,000-square feet. Vice Chair Murray stated that their previous ordinance had a septic tank size. He noted that it is important that the Board limits the total tankage, because there could be more than one septic tank. He stated that the Board should not have a limit on a tank size of 1,200 gallons because two septic tanks could be installed.

Member Cofield stated that he has a clear bias against limiting the size and square footage of a house. He stated that his approach would be a comprehensive one that gives the ability to have more square footage in a house. Chair Blakaitis agreed, adding that it should not just state a square footage. Member Cofield agreed, adding that he likes the approach that the Town of Nags Head has in place. He added that it is a comprehensive approach, it has a number of factors

that state what can and cannot be done, and it allows someone that wants to build a large house, to build one.

Chair Blakaitis stated that he liked the Town of Nags Head's approach and also liked Option E in the staff report as it is a little simpler. He thought there may be a combination. Director Heard pointed out that the Town of Nags Head does not have a maximum house size, but had different standards depending on where a house is located, such as an oceanfront home.

Chair Blakaitis asked the Board to remember at the Council Retreat that Mayor Pro Tempore Monica Thibodeau cautioned that Duck not do too much. He stated that, currently, there is only one house in Duck that was pushing the Town. He wasn't sure how many more the Town will see.

Council Liaison Jon Britt was recognized to speak. Council Liaison Britt felt there was a sentiment at the Council Retreat for not doing too much. Chair Blakaitis agreed. Council Liaison Britt thought the problematic situation is in an area with very large lots that is not the norm of the Town. Chair Blakaitis asked if it is possible for the Board to state that they will stay with what is currently on the books and look at it again if another problem arises. Council Liaison Britt thought it is an option that should be on the table. He thought there are other sentiments, but Option E in the staff report should be one that's considered, something involving less regulation.

Director Heard stated that this is why he wanted the Board's feedback. Chair Blakaitis suggested eliminating a few options. He suggested it be discussed in detail at the Board's next meeting. He thought some options can be eliminated. Director Heard stated that it would be a lot of work to put together different scenarios for all of the options. Member Cofield stated that he is in favor of Option D and E. He stated that if someone has an oversized lot, then a 10,000-square foot house can be built. Director Heard noted that that is how the Town of Nags Head does it. Member Cofield asked if it is able to be achieved under Option E. Chair Blakaitis stated that it is not, but it could be combined. Director Heard thought it could be achieved under Option E. He added that Duck currently has standards that allow more flexible setbacks and lot coverage for nonconforming properties that are smaller with the understanding that they don't have as much area to work with.

Chair Blakaitis stated that he would like to see Option D and E only and eliminate all of the other options. He added that the Board can then see what can be done to combine the two to make a new option. Council Liaison Britt thought it went in the direction that Council wants to see.

Vice Chair Murray thought Option E plus the septic tank size can do the whole thing. Chair Blakaitis agreed. Member Whitman asked what the maximum tank size is. Director Heard stated that it is 1,080 gallons for Nags Head. Member Whitman stated that the Town of Nags Head's code states that it cannot exceed 1,080 gallons per day and does not state a tank size. Vice Chair Murray stated that it can be gallons per day or tank size. Chair Blakaitis suggested that Director Heard obtain all of the information and see what can be done. Vice Chair Murry noted that 1,000 gallons per day is a lot. Council Liaison Britt agreed. Director Heard stated that the exact amount does not have to be decided at this meeting.

Director Heard stated that other things can be incorporated into the Town of Nags Head concept. He added that the key to the Town of Nags Head concept is that it is a give and take approach. Chair Blakaitis stated that if the Board does not like it, it can be thrown out. Director Heard asked if there are specific things that the Board wants to see from residential development that could be a part of this proposal. Chair Blakaitis stated that if the Board chose either Option D or E, it can be tied to lot size.

Member Cofield stated that a large house on a large lot is not problematic to him. He stated that trying to site a large house on a regular size lot would be a problem. Chair Blakaitis noted that it cannot be done according to the table in front of the Board. Member Cofield agreed.

Director Heard stated that if someone wants the advantage of building a larger house in Nags Head, there are standards for maintaining vegetation above and beyond the typical standards. He stated that there are conditions related to setbacks, parking, and stormwater management. Council Liaison Britt noted that height will also need to be taken into consideration.

Vice Chair Murray asked if it will be possible to strengthen Option E and make Option D via a conditional use permit. Chair Blakaitis stated that it can be done. Vice Chair Murray thought it would keep things simple.

APPROVAL OF MINUTES

Minutes from the March 14, 2018, Regular Meeting

Member McKeithan moved to approve the March 14, 2018 minutes as presented. Member Cofield seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of April 4, 2018 Town Council Meeting

Director Heard gave an update on the April 4, 2018 Council meeting to the Board and audience.

Project Updates

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

BOARD COMMENTS

Chair Blakaitis stated that three Board members attended zoning training recently and complimented them on going. Member McKeithan stated that it was great training and he learned a lot.

ADJOURNMENT

Member Cofield moved to adjourn the meeting. Member McKeithan seconded.

There was no vote.

The time was 9:08 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman