

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

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, July 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: Craig Readman of Treehouse Coffee and Ralph Calfee of Calfee Engineering.

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

**PUBLIC COMMENTS**

None.

**NEW BUSINESS**

**Conditional Use Permit 18-008: Application for a Conditional Use Permit to Apply the Village Commercial Development Option Seeking Flexible Development Standards for Parking Requirements to Accommodate Expansion of Treehouse Coffee/Rope Ladder Kitchen in the Scarborough Faire Shopping Center at 1177 Duck Road**

Director Heard noted that the proper notice was completed for the application materials. He stated that the application was to bring into compliance one of the buildings within the Scarborough Faire Shopping Center. He stated that recent use changes and improvements in the building altered some aspects of the prior approval. The building is now functioning as a restaurant where it was originally four retail units. He added that one unit is functioning as the kitchen while the other three contain seating and other aspects of a restaurant. He stated that the applicant is looking to bring the structure into compliance with Town standards as part of the proposal.

Director Heard stated that the subject property is presently zoned Village Commercial and contained the Scarborough Faire Shopping Center. He explained that the property houses five separate buildings, each of which contains multiple units. In total, the property contains 12,191 square feet of retail space, three restaurants and four two-bedroom apartments.

Director Heard stated that the Scarborough Faire Shopping Center was originally approved in 1983 by Dare County and the center has had changes to the tenancy and site layout over the years. He noted that while most changes in tenancy have been approved administratively, several conditional use permits have previously been approved by Dare County and the Town of Duck, such as the following:

- CUP 06-1995 – Conditional use permit through Dare County to convert an existing 866 square foot retail space to a bakery with on-site food preparation, retail/wholesale, and delivery.
- CUP 01-2001 – Conditional use permit through Dare County to convert an existing 574 square foot retail space to a deli with six customer seats.
- CUP 2003 – Conditional use permit through the Town to expand the deli to an adjoining 600 square foot retail space and add nine customer seats, for a total of 15, to the deli.
- CUP 14-002 – Conditional use permit to convert two retail spaces totaling approximately 964 square feet into an eating/drinking establishment.

Director Heard noted that CUP 14-002 was for Treehouse Coffee. The applicant had proposed a carry-out business with no indoor seating, but a 208-square foot outdoor dining area that contains six seats. He added that the applicant could have up to 12 indoor seats without increasing the minimum parking requirements for the coffee shop, but approval of those seats was neither requested nor granted. He stated that sometime after the approval of CUP 14-002, the applicant added 12 indoor seats to the Treehouse Coffee operation without obtaining an amended conditional use permit or approval from the Town. He explained that during an annual fire inspection in April, Fire Department officials noted that walls had been knocked out between two adjoining units and seating was added to create an expansion of the existing Treehouse Coffee business into Unit 2 of the building. He added that later that day, staff met on-site with the owner/applicant to document violations for a change of use and building improvements without obtaining the necessary permits. He stated that staff notified the applicant that the current operation was in violation and requested a submittal of a conditional use permit application to have the use considered for approval. He pointed out that the applicant submitted this application for consideration by the Planning Board to bring the violations into compliance.

Director Heard stated that the applicant is proposing to convert several retail spaces in Building 3 to an eating establishment that encompasses the entire building. He added that the maximum building size standard is 5,000 square feet in the Village Commercial District. He stated that none of the five individual buildings exceed the 5,000-square foot minimum, so the site is in compliance with that standard. He stated that the proposed eating establishment in Building 3 is approximately 1,856 square feet and although the space within the building will see a change of use, the size of the building remains the same under the proposal.

Director Heard stated that when one thinks of the standards and guidelines that the Town encourages within the Village Commercial District, Scarborough Faire Shopping Center is a good example of what the Town is looking for. There is a relatively large development of over 12,000 square feet of retail, but the manner in which it is designed is consistent with what the

Town is looking for as far as the breaking up the mass of the buildings, the character and architecture of the buildings, and maintaining a large number of significant trees on site. He noted that the applicant is not proposing to make any site changes other than a minor one.

Director Heard stated that the main piece of the proposal for the Board to consider is the parking. He explained that there has been an increase of 2.8 parking spaces in the minimum requirement with the proposed change of use to an eating establishment. He added that additional seating in Heart restaurant requires additional parking and between the two, it has increased the overall requirement to 115 parking spaces on the site. He noted that the property currently contains 107 parking spaces. The applicant is seeking a modification through the Village Commercial Development Option to accommodate for those 8.3 parking spaces above and beyond the Town's minimum requirement.

Director Heard stated that staff had evaluated a couple factors in the proposal that he would like the Board to consider. He stated that since there is a fairly substantial amount of traffic arriving to the site with pedestrians and bicyclists, which is a factor that may mitigate the applicant's parking needs for the eight parking spaces. He added that Scarborough Faire has additional parking available that adjoins the property. While not located on the subject property and not counted in the parking calculations, there is a gravel parking area that accommodates at least 13 vehicles within the Christopher Drive right-of-way adjoining Scarborough Faire. He pointed out that vehicles in these spaces back directly onto Christopher Drive and that the informal, gravel parking area was in place prior to 2001.

Director Heard stated that the site needed to have five ADA parking spaces, but there are only four existing spaces. He added that the applicant's engineer presented him with a plan for the fifth space prior to the meeting. He explained that the applicant is proposing to convert Space 16 to an additional handicap parking space so there will be two adjoining ADA spaces sharing a drop-off area. He noted that it does not present any problems and the remaining parking spaces are compliant with the parking requirements.

Director Heard noted that the applicant has provided some options for creating a few extra parking spaces on the site if they are needed as the Board evaluates the proposal. The design and layout of the property includes the preservation of many mature trees. He stated that there could be steps taken to remove trees and vegetation in order to add parking spaces. He added that unless it is a significant concern for the Board, he sees value in maintaining the trees and vegetation. He stated that staff is recommending approval of the conditional use permit with the following conditions:

1. The applicant must cease use of the approved expansion until all building permits have been obtained, necessary work completed, final inspections approved, and certificates of completion/occupancy issued in compliance with North Carolina Building and Fire Code standards.
2. The applicant must add one additional ADA compliant parking space to the shopping center.

3. The Building Inspector and Fire Department must review and approve the proposed improvements for compliance with applicable codes.
4. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
5. This conditional use permit will expire in 12 months from the date of approval if the building improvements have not been permitted and completed.

Chair Blakaitis asked what the exact number of parking spaces that the applicant is short. Director Heard responded that it is eight spaces.

Member Cofield stated that he does not remember any bicycle racks on the property. He stated that he appreciates the vegetation on the site, but it looks like there is space for additional parking spaces in the southeast corner of the property that will not affect the trees. He asked if that is accurate. Director Heard stated that there are several parking spaces that adjoin the area where the dumpsters are located. Member Cofield pointed out that the spaces are near the dumpsters. Chair Blakaitis and Council Liaison Britt noted that it is a septic drain field. Director Heard explained that another unique feature of the property is that all the buildings have individual drain fields that are located in various areas on the site.

Member Whitman asked if the ADA parking spaces will be paved. Director Heard stated that it is required to be paved. Vice Chair Murray noted that a tree is shown on the site plan in the area of the proposed ADA parking space and asked if the tree will be removed. Chair Blakaitis and Director Heard stated that the area is an existing parking space and will not require tree removal. Striping will be added between parking spaces #16 and #17.

Member Whitman asked if the Fire Department and Building Inspector Steve Murray have looked at the proposal before it came to the Planning Board. Director Heard stated that they did, but that this application is purely for zoning approval. The intent was to make sure the applicant is aware of additional steps to get the building permit approvals which include compliance with the building and fire codes. Member Whitman asked if the Board approved the application, what will happen to the gravel parking on Christopher Drive if the property is sold. Director Heard stated that the parking is in a public right-of-way and not on anyone's property. Member Whitman asked how it will work if the Board approves the CUP with the 13 parking spaces on Christopher Drive. Vice Chair Murray stated that they are not shown on the site plan. Director Heard stated that the Board will not be giving the applicant an exclusive right to use those parking spaces, but it is a consideration for the Board in allowing the request for eight fewer parking spaces under the Village Commercial Development Option. It is a mitigating factor and something for the Board to consider, but will not be part of the approval because it is not on the subject property.

Member McKeithan questioned if the 13 parking spaces are available for anyone to park and no one else owned it. He asked if people can park in those parking spaces and shop at Scarborough Faire. Director Heard stated that the State of North Carolina owns the right-of-way containing the parking spaces. Member McKeithan was trying to ensure that no other entity owns the property and can refuse parking to Scarborough Faire customers. Member Cofield noted that the

parking spaces look like they are for Scarborough Faire. Chair Blakaitis stated that it was an unusual situation, but it works to the Town's advantage.

Ralph Calfee was recognized to speak. Mr. Calfee stated he has been to Scarborough Faire back when it was new, when driving through Duck was easy and finding a parking space in Scarborough Faire was hard. He stated that Scarborough Faire has developed as a walking site nestled in a natural environment. He stated that it may not fit very well with zoning regulations as it is hard to create zoning regulations that address places such as Scarborough Faire.

Ralph Calfee stated that there are several characteristics of Scarborough Faire that the Planning Board has not addressed relating to the issue of parking. He explained that because Scarborough Faire has a multitude of individual small shops, it doesn't park the same as traditional parking areas, in that many businesses have either a morning crowd or an afternoon crowd. It is very rare that all of the facilities require maximum parking at the same time. He added that when the parking calculations are completed, it means that everything has to be parked at once. In reality, it doesn't work that way as Treehouse Coffee is not open in the afternoon or evenings, yet they have a parking requirement. He stated that things will smooth out with a lot of the parking requirements.

Ralph Calfee stated that there is a history with Scarborough Faire as it was the place for people to go to and was the primary place in Duck to go for eating, drinking and shopping. He stated that as Duck developed, Scarborough Faire started to be in competition with a lot of other places and so their parking needs changed.

Ralph Calfee stated that history tells him that there isn't a parking problem that we're trying to resolve. He stated that a good and bad thing about the application is that it will fix some things that have happened over time without permits. He stated that the good thing about it was that the Board is discussing something that is already functioning and working as the seats are already in place or have been. He stated that it is the wrong way to address approval, but the reality is that it helps greatly as it shows there isn't really a parking problem. He pointed out that the Town of Duck is intentionally promoting the park and walk concept where people can park their vehicle and walk all throughout Town. He asked that the Board consider the parking spaces on Christopher Drive as they have existed for over 30 years and are functional.

Member Cofield stated that he generally agreed with Ralph Calfee's comment about the way the businesses in Scarborough Faire operate as they are not all open at the same time. He added that some businesses have heavy traffic in the morning, some in the afternoon and others in the evening. He pointed out that Mr. Calfee commented that Treehouse Coffee is not open in the afternoon. Mr. Calfee clarified his previous statement by noting that it is open in afternoons, but their primary and heaviest traffic occurs in the mornings.

Chair Blakaitis thanked Director Heard for his detailed presentation. He felt the presentation was good and that the additional parking spaces can be supported by the Planning Board.

Member Whitman asked about the changes to the proposal. Director Heard stated that it has to do with the addition of the ADA parking space. He added that the change will be incorporated into the packet as it moves up to Town Council.

Member Cofield asked if the Board should add another condition to make the approval subject to approval by the Dare County Health Department. Chair Blakaitis noted that the Health Department has already approved it.

Member Cofield moved that the conditional use permit be approved as submitted with the conditions in the staff report. Member McKeithan seconded.

Motion carried 5-0.

## **OLD BUSINESS**

### **Text Amendment Ordinance 18-06: Proposal to Amend Section 156.126 of the Zoning Ordinance by Establishing Standards for the Scale of Single-Family Residential Development**

Director Heard stated that limitations on house size is an issue that has come up on several occasions, most recently at the Town Council Retreat in February. He stated that the Town is seeking a better way of regulating house sizes. He noted that the Town initially capped house sizes according to the number of bedrooms, using a tiered approach, but a State law now prevents that. So, the Town moved on to a tiered approach tied to the Health Department septic permit. That approach has flaws, so we're now looking for an approach that will be both legally defensible and meet the needs of the Town.

Director Heard stated that many different approaches were considered before the Board instructed him to develop a draft ordinance combining the Town of Nags Head approach with typical development standards. He explained that the Town of Nags Head has some maximum house size standards as well as greater allowances if a homeowner does certain things that are consistent with development practices that the Town of Nags Head wants to encourage. He noted that they even has architectural design standards as part of it, which is not something the Town of Duck has or is suggesting. He stated that it is more of an incentive-based approach and he thinks that is what the Board members like about it. He added that it is also a way of achieving some of the goals that the Town has regarding the use of good development practices.

Director Heard stated that one of the main differences between the Town of Nags Head and the Town of Duck approaches is that the Town of Duck has traditionally used a tiered approach based on the size of the lots. He added that the proposed ordinance will continue that approach where the larger the lot is, the greater the allowance offered to the property owner. He stated that staff has looked at every permit that issued since incorporation for homes that were built, took a look at the size of housing, and tried to fit them into appropriate tiered categories.

Director Heard stated that the Board has a draft ordinance which sets the definition for a large residences and maximum standards in each of the tiers. He explained that the maximum standards capture most of what has been built as most of the permits that the Town of Duck has issued will be accommodated by the proposed maximum standards. He added that if someone wants to build something larger than what the maximum standards, there are criteria that an owner can meet to do so. He stated that these criteria include a conforming lot size of 15,000

square feet, larger setbacks on all sides for larger residences, and additional landscaping requirements. He noted that architectural design standards and detail that the Town of Nags Head had is not part of the ordinance. He stated that there would be a minimum septic capacity that is a Town standard and not tied to the Health Department. He stated that it was previously discussed, but a final resolution had not been reached regarding a maximum size house of 10,000 square feet.

Chair Blakaitis asked if, under building facades where it was mentioned limiting the massive appearance by an architectural element that may break up the front, what the design limitation is as far as what would be considered a larger residence under that clause. Director Heard stated that the term “large residence” is defined in the draft ordinance as anything that exceeds the maximum square foot figures in the chart under Section C. He noted that anything that exceeds those maximum sizes will have to comply with that standard as well as the others. Chair Blakaitis pointed out that the chart starts at 3,500 square feet for small lots and goes up to 7,000 square feet.

Vice Chair Murray understood the definition of a large residence, but pointed out that a large residence cannot happen on a lot under 15,000 square feet. He asked if the following language could be added: “...(the minimum lot area for establishment of a residence over 4,500 square feet is 15,000)...” He added that the ordinance referenced the chart and was a little confusing. Director Heard stated that the lots under 15,000 square feet are not be eligible to exceed the maximum size standard. He understood the confusion and added that if it is not reading clear enough, he can make a change. Chair Blakaitis stated that if #4 stays in the final draft, then the following language could be added: “...to limit the massive appearance of residences larger than 4,500 square feet...” Vice Chair Murray thought it makes sense and added that Director Heard will have to break it out. He asked if the façade requirement will be applied to every new house more than 30 feet in length. Director Heard stated that it will apply to any new house that exceeding the square footage of what is on the chart.

Chair Blakaitis wasn't sure why the architectural features are mentioned since the Town is not allowed to control them, noting that the State does not allow a municipality to control it. Director Heard noted that Member McKeithan had an opportunity to look through the Town of Nags Head's extensive architectural guidelines and added that the reason why it is permitted is that it is an incentive-based program and not a regulation. The incentive is that Nags Head is giving homeowners an opportunity to build something larger in exchange for better design. He stated that a relatively large house can be built without having to comply with design standards. If they want to build something larger, the owner would have to agree to comply. Vice Chair Murray clarified that it is larger per the size of the lot in the Town of Duck's ordinance. Director Heard stated he is correct.

Member McKeithan stated that the way he reads the Town of Nags Head Residential Design Guidelines is that if a homeowner complies with them, they cannot exceed 5,000 feet, with the exception of one zoning district. If they meet the residential design guidelines, the homeowner's side yard setback goes from 12 to 10 feet if under 4,200 square feet and if it was more than 4,200 square feet, the setbacks are reduced from 14 feet to 10 feet.

Vice Chair Murray stated that the Town of Nags Head's ordinance was incomprehensible and put the zoning personnel in a difficult situation trying to translate it. He appreciated the simplicity of Duck's approach over the Town of Nags Head's. Chair Blakaitis recommended that the Board stick to the chart and discuss the extra-large homes that can be built above 7,000 square feet and see how they like it. He noted that it is the meat of the discussion.

Member Cofield stated that he liked the mixed approach drafted by staff. He also liked Vice Chair Murray's suggestion of looking at a conditional use permit for houses that are larger. He stated that he still has a problem with capping the residence size at 10,000 square feet. He stated that he is comfortable with increasing the lot size requirements to build a bigger home. He reiterated that he would not like the size to be capped, but if the house is over 10,000 square feet, it could require a conditional use permit. He stated that there will be few of those size homes. He stated that the table can be changed to say that a house over 10,000 square feet will require a greater lot size as determined by the Board. Chair Blakaitis asked Member Cofield how it will change the look of Duck. Member Cofield didn't think it will. He thought what changes the appearance of Duck are a lot of rental units in a house.

Member McKeithan stated that if the conditional use permit is a requirement, several times it has been inferred that this is more than likely going to be a large house owned by a person that will not rent it, which may be the case, but he wondered what will happen when there is a house with 12 bedrooms on a lot that is less than 10,000 square feet. He stated that many people were concerned about this happening. He stated that, if they meet other requirements, he doesn't understand how a conditional use permit can restrict a person using it as a rental property. He stated that one can hope that someone constructs a large house with a few bedrooms in it, but there is no guarantee for it. He didn't think the Town of Duck can decide to deny a home if it is a rental. He stated that the Town could be faced with the same issue that the Town of Kill Devil Hills is faced with and when he talked to some of the people at the Town of Nags Head. Everything they are doing was trying to go in the opposite direction of where the Town of Duck may be headed. Other communities are tightening up the size of the houses so that there isn't the 15+ bedrooms that are being built in Kill Devil Hills. He stated that if Duck decides to go to 10,000 square feet or unlimited, there will be a day where the Town will be worried about the large rental house. He wasn't sure how it can be prevented.

Member Cofield agreed with Member McKeithan in principle and doesn't want to see that number of rental rooms in a house either, but thought it can be dealt with through lot size. He stated that it is not economic for an investor to invest money and put it on a large lot. From a purely economic standpoint, they come out far better by building a 12-bedroom house on two lots rather than trying to amass the lot size to build a large house with an indoor swimming pool. He thought that the way to deal with it is to increase the lot size where it becomes uneconomic for an investor to try to put in a 15-bedroom house and get the lot size to justify it. Chair Blakaitis pointed out that the Board cannot read the minds of investors. He stated that Member Cofield thinks it isn't economically effective, but what happens 10 years from now when economic factors change. He stated that no one can know what is in an investor's mind.

Chair Blakaitis stated that he likes the way the ordinance is presented and the chart. He stated that he remembers at the Council Retreat when they talked about studying it again due to the passage of the State law. He added that the Board started out simply by recommending



maximum numbers of bedrooms. Then it was changed, and the Town based its standards on occupancy, which made it a little more complicated because the Town was depending on the Health Department determinations. He stated that now, it looks to him like this approach is far more complicated than the other two. He wasn't sure if there is a difference of opinion between the Council members, but he recalls that some want the ordinance to be kept simple. The feeling he got is that the Board should not go overboard and keep things simple.

Council Liaison Britt agreed that it should be kept simple, but also agreed with the path the Board was going down to give the option to have bigger houses for people. He stated that he liked the conditional use permit idea as well. He thought the Board is on the right path and that the 10,000 square feet being discussed will be an interesting topic of discussion at the Council meeting.

Chair Blakaitis thought opening it up to any size is asking for trouble in the future. He stated that he doesn't see any reason why it will have to be larger than the 7,000 square feet as there is no town on the Outer Banks that was allowing residences that large. Council Liaison Britt stated that, as a fire captain, a 10,000-square foot residential house scared him. Chair Blakaitis stated that it scared him for other reasons and he thought that the Board should stop it at 7,000 square feet. He suggested keeping the lot sizes the way they are in the draft ordinance and remove the conditional use permit to keep it simple. He didn't think 10,000 square feet is something that the Board wants to do for Duck. He thought it violates the CAMA Land Use Plan and Council's 2027 Vision. Council Liaison Britt clarified that Chair Blakaitis does not want the conditional use permit as part of the ordinance and keep it at 7,000 square feet. Chair Blakaitis agreed.

Vice Chair Murray agreed with Member Cofield's comments as he does not see a point for having any cap on the square footage when it is subject to a conditional use permit since it will be coming before the Planning Board and the Town Council. Member McKeithan asked what a conditional use permit will accomplish. He stated that if the standards are met and the lot is big enough, the Town cannot dictate if it is owner-occupied or a rental home. Vice Chair Murray noted that it is not a Village Commercial Development Option conditional use permit, but a conditional use permit, which meant it has to meet applicable criteria. Chair Blakaitis asked what criteria it will have to meet. Vice Chair Murray stated that it will have to meet all of the setback requirements.

Director Heard pointed out that potential criteria for a conditional use permit is in the draft ordinance. Chair Blakaitis pointed out that setbacks are currently a requirement. Vice Chair Murray agreed that the 10,000-square foot requirement seemed redundant to him since it is subject to a conditional use permit. He stated that he is concerned about the increased side setbacks in the up to 7,000 square foot category in the ordinance. He is concerned about side setbacks because when side setbacks are increased, it forces the house to be designed to look like the large, narrow homes in Kill Devil Hills, which Duck is trying to avoid. He added that the biggest lots in general are oceanfront lots, which are far deeper than they are wide. He doesn't have an objection in principle to making setbacks greater, but has an objection to making side setbacks greater under the allowable 7,000 square feet, since most of the 25,000 square foot lots – where by right someone can build a 7,000 square foot house – will be on the oceanfront and he thought the Board wants to avoid this.

Chair Blakaitis asked why the setbacks must be changed at all. Vice Chair Murray explained that it is part of the incentive approach. The idea is if a homeowner wants a bigger house, it should be less imposing on the neighboring properties. Chair Blakaitis stated that if the houses are stopped at 7,000 square feet, there isn't as much of an incentive anymore. Vice Chair Murray disagreed, adding that it will allow four feet additional of house width. Chair Blakaitis stated that the Board doesn't have to do that. He added that the incentive approach is designed mainly for a house larger than 7,000 square feet. Director Heard pointed out that the incentives would apply to larger houses on smaller lots as well. Vice Chair Murray agreed. Chair Blakaitis stated that whatever the setbacks need to be, he would agree with them. He added that he doesn't care what the setbacks will be, adding that the maximum size of houses needs to be stopped at 7,000 square feet. Vice Chair Murray countered that the Board would be closing a door to development that has been seen in Duck.

Director Heard stated that Duck has been incorporated for 16 years and has never had a house built that was 10,000 square feet or greater. Chair Blakaitis wondered why the Town would want to allow it now. Director Heard stated that the only house that approaches 10,000 square feet is the one in Palmers Island that caused this issue, which is a rental house. Vice Chair Murray asked how many square feet that house sat on. Director Heard stated that the house is over 9,800 square feet. Vice Chair Murray asked how big the lot is. Council Liaison Britt stated that the lot is over 40,000 square feet. Vice Chair Murray pointed out that big houses are seen by some as appropriate on big lots. Chair Blakaitis pointed out that there aren't many lots that size. Vice Chair Murray stated that a person can buy two lots and combine them into one lot, which lowers density and is consistent with the CAMA Land Use Plan.

Director Heard stated that his point is that the house in Palmer's Island is not even 10,000 square feet, yet caused a lot of issues and controversy in Duck. Member McKeithan added that there have only been two other houses since incorporation that were over 7,000 square feet.

Chair Blakaitis understood the chart in the draft ordinance and thought it is good. He wondered why the Board is considering allowing larger houses when none have been built. He doesn't think it complies with the Towns 2027 Vision or CAMA Land Use Plan. He stated that, in the interest of making it simple, the Board can stick with the chart, forget about moving up to 10,000 square feet, strike all of the language below it and make it a simple chart. He added that the setbacks can be changed any way the Board wants.

Vice Chair Murray moved that the Planning Board adopt the ordinance as written with the two following changes: that in the minimum building setback for principal structures, the side setback of 12 for up to 7,000 square foot structures be changed to 10; and that #6 under Section D – maximum size no large residence shall exceed a maximum of 10,000 square feet – be struck completely. He added that he would like the conditional use permit requirements to be discussed at a later date. Chair Blakaitis stated that it will not be part of the motion.

Member Cofield seconded. He added that since there have been comments about houses built over 7,000 square feet in Duck over the last few years. He emphasized that out of the two that were built, one is not a rental. He stated that there are people that build big houses and he doesn't think the Board wants to rule those people out of being a Duck resident.

Chair Blakaitis asked Vice Chair Murray to reiterate his motion. Vice Chair Murray moved to adopt the ordinance as written, but on the minimum building setback for principal structures table, under the up to 7,000 square foot column, the 12-foot side yard setback be stricken and changed to 10 and that Section D, #6 be stricken – the maximum size being capped at 10,000 square feet.

Chair Blakaitis asked if Vice Chair Murray wants to keep the maximum size at 7,000 square feet. Vice Chair Murray stated that 7,000 square feet is appropriate as a standard size, but added that anything over 7,000 square feet could be allowed with a conditional use permit. Chair Blakaitis clarified that Vice Chair Murray is allowing a house to be built over 7,000 square feet in his motion. Vice Chair Murray stated he is correct and the reason he stated such was that conditional use Section E – Lot Size – reads: “The size of the residence and associated improvements must be proportionate in size to the property on which it is located.” He felt it gives excessive latitude to the Planning Board and Council in determining what can happen on a lot of any size. He added that he will like to expand that to take into account the neighboring properties to some degree but thought it should be discussed.

Chair Blakaitis asked if Vice Chair Murray is proposing to stop at 10,000 square feet. Vice Chair Murray disagreed, adding that he is not seeking any overall cap to building size. Director Heard stated that the maximum size is what Vice Chair Murray is getting rid of. Chair Blakaitis thought it will create a lot of disappointment in Duck if it is approved. Member McKeithan stated that the proposal is not in accordance with the CAMA Land Use Plan and the 2027 Vision for the Town of Duck because of the excessive proposal of the house sizes.

Motion failed 2-3 with Chair Blakaitis, Member McKeithan and Member Whitman dissenting.

Chair Blakaitis thought the biggest problem is extending the house sizes above 7,000 square feet. He still felt that it did not need to be done. Member Whitman asked if there is any reason that a person cannot appeal to the Town Council for a house larger than 7,000 square feet. Chair Blakaitis and Council Liaison Britt stated that there presently isn't a limitation. Director Heard stated that the standard in the ordinance can be appealed by a variance through the Board of Adjustment. He added that the challenge would be that the homeowner will have to show that there is some hardship that prevents them from building a house less than 7,000 square feet and that a variance should be granted to build something greater than 7,000 square feet. He reiterated that it would be a challenging argument. Council Liaison Britt didn't think that proving a hardship can be done. Vice Chair Murray thought the only route will be via a zoning text amendment. Chair Blakaitis stated that there would be an evidence problem.

Member Cofield moved that the Planning Board adopt the proposal in front of them with a 10,000 square foot cap; that the side yard setback be changed from 12 feet to 10 feet only up to 7,000 square feet; and anything above 7,000 square feet be through a conditional use permit.

Chair Blakaitis noted that it changed the motion made by Vice Chair Murray regarding the allowable size of a house. Member Cofield stated he is correct.

Vice Chair Murray seconded.

Member Whitman clarified that the 7,000 square footage will keep the side setback at 15 feet. Member Cofield stated that it will.

Vice Chair Murray pointed out that for an oceanfront application, if someone wants to build up to 7,000 square feet, they will be subject to double CAMA setback requirements, which will be 180 square feet setback instead of 90 square feet. He thought that on most oceanfront lots, in order to go over 7,000 square feet, they will have to buy two lots and then the side yard setback will not be a hardship.

Chair Blakaitis stated that he still felt obligated to support the 7,000 maximum square footage requirement and thought it is large enough for most anything built in Duck presently. Member McKeithan agreed with Chair Blakaitis.

Vice Chair Murray reiterated that a conditional use permit that is not using the Village Commercial Development Option is more similar to a variance or special exception and there are guidelines that have to be met.

Motion failed 2-3 with Chair Blakaitis, Member McKeithan and Member Whitman dissenting.

Member McKeithan moved that Ordinance 18-06 be amended to restrict the size of a house to 7,000 square feet, therefore, removing the requirement for a conditional use permit for anything over 7,000 square feet. No residence shall exceed a maximum size of 7,000 square feet.

Council Liaison Britt clarified that Member McKeithan's motion will involve striking D and amending #6 to 7,000 square feet. Chair Blakaitis pointed out that #6 is no longer needed. Director Heard added that if the ordinance is adopted, then all of the references to over 7,000 square feet will also be stricken from the ordinance. Member McKeithan agreed that they will no longer apply. He added that he would leave in the side setback reductions proposed by Vice Chair Murray.

Chair Blakaitis noted that the standards can always be revisited. He asked Member McKeithan to restate his motion for clarity.

Member McKeithan moved to recommend submitting to the Town Council approval of Ordinance 18-06 and that it will have a maximum size of a residence of 7,000 square feet, and as stated, on Page 2 – the chart that says over 7,000 square feet for setbacks will be removed and on Page 3 – Maximum Size – no large residence shall exceed a maximum size of 7,000 square feet.

Member Cofield reminded the Board that they are telling a homeowner who has already built a house greater than 7,000 square feet in Duck that they cannot build the house. Chair Blakaitis pointed out that if the house is already built, it isn't an issue. Member Cofield stated that if the house is over 7,000 square feet and is owner occupied and not a rental, the ordinance tells them that they are not welcome in Duck and cannot build that size house. Chair Blakaitis didn't think that is true with regard to not being welcome in Duck.

Member McKeithan added that Duck's allowances will still exceed those of other communities on the Outer Banks. Vice Chair Murray asked if Member McKeithan's comments are correct,

even with the point system. Director Heard stated that a very select group of properties in Nags Head can exceed the proposed standards. He added that Kitty Hawk, technically, has no limits on house size, but functionally and practically may have the most severe limits of any town on the Outer Banks due to smaller lot sizes. Chair Blakaitis pointed out that Nags Head's standards are what they are and Southern Shores is a maximum of 6,000 square feet.

Member McKeithan stated that when he was looking at Kitty Hawk for information, a 6,000 square foot house has a side yard setback of 25 feet. He added that it may be irrelevant to the Board's discussion. Vice Chair Murray stated that it is relevant, but Kitty Hawk does not have oceanfront lots like Duck does.

Member Whitman seconded.

Motion carried 3-2 with Vice Chair Murry and Member Cofield dissenting.

### **PRELIMINARY REVIEW/DISCUSSION OF CUP APPLICATION CHECKLIST**

Chair Blakaitis noted that the checklist was originally suggested by Vice Chair Murray and drafted by staff.

Director Heard stated that he put together a checklist that outlined things that will need to be submitted as part of the application and it included an outline for the process. He noted that the main purpose is educating or documenting that the applicant will be aware of everything. He noted that there is a section requesting how the applicant wishes to be notified for it so that it is clear how notice will be provided. He stated that it laid out the expectations and responsibilities of each of the parties so that everything is clear with regard to their roles in the process. He stated that there may be some other good ideas out there that the Board members may have to add to the list. He stated that he is open to hear from the Board.

Chair Blakaitis asked if the plan is to make the checklist permanent. Director Heard thought that it will be something handed out to potential applicants for a conditional use permit as the list is drafted specifically for that purpose. Chair Blakaitis asked if the applicant will have to come back to staff and tell them they have everything and in turn, staff marks off what they bring in. Vice Chair Murray stated that staff explained to him the difficulty in the time elapsing between the preparation of the staff report on a Friday and the meeting being held the following Wednesday. He explained that unless they come to the Town office to pick it up, there is no way to get a signature back to the Town that they have received the staff report. He suggested that the applicant sign the checklist at the point of application and then at the opening of the meeting, the Board can remind the applicant of the form and asked them if they received the staff report. Chair Blakaitis thought that asking the applicant at the beginning of the meeting is a good idea, but isn't the only way it can be done.

Vice Chair Murray stated that, because it is a quasi-judicial hearing, the sense in the applicant and the Board that the packet, the information gathered at the site visit, and the discussion of that evening will be the evidence that needs to be considered. He pointed out that at the first Roadside Bar & Grill application, it was the consensus of the Board that it was incomplete and that they needed to come back to them. He thought it is an acceptable outcome when it is the

consensus of the Board that staff made their best effort to gather all of the information in the staff report, but the application is simply inadequate. He added that once an application comes in and staff determines it to be adequate, and it is the consensus of the majority of the Board, that will bind the Board to move forward with that proceeding for the evening. He felt like it is a mechanism of fairness to the applicant.

Member McKeithan asked if it will preclude the applicant turning in information at the time of the meeting. He noted that it has happened a few times. Vice Chair Murray thought, of all the things that the Board discusses, the presence of the owner or applicant in practicality of that and the acknowledgement on the applicant's part that they received their report and the acknowledgment on the Planning Board's part that if it is the consensus of the Board that they proceed in that meeting.

Member Cofield stated that he does not have a problem with the first page of the checklist. He thought that on the second page that states the applicant attend and present information at the Planning Board and Town Council meetings is telling the owner to attend since the applicant is typically the owner of the property. He commented that it is acceptable the way it is written. He stated that he would like to add to that the following language: "All information submitted must be accurate and truthful." He thought there were occasions in the past where it was questionable, and he doesn't think the Board should deal with any applicant that is giving the Board less than accurate and truthful information.

Member Cofield stated that he has no problem with the section on the Community Development Staff but has a problem with the section for the Planning Board. He wondered if the Board wants to tell the applicant that every Planning Board member will visit their site. Director Heard stated that staff tells applicants that Board members typically visit the site to gain better understanding of the situation. Member Cofield stated that it is okay to use the word typically, but the checklist states that it will include a visit to the site. He doesn't think that it should be included in the application as it is the wrong thing to tell the applicant.

Member Cofield stated that the second bullet under Planning Board states the following: "Receive and gather necessary information at the Planning Board meeting." He thought it should be changed to read as follows: "Receive and gather information pursuant to the Planning Board meeting." He stated that he has gathered information from visiting the site and not just at the Planning Board meeting. Member Cofield offered similar comments regarding the section for Town Council.

Member Cofield stated that under Notes, it reads as follows: "...are not allowed to discuss the proposal with members of the Planning Board..." He noted that the applicant is allowed to discuss it. He added that putting a prohibition on it for a quasi-judicial process is wrong. Director Heard stated that, technically, according to the UNC School of Government, the Planning Board should not be viewing conditional use permits at all. Vice Chair Murray thought it is something that should be pointed out to Town Council. He explained that it creates an opportunity for Council to disagree with the Planning Board, which makes both bodies look discredited. Director Heard thought the issue worthy of further review and an opinion from Town Attorney Robert Hobbs.

Vice Chair Murray stated that even through the site visit, the Board is gathering information, but it may not be accurate and what the members see may not necessarily be the reality of the situation. Director Heard pointed out that it is not the Board's sole basis for gathering information, but may help the Board members orient the site for their discussions.

Chair Blakaitis thought Member Cofield's recommendations were good. He stated that as far as the section for the Planning Board, he would strike what is in parenthesis as it has to be reviewed. Vice Chair Murray suggested that the wording in parenthesis should remain but change "should" to "may" as it implies permission to enter the property. Member Cofield stated that he is comfortable with Vice Chair Murray's suggested change. He reiterated his suggestion to change "during" to "pursuant". Chair Blakaitis thought it was a good suggestion. He asked Director Heard to check with Town Attorney Hobbs on the Notes language and then come back at the August 8, 2018 meeting with a revised checklist.

Member Cofield stated that he does not recall any part of Roadside Bar & Grill's original application being incomplete. Director Heard stated that the original application did not show any setbacks, all of which were estimated by staff.

Vice Chair Murray felt that with certain applicants, staff is under pressure to give people their hearing and in that case, it is suitable for the Board to ask. He stated that he wants to be clear, the subsequent meeting with Roadside Bar & Grill, Member Cofield still feels that the application was incomplete. Member Cofield disagreed, adding that he doesn't feel it was incomplete, but that he had a problem with it. Vice Chair Murray agreed, noting that as the Board went through the list, Member Cofield did not feel the need to comment on it as they went through it. He added that Roadside was faced with a Planning Board of four even though Member Cofield still voted. Chair Blakaitis disagreed, pointing out that Member Cofield had something else in mind and was just not answering the questions. Director Heard thought it had to do with the fact that multiple changes that were made at the very beginning of the meeting and being uncomfortable reviewing a proposal that wasn't a final product. Council Liaison Britt noted that the Board members seemed uncomfortable when Roadside had all the changes on the floor as to whether they should be talking about it or not. He thought the Board needs to be flexible and take some occasional changes since businesses have a short season and the process is 60-75 days long. He suggested that the Board members not get hung up on little things and table them as the businesses are trying to get things done to get their business open. He thought it can be tabled if it is a big issue.

Vice Chair Murray asked if there is any way to define it. Chair Blakaitis stated that the Board does not have it happen that often, so he isn't sure why the members should worry about it. Vice Chair Murray asked if there is a way the Board can define little items, such as site plan changes. He asked if there can be a site plan change to a conditional use permit the day of the meeting. Chair Blakaitis thought if Director Heard received all the information he needs, he can have it for the meeting. Council Liaison Britt noted that with the timing of getting the packet on a Friday and the meeting on the following Wednesday, making the applicant wait another 30 days for minor changes does not make sense. Chair Blakaitis noted that the Board receives updates the evening of the meeting at their places if there are any. Council Liaison Britt thought Vice Chair Murray makes a good point in that if the Board gets into a situation where there are a lot of changes, the Board needs to stop what they are doing and decide if they are comfortable moving

forward, then get consensus or stop. Vice Chair Murray stated that that is why he suggested a consensus from the Board is a good place to start.

Chair Blakaitis noted that it was done in reverse with Roadside Bar & Grill because the Board felt uncomfortable looking at the new information that was given to the Board at their meeting without further explanation.

Member Cofield stated that he takes his thoughts very seriously and was in the position of making presentations before the Planning Board or any other board and took them seriously. He added that he has been on the other side of the table before Duck and wanted the applicants to take the process seriously. He felt if they did, the Board will receive good and accurate information. He stated that he doesn't like an applicant coming before the Board and trying to present changes at the last second.

Member McKeithan thought that there were times where the tenant made the request and then other times the owner did. He added that at one meeting, he had requested that the owner be present since it involved parking. He thought both parties – the owner and the applicant – should be present for the meeting so it is clear what was going on. Chair Blakaitis thought the checklist had owners and applicants on it. Member McKeithan didn't think it did. Vice Chair Murray agreed with Member McKeithan's comments, but the issue is that the Board cannot make it a requirement that the owner be present when there are properties such as the Scarborough Lane Shops, the Scarborough Faire Shops or the Sanderling Inn as there isn't an owner but a company. Member Cofield stated that the principal from those companies can attend the meeting. Vice Chair Murray asked if that is a requirement that the Board is making. Chair Blakaitis pointed out that there was one earlier in this meeting. Vice Chair Murray noted that the owner wasn't present. Chair Blakaitis stated that he was. Member McKeithan didn't think it was the owner. Chair Blakaitis added that the person managed the entire shopping center. Director Heard concurred. Vice Chair Murray stated that he is suggesting that an accommodation be made for a representative of the owner. Member McKeithan stated that there could be a situation where the Board may not move forward because the owner isn't present, and the applicant does not have the authority. The applicant needs to know that if they are present on their own and the owner should be present as well, the Board may not be able to approve the application. Member Cofield agreed.

Member Cofield thought that everyone who comes before the Board should have the authority to speak for the owner. Member Whitman agreed. He suggested that the checklist state the applicant should obtain permission from the owner or a representative. Director Heard pointed out that the owner has to sign an application, but there is no requirement that the owner be involved other than to say that they approve of the request for the property. He stated that he would like to look at the last part of the checklist as he feels there is value in broadening the statement suggesting who needs to be present for the meeting. Member Cofield thought the owner needs to sign the application. If they are not present, they should designate someone to speak for him. Chair Blakaitis agreed. Council Liaison Britt stated that in the past, most of the time when it was that important or controversial, the owner was present for the meeting. He added that for something little, there is no need for the owner to be present.



Director Heard stated that he will make the changes to the checklist and bring it back to the Board at their August 8, 2018 meeting.

### **APPROVAL OF MINUTES**

#### **Minutes from the June 13, 2018, Regular Meeting**

Vice Chair Murray had a correction to Page 2 of the minutes.

Member Cofield moved to approve the June 13, 2018 minutes as amended. Member Whitman seconded.

Member Cofield stated that the June 13, 2018 meeting was a very long one and the minutes were extensive. He stated that he wants to thank Town Clerk Lori Ackerman for her work. Chair Blakaitis agreed, adding that Town Clerk Ackerman does a great job.

Motion carried 5-0.

### **OTHER BUSINESS**

None.

### **STAFF COMMENTS**

#### **Project Updates**

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

### **BOARD COMMENTS**

Chair Blakaitis thanked Director Heard for the detailed work that he does for the Planning Board.

### **ADJOURNMENT**

Member Cofield moved to adjourn the meeting. Vice Chair Murray seconded.

There was no vote.

The time was 8:36 p.m.

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