

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
May 9, 2018**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, May 9, 2018.

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

Absent: Tim McKeithan.

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

Others Present: Philip Ruckle from the *Coastland Times* and Bob Fitchett.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for May 9, 2018 at 6:31 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Text Amendment: Maximum Residential Building Size/Occupancy

Director Heard stated that the Board's last meeting, there was discussion on the options and alternatives that the Board wishes to consider. These concepts were presented at the Town Council Retreat and the Board's April 11, 2018 meeting. Based on the conversation with the Board, staff has created a draft ordinance. He noted that it is only for the purpose of discussion at this meeting, but if it is the desire of the Board, the ordinance can be forwarded to Town Council for their consideration. He stated that the main intent is to get something on paper to see how it will work using the concepts that the Board discussed.

Director Heard stated that one concept has to do with using typical development standards like setbacks, building height and lot coverage to see if they can be used effectively. He added that the second concept is looking at the Nags Head approach which includes a relatively small maximum house size, but gives allowances to exceed the size if a homeowner complies with a handful of standards. He noted that it is an incentive-based approach in that a homeowner can build a larger house if they comply with additional development standards.

Director Heard stated that the Board discussed the possibility of regulating the size of septic tanks and he shared with the Board that the Town attorneys are not in favor of that idea as they feel that septic standards could indirectly tie back into the number of bedrooms. They also feel that if challenged, there could be a weakness in terms of something that the State Health

Department regulates, which may pre-empt the Town from doing so. Director Heard noted Board comments at the last meeting suggesting that the Town has not always followed what the Town attorney has recommended and sometimes has come up with some good solutions. As the concept was something that the Board wanted to consider, he included it as one of the criteria in the draft ordinance.

Director Heard stated that he used the same figure that the Town of Nags Head uses regarding wastewater capacity, which is 1,080 gallons per day. He explained that it is the equivalent of a nine-bedroom house, adding that the calculation is basically 120 gallons for each bedroom. He stated that he chose that figure, because it happens to be the largest house the Town presently allows under the 18-occupant maximum for the largest lot sizes in Town.

Director Heard stated that the draft ordinance outlines the intent and definition of a large residence. He stated that the Town of Nags Head set a basic, single maximum size for their homes. Because Duck has been comfortable with using a tiered approach based on lot size in the past, he drafted the ordinance based on that approach. He explained that rather than having a single figure, there are five tiers, similar to what the Town had previously. He stated that the reason for the sizes selected in the draft ordinance is that they accommodate, in all cases, at least 75%, and for smaller lots, over 90% of the existing homes. He felt that, in looking at it, 80% - 90% of every project that has ever come through the Town for new construction would be accommodated by these standards and that is a good cutoff point. He added that it is only the residences on the extreme upper end of the tiers that will have to decide whether to make their home smaller to fit within the size or achieve the extra standards that are laid out for larger homes. He pointed out that there is no magic or anything definitive with regard to the sizes proposed and staff can look at other options if the Board wished and let them know how it will change the ordinance.

Director Heard stated that the draft ordinance proposes an administrative approval process, which is the same with any house currently, adding that there will not be a special process if the house is under the size limitations in the ordinance. He stated that if a homeowner is looking to build something larger than the sizes listed, then it would be classified as a large residence and must comply with other criteria in the ordinance. He explained that a larger residence can only be built in instances where there is a conforming lot, which was 15,000 square feet or greater, as the ordinance will not permit larger residences to be constructed on existing, nonconforming lots.

Director Heard explained that as houses get larger, there begins to be an appearance issue with the mass of the house from the road and adjoining properties. He stated that one way to minimize this impact is to look at larger setbacks. He noted that he didn't want to make the difference too substantial and overly restrictive, but proposes increasing setbacks by a couple feet for houses up to 6,000 square feet and by five feet for houses over 6,000 square feet. He reiterated that it is attempting to minimize the proportions of massiveness of the structures as well as providing a little relief from adjoining properties.

Director Heard stated that there would be landscaping requirements for larger houses. He explained that the Town already has canopy coverage requirements of 15% for residential properties. He added that the ordinance will put a standard to maintain 10% of lot area of existing natural vegetation, which would only apply if there is natural vegetation. He stated that

it will also bump the vegetative lot coverage up to 20% from 15%. He explained that if an owner is building something larger or more massive, the additional vegetation is a way of buffering it and lessening the impact it may have visually as well as the associated impacts to neighboring properties and from the street.

Director Heard explained that the ordinance states that a homeowner cannot have a facade greater than 30 feet in length without breaking it up in some way with a vertical indentation, porch, or other architectural feature. He stated that the reason the Town can add this design standard is that it is not a requirement for a basic residence, but an incentive or trade-off for homeowners seeking to build a larger home. He pointed out that this standard will not be applied to the vast majority of projects that staff would see and is only if someone is proposing to build something that is significantly larger.

Director Heard thought it is prudent to put in an overall maximum size in the draft ordinance. He stated that there has never been a house built in Duck since incorporation that has exceeded 10,000 square feet. He felt that the number is a fair maximum size for the ordinance.

Chair Blakaitis asked, besides the house in Palmers Island, what the largest-sized house in Town. He thought it is about 8,000 – 9,000 square feet. Director Heard stated that he isn't sure, but can research it if the Board wants. He stated that when staff looks at site plans and tries to figure out what will be allowed, there could potentially be houses that are significantly larger than 10,000 square feet built on some of the largest properties, or if someone combines two parcels.

Director Heard stated that, without an overall cap, the Town could see something extreme occur, which may or may not be the desire of the Board and Town Council. He stated that he chose to offer the suggestion that there be an overall cap at 10,000 square feet. He added that he felt it is reasonable since the Town has never had as house that large constructed since incorporation. He thought it is a fair limit and in line with the housing market.

Chair Blakaitis asked how the 1,080 gallons per day for wastewater would be enforced. Director Heard stated that this ordinance is not tied to a health department permit, but is a Town standard. Director Heard stated that staff will review the septic permit at the time the home is permitted. The wastewater capacity will be on there so staff can evaluate what it says on the permit. He added that it gives the Town the right to enforce it based on the Town's standard.

Council Liaison Britt noted that the Town had challenges based on occupancy. Director Heard stated that the reason it is a challenge is because the existing ordinance is specifically worded to tie into the health department permit.

Vice Chair Murray pointed out that Director Heard is wording the ordinance in gallons per day and not in a tank size, which is related to gallons per day. Director Heard stated that the wording in the ordinance was: "...the total maximum permitted capacity for a property..." He explained that if a homeowner chose to install multiple tanks, it will still cover all of it. He added that it is intended to capture Vice Chair Murray's suggestion from the previous Board meeting.

Vice Chair Murray asked what will stop an applicant from applying for a health department permit in compliance with the draft ordinance, obtaining a building permit and returning to the

health department to amend their permit. He explained that when the previous applicant first applied for the building permit, they had offices and libraries in the house that were later converted to bedrooms. He asked what mechanism the Town had in the ordinance to stop them from going back to the health department, amending the permit to change the libraries and offices to bedrooms and putting in more tankage (aside from the permit with the Town). He noted that the building inspector does not review tank size. He noted that it is essentially what happened with the house on Baum Trail as they just named the rooms differently.

Member Whitman asked if the homeowner's Certificate of Occupancy indicates that it is a nine-bedroom house and asked if they decide to sell the house and it has 12 bedrooms, what would happen. Director Heard noted that the Town is not involved in the sale of a home. Vice Chair Murray stated that the health department permit determines the number of bedrooms. Director Heard stated that staff does not typically review a separate health department permit as staff doesn't usually see it. Chair Blakaitis noted that if it is a change from the original proposal, it will require a permit. Vice Chair Murray stated that the Town can deny a Certificate of Occupancy.

Vice Chair Murray stated that the Board has gone round and round discussing different aspects and this ordinance seems to capture it as best as it possibly can. He added that he does not think about the post-Certificate of Occupancy necessity for an additional land disturbance permit. He noted that the Town of Nags Head ordinance specifically mentions accessory structures but the draft ordinance does not. Chair Blakaitis pointed out that it did. He added that accessory structures have to be in the ordinance as they have to be approved. Vice Chair Murray pointed out that it doesn't state expressly that it includes accessory structures, it just states "total heated area for residences". Director Heard referenced where the draft ordinance includes any enclosed living space that is present in accessory structures located on the same lot.

Vice Chair Murray stated that someone can purchase and recombine multiple oceanfront lots and recreate an historic coast guard lifesaving station outpost, consisting of a main house and outbuildings. He added that they will be subject to the 10,000-square foot cap total, as the ordinance is written. Director Heard stated he is correct. Vice Chair Murray clarified that they would have to provide the additional canopy coverage, but that it seems believable because of the lot size. Vice Chair Murray stated that he is trying to think of instances where someone may want to build a residence for reasons that are not a rental machine and things that may be an asset to the community. He thought they will be able to do that, but under the draft ordinance, will be capped at the 10,000 maximum. Director Heard stated that it doesn't change anything related to the number of dwellings as they will still be limited to the main house and whatever the accessory dwelling ordinance allows. Chair Blakaitis pointed out that they can have accessory dwellings. Director Heard stated that it does not create the ability to create a cottage court where there are five, different small cottages on a lot.

Vice Chair Murray stated that he can think of reasons to come up with thousands of square feet of space. He added that Duck has a certain economic model currently for people that invest in the community. Chair Blakaitis stated that the Board can define it a little more. Vice Chair Murray wasn't sure if the Board needs to, but suggested potentially putting a conditional use permit clause in the ordinance. He asked if there is any way the Board can make some exception to the 20% vegetative coverage for oceanfront lots. Permit Coordinator Cross noted that the

Sanderling subdivision had a lot of flag lots. Vice Chair Murray stated that flag lots are at a major disadvantage for canopy coverage because they have a large leg that was designed to be the driveway where trees cannot be planted, but count as square footage. Chair Blakaitis asked Permit Coordinator Cross if she is sure they are flag lots. He added that in certain cases there is one driveway for four houses – two on the oceanfront and two located behind them. Permit Coordinator Cross stated there is a difference. Chair Blakaitis agreed, adding that southern Sanderling has two sections with shared driveways. He wasn't sure if there are real flag lots, unless there are some in the northern section. Permit Coordinator Cross thought Chair Blakaitis is correct, adding that they are probably shared driveways.

Vice Chair Murray stated that he doesn't think the Board needs to write an ordinance for one lot, but is curious if there are more in Duck, because it is very hard to obtain canopy coverage when a third of the lot is comprised of a driveway. Director Heard suggested that the Board look at the top of Page 3 of the draft ordinance. He noted that there is a clause that the Town of Nags Head's ordinance has that he included in the draft ordinance, which states that if a lot has unique characteristics, it allows oceanfront properties to preserve the dune (rather than vegetative) features, subject to the Zoning Administrator's determination.

Vice Chair Murray understood the intent of building facades. He asked if it needs to be more clearly defined. Chair Blakaitis stated that it is fairly general. Vice Chair Murray agreed and wondered if it will be a problem. Director Heard stated that he can pull out any historic preservation ordinance and get into greater detail about building design in this ordinance, but then the Town will be dictating design to property owners. Chair Blakaitis thought Director Heard is trying to stay away from that with the draft ordinance. Director Heard stated that Vice Chair Murray's point is well taken as the ordinance could be subject to broad interpretation. He stated that if there is some sort of attempt made that breaks up the façade in some way, it is achieving the intended goal. Vice Chair Murray thought that any attempt could qualify. Chair Blakaitis agreed.

Chair Blakaitis thought it sounds like Vice Chair Murray likes the ordinance as it is written since it incorporates items the Board discussed at their last meeting. Vice Chair Murray agreed, adding that he likes the conditional use permit idea for larger houses. Chair Blakaitis asked the other Board members for their thoughts.

Member Cofield stated that he likes the Town of Nags Head approach in which various factors will be looked at. He thought it is the most comprehensive approach to the issue. He added that he likes that Director Heard combined it with the standard features to make it a hybrid approach. He stated that he has a question about the vertical features. He thought there could be additional language without trying to define it further. He noted that the vertical does not get at what the Board addressed as it doesn't cover cantilevers and structures that aren't in the same plane, but may achieve the intent. Chair Blakaitis stated that if the Board wants to give staff a little more leeway, the word "vertical" can be stricken from the ordinance and be replaced with "significant architectural elements". Member Cofield stated that he would prefer that.

Member Cofield stated that he was fine with the draft ordinance until he got to the part about maximum size. He added that he had a problem with that. He doesn't think the Town needs to be in the business of telling someone what the maximum size should be. He thought the Board

can cover the objectives that they are discussing by incorporating other features into lot size. He thought that other things can capture the elements that the Board is trying to preserve. He reiterated that he has a concern with maximum size standards. He thought Vice Chair Murray's suggestion at the last meeting of a conditional use permit is a way to incorporate someone who wants to build a house that is over 10,000 square feet. He didn't think the assumption held that someone who is building an 11,000-square foot house will rent it. He stated that it was clearly the model for most houses on the Outer Banks, but it isn't every house. He stated that he built a house that was over 10,000 square feet and it wasn't a rental. He added that the rooms were large and incorporated room types that are not found in an average house. He stated that if the Board struck maximum size, he will be fine with it. He added that if the Board considers a table using lot size for a house over 10,000 square feet, there may be 30-50,000 square foot lot sizes. He stated that most people who build that size house will want a large lot. He added that the other way to deal with it was for houses over 10,000 square feet to be allowed through a conditional use permit.

Chair Blakaitis asked what could be done with the chart in the draft ordinance. He asked if the chart should be left in as is. Member Cofield stated that the chart is fine, but another box should be added to it. Chair Blakaitis asked if maximum size should be removed from it. Member Cofield opined that it should. Vice Chair Murray noted that the 25,000 square foot category will have to be book-ended to something. Director Heard agreed and added that a conditional use permit could be another way to handle larger residences.

Member Cofield asked if a maximum size house can be over 10,000 square feet, but require a 50,000-square foot lot or some other amount that the Board comes up with. Chair Blakaitis stated that additional lot size can be put in or make approval subject to a conditional use permit. Vice Chair Murray agreed. Chair Blakaitis thought it is a good idea. Member Cofield stated that if there is a fairly large house with an indoor pool, it would likely be over 10,000 square feet.

Member Whitman asked how many lots in Duck are still buildable for a 10,000-square foot or greater home. Director Heard stated that every lot in the Palmer's Island subdivision is an acre or more in size. Chair Blakaitis pointed out that it is now the age of tear-downs, so one really doesn't know how many lots are buildable. Director Heard stated that the real estate market will reach the point where people will buy two adjoining properties, combine them and construct something much more substantial. Chair Blakaitis stated that he is seeing more tear-downs in the Sanderling subdivision. Vice Chair Murray added that Buffell Head Road is on the cusp of tear-downs because the lots are so shallow. He noted that what people thought is oceanfront development cannot happen on those lots. Director Heard stated that there are opportunities on the sound side for development as there are multiple 20,000+ square foot lots in a row that are undeveloped. He added that there are a number of areas in Town where that scenario exists.

Vice Chair Murray asked if people want to remodel their home, is the portion of the house that takes them over the threshold the only portion of the house that would be subject to the increased setbacks. Chair Blakaitis stated that it would be for the entire house. Director Heard concurred that the greater setback would apply to the entire house. The homeowner would have to apply for a variance for or a special exception if they qualify. Vice Chair Murray clarified that they will in order to leave the existing house on the property. Director Heard stated it will apply if the existing house would become nonconforming as a result of the addition.

Chair Blakaitis asked if a conditional use permit will be needed for a larger house. Vice Chair Murray stated that he likes Member Cofield's suggestion. Director Heard clarified that if the Board is looking at that concept, the table in the draft ordinance could be amended show lots at 25,000 to 39,999 square feet as well as adding another line for lots that were 40,000 square feet or greater, and not having a maximum size. Member Cofield stated that is fine with him, but if Director Heard wants, the lot size can be decreased more. He added that if there is a large lot, there is no reason to restrict the homeowner to building a 7,000-10,000 square foot house. He stated that he does not assume if someone built a 10,000-square foot house, that it will be a rental property.

Director Heard stated the reason he is asking the Board about the limits is that a lot size category at 50,000 square feet would not apply to almost every lot in Town. Chair Blakaitis stated that he isn't sure about it. He doesn't think there is anything wrong with a maximum size house, but thinks the Board needs to consider the CAMA Land Use Plan and the 2027 Vision. He thought that a house bigger than 10,000-square feet is inconsistent with those documents.

Vice Chair Murray stated that he understands Chair Blakaitis' concern, but wants to point out that Member Cofield is suggesting that in order to do that, one will have had to buy oceanfront lots due to the nature of them sitting in a straight line. Chair Blakaitis asked why bother. Vice Chair Murray stated that it is consistent with the CAMA Land Use Plan, if that is the case, because combining four lots would take four houses off the table. He explained that if an individual buys four lots to build one house, the density will be decreased. Chair Blakaitis disagreed with Vice Chair Murray. He stated that if an individual has five lots and built a large house on those lots, they are no longer looking at the atmosphere of a small town, which was what the 2027 Vision and CAMA Land Use Plan call for. He stated that he isn't sure if he cares and is just playing devil's advocate, but thinks it deserves consideration.

Member Cofield noted that the size of a house has nothing to do with a small town. Vice Chair Murray thought it is a compelling reason to make it a conditional use permit. He explained that if it is a conditional use permit, the Board will not have to hear about it again when someone recombines lots or finds a large lot and creates a loophole. He added that the Board will hear about it as a matter of course as opposed to once it was completed. He thought that once a developer or property owner is that far off the reservation, the Town will be seeing 12,000-13,000 square foot home ranges. He thought there is a compelling interest for the Town to have some input in how that development happens. He thought once it gets to that threshold, requiring a conditional use permit becomes reasonable. He thought that when it is a specialized project, the Planning Board could have some input. Member Cofield thought that there should be specific things that the Board is looking for, such as the size of a lot and vegetation. He added that as long as the owner is meeting the criteria, there will not be an issue.

Chair Blakaitis stated that he does not object to a conditional use permit, but is pointing out about the CAMA Land Use Plan and 2027 Vision. Vice Chair Murray asked if the requirement for a conditional use permit will allay Chair Blakaitis' concerns. Chair Blakaitis stated that he isn't sure if his concerns are valid, but is just bringing it up. He added that if he reads both the CAMA Land Use Plan and the 2027 Vision, he can find a problem with a house as large as 40,000-square feet. He thought that could cause a problem.

Member Cofield asked what is the easier way to do things. Director Heard stated that either option works. He explained that one option can be as simple as adding an additional line to the table to establish a lot size and cutoff with no maximum. He stated that it is fairly simple and straight-forward and keeps everything as an administrative process. He stated that the other change involves a different process, but the Board and Council may find value in doing that for projects worthy of special review. He stated that the conditional use permit will be a little more complicated as staff will have to draft some criteria for the Board to consider.

Chair Blakaitis thought the consideration will have to be for lots over 25,000 square feet. Director Heard stated that lot size can be one of the criteria. Even if it is done as a conditional use, a minimum lot size can be established. He stated that there are all kinds of items that can be factors that to be considered during the conditional use permit process.

Member Cofield stated that he will be fine with adding another category to the table on Page 2 of the draft ordinance. He thought that by looking at additional features, such as landscaping, the Board can capture that in going above 10,000 square feet, and he is fine with that. He added that he wants to make a large house fit.

Chair Blakaitis suggested putting the additional line in the draft ordinance, but requiring a conditional use permit for anything over 10,000 square feet. Vice Chair Murray stated that his concern is if the lot was over 15,000 square feet, depending on the architectural design, it should be multiple buildings. He didn't think it can be written into an ordinance in any responsible way. Chair Blakaitis clarified that that is why Vice Chair Murray wants a conditional use permit process. Vice Chair Murray agreed. Chair Blakaitis thought it is a good idea.

Member Whitman questioned if a lot can have a main house and two guest houses. Chair Blakaitis pointed out that guest houses have a limit on size. Vice Chair Murray agreed, adding that based on the Town's current ordinance, it would not be practical. He thought the draft ordinance is pretty concise and thought it will be a lot of work to design a house that would probably never be built. Member Cofield reiterated that if there is a large house and the owner puts in a decent sized indoor swimming pool, they will be over 10,000 square feet. Director Heard noted that a house of that scale has never been built in Duck since incorporation 16 years ago. Chair Blakaitis stated that there is a house in Southern Shores with an indoor pool that is not 10,000 square feet. Member Cofield asked how big the house is. Chair Blakaitis stated that it isn't that big. Member Cofield stated that he's been in a few homes with indoor pools that are pretty large. Chair Blakaitis agreed.

Chair Blakaitis stated that he appreciates that the Board liked the draft ordinance because he thinks they are discussing things that they can put their teeth in. He noted that there aren't any great changes to the draft ordinance. Vice Chair Murray agreed.

Council Liaison Britt stated that parking layout can be a criterion that the Board wants to consider. He reminded the Board that one of their biggest objections in the past were huge parking lots in front of houses. He thought if the Board wants to go bigger, something needs to be done to break up the parking lot. Director Heard agreed with Council Liaison Britt's comments.

Member Cofield also agreed with Council Liaison Britt's comments. He thought that with large houses, the Board should consider all the elements of the property to make sure everything fits in. Chair Blakaitis thought this is a good reason to have it through a conditional use permit.

Council Liaison Britt noted that one of the biggest battles in Town is the use of a house. He stated that the question has been if a 10,000-square foot house be used as a primary house or rental house. He stated that the Town struggles with this distinction. He noted that the use does matter and looking at it from a conditional use standpoint, it is obvious what it will be used for from the basic design. He pointed out that every situation is unique. He thought there are situations that will not apply to everything in the draft ordinance.

Vice Chair Murray asked if there is a way to write the conditional use portion so that it is similar to the Village Commercial Development Option conditional use permit. He added that one can look at the normal ordinance, use it as a guideline and then come to the Board to make their case. Chair Blakaitis agreed. Director Heard stated that he saw a distinct difference in that the Village Commercial Development Option is for a very specific area of Town that has a very different atmosphere and character to it. He added that it is only applied in that area, whereas the other will potentially apply to virtually anywhere in Town. He stated that there needs to be some criteria in place to validate why the Council is granting something in one application versus another where the members may feel differently.

Vice Chair Murray thought the basis isn't the square footage of a house, but the lot size. He stated that it is asking a lot of the applicant is willing to go to whatever lot size threshold that is set. He noted that a homeowner will either have to buy a house in a subdivision with large lots or have to combine multiple lots, which means there will be a very long due diligence period or pay twice the cash of any applicant to purchase the lots in and hope they can do what they want to do. He added that it doesn't seem like it will happen that often. Director Heard didn't think it will happen often, but thought the conditional use permit will need to be based on the square footage of a house and not the lot.

Vice Chair Murray thought it needs to be based on both. He stated that whatever the threshold becomes, in order to apply for a conditional use permit, the lot has to be over 40,000 square feet and the owner will have to be applying for a house that is over 8,000-10,000 square feet. Director Heard didn't think it needed to be that complicated. He stated that the lot size can just be one of the criteria under the conditional use permit. Council Liaison Britt thought it should just be for house size. Chair Blakaitis thought the criteria is house size as that is what the Board is discussing.

Director Heard stated that he doesn't see the need to change both the table and create a conditional use permit if it isn't necessary. Chair Blakaitis asked how it could be worded. Director Heard stated that he would remove (D)(6) from the draft ordinance and add (E) containing standards for a conditional use. This section could describe the criteria and conditions for any house that is 10,000 square feet or greater and list the criteria for that type of proposal. He added that lot size can be one of the criteria.

Council Liaison Britt stated that the maximum size in the table for a 25,000-square foot lot is for a 7,000-square foot house. Director Heard noted that there have only been three houses in Town's history that have been over 7,000-square feet. Council Liaison Britt suggested that if the Board is going to do it at 10,000-square feet, they can do it at 7,000-square feet instead since there have been so few homes of that size. Chair Blakaitis stated that it will soothe the CAMA Land Use Plan argument.

Member Cofield stated that Page 2 of the chart suggests that the maximum size house is 7,000-square feet. He asked if it has to be changed in some way. Council Liaison Britt thought it can be administratively handled in that if it is above 7,000-square feet, it will be via a conditional use permit. Member Cofield thought the language should state: "...except for 6E..." Director Heard agreed with that reference. Member Cofield stated that his suggestions for criteria for a conditional use permit include the design features of a house, lot size, landscaping, setbacks and parking. Chair Blakaitis noted that these are not things that will be put in this ordinance, but addressed during the conditional use permit review. Member Cofield thought there needs to be some criteria outlined in the ordinance. Chair Blakaitis disagreed, adding that the Board just discussed that anything above 7,000-square feet will need a conditional use permit. Director Heard stated that there should be criteria in the ordinance.

Vice Chair Murray noted the list of requirements that Member Cofield wants added to the draft ordinance, which he agreed with. Council Liaison Britt stated that they are setbacks, landscaping, parking, and architectural massing. Director Heard thought that a minimum lot size could also be added. Council Liaison Britt thought lot size will already be in there. Member Cofield stated that he would like to see a difference in the lot size for an 8,000-square foot house as opposed to an 11,000-square foot house. Council Liaison Britt agreed. Member Cofield thought, generically, lot size can be added as a condition for the conditional use permit.

Vice Chair Murray asked about the factor by which square footage is increased in each category in the table. He noted that it goes from 1,000 to 1,500. Director Heard stated that he has a list of every house that has been built in Duck and based the amounts on the sizes of houses built in each category. Vice Chair Murray understood, but pointed out that it isn't a mathematical factor that the Board can use as a guideline. Council Liaison Britt noted that there will be a base criterion. Chair Blakaitis agreed.

Chair Blakaitis asked if the draft ordinance can be voted on at this meeting. Director Heard suggested that he put something together to bring back to the Board at their June 13, 2018 meeting for consideration. Member Cofield suggested that it be sent to the Board before the next meeting for their review.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Minutes from the April 11, 2018, Regular Meeting

Vice Chair Murray had a correction to Page 12 of the minutes.

Chair Blakaitis moved to approve the April 11, 2018 minutes as amended. Member Cofield seconded.

Motion carried 4-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of May 2, 2018 Town Council Meeting

Director Heard gave an update on the May 2, 2018 Council meeting to the Board and audience.

Project Updates

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

BOARD COMMENTS

Vice Chair Murray stated that he spoke recently with Town Manager Chris Layton and determined that the Board needed to discuss this item instead of having Council ask the Board. He stated that the Board has attended lunch and learn meetings and received a lot of background information regarding the procedures for applications that the Board is hearing. He felt it will reduce tension in meetings as well as help applicants if there is some type of standard application or definition regarding what a conditional use permit is. He explained that for people applying for a conditional use permit or variance, it should be clear what constitutes a compelling interest or reason to grant relief or, in the case of a variance, what constitutes a hardship. There can be a form for the applicant sign it to signify that they understand what they are bringing before the Board. He felt it will help the Board potentially eliminate some of the instances where people do not understand what they were applying for.

Vice Chair Murray felt that staff might be preparing the applicants better if they are able to give them a recommendation for representation at the meetings. He gave an example that if the applicant meets one threshold, it is normal, even in a commercial environment, for an applicant to be their own representative. However, if the development reaches a different threshold, then the applicant will be told they need a professional to represent them at the meeting due to the level of detail that the Board typically requires. Chair Blakaitis pointed out that Director Heard can do this at his discretion.

Vice Chair Murray thought that different Planning Board and Council members have different expectations. So, he felt that they should be shared with Director Heard in a more formal way. He noted that Member Cofield had asked for additional survey information and at times the Board has asked for information when the applicant was representing themselves, and they were

unable to furnish the information at the meeting. He noted that it isn't because the information isn't necessarily in the agenda packet, but when the Board asks for a clarification, both parties aren't clear on what is being asked.

Vice Chair Murray felt that the Board needs to make every effort to set an applicant up for a successful approval. He added that if it happens in a more formal way, then everyone is on the same page. He noted that nothing increases the tension in a meeting than staff or the Board having to point out that something is factually untrue. He stated that he is looking for a way to eliminate some of those corrections that are necessary.

Director Heard stated that with regard to a variance, staff strongly advises anyone that is given an application to talk with him as they are putting the application together to explain what the Board of Adjustment will be looking for. He noted that a variance is unusual and not something that people deal with every day. He stated that the criteria are very specific and spelled out in State Law, which the Town Code mirrors, as far as what the applicant needs to show and what findings need to be made. He noted that this is already being done. Chair Blakaitis thought that sometimes people think they can do something, but do not have the right person with them.

Director Heard stated that, as far as a conditional use permit, or in the case of Roadside Bar & Grill, it was a Village Commercial Development Option, and for that there are not specific guidelines. He stated that he sat down with them and talked about the things that they need to look at. He added that the Village Commercial Development Option involves a trade-off in that something has to be offered in order to make things work. He stated that it can be difficult, and even inappropriate, for him to look at a proposal and offer his judgment on behalf the Board and Council. He added that it is a dangerous area, particularly with a quasi-judicial situation. He stated that offering design assistance makes it uncomfortable for him and the applicant if the Board doesn't agree with his advice.

Director Heard stated that for a conditional use permit, there are not hard and firm criteria, so it becomes a little more challenging when guiding someone. He added that he can talk about more general things, such as the Board's review of a similar project and what the outcome was.

Chair Blakaitis clarified that Vice Chair Murray is looking for something that will make the flow easier between the applicant and the Board as well as Director Heard understanding exactly what he's supposed to do. Vice Chair Murray agreed. He added that he is not looking for input on what will be approved or reading the minds of the Board members. He stated that he wants an acknowledgement that information was provided. He explained that when he obtains a building permit, he has to sign an acknowledgement of the list of common inspections, which is the grounds for charging for a permit fee. He stated that he is talking procedurally as he wants the applicant to understand and thinks it should be in writing, so there is a common understanding. He pointed out that he isn't suggesting that the Board give the applicant input on what may or may not be approved, but wants a checklist, letting the applicant know what to expect as well as what is expected of the applicant. Director Heard clarified that Vice Chair Murray's thoughts are more process than content. Vice Chair Murray agreed.

Chair Blakaitis clarified that Vice Chair Murray is saying that it would be nice to obtain an initial on a piece of paper. Vice Chair Murray agreed, adding that he wants the paper to be useful to the applicant.

Vice Chair Murray pointed out that there appears to be a class of conditional use permit applications that require professional help and a class that do not. He understood that the Board cannot require the applicant to obtain professional services, but felt that it may be helpful to the applicant to point it out. Director Heard stated that in the Roadside situation, staff met with the applicant and pointed out the deficiencies in the application and the applicant chose to move forward with the original application.

Council Liaison Britt stated that when someone comes in once a year or once every five years for a business, it can be an intimidating process. He thought that anything that can be done to make it clearer will help. Vice Chair Murray noted that it is intimidating at times, but other times it isn't intimidating enough. He stated that he doesn't want an applicant to come before the Board unprepared, because then they are wasting their time as well as the Board's. He stated that the Board is not present to deny applications, but to approve them. Member Cofield thought the Board is present to review and make a judgment on the applications. He stated that he doesn't consider himself present to approve applications. Vice Chair Murray disagreed. He thought the Board is present to review and give their recommendation to Council. Chair Blakaitis clarified that Vice Chair Murray wants to make it as easy as possible for the applicants. Vice Chair Murray agreed. Member Whitman noted that there have been a number of applicants that came before the Board and weren't sure what they were supposed to be doing. Vice Chair Murray agreed.

Vice Chair Murray stated he wanted the Board to come to a consensus regarding what happened with the applicant with the ice cream shop. He explained that the seating of Tullio's Bakery became part of the discussion, which blindsided the applicant. He felt that the Board needs to clarify how far afield of an application in front of the Board can go and that the Board needs to let the applicant have an expectation on it. He thought there needs to be a standard so that it is fair to the Board and the applicant.

Member Cofield thought that an applicant should know what is expected of them for what they are applying for. He stated that it has been his thinking that Director Heard has done that fairly well when he meets with the applicants. He thought it was problematic to put something in writing that expects an applicant to do something, then if something is left out and the Board asks about it, the applicant can say they weren't told that the item left out is a requirement. He thought it could be problematic to try to do what Vice Chair Murray is suggesting. He stated that he has a very clear expectation for every applicant that comes before the Board, which is that the applicant is present and available for questioning regardless of whether or not they have representation with them.

Member Cofield stated that his expectation is that the information presented to the Board is factual and correct. He stated that he does not want to have to guess at the information presented, which came up regarding parking at Loblolly Pines. He didn't think it was incumbent upon the Town to guess at the number of parking spaces. He thought it is the owner of the property that is the applicant and not the business. He thought the question about Tullio's

Bakery seating was appropriate because it deals with parking. He added that if Tullio's just added the seating, there is a parking requirement that goes with it, which impacts the total parking that is required. He reiterated that he thought the question is appropriate. He stated he expects complete, accurate information and does not want to have to guess at the information when making a decision.

Vice Chair Murray stated that if the issue is to be discussed at a future meeting, he does not want to further discuss it at this meeting. He stated that he is proposing that the Board discuss it. Chair Blakaitis thought the Board should make a list and send it to Director Heard. He added that if the Board has to sit down amongst themselves or do it via email, it should be done. Vice Chair Murray thought the Board has to ask permission first. He stated that he is asking the Board if they are interested in asking Council. Chair Blakaitis stated that he would like to review everything as a Board to see if it is something the Board wants to do. Council Liaison Britt noted that if the Board feels it is important, Council will likely allow it. Chair Blakaitis agreed.

Member Cofield thought applicants for a reasonably complicated project need to know that parking will become an issue since it's in the Town's ordinance. He stated that the Board had an expectation that they are looking at a fair representation of the parking spaces. Chair Blakaitis thought the entire Board felt that way and every applicant knows that they will have to deal with parking requirements.

Chair Blakaitis thought Vice Chair Murray made some good points and anything that can help the Board is good. Vice Chair Murray stated that he wants some acknowledgment from the applicants. He noted that the Board reviews applications monthly or bi-monthly and it seems that there are parts about it that are frustrating for the Board since the information is incomplete. He felt that the Board needs to remember that for the applicants, this is something that is done very infrequently.

Vice Chair Murray stated that he will come up with a list for Director Heard and then it can be discussed briefly at a future meeting. Member Cofield stated that he is fine with the concept, but has some reservations about a checklist that an applicant can point out that an item isn't on the checklist. Vice Chair Murray stated that he isn't envisioning a checklist of things that an applicant needs to bring to a meeting, but more of a checklist about what the applicant's expectations should be.

Member Whitman clarified that the staff report is in the agenda packets sent to the applicants before they attend the meeting. Chair Blakaitis added that they already receive an agenda packet. Vice Chair Murray suggested that the applicant acknowledge that they received the packet.

Vice Chair Murray stated that the proceedings of the Board over the past three years have gone from collegial to adversarial. He thought that this will be one small step. Chair Blakaitis asked if it is adversarial towards the applicant. Vice Chair Murray stated that it has been at times. He felt that the applicants are being asked for things that they may not have been asked for in the past. Chair Blakaitis asked whose fault it is. Vice Chair Murray stated that he isn't sure, but thought his proposal could be a step in a positive direction, which was why he wants the Board to discuss it. He felt like there has been a change in tone.

Chair Blakaitis stated that the list should be sent to Director Heard and have him send it back to the Board. He reiterated that he did not wish to discuss it at a meeting, but if the rest of the Board wants to, he could change his mind. Member Cofield felt sending the list to Director Heard is a good idea; but he doesn't want to do it without discussing it at a meeting. He added that if the Board is going to do it, it should be discussed at a public, open meeting. Chair Blakaitis pointed out that it isn't required as it is procedural items that the Board is asking Director Heard to do and doesn't think it has to be discussed at a meeting. Member Whitman stated that he wants to see what is on the list before he makes any comments. Council Liaison Britt suggested that Director Heard give the Board a synopsis at a meeting. He didn't think it will need to go before Council.

Member Whitman asked when the Board received their last packet and saw the issue with Tullio's Bakery, when it would be discussed. Chair Blakaitis stated that the Board had asked Director Heard to look into the situation. Member Whitman asked how the Board can approve the ice cream shop when they are not sure it meets the parking requirements. Director Heard stated that the seats at Tullio's were completely irrelevant. He added that the development is clearly underparked by at least nine parking spaces. He pointed out that the question before the Board was whether the proposed ice cream store would further increase parking requirements on the site, which it did not. He stated that whether Tullio's is in compliance – which they are not – didn't matter to the application.

ADJOURNMENT

Member Whitman moved to adjourn the meeting.

There was no second or vote.

The time was 8:32 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman