

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
January 9, 2019**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, January 9, 2019.

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.

Absent: None.

Others Present: Ben Vorndran and Bob Hovey.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for January 9, 2019 at 6:33 p.m.

**PUBLIC COMMENTS**

None.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**Conditional Use Permit 18-10: Application for a Conditional Use Permit to Convert 134 Square Feet of Retail Space to a Yogurt Shop (Eating Establishment) and Add a 275 Square Foot Outdoor Seating Area on the Duck Village Outfitters Property at 1207 Duck Road**

Director Heard stated that the applicant is requesting a conditional use permit to convert 134 square feet of retail space to a yogurt shop and add a 275 square foot outdoor seating area at the Duck Village Outfitters property. He stated that the property is presently zoned Village Commercial and contains the retail and storage areas for the business. He explained that the building was constructed in 2007 and contains approximately 1,552 square feet, with 937 square feet consisting of the retail space on the ground floor. He added that other areas in the building are used for storage, bathroom, and changing room. He noted that the rear of the property is enclosed by an eight-foot high solid fence and contains a storage area for outdoor equipment.

Director Heard stated that in July 2006, the Town Council granted a conditional use permit to Robert and Tanya Hovey for the construction of a new building with approximately 1,039 square feet of retail space on the ground floor and a second-floor office of 315 square feet. He pointed out that under the Village Commercial Development Option, the project was granted relief from standards for a rear building setback of 18.7 feet; front parking setback of 7 feet; south side parking setback of 2 feet; north side parking setback of 3 feet; and lot coverage of 64.8%.

Director Heard stated that the applicant is proposing to convert a portion of the existing retail space into a frozen yogurt shop with three interior seats. He stated that although listed at 1,998 square feet in the Dare County tax records, the building appears to contain approximately 1,552 square feet of functional space. He noted that using either measurement, the building size complies with the maximum building size standard of 5,000 square feet in the Village Commercial District. He added that the building is 27 feet in width and 40 feet in depth. Even though the space within the retail area will be redistributed differently, the size of the unit will remain the same under the proposed change of use.

Director Heard stated that the property is approximately 7,493 square feet, significantly smaller than the minimum lot size of 20,000 square feet for the Village Commercial District. He noted that since it is an existing, nonconforming parcel, the lot can be developed and used so long as the Planning Board finds that the lot is “of sufficient size to meet the requirements of the Dare County Health Department, to provide adequate siting for structures, and to provide parking, loading and maneuvering space for vehicles.” He stated that the existing development covers 64.8% of the lot, which exceeds the maximum lot coverage requirement of 60%. He added that the increase in the allowed lot coverage was granted during the project’s original approval under the Village Commercial Development Option and that the lot coverage will remain the same with the proposed change of use. He stated that the property currently has a single ingress/egress driveway 24.5 feet in width off Duck Road, which complies with the maximum width standard of 30 feet. He added that the existing access will remain the same under the proposed change of use.

Director Heard stated that the amount of parking on the site complies with the minimum parking requirement. He added that a compliant ADA space was provided in close proximity to the building entrance. He stated that Parking Space #1 and the adjoining passenger loading area were constructed to be ADA compliant and have a concrete surface. He added that Parking Spaces #2 through #7 have a stone/gravel surface and Parking Space #8 and the loading zone on the southern side of the building have a concrete parking surface. He pointed out that Town standards require a minimum setback of five feet from side property lines and 10 feet from the front property line for parking spaces. He noted that Parking Space #7 was located within the 10-foot front setback, about seven feet from the front property line. He added that every parking space on the site encroaches into the five-foot setback and that Parking Spaces #1 through #7 encroached as close as three feet from the northern side property line, while Parking Space #8 encroached about two feet from the southern property line. He stated that although they are nonconforming with the Town’s parking setback standards, the location of the spaces was approved under the Village Commercial Development Option in 2006. He noted that since the applicant is not proposing any changes to the parking layout, the spaces are approved to remain in their current location.

Director Heard stated staff was recommending approval of the conditional use permit to establish a frozen yogurt shop and associated outdoor seating, subject to the following conditions:

1. The Building Inspector and Fire Department must review and approve the proposed improvements for compliance with applicable codes.
2. The applicant must obtain a permit from the Dare County Health Department for the design and installation of the proposed wastewater treatment system improvements prior to the issuance of a building permit.
3. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
4. The applicant must obtain approval from the Community Development Department for any exterior lighting in the outdoor seating area, which must comply with the Town's lighting standards and may require a building permit.
5. This conditional use permit will expire in 12 months from the date of approval if the approved change of use has not been initiated.

Chair Blakaitis stated that in understanding what Director Heard put forth, no changes are being made to anything that was approved under the Village Commercial Development Option in 2006. Director Heard stated that there is a use change as well as the addition of the outdoor seating area, but that is not requiring physical improvements other than additional tables. Chair Blakaitis questioned if other items are proposed to be changed or are they permitted as they stand. Director Heard responded that no site changes are necessary.

Chair Blakaitis asked the applicant if he had anything to present.

Bob Hovey of 300 West Eden Street, Kill Devil Hills was recognized to speak. Mr. Hovey stated that Duck Village Outfitters has been in business since 1998. In 2006, they developed the subject property with the Duck Village Commercial Development Option, adding that they were only the second property to do that. He stated that he wants to try something different. He noted that it is his 21<sup>st</sup> year in business and he has seen a slowdown with more competition from the rental businesses. He stated that most of the people are renting their equipment online, so not nearly as many come to his store to rent items, which has caused a decline in retail business. He stated that they are looking to try something fun that Duck does not have currently. He thought it will benefit the visitors to have the option of having something like frozen yogurt and smoothies. He wasn't sure that any other places in Duck sell frozen yogurt or smoothies.

Member Cofield asked Bob Hovey if he owns a similar retail operation further down on the Outer Banks. Mr. Hovey stated that he owns a store in Salvo. He added that he had a store in Kill Devil Hills that sold recently. Member Cofield asked where people are buying their equipment online. Mr. Hovey stated that he works with a couple of different rental companies as far as being their preferred vendor. He added that most people will Google rental equipment. He noted that the majority of visitors to Duck are repeat visitors who have experience with renting from his store.

Member Whitman clarified that Bob Hovey uses a box truck to deliver his rentals. He asked if the truck is stored at the Duck location. Mr. Hovey stated that he uses the box truck at the Duck location for deliveries from his other location as well. Member Whitman asked where the box

truck is typically parked. Mr. Hovey stated that it is on the road most of the time. Member Whitman asked if any of the parking spaces at his store are for the box truck. Mr. Hovey stated that he does not like to keep the box truck on the premises, so he moves it to other locations.

Member McKeithan asked Bob Hovey to describe the proposed table and chair setup for the outdoor seating. Mr. Hovey stated that there are no particular guidelines with regard to the number of seats as it is just the amount of square footage. He stated that he has an area in between his property and the neighboring one that is 10 feet wide, which is the setback from his building to the neighboring property, which runs the length of the building. He added that he has a bicycle rack as well as a few trees that he planted there, leaving him enough room to put four tables out there. He noted that at one point he had some picnic tables out there, but presently only one is there. Member McKeithan asked if the tables will be permanently mounted or moveable. Mr. Hovey stated that they will be moveable. Member McKeithan asked if he proposes to maintain the outdoor seating arrangement year-round or during the tourist season. Mr. Hovey stated that he will likely leave the tables out there year-round.

Member Whitman asked if there will be landscaping between the gas station and Duck Village Outfitters so there will not be any accidents with vehicles jumping the curb and hitting the tables. Bob Hovey stated that there is a curb in place. Member Whitman stated that if someone pulls up at night, the vehicle's headlights will shine on the tables. Mr. Hovey stated that he likes to keep the area open as it currently exists. He stated that if he has to, he can plant something there. He added that Fire Chief Donna Black is concerned about putting anything combustible near the property line, so he wasn't planning to put anything there.

Member Cofield stated that it struck him as a very straight-forward proposal. He stated that he likes the fact that there aren't any parking issues and the building accommodates the proposal. Chair Blakaitis stated that everything is pretty much the same except for a slight change. He agreed with Member Cofield's comments.

Member Cofield moved to recommend approval of Conditional Use Permit 18-10 as presented with the conditions listed. Chair Blakaitis seconded.

Motion carried 5-0.

## **APPROVAL OF MINUTES**

### **Minutes from the December 12, 2018, Regular Meeting**

Member McKeithan moved to approve the December 12, 2018 minutes as presented. Member Cofield seconded.

Motion carried 5-0.

**OTHER BUSINESS**

**Nominate Representative to Duck Land Use Plan Advisory Committee**

Chair Blakaitis reminded the Board that the Town Council has created a CAMA Land Use Plan Advisory Committee and passed a resolution which requires people from various qualifications to serve on the committee. He stated that one member will need to be from the Planning Board, one from the Board of Adjustment, one from Council, and two at-large members of the community. He stated that the Board is asked to submit to Council a candidate to be on the committee. He added that there have been two requests at the Planning Board level by Member Sandy Whitman and by Member James Cofield to serve on the committee. He suggested that the Board not vote on who they want to send but send both to Council, similar to what the Board of Adjustment did earlier in the day at their meeting. He stated that he does not wish to choose who should serve but will send Member Cofield and Member Whitman to Council for their approval.

Member McKeithan moved to send Member James Cofield and Member Sandy Whitman as nominees to the CAMA Land Use Plan Advisory Committee. Chair Blakaitis seconded.

Motion carried 3-0 with Member Cofield and Member Whitman recused from voting.

**STAFF COMMENTS**

**Project Updates**

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

**BOARD COMMENTS**

Chair Blakaitis requested that at future meetings, the Board members sit five across at the table just like the Council seating to make it easier for members of the audience to see the members of the Board.

**ADJOURNMENT**

Member Cofield moved to adjourn the meeting. Member McKeithan seconded. There was no vote.

The time was 7:19 p.m.

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