

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
February 13, 2019**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, February 13, 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 Cahoon of Cahoon and Kasten Architects, Beaman Hines, Necla Radar, Michael Strader of Quible and Associates, and Gunnell Rupert.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for February 13, 2019 at 6:37 p.m.

PUBLIC COMMENTS

None.

APPROVAL OF MINUTES

Minutes from the January 9, 2019, Regular Meeting

Member McKeithan moved to approve the January 9, 2019 minutes as presented. Chair Blakaitias seconded.

Motion carried 5-0.

NEW BUSINESS

Conditional Use Permit 19-001: Application for a Conditional Use Permit to Add a Coffee/Smoothie Take-out Business (Eating Establishment) in an Existing Unit of the Barrier Island Station Shopping Center at 1247 Duck Road

Director Heard stated that the applicant is requesting a conditional use permit to establish a coffee/smoothie take-out business in a 442 square foot unit of the Barrier Island Station Shopping Center at 1247 Duck Road. He stated that the property is presently zoned Village Commercial and contains the Barrier Island Station Shopping Center, which contains a variety of

office, retail and residential uses housed in a single, multi-story building. He noted that although it appears to function as a single site, the property is wrapped around the north and east sides by a large, Village Commercial zoned property that contains parking shared by Sunset Grill and the Barrier Island Shoppes.

Director Heard stated that the applicant is proposing to convert an existing retail space into a coffee/smoothie take-out business, which is defined as an eating establishment in the Town's zoning ordinance. He noted that an eating establishment is a conditional use in the Village Commercial Zoning District. He stated that the existing Barrier Island Shoppes building was constructed in 1984 and contains a total of 11,052 square feet, which exceeds the maximum building size standard of 5,000 square feet in the Village Commercial district. He noted that the center was constructed long before the Town incorporated and is considered a legal, nonconforming use and can continue to be used with its current layout and dimensions.

Director Heard stated that the subject unit was previously occupied by a retail tackle shop and is only 442 square feet in size. He pointed out that although the space within the unit will be redesigned, the size of the unit will remain the same under the proposed change of use. He added that the existing shopping center setbacks comply with the Town's standards and will remain the same under the proposed change of use.

Director Heard stated that the total lot coverage of 64.8% exceeds the maximum lot coverage requirement of 60% in the Village Commercial District. He added that even though it is presently nonconforming, the existing lot coverage will remain the same under the proposed change of use. He stated that the current development has two driveways for ingress/egress from Duck Road. He noted that the widths of both driveways comply with the Town's standards and will remain the same under the proposed change of use.

Director Heard stated that most of the existing parking lot is paved with asphalt and has an atypical layout with spaces running parallel and perpendicular located around all four sides of the building. He stated that drive aisle widths range from as wide as 27 feet in front of the building to as narrow as 19 feet by the rear of the building. He noted that the narrower drive aisle to the rear of the building is not ideal, but staff is not aware of any significant problems with the functionality of the current parking layout. He added that the existing drive aisles will remain the same with the proposed change of use. He stated that 12 parking spaces on the south side of the building can only be accessed from inside the gates of the Barrier Island Station timeshare development. He pointed out that these spaces are surfaced in gravel and back directly onto the main access road through Barrier Island Station. He stated that due to the location, it is highly likely that these spaces are typically used by guests and visitors to the adjoining Barrier Island Station Office.

Director Heard stated that for several decades, the Barrier Island Shoppes and Sunset Grill and Raw Bar have operated under an informal shared parking arrangement. He stated that the applicant has not been able to provide staff with any documentation regarding the specific arrangements for easements, use, or maintenance of the shared parking areas on the east side of Duck Road. However, staff has found reference to the shared parking arrangements in a deed recorded in 1982, prior to the construction of the current improvements on both properties. He explained that presently, Sunset Grill and Raw Bar has 44 parking spaces on the west side of

Duck Road and 90 parking spaces on the east side of Duck Road. He added that the Barrier Island Shoppes property contains only 29 parking spaces. He stated that based on the official Health Department permit for seating and estimated number of employees, the minimum parking requirement for Sunset Grill and Raw Bar is 138.7 spaces. He explained that the variety of office, retail, and residential uses in the Barrier Island Shoppes require a total of 73 parking spaces. Together, the businesses at the Sunset Grill and Raw Bar and Barrier Island Shoppes require a minimum of 212 parking spaces. He noted that only 163 parking spaces exist on the two properties, leaving a deficiency of 49 parking spaces to serve the uses on these sites. He stated that in spite of the deficiency, the parking area typically functions well in meeting the parking needs of the businesses involved and, while Sunset Grill and Raw Bar is open for business during daytime hours in season, its greatest business is conducted during the evening hours. He stated that the two properties have co-existed with a shared parking arrangement for many decades, so the existing parking situation is a legal, nonconforming one and both businesses can continue to operate with the current parking situation but cannot be expanded in a manner that increases the parking needs for either property without approval of a significant parking reduction through the Village Commercial Development Option.

Director Heard stated that the proposed change of use to a coffee/smoothie take-out business results in an increase of parking requirements on the site. He stated that when classified as a retail space, the 442 square foot unit required a minimum of 2.2 parking spaces. As an eating establishment, the proposed use requires a minimum of five parking spaces. He added that this proposed increase is offset by the recent conversion of another unit in the Barrier Island Shoppes from a beauty salon to a four-bedroom apartment. He noted that this change of use reduced the minimum parking requirement by 4.6 parking spaces, from 7.1 spaces for the beauty salon to 2.5 parking spaces for the apartment. He stated that the minimum parking requirement for the shopping center rounds down to 73 parking spaces.

Director Heard pointed out that although not initially proposed, the coffee/smoothie business can add up to 12 customer seats without exceeding the five-space minimum parking requirement for the business. He added that the applicant recently applied for a permit to covert additional space to another four-bedroom apartment, which change will result in a further decrease of parking requirements for the site.

Director Heard stated that staff is recommending approval of the conditional use permit, subject to the following conditions:

1. The applicant must obtain a wastewater permit from the Dare County Environmental Health Department prior to the issuance of a building permit for the renovations and establishment of the use.
2. The Building Inspector and the Fire Department must review and approve the proposed improvements for compliance with applicable codes.
3. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
4. This conditional use permit will expire in 12 months from the date of approval if the approved change of use has not been initiated.

Member McKeithan clarified that the same individual owns the entire property including the restaurant. Director Heard stated that there are three properties, the subject property and two parcels owned by Sunset Grill and Raw Bar. He noted that the owner of the subject property, Beaman Hines, is present at the meeting. Director Heard mentioned that John Kotch is the owner of the Sunset Grill properties.

Chair Blakaitis asked if the applicant has anything to present.

Ben Cahoon of Cahoon and Kasten Architects was recognized to speak. Mr. Cahoon stated that the owner of the property for the proposal is present for this meeting. He stated that it is a long-standing situation with the existing building as it has hosted the post office and for the most part, housed mostly office space. He stated that the owner is doing a couple of things to the property that are consistent with the intent of the Village Commercial district. The owner is trying to activate the building a little more with the conversion to add food service. He stated that the coffee/smoothie shop will be complementary to other uses in the area. He added that the conversion of parts of the building to apartments is in response to needs of the local workforce. He stated that the Village Commercial Development Option helps the applicant deal with some of the long-standing situations. He noted that they are happy with staff's recommendation for approval and accept the recommended conditions.

Member Whitman pointed out that the applicant is short 49 parking spaces. He asked how parking is divided up between the applicant's property, Barrier Island and Sunset Grill and Raw Bar. Director Heard stated that the staff report has broken down as far as how many parking spaces are on each property. He stated that as it relates to this application, it is a moot point because the applicant's proposal reduces the need for parking and does not increase it. He added that even though it is presently nonconforming, the proposal does not create a need for bringing the parking into compliance. He explained that there are a total of 163 parking spaces, with 134 of them on Sunset Grill and Raw Bar's property and 29 parking spaces on the subject property. Member Whitman clarified that the applicant is significantly short on parking spaces as he needs 73. Director Heard confirmed that the subject property is 44 spaces short, but added that for the past 35 years, they have been working under a shared parking arrangement.

Ben Cahoon stated that because Sunset Grill and Raw Bar is an evening operation, the parking spaces have offset one another and while there have been times when the parking lot was full, there is overflow parking. He added that the parking situation has worked with all the uses and there has been no issue of people trying to park in the right-of-way. He stated that when they analyze the numbers under the current ordinance, it doesn't work, but the fact is that everything has co-existed since the 1980's without any kind of conflict.

Member Cofield asked whose signature is on the application. Ben Cahoon stated that it is Beaman Hines' signature. Member Cofield asked what Mr. Hines' relationship was to the property owner. Mr. Hines stated that he is the property owner. Member Cofield noted that the application states that the property owner is Gold Key, LLC, but page 3 of the application states the property owner is Barrier Island Station. He asked who the property owner is. Director Heard clarified that the page 3 information is a list of the adjoining property owners. Mr. Hines stated that Gold Key, LLC is the owner and he signed the application as president of Gold Key.

Member Whitman asked if the owner of Sunset Grill and Raw Bar is aware of the application. Ben Cahoon stated that he is. Director Heard confirmed that the Sunset Grill owner was notified of the application and meeting.

Ben Cahoon stated that, subject to the approval by the Town, the applicant will obtain a permit from Dare County Environmental Health and then a building permit.

Chair Blakaitis thought it is a legal nonconforming situation and he doesn't see any real problems with the proposal.

Member Cofield moved to approve Conditional Use Permit 19-001 as presented. Vice Chair Murray seconded.

Motion carried 4-1 with Member Whitman dissenting.

Ordinance 19-02: Application for a Text Amendment Proposed to Amend Subsection 156.036(C) of the Zoning Ordinance by Adding Beach Buggy Rentals as a Conditional Use in the Village Commercial (V-C) Zoning District, Subject to Several Conditions

Director Heard stated that the applicant has proposed to amend Subsection 156.036(C) of the Duck Town Code by adding Subsection (18) *Beach Buggy Rentals* as a conditional use in the Village Commercial zoning district, subject to the following conditions:

“(18) Beach buggy rental, provided the following conditions shall be met:

- (a) There shall be a management office on site.
- (b) No more than six beach buggies may be parked on site at one time.
- (c) Only one beach buggy may be parked in front of the building where the office is located.
- (d) No repair work may be undertaken on site.”

Director Heard noted that if the text amendment is approved, the applicant plans to seek approval for a dune buggy rental business in one of the existing units at the Barrier Island Station shopping center under a separate conditional use permit application.

Director Heard explained that in years past, the Planning Board and Town Council have evaluated related issues such as the outdoor display and storage of products for businesses. He stated that the following standards were found in Section 156.131 of the Zoning Ordinance for the temporary outdoor storage and display of products:

1. Outdoor display or storage must be products sold by an established business on the same lot.
2. The display or storage area cannot impede vehicular or pedestrian traffic and parking.
3. The display or storage area cannot be located within a required landscape buffer area.

Director Heard stated that staff compiled a list of standards concerning beach buggy or vehicle rentals for other communities on the Outer Banks. He noted that they are not permitted in the Town of Southern Shores; the Town of Kitty Hawk allows them under a conditional use permit

with conditions; the Town of Kill Devil Hills allows vehicle rentals as a permitted use; the Town of Nags Head does not permit them; the Town of Manteo allows them under a conditional use permit; Dare County permits them as automobile sales and rentals; and Currituck County permits them as automobile sales and rentals subject to certain standards. He

Director Heard pointed out that in reviewing the applicant's proposal, specifically the proposed conditions, staff found that it successfully addressed several important issues associated with this type of use:

- The location of a management office on-site ensures some level of awareness and responsibility for business activities on the property.
- The overall limitation on the number of vehicles ensures that the business does not sprawl into a large operation dominating the site.
- The limitation of one display vehicle limits the visual impacts of the business, preventing a "used car lot" appearance.
- The restriction on repair work prevents noisy, unsightly, and environmentally impactful work on the site.

Director Heard stated that whether or not the proposed use is consistent with the interests of the Town of Duck is a policy decision to be made by the Planning Board and Town Council. However, after reviewing the proposed text amendment, staff had the following comments regarding the proposal:

If the Planning Board decides to recommend approval of the proposed use, staff is recommending that the Board consider related definitions and/or provisions to clarify the use permitted. If the Board wishes to specifically limit rentals to beach buggy rentals, then adding a definition for the term "beach buggy" is important to differentiate this type of vehicle from jeeps or other vehicles that may be rented. Alternatively, if the Board wishes to consider broadening the application to include other types of vehicles, then the proposed ordinance can be amended to include all types of vehicles under a broader term such as "vehicle rentals".

Director Heard stated that the proposed limitation on repair work is a positive step, but it is staff's opinion that the proposed limitations may not go far enough. This has been an issue that has arisen with similar rental operations in the Town of Kill Devil Hills. Staff is asking that the Planning Board consider additional conditions limiting maintenance work and that tools, parts, and equipment be stored inside.

The proposed limit of one vehicle in front of the business deals with the issue of visual clutter. However, the Planning Board may wish to address where vehicles will be parked on the site. The Planning Board may consider if the display vehicle should be in a designated parking space or allowed elsewhere on the property and if other vehicles can take up required parking spaces on the site. The Board members may also want to consider limitations on the storage of inoperable vehicles on site.

Ben Cahoon stated that similar vehicles are currently being rented in the Town of Kill Devil Hills and are seen on the roads in the Town of Nags Head, especially on "the beach road". He noted that they are licensed vehicles and it seems to be another thing that visitors enjoy while on

vacation. He stated that the applicant currently operates this type of business elsewhere. He noted that this issue is a text amendment and the applicant will have to be cautious with regard to the conditions.

Chair Blakaitis asked where the other operation is located. Beaman Hines stated that it is in Harbinger. He explained that most people that rent the buggies drive to Corolla and back. He added that he wants to provide an easier location for them, so they don't have to drive across the bridge. Chair Blakaitis clarified that the vehicles are going to Corolla to drive on the beach. Beaman Hines stated that he is correct. Chair Blakaitis asked when the people go to Corolla, they pay the new fee or if Mr. Hines pays it. Beaman Hines stated that he has to pay for it. He stated that he has only six beach buggies. They are not dune buggies but expensive vehicles that are custom made and well taken care of. He stated that he has no intention of changing the oil in the buggies at the Barrier Island building due to all of the money he puts into repairs. He noted that he is basically asking for a place to have the beach buggies for people to use to get where they want to go instead of going across the bridge.

Chair Blakaitis asked if the traffic rules regulate the beach buggies to operate on certain streets with certain speed limits. Beaman Hines stated that they do not. Chair Blakaitis clarified that they were different. Mr. Hines stated that the vehicles can go up to 70 mph. He noted that they are not very loud. He added that the biggest complaint is how long it takes to drive back and forth from Harbinger to Corolla.

Member Cofield noted that the Town of Nags Head does not permit beach buggies. He asked why. Ben Cahoon stated that the Town of Nags Head permits the rental of the three-wheel, two-seater buggies. Member Cofield stated that he is asking specifically about this proposal. Mr. Cahoon stated that the Town of Nags Head does not permit the beach buggies. Member Cofield asked if they are permitted on the Town of Duck's beach. Chair Blakaitis stated that they are not permitted. Member Cofield stated that it seems counterintuitive for Duck to permit the rental of something that is not permitted on the beach in Duck. Ben Cahoon agreed but pointed out that he sees them a lot of them on "the beach road" in Nags Head, adding that Nags Head does not allow driving on the beach in season. Beaman Hines pointed out that beach driving is allowed only 35-40% of the time.

Chair Blakaitis clarified that they are not rented in the off season. Beaman Hines stated that the peak rental season is from Memorial Day through Labor Day. He added that there are some rented around Thanksgiving and at Christmas.

Member Whitman clarified that the proposal is for six vehicles on location. Beaman Hines stated that six would be the most he will ever have on-site.

Vice Chair Murray asked how he envisions parking on the site. Beaman Hines stated that they deliver vehicles to people and have liability insurance that people have to sign. Vice Chair Murray asked if there is any advantage to have an inoperable or miniature display vehicle at the rental facility. Mr. Hines stated that he would like to move away from delivering the vehicles and would rather have people come to the site to pick the vehicles up. Ben Cahoon thought the disadvantage to allowing inoperable vehicles is a slippery slope. He thought the concern for the display would be that Mr. Hines will end up with a collection of inoperable vehicles on some sites.

Vice Chair Murray stated that the reason for his question is for a single display vehicle and exclusive off-site delivery. He thought that isn't what the applicant is asking for and if the Board goes in that direction, the applicant's needs will not be satisfied. Beaman Hines stated he is correct.

Chair Blakaitis reminded the Board that they are not voting for an application at this time, but for a text amendment change. Each individual application would have to come before the Board as a conditional use permit. He stated that the parking may come into play, when it happens, and if it does, then so be it.

Member Whitman asked how staff will be considering the vehicles on the site to rent. He asked if they would be taking any parking spaces. He noted that if there are six vehicles, they will need six parking spaces that would automatically be deducted from the parking. Director Heard agreed, adding that it is one of the reasons why staff asked the question regarding the display vehicle. Ben Cahoon stated that in looking at the ordinance, if it passes, the maximum will be six vehicles. Member Whitman noted that in the proposal, the applicant is asking for six vehicles to be parked at the site at one time. Chair Blakaitis pointed out that the applicant is proposing the text amendment to include six vehicles, but the Board can change that. He reminded that Board that each application will be different, and the applicant is just suggesting verbiage for a text amendment, which the Board can change. Vice Chair Murray agreed.

Vice Chair Murray stated that when he read the packet and listened to Director Heard's presentation, he felt like defining "beach buggy" seemed important, but then the more the Board went through the questions, it seemed that it was less important. He thought the question is if the Board wants to allow vehicle rentals and have it dealt with on an individual basis through the permitting process. Chair Blakaitis agreed, adding that it will be included in the text amendment. Vice Chair Murray agreed. He stated that beach buggies are proposed, but he isn't sure if beach buggies should be treated preferentially by the Town over jeeps or electric cars. Member Whitman asked how the Town handles golf carts. Director Heard stated that they are under a rental business and the companies that doing it are the same ones that rent umbrellas, tents, bikes, and kayaks. Vice Chair Murray asked when a street legal golf cart is rented, how is it not considered a car. Director Heard stated that it isn't the same thing. He added that it could fall under that blanket term of vehicle rentals, but it is not a car unless modified to be street-legal.

Chair Blakaitis asked if the Town allows golf cart rentals. Director Heard stated that the Town does and Ocean Atlantic Rentals rents them. Member Cofield noted that no one can drive a golf cart on the beach. Vice Chair Murray pointed out that one cannot drive a dune buggy on Duck's beach either. Member Cofield agreed, adding that it is a fundamental problem that he is having with the proposal. He stated that he is having an issue with allowing a company or operation to rent something that cannot be used in Duck. Member McKeithan stated that it is his concern as well. He stated that it appears like it is a special type of vehicle but is effectively a rental vehicle that goes on the streets. He added that it isn't any different than a Jeep or sedan.

Member Cofield stated that if they are allowed to be used on the beach in Currituck or Corolla, then they should be sold or rented there. Chair Blakaitis stated that it is a large expansion over what is rented presently in the way of golf carts. Vice Chair Murray agreed.

Member Cofield moved to deny the text amendment as presented. Member McKeithan seconded.

Chair Blakaitis thought the main question is if the text amendment is right for the Town of Duck. He added that he isn't sure it is.

Member Whitman stated he is not in favor of the application. Chair Blakaitis asked why. Member Whitman doesn't think it is something appropriate with the Village Commercial district.

Vice Chair Murray asked if the Board discussed just making the application be for vehicles. Chair Blakaitis stated that they did not. Vice Chair Murray stated that he does not have a strong feeling about it either way but thought making it specific for beach buggies is a little too specific for a text amendment. He added that if the Board is going to recommend a text amendment, it should be for vehicles and then look at the merits of the specific application for beach buggies. Chair Blakaitis pointed out that a comment was made that this did not fit the character of Duck at this time. Vice Chair Murray stated that he cannot speak to that, but thought the proposal focusing on beach buggies is too narrow for a text amendment.

Motion carried 5-0.

Council Liaison Britt inquired if the request will still proceed to Town Council. Director Heard stated that it will, unless the applicant chooses to withdraw the proposal. Otherwise, it will move forward with a recommendation for denial from the Board. Vice Chair Murray asked if the applicant does not want to take the amendment to Council with the recommendation that it be denied, can they change the proposal. Member McKeithan stated that they can, but it would have to come back before the Planning Board. Director Heard confirmed that it would come before the Planning Board. He added that if it is a substantially similar proposal, staff will consider it to be the same application.

Conditional Use Permit 19-002: Application for the Following Conditional Use Permits in the Loblolly Pines Shopping Center at 1187 Duck Road: (i) Conversion of a 900 Square Foot Retail Space to a Post Office; (ii) Addition of Customer Seating at Tullio's Bakery; and (iii) Use of the Village Commercial Development Option to Reduce the Required Number of On-Site Parking Spaces

Director Heard stated that the applicant is requesting conditional use permits for the Loblolly Pines Shopping Center to convert a 900 square foot retail space to a post office; to add customer seating at Tullio's Bakery; and using the Village Commercial Development Option to reduce the required number of on-site parking spaces.

Director Heard stated that the property is presently zoned Village Commercial and contains the Loblolly Pines Shopping Center. He added that it was constructed in 1986 and contains a total of nine units in the 11,051 square foot building.

Director Heard stated that the Loblolly Pines Shopping Center was originally approved by Dare County in 1985 and constructed in 1986. He pointed out that the center had several changes to its parking layout, access, and tenancy during its early years. He added while other changes in tenancy have been approved administratively over the years, only two changes have required a

conditional use permit: CUP 17-004 to convert 270 square feet of retail space into an eating/drinking establishment at Growlers to Go and CUP 18-005 to convert a 900 square foot retail space to Weezy's ice cream shop.

Director Heard stated that the applicant is proposing to convert an existing 900 square foot retail space into a post office. He noted that a post office is a conditional use in the Village Commercial zoning district. He stated that the applicant is also proposing to bring the existing, nonconforming seating at Tullio's Bakery into compliance. He noted that intensifying the use of the bakery is also a conditional use in the Village Commercial zoning district.

Director Heard stated that the existing shopping center contains a total of 11,051 square feet, which is greater than the maximum building size standard of 5,000 square feet in the Village Commercial District. He noted that as the center was constructed before the Town incorporated, the building is considered a legal, nonconforming use and can continue to be used in its current layout and dimensions. He explained that the unit proposed for the post office is located in the northern wing of the center and is presently part of the retail store, All Ducked Out. He added that the unit is approximately 900 square feet and that All Ducked Out will continue to occupy the adjoining unit with a new wall separating the uses.

Director Heard stated that the existing pergola structure that adjoins Pizzazz Pizza encroaches over three feet into the front setback and the northern wing of the shopping center encroaches slightly into the northern side setback. He added that the remaining setbacks comply with the Town's standards and although nonconforming, the existing setbacks are not impacted by the proposed changes of use and will remain the same. He noted that the applicant is requesting to use the Village Commercial Development Option to modify the minimum setback requirements and bring the existing front and north side setbacks into conformity.

Director Heard stated that the subject property is 46,414 square feet in size and complies with the minimum lot size of 20,000 square feet for the Village Commercial District. He stated that the total lot coverage of 65.6% exceeds the maximum lot coverage requirement of 60% in the Village Commercial zoning district and, although presently nonconforming, the existing lot coverage will remain the same under the proposed changes of use.

Director Heard stated that the original development approval for the site included several uses with less substantial parking requirements. He added that as units in the shopping center have converted to other types of uses, the amount of parking on the site has become nonconforming. He noted that the existing development contains 46 on-site parking spaces with some of the parking surface being concrete and some gravel. He stated that there are six additional gravel parking spaces accessing directly onto Poteskeet Drive on the south side of the building and that they cannot be officially counted as they are not on the subject property but are accessible and typically used by employees and customers of businesses in the shopping center. He explained that the proposed change of use from a retail space to a post office does not increase the amount of parking required for the site. He pointed out that as an eating establishment, Tullio's Bakery requires a minimum of five parking spaces, but due to the amount of seating with 14 seats, the parking requirement for Tullio's increases to 5.7 parking spaces. He stated that the two changes of use increase the parking requirement by 0.7 spaces.

Director Heard stated that since the property contains 46 parking spaces, the amount of parking available is six spaces short of complying with the minimum parking standards. He stated that the applicant is seeking relief through the Village Commercial Development Option to modify the minimum parking requirement and find that 46 parking spaces are adequate to serve the existing and proposed development on the site. He stated that the applicant noted that much of the customer traffic to Loblolly Pines arrives on foot or by bicycle and that the amount of vehicular parking needed is less than typical shopping centers. He added that Loblolly Pines also has additional parking available that adjoins the subject property. He pointed that even though it is not located on the property and not counted in the parking calculations, there is a gravel parking area that accommodates six vehicles within the Poteskeet Drive right-of-way, which has been in place for several decades.

Director Heard stated that the applicant is seeking approval of the Village Commercial Development Option for two purposes: (1) to modify the minimum setback requirements and bring the existing front and north side setbacks into conformity. Approval would allow a setback of 9.8 feet for the existing shopping center building from the north side of the property line and setback of 11.7 feet for the existing pergola from the front property line; and (2) to modify the minimum parking requirement and find that 46 parking spaces are adequate to serve the existing and proposed development on site. Approval would allow the 46 on-site parking spaces instead of the 52 parking spaces required to accommodate the uses in Loblolly Pines.

Director Heard noted that the Village Commercial Development Option offers flexibility from a variety of development standards in the Village Commercial District on a project-specific basis. He noted that the Planning Board is asked to determine if the proposed development is consistent with the intent of the Village Commercial Development Option and warrants approval of the requested modifications to the development standards for parking.

Director Heard stated that staff is recommending approval of the conditional use permit 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. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
3. This conditional use permit for the post office will expire in 12 months from the date of approval if the approved change of use has not been initiated.

Michael Strader of Quible and Associates was recognized to speak. Mr. Strader stated that he wants to re-emphasize that the applicant is not proposing any site improvements, adjustments or changes to the existing site outside of the bicycle rack that they are offering to complement the new pedestrian/bicycle improvements. He stated that the applicant is not proposing to increase any existing nonconformities that currently exist on the property.

Vice Chair Murray asked what the survey is measured to – the side or the foundation. Michael Strader stated that they measure to the furthest extent of the structure. Vice Chair Murray stated that the building has vinyl siding on it. He clarified that they measured to something they can

push on that moved, which was about a tenth of a foot. Mr. Strader stated that they shoot to the furthest point.

Chair Blakaitis stated that Director Heard mentioned the two nonconforming setbacks. He asked if the applicant is requesting that they become legal nonconformities. Director Heard clarified that the applicant has requested that they be included as part of the Village Commercial Development Option. Chair Blakaitis asked what they are presently. Director Heard stated that they are legal, nonconforming uses that are grandfathered. He explained that the applicant is asking the Board to change the setback from the west side to 9.8 feet and from the front property line to 11.7 feet. Chair Blakaitis noted the Board would be allowing the applicant to bring the existing nonconforming setbacks into conformity. He asked why they need it to be part of the Village Commercial Development Option. He noted that it takes some flexibility away from the Town. Director Heard stated that it does not accomplish a lot but any time there is a nonconformity, there is always a red flag, especially when it comes to selling a property.

Member McKeithan stated that if the Board granted the setback changes, it would legally change the setback permanently. If the owner wants to extend the pergola out further, he will be allowed to do so due to the changed setback. Director Heard explained that it would not allow the owner to create further nonconformities. Member McKeithan thought it would allow that. Director Heard stated that it would only allow the encroachment shown on the applicant's survey, not other structures or future additions.

Vice Chair Murray asked if the applicant can add a second story to the building with the encroaching setback. Director Heard stated that they cannot increase the encroachment vertically.

Member Cofield asked the applicant why they want the setback reduction approved instead of leaving it as a legal nonconformity. Michael Strader stated the primary concern is the change of use. So, if it was a concern for the Board, the applicant can remove that request, but the purpose is to remove the red flags on the property. Director Heard stated that the setback request was not part of the original application but came up when the survey was reviewed, and the applicant asked that it be added. He noted that it sounds like there is a willingness by the applicant to proceed without the setback reduction. Member Cofield stated that he doesn't see how it is in the Town's interest to legalize the encroachments if they are already nonconforming. Chair Blakaitis agreed. He thought it is a good proposal for what has to be accomplished, but he doesn't think he can agree with the transfer of responsibility.

Member Whitman asked if the applicant is changing the parking layout as it differs from the last two proposals that were received. He inquired if the Board can ask the applicant to restripe the lot and put bumper stops on the parking spaces. Director Heard stated that none of the proposals, including this one, involved reorientation of the parking area. He explained that the only thing the applicant has done differently was to physically survey the current layout of the parking. He noted that the previous layouts from 1984 and 1985 were never actually built in that configuration so they are not proposing to change anything. He stated that the Board can ask of the applicant to add striping and/or bumper stops to delineate the parking spaces.

Member Whitman stated that the applicant had previously stated that they were basing things on the previous survey and now the new survey is different. He pointed out that the six parking spaces on Scarborough Lane were not included in previous calculations and now the Board is being asked to include them in this application, and they are not even on the property. Vice Chair Murray explained that they aren't included in the count, but they can be taken into consideration when the Board grants the applicant parking relief. Member Whitman agreed and added that if the Board gives the applicant parking permission, it will give him parking permission to park on the State right-of-way. Director Heard and Vice Chair Murray disagreed. Member Whitman pointed out that it is a State road. Vice Chair Murray stated that the Board does not allow or disallow it, the Board just acknowledges that they are existing spaces. Member Whitman stated that the Board is being asked to consider those spaces as part of the parking calculation. Director Heard stated that if the Board decides to grant approval of the Village Commercial Development Option, they are saying that the applicant will only be required to have 46 parking spaces on the site, which is sufficient to serve their needs. He stated that it is a mitigating factor that those six spaces exist, but they are not included in the parking calculation.

Director Heard noted that there was a suggestion to define some of the parking spaces in the gravel area. Gunnell Rupert was recognized to speak. Mr. Rupert stated that he can stripe the parking spaces. Member Whitman asked about installing bumper stops. Gunnell Rupert stated that he has railroad ties in place that are used as bumper stops. He added that if the Board wants bumper stops in order to approve the application, he will install them. Member Whitman pointed out that there needs to be some definition of parking spaces. He thought the parking spaces should be striped. Michael Strader clarified that Member Whitman isn't asking for the entire parking lot to be striped. Member Whitman stated that he isn't. He noted that one parking spot backs out into a mailbox. Mr. Strader stated that it is a useable space and the mailbox does not prohibit parking in that space.

Member Whitman asked how many seats exist in the pizza shop. Gunnell Rupert stated that he has 14 seats. Member Whitman thought Mr. Rupert was only supposed to have 12 seats as two seats were to be removed under the previous conditional use permit. Gunnell Rupert stated that he agreed to remove two seats with the ice cream shop proposal, but the two seats didn't come out. He added that he had discussions with Director Heard that it would happen during the off-season because the light over one of the tables would have been a hazard to people with the seats removed. He added that when the proposal for the post office came up, he discussed with Director Heard the parking and how many spaces were required. He stated that once he did an updated site plan and parking calculations, he discovered that the 14 seats would be feasible as part of this proposal. He thought he made a good faith effort since it wasn't actually attached as a condition at the time. He thought part of what he was trying to achieve with the other items is to bring everything up to date with the Town, so he will not be left with nonconformities.

Director Heard stated that with regard to the nonconformities, before the post office even came up, the proposals were treated as an overall concept with all of the existing and added seating included in the calculations for parking. He stated that the Planning Board is looking at a total package for everything and not piecemeal in order to identify what is required and available with regard to parking.

Member Cofield stated that he disagreed with the presentation. He pointed out that the condition that the Board approved previously included two seats to be removed. He noted that it was a condition of the approval. Director Heard agreed. Member Cofield stated that for the applicant to come before the Board and say they were thinking of doing something else is wrong. He stated that it should be something that was specifically identified that the applicant is going from 12 seats to 14, which is not specified in the current proposal. He stated that 12 seats were approved with the previous conditional use permit. He stated that it is remiss of Director Heard to come to the meeting and not identify that the applicant is going back to 14 seats. He added that it is misleading to the Board members.

Chair Blakaitis asked what should be done. Director Heard stated that the proposal is for 14 seats and the numbers work for the parking spaces. Member Whitman pointed out that the applicant is increasing the permitted seats from 12 to 14. Director Heard stated he is correct. Vice Chair Murray clarified that the total count on the proposal is correct. Director Heard stated that it is specified and included in the parking calculations.

Chair Blakaitis asked if the Board is happy with the proposed conditional uses, with an exception for the reduced setbacks that the Board is not in agreement with as far as incorporating them into the Village Commercial Development Option, which he isn't in favor of. He asked if the Board is ready to move forward with the proposal.

Vice Chair Murray asked from a procedural standpoint if the Board can state that setback relief is not being granted as a condition. Director Heard stated that they can. He stated that the Board can clarify that the Village Commercial Development Option is for the parking only and will not include reductions for the setbacks.

Member Whitman asked where the bumper stops and striping will be put in the proposal. Director Heard stated that it can be added as a condition. Vice Chair Murray thought if the Board is conditioning the bumper stops, then the Board needs to consider the parking allowance. He stated that if the Board is not making an allowance for the increased seating, then that will default to they are not doing anything that will change the parking. Member Cofield pointed out that the applicant is including the seating, as it is in the total count. Vice Chair Murray asked how the post office alone affects the total count. Director Heard stated that the post office alone does not impact the parking requirements, but the seating for Tullio's Bakery and Pizzazz Pizza do. Vice Chair Murray agreed, adding that the Board is saying they are uncomfortable with the setback relief, which meant that they are approving the post office use, the seating for Tullio's Bakery and the two additional seats for Pizzazz Pizza as well as parking relief under the Village Commercial Development Option. He stated that if the Board is approving the parking relief, it seems reasonable that the Board require the bumpers and striping. He clarified that the only thing under the Village Commercial Development Option that the Board is not accepting was the setback relief. Chair Blakaitis stated he is correct.

Member Cofield suggested adding that the proposal going forward to Town Council specifically state that the Planning Board is bumping up the seating for Pizzazz Pizza from 12 to 14. He thought it is misleading the way it was presented.

Vice Chair Murray moved to recommend approval of CUP 19-002 with the conditions as proposed by staff, excluding the setback relief discussed in the staff report and adding the condition of bumper stops and parking lot striping in the area of the pine trees. Chair Blakaitis seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of February 6, 2019 Council Meeting

Director Heard gave a short update on the February 6, 2019 Town Council meeting to the Board and the audience.

Project Updates

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

BOARD COMMENTS

Vice Chair Murray stated that it was brought to his attention that the survey question that he had asked Michael Strader earlier in the meeting is coming up over and over on the beach, so much so that the Town of Kill Devil Hills and the Town of Nags Head have clarified in their ordinance what surveyors are supposed to measure to. He thought the Board should look at it if Council thinks it is a good idea. He explained that towns are having one surveyor survey something that is compliant and then have another surveyor come and disagree with them, which is due to measuring from two different points. He stated that it will add consistency throughout for the Planning Department as they receive a foundation survey and building location survey before the rough in inspection is completed and then when they finish, if the ordinance is passed, it will be consistent as opposed to a building growing over time.

Member Cofield asked Vice Chair Murray if he is suggesting that there isn't an industry standard. Vice Chair Murray stated that it is typically the framing as that is drawn on the site plan. Member Cofield thought it is the foundation. Vice Chair Murray explained that there are cantilevers and things that overhang and, in that case, it will need to be noted as the framing of the cantilever. He suggested that ordinances passed in other towns can be reviewed to see what allowances were made.

ADJOURNMENT

Member McKeithan moved to adjourn the meeting. There was no second or vote.

The time was 8:32 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman