

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
May 13, 2020**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, May 13, 2020.

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

Absent: None.

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

Absent: None.

Others Present: Director of Marketing and Events Christian Legner, Police Chief John Cueto, and Philip Ruckle.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for May 13, 2020 at 5:29 p.m. He noted that attendance was disabled for the public and that this was a meeting that was considered virtual and that the chat feature was disabled for those watching remotely. He stated that if anyone watching remotely wanted to make a comment, they could indicate by raising their hand in the chat feature.

PUBLIC COMMENTS

None.

OLD BUSINESS

None.

NEW BUSINESS

Review of Hazard Mitigation Plan

Director Heard stated that the plan has been under development for approximately one year. He stated that previously when the last update was completed five years ago, it was more of a true regional plan and included a lot of counties in the Albemarle region. He stated that many of those counties do not have the same issues and interests as Dare County. So, some recommendations weren't relevant. He stated that the current draft plan includes just Dare County, Currituck County, and all of the municipalities. He stated that the steering committee consisted of representatives from local governments as well as a variety of interests and

perspectives from local engineers, surveyors, realtors, insurance agents, and business owners during the process.

Director Heard stated that local businessmen Jim Braithwaite and Matt Price were members of the steering committee and volunteered their time and input for the plan by attending a number of meetings as well as sharing ideas with the entire group. He added that their assistance during the process was greatly appreciated.

Director Heard stated that the hazard mitigation plan is important because it identifies the ways that the Town and the counties are intending to protect people and properties from the effects of natural and human-caused hazards. He added that the plan also helps the Town maintain eligibility for mitigation funding and disaster relief assistance from FEMA as well as improving the community rating system scores, which help to reduce flood insurance rates for homeowners in Duck.

Director Heard stated that there is a website available to view the plan and provide comments. He noted that there was significant public input during the planning process with over 850 people submitting responses during the four-month period. He said that additional public input was provided through the steering committee that oversaw the development of the plan. The steering committee consisted of 36 members as well as a separate nine-member leadership subcommittee that worked more directly with the consultants.

Director Heard stated that the Board's packet contains sections from the plan that are relevant to Duck, which was the main end product.

Chair Blakaitis moved to recommend approval of the Outer Banks Regional Hazard Mitigation Plan as presented. Member McKeithan seconded.

Motion carried via roll call 5-0.

Ordinance 20-03: Temporary Zoning Accommodations During Emergency Declaration and to Develop Standards for Temporary Measures to Accommodate Restaurant and Other Business Operations During COVID-19 Restrictions

Council Liaison Whitman thought the items should be taken up as separate issues.

Director Heard stated that there were two things that were under consideration for the Planning Board – to create allowances for the Mayor to authorize the Town Manager or designee to establish reasonable temporary accommodations in zoning regulations consistent with an emergency declaration and in the interests of public health, safety and welfare; and to establish parameters for the types of accommodations for restrictions relating to the COVID-19 crisis.

Director Heard stated that the draft ordinance was prepared by Town Attorneys Robert Hobbs and Ben Gallop with some minor changes due to the original ordinance dealing only with zoning standards. He noted that some of the standards the Board would be discussing are not contained within the zoning ordinance but elsewhere in the Town Code. He added that the draft ordinance is proposing to allow temporary emergency provisions throughout the entire Town Code.

Director Heard pointed out that the ordinance is a separate issue that needs a formal recommendation from the Planning Board. He added that the ordinance will enable the Town to have a procedure to institute temporary provisions. He stated that the second step is for the Planning Board to suggest ideas to work with local businesses on a temporary basis, as long as the restrictions are in place during the COVID-19 situation. He stated that the Board will be offering suggestions that could be considered by the Town Council. If the ordinance is adopted as written, the decision about allowances will be made by the Mayor and Town Manager.

Director Heard stated that the ordinance is written generally enough that it will apply to COVID-19, but will also apply to other situations such as the aftermath of a hurricane or any other kind of emergency incident that comes up. As long as it is a clear emergency, the ordinance will allow the Mayor and Town Manager to implement some flexible standards to help businesses deal with it.

Director Heard stated that Dan Lewis, President of the Outer Banks Restaurant Association, submitted an email that dealt with the provision of food trucks and the use of outdoor areas by restaurants. He noted that there are other ideas that the Board may wish to consider as part of their suggestions to Town Council.

Director Heard pointed out that Dan Lewis is also part owner of Coastal Cantina and Coastal Cravings restaurants and had submitted an email to the Town Council on May 3, 2020 with a similar letter sent to the other communities in Dare County, asking the Town to adopt special provisions for restaurants as they are permitted to reopen under COVID-19 restrictions in the near future imposed by Governor Roy Cooper. He stated that it was anticipated that when Phase 2 restrictions begin, restaurants will be able to open at 50% capacity and will likely have other types of social distancing restrictions in place. He stated that even though restaurants may be able to open, their capacity will be greatly diminished from what they would have been able to accommodate in past years. He added that they are asking for flexibility in terms of being able to operate and serve more people during this time with the summer season approaching.

Director Heard stated that one of the items for the Planning Board's consideration is for allowances for the temporary establishment or expansion of outdoor dining/seating areas to accommodate for the loss of permitted occupancy in a restaurant. He stated that the second was an allowance for the use of carts, kiosks, or food trucks on the same site as the restaurant. He stated that the Board may want to consider that restaurants aren't necessarily the only types of businesses that will be affected in some way as there are also some occupancy restrictions placed on other types of businesses including retail establishments. He thought that the Board may want to look at provisions that apply to other types of businesses.

Director Heard recommended focusing on issues that are under the Town's control, as other aspects are regulated by the Dare County Health Department, Americans with Disabilities Act, and other agencies. He added that those are not things that Duck needs to deal with since the businesses will be subject to those standards. He stated that there could be a "catch-all" that had the following wording: "...these temporary standards are in place subject to approval by the Dare County Health Department." He noted that businesses will have to comply with all applicable state and federal standards.

Chair Blakaitis noted that there are references in regard to what the Health Department controls with regard to septic, etc. He asked why it needs to be repeated. Director Heard stated that in the Board's memorandum, they may wish to make that point clear. Chair Blakaitis clarified that the Board is not creating any ordinances but simply making a list to send to Town Council. Director Heard stated he is correct.

Chair Blakaitis asked if the Board members need to vote on what is put on the list. Director Heard stated that the Board could. He reiterated that there are two action items in front of the Board – the first is the draft ordinance which will need to be voted on. He explained that the ordinance added Section 113.01, Temporary Provisions, which read as follows:

“In the event of an emergency declared by the Town of Duck or Dare County pursuant to NCS 166A-19.22, the Mayor may authorize the Town Manager or his designee to allow for reasonable temporary accommodations in Town regulations consistent with and furthering the purposes of the emergency declaration and in the interests of public health, safety and welfare. Such temporary accommodations shall not extend beyond the termination of the declaration of emergency or the end of the circumstances under the declaration causing the need for accommodations. Such temporary accommodations may include, but shall not be limited to, amendments to the following chapters of the Town Code: (A) Chapter 93, Parks; (B) Chapter 95, Special Events; (C) Chapter 110, Peddlers and Vendors; (D) Chapter 156, Zoning (1) Permitted uses; (2) Lot coverage; (3) Structure setbacks; (4) Parking requirements; (5) Signs.”

Director Heard noted that any future emergency regulations would also be covered under this new section in the Town Code.

Member McKeithan asked if any other municipalities or Dare County are giving these types of authorizations to the Mayor and Town Manager. Director Heard stated that he did not know the specifics yet. He added that the Town of Nags Head is taking a similar approach to Duck with regard to an ordinance. The Towns of Kitty Hawk and Kill Devil Hills appear to be taking a different approach in that they are adopting temporary standards under the powers of the emergency declaration. He added that Duck has been advised that adoption of an ordinance is a more legally defensible way and is the approach that Duck is taking. He noted that the timing works out well in that as the ordinance moves to Town Council, it will potentially be adopted by May 20, 2020, which is quick turnaround before restaurants will be allowed to open back up.

Vice Chair Cofield asked what the rationale is for the Planning Board and Town Council shifting the responsibilities to the Mayor and Town Council. He stated that his take on Town ordinances is that they should have the same review and analysis as a standard ordinance, which come with a recommendation from the Planning Board and then go before Town Council for adoption. He added that Town Council meets twice a month while the Planning Board is subject to meet at any time. He didn't understand the rationale about the emergency nature. He noted that a meeting could be called in the next week to deal with it. Director Heard explained that if this ordinance is adopted, there would not need to be an ordinance amendment process moving forward.

Vice Chair Cofield thought Director Heard misunderstood his question. He stated that Town ordinances of this type generally come from the recommendation of the Planning Board to the

Town Council and the Council then adopts the ordinances. He added that the request in front of the Planning Board was to adopt a new ordinance which then could allow modification of any different ordinance on the books during this emergency period. He noted that those modifications would not come back before the Planning Board for recommendation to Town Council. It was his view that applications for new ordinances of this type should have the same review or rigorous analysis as the rest of the ordinances. Director Heard explained that the rationale is being able to rapidly respond to crises. The proposed ordinance reduces the process for approval of temporary measures. The Mayor may seek input whenever he likes in the future in making the decision, whether it is the opportunity to adopt something even with this extremely short timeframe. He noted that Council would be waiving the typical period for setting a hearing and hold the hearing at a future date. He added that what is usually a two-and-a-half month process will be narrowed down to half a month for consideration of this ordinance. He noted that there are occasions where there may be an even more immediate need. He understands Vice Chair Cofield's point regarding being able to look at things quickly, but if it is something that requires an ordinance change, it cannot be done any quicker than what is being done with this ordinance because of advertising requirements.

Member Murray noted that all of the concerns and comments in the staff report are about economic welfare. He asked if that needs to be specified. He added that if it is not explicitly written that it is for the economic benefit of the Town, an argument could be made disallowing things to happen. Director Heard stated that it could be added as a fourth justification.

Member Morton moved to accept the ordinance to establish temporary accommodations for regulations during a declared emergency with the wording that has been provided under the Temporary Provisions paragraph with the addition of the word "economic" in front of "welfare". Member Murray seconded.

Motion carried via roll call 4-1 with Vice Chair Cofield dissenting.

Director Heard stated that the Planning Board is being asked to consider recommendations regarding temporary provisions relating to the COVID-19 event and the challenges being faced by the local restaurants and other businesses in Duck. He stated that the Board has in their packets a list of what the other towns and Dare County are considering regarding similar requests in their communities. He added that there are approximately 12 public comments submitted to the Board via email that were received prior to this meeting.

Chair Blakaitis asked if each comment received will have to be read out loud. Director Heard stated that they will. Chair Blakaitis stated that he doesn't think it is necessary. Director Heard stated that the following individuals had submitted comments:

- Val Storey of Scarborough Faire
- Jon Britt of Nor'Banks/Village Table & Tavern
- Keith Exton of Duck Donuts
- Kate Harvey of Candy & Corks
- Ken Forlano of Duck Deli
- Dave Facenda of Untucked
- Bill Berger of Scarborough Lane Shops

- Doug Brindley of Brindley Realty
- Jim Braithwaite of the Waterfront Shops
- Craig Readman of Treehouse Coffee and Heart Restaurant
- Dawn Russo of Tullios Bakery
- John Power of Blue Point Restaurant
- Lee Raskin with Eventide
- Allen Lehew of Duck's Cottage Coffee and Books

Director Heard added that he received a telephone call from Ron Forlano who shared comments that were similar to his son's, Ken Forlano.

Director Heard stated that Dare County was the furthest along at this point in that they developed draft ordinances for consideration, which was why their proposals are more detailed. He stated that Dare County and the Town of Nags Head already allowing a restaurant to operate a food truck or food stand on their site. He stated that Dare County's proposal is expanding that provision to allow temporary on-site food stands, which is not a vehicle, but another type of kiosk set up as a food stand. He stated that it would be limited to one stand, have to be in compliance with Health Department standards, have access to public restrooms, be in compliance with building setbacks, have at least 10 parking spaces, and have an allowance for one temporary sign that would be 12 square feet in size or less.

Director Heard stated that the other issue Dare County is addressing directly in considering the ordinance was temporary provisions for outdoor seating and dining. He explained that they are looking at requiring the submission of a site plan with administrative review of the plan; provisions defining the location of the seating that would include locating it in excess parking areas and not part of the required parking spaces; locating it in setback areas or any areas that are not occupied by above-ground infrastructure or on the septic system. Director Heard stated that the excess parking provision can be created by a reduction of the restaurant capacity. He added that they are also allowing businesses using outdoor seating or dining to have shared parking with other commercial properties within 400 feet of the subject property. He noted that outdoor seating can be located on decks or porches and has requirements for access to public restrooms with an allowance of one temporary sign that was 12 feet in size or smaller.

Director Heard stated that the Town of Nags Head also allows food trucks and is considering requirements for a temporary permit and were considering temporary provisions for outdoor seating and dining up to the previously allowed capacity of the restaurant.

Director Heard stated that the Town of Kill Devil Hills has looked in some detail at the outdoor seating and dining and noted that they are considering allowing up to 25% of the dedicated parking area to be used for that purpose but haven't gone any further at this point.

Director Heard stated that the Town of Kitty Hawk held a meeting with a some of their restaurant owners on Friday, May 8, 2020 and as a result it helped guide them moving forward. He noted that they are still discussing the format of their ordinances but would likely adopt temporary provisions allowing outdoor seating and dining in grassed areas. He added that a certain amount of the parking areas would have to be roped off as designated food service areas.

He stated that they were also considering temporary allowances for on-site food trucks, tents and additional signage. He stated no municipality has gotten as far as a formal adoption at this point.

Director Heard stated that one of the key items that the Board will need to discuss is allowances for on-site food trucks. He explained that the request from Dan Lewis is to allow a food truck to be used on the same site as the restaurant that it is serving as a temporary provision during the COVID-19 restrictions. He noted that there have been a lot of comments that were submitted regarding food trucks.

Member Morton asked if the Planning Board can come back at a future meeting to revisit the list based upon the results of the COVID-19 restrictions that are in place. Chair Blakaitis thought it can be done in the future. Director Heard agreed.

Chair Blakaitis noticed that it seems most of the comments are not in favor of food trucks. He read comments that the food truck that is suggested is only for one property. He noted that many of the comments relate to a food truck that travels around Town. He didn't think that is wanted because it would violate an ordinance that was passed years ago with the approval of the business community. He thought the Board needs to keep that in mind and decide whether they want any food trucks permitted. He thought there is a recommendation to pass the food truck for every business and not just one business. Director Heard stated he is correct that is not a proposal for one individual property, adding that it would apply to any business that wants to use a food truck, even though the proposal comes from one individual.

Member Murray asked for clarification that the request for the food truck at Coastal Cravings would be used for food prep and not food service. Chair Blakaitis stated he is correct. Member Murray noted that seven out of twelve comments objected to the food truck, two supported it, and the rest did not comment on that issue. He stated that the comments that were opposed to food trucks were generally opposed to them because of the effect on the flow of traffic. He isn't sure if that should color the way the Board makes their recommendation. He thought that food trucks used for food prep services may need to be parked in a certain place. Chair Blakaitis agreed that the Board will likely want that. Member Murray stated that the disruption of traffic and shopping centers may be more important to think about. He stated that he has less of a problem with it as proposed but understood that there could be some expansion once it's permitted. He wondered how service out of a food truck should be defined.

Chair Blakaitis asked about the cessation of the temporary provisions. He thought there should be an end date for them. Director Heard confirmed that an end date could be a component of the accommodations. He stated that the Board can add it as part of their recommendation but noted that no one knows how long COVID-19 will last with regard to the restrictions. Chair Blakaitis suggested putting an end date in and then changing it later if needed. Member Murray suggested that the Board's recommendation state that the temporary accommodations shall not extend beyond the termination of the declaration of emergency or the end of the circumstances under the declaration. Chair Blakaitis thought it was vague. Member Murray pointed out that there is a cessation clause in the ordinance and wondered if the Board should suggest phasing. He explained that each time there is an update from the State, that could be tied to a re-evaluation of what would be permitted under the last set of circumstances. Member Morton and Chair Blakaitis agreed.

Member Morton thought the restriction on food trucks is that they are auxiliary to the kitchen since food will not be served from the truck. He thought this will also be a means for the kitchen staff to social distance. He noted that there will be no food sold from the truck. Chair Blakaitis thought the applications would have something about doing something in the truck.

Member Murray pointed out that there are a couple of sections where the topic is solely food trucks, while other areas the language speaks of food trucks, kiosks, etc. He asked if they should be separated. Director Heard stated that Dare County is treating them separately as different things. Member Murray thought it dealt with some of the concerns from the public comments that were received, with the main one being that food trucks have not been allowed in Town. So, a restaurant in Duck is not likely to have a food truck unless it has a branch of its business that is outside of Duck. He stated that allowing kiosks or other language will allow someone to set up a grill that under normal circumstances, would have to go through a conditional use permit application and site plan review. He asked if staff will be the one evaluating things under the draft ordinance. Director Heard stated that it will depend on the standards that are adopted for each incident.

Member Morton asked if a food truck will have to obtain approval from the Health Department. Director Heard stated that they will. Member Morton thought if someone wants to use a grill, they will have to obtain approval from the Health Department. Member Murray stated he is correct, adding that it would be followed up with a 90-day application process before it comes to the Board. He thought Vice Chair Cofield had pointed out that there will be decisions made that would normally be vetted through that process. Member Murray asked if the Board is reading too far into things. Director Heard thought Council is looking for the Board's thoughts in setting criteria for this emergency situation and are looking at the Board's recommendations for the parameters under which these types of uses could be approved.

Chair Blakaitis thought the Board needs to do something regarding food trucks and then the other uses will follow along. He thought the Board needs to decide whether they are in favor of food trucks as described.

Member McKeithan stated that he is in favor of using a food truck as an auxiliary use. Chair Blakaitis thought that is what the Board wants to do. Member McKeithan disagreed and thought Member Morton had made the suggestion of using a food truck as an auxiliary kitchen, not to serve patrons in order to reduce the exposure of COVID-19 to the employees of the restaurant. This will not give an unfair advantage to other restaurants by having a second source of selling food. Chair Blakaitis disagreed. Member Murray pointed out that if the Board does not make a statement to that fact, then it can be used to serve food. Member Morton agreed.

Vice Chair Cofield thought the Board was trying to give relief to restaurant owners given the emergency conditions. He thought the Board wants to be careful so as not to give an unfair advantage to any particular restaurant. He added that the issue of food trucks brings that up. He stated that there were comments against food trucks as well as other comments in favor of it. He pointed out that Duck does not allow any kind of food truck and only one restaurant he can think of has a food truck. He thought it will be better not to allow food trucks at all. He added that having a food truck will give an advantage to the one restaurant that already has one. He

reiterated that he is not in favor of allowing food trucks in Town. Chair Blakaitis pointed out that it could be something that Council can change at any time. He stated that he tends to agree with Vice Chair Cofield's comments, but as far as giving an unfair advantage to one restaurant, it is possible because the other restaurants do not have food trucks. He noted that they can get one if the ordinance is approved.

Member Murray asked if the Board should vote on whether or not to allow food trucks. Chair Blakaitis agreed with Vice Chair Cofield that he is not in favor of allowing food trucks in Town. Member Morton stated that he is in favor of food trucks if they are used as an auxiliary to the kitchen of a restaurant and serving food to patrons. Member McKeithan stated that he agrees with Member Morton's comments allowing food trucks. Chair Blakaitis stated the he is not in favor of allowing food trucks. Vice Chair Cofield stated he is not in favor of allowing food trucks. Member Murray stated that he is in favor of allowing food trucks for preparation and storage only. With a majority of the Board members in favor, Chair Blakaitis stated that food trucks will be put on the list for Town Council's consideration.

Director Heard stated that if the majority of Planning Board members wants to allow food trucks, then the members may want to spell out certain parameters and conditions. He thought there are some challenges with defining uses. He pointed out that food trucks will be cooking and preparing food to bring to a table. He wondered at what point that does that activity not become part of the sale. He added that it is easier to define storage but wondered when the preparation process becomes part of the sale. He stated that it is hard to define.

Member Murray thought the definition is that a staff person of the restaurant who is not working inside the truck will deliver the food to whoever took the order and not at the truck and delivers the food away from the truck. He noted that after 5:00 p.m. on any given day, the standards will be impossible to enforce. Chair Blakaitis asked how it would be impossible. Member Murray explained that it will be complaint driven. Member Morton thought it can be stipulated that food cannot be served out of the truck.

Permit Coordinator Sandy Cross was recognized to speak. Permit Coordinator Cross stated that some comments had come in and needed to be read. She stated that Jay Blose had suggested allowing food trucks only on properties that the restaurant is located. She stated that he further suggested that the time limit for the end date be no later than the end of the year.

Permit Coordinator Cross stated that Dan Lewis indicated that he had forwarded an email to all of the Planning Board members earlier in the day. She stated that Town staff did not receive a copy of the email.

Permit Coordinator Cross stated that Michelle Rowles had commented that to her current knowledge there are no food trucks in Duck and there are no regulations and wondered how it pertains to the current situation as well as how the Town will regulate the distribution of food and beverage during this time. She stated that Ms. Rowles wrote, with regard to the 50% capacity, there needs to be outdoor seating and asked how it is calculated.

Chair Blakaitis stated that with regard to Jay Blöse's comments, the Board already discussed all but a drop-dead date and the decision was made not to have a drop-dead date. He added that he did not understand Michelle Rowles's comments.

Member Murray reiterated that there seems to be a consensus that re-evaluation based on the State's phases is a good idea. He asked if the rest of the Board agreed. Vice Chair Cofield stated that he agreed. Chair Blakaitis stated that he agreed. Member McKeithan stated that he agreed. Member Morton stated that he agreed.

Director Heard stated that the Board needs to discuss whether a food truck can be used and what it can be used for. He stated that he is hearing comments that none of the Board members want sales coming directly from the food truck. Vice Chair Cofield stated that the ultimate decision will not be made by the Planning Board.

Chair Blakaitis stated that Dan Lewis had mentioned in this email that they will not be selling food from the food truck but providing food for the existing permitted restaurants and addressing the need for the kitchen to operate while maintaining the appropriate social distancing measures. Member Murray stated that it is an issue that staff has the discretion to revoke the use. Member McKeithan thought it was discussed that the food trucks are not allowed in Town but that a restaurant can have a food truck.

Director Heard asked if there are any other thoughts related to conditions for the allowance of an on-site food truck. He noted that the Board discussed approval by the Health Department and access to public restrooms. Member Morton thought if the truck is serving food and people are buying food from it, then there should be access to restrooms, but if it is just being used as a kitchen, then that may not be necessary. Member Murray pointed out that the food truck can continue making food for deliveries after the hours of the restaurant. He didn't see the relation with regard to the restroom requirements if it is used the way the Board has discussed.

Director Heard asked about potential location on the site and signage. Chair Blakaitis thought the location should be the most convenient and not one that takes up required parking. He added that it also needs to conform to health guidelines so it cannot be on top of a septic field. Director Heard clarified that the Board is in favor of the truck not located in parking spaces. Member Murray thought the Board will be dealing with parking in a subsequent discussion if there could be a deferment of parking requirements due to loss of inside dining. Director Heard stated that it could as it relates to outdoor seating, but this discussion is specific to the food truck. Member Murray thought it will be specific to the food truck if the food truck is serving food. Chair Blakaitis stated that the Board is discussing where the food truck should be parked. Member Murray thought it could be parked in any parking space on the restaurant property. Member McKeithan recommended no additional signage since the food is not for sale from the food truck. Member Murray and Chair Blakaitis agreed.

Director Heard asked the Board to discuss temporary provisions for outdoor seating and dining. He explained that some of the other communities are where it can be located, such as on a grassed area or parking areas. He noted that there are some challenges as the Board has discussed not wanting to favor one business over another. He added that there are some businesses in Town that have open areas where they can easily put something in that area on the grass and

there are other businesses that do not have that ability so they may need to look at other options instead of being limited to a grassed area. He asked the Board if they want to allow outdoor seating and dining and if so, is it be something that should be limited to the capacity of the restaurant. He asked the Board to think about if they had any specific design or locational criteria they want to consider.

Member Murray suggested deferring to the Health Department requirements for the location as they have detailed parameters. He thought it will be hard for the Board to come up with all of the permutations of possible places since it isn't an ordinance. Chair Blakaitis agreed. Vice Chair Cofield agreed with Member Murray's comments and added that since the state regulation is to reduce the capacity by 50%, the business cannot increase with the outdoor accommodation, consistent with the reduction under the State regulation. He further stated that if they are reducing by 30 seats inside, they cannot add 40 seats outside. Member Murray agreed. Member McKeithan thought there should be language about satisfying social distancing requirements. Vice Chair Cofield stated that the maximum amount of additional seating is governed by the amount of reduction of capacity. Member Murray pointed out that an outdoor entertainment and seating area are two different things. He clarified that the Board is allowing the seating to be moved outdoors to a location determined by the requirements outside of the Town's control to not exceed their current indoor total seating capacity.

Permit Coordinator Cross stated that Dan Lewis wrote in that approval on a location by location basis is adequate based upon variables. She stated that he wants that considered by the Planning Board. Chair Blakaitis stated that it is location by location. Vice Chair Cofield stated that he does not understand Mr. Lewis' comment. Chair Blakaitis stated that he does, and it is giving businesses a break by allowing the use of outside areas.

Director Heard stated that with regard to where a business can go, one of the key issues identified and discussed in other communities had to do with the ability to use existing required parking as the area where the tables and seats will be placed. He added that there are some towns that are looking at certain parameters – the Town of Kill Devil Hills is looking at 25% and could use up to 25% of the dedicated parking lot for that purpose. He stated that the Town of Kitty Hawk does not have a figure yet but is looking at something similar with a certain allowance that can be used so that it doesn't take up the entire parking lot. He asked the Board if it is something they wish to explore further. Chair Blakaitis didn't think the Board can as he thought it was up to each restaurant to figure things out. Member Morton thought it can be done like the Town of Kill Devil Hills. Chair Blakaitis disagreed and felt it needs to be done on a case by case basis. Member Murray stated that a percentage will not work because of the way the Town calculates parking for different uses. Director Heard clarified that a percentage will work.

Permit Coordinator Cross stated that Dan Lewis wrote in that 50% capacity is expected to be based on inside and enclosed patio seating. The additional capacity is beyond that realm making parking spaces grassy areas, etc.

Vice Chair Cofield stated that if a restaurant's seating capacity is reduced by 50%, then the parking requirements will be reduced accordingly by 50%. He stated that reducing the number of seats inside translates to reduced parking spaces so the business should be able to use those parking spaces for the seating.

Director Heard stated that if there is reduced capacity it will potentially mean that there is only half the amount of parking required. He stated that if additional seating is put back into that equation, it would be increasing the capacity and would need parking to accommodate the additional seating that would now be moved outside. He stated that is how the 25% was arrived at for the Town of Kill Devil Hills. Member McKeithan thought the Board should allow 25% for seating as the people using the outdoor seating will need a place to park.

Member Murray stated that he does not see a need to make adjustments for parking. He thought the businesses are going to need to be flexible as people will not want to eat outside in the summer heat. He isn't sure it makes sense to have a recommendation at this point.

Permit Coordinator Cross stated that Michelle Rowles wrote in that as the guests are retraining, a guideline will help businesses to enforce social distancing as well as having a list available to display to help visitors understand, respect and protect. She stated the State has put out guidelines that are distributed by staff to the businesses, so she isn't sure if Michelle Rowles wants that in addition to what the State has done.

Permit Coordinator Cross stated that Dan Lewis wrote in that he does not recommend 25% for Duck as there isn't enough capacity. She stated that he would like the email he sent to the Board earlier to be read in its entirety. Permit Coordinator Cross reiterated that staff never received a copy of the email. Director Heard pointed out that if staff did not individually read the other emails that came in prior to the meeting, he doesn't think it would be fair to read the email from Mr. Lewis just because he wants it done. He added that the Planning Board members all confirmed that they received the email and it is part of the meeting record.

Vice Chair Cofield stated that the Board was discussing the items for consideration, but they were not the Board's rules as they were for the Mayor and Town Manager. Member Murray agreed. Member Morton thought the Board didn't have to use the 25%, but could indicate an area that the seating could be put in. Vice Chair Cofield stated that no one was reducing the seating capacity of restaurants so the Board could not take the outside parking spaces. He reiterated that it was up to the Mayor and Town Manager to work out the details.

Chair Blakaitis asked if a general statement could be added about parking. Director Heard stated that the recommendation can be as detailed as the Board wants. Member Murray agreed with Vice Chair Cofield's comments that parking be considered.

Director Heard stated that there are other items to be considered with one being the potential provision for tents, presumably in relation to the outdoor dining and whether that should or should not be allowed. Chair Blakaitis stated that he doesn't have a problem with it. Permit Coordinator Cross noted that a building permit will be needed depending on the size and thought the Board needs to decide if the fees for it should be considered. Chair Blakaitis asked what the fee is. Permit Coordinator Cross stated that it is \$100, adding that commercial properties are limited to four permits per year. Chair Blakaitis thought it would be up to Council regarding the fees and permits.

Director Heard asked the Board how they feel about signs. He stated that Dare County is allowing an additional temporary sign no greater than 12 square feet in size. He added that some of the other towns are considering it, but he isn't sure if they will move forward with it. Chair Blakaitis thought there should be consideration for the signs and Council can make that decision.

Director Heard asked the Board if they have other issues that they wish to discuss.

Member Murray noted that some of the comments received are asking the Board to encourage people to wear masks. He doesn't think it is in the Board's purview and thought Council should be encouraged to discuss it. Member McKeithan thought encouraging people to wear masks should come from the Town and Dare County and not the individual shops. Chair Blakaitis agreed. Director of Marketing and Special Events Christian Legner was recognized to speak. Director Legner stated that she sent to every business in Duck information from the State about the new executive order and all of the information from Dare County which included standardized signage for masks and social distancing.

Introduction to NCGS Chapter 160-D: Planning & Development Modules from the UNC School of Government

Director Heard stated that since there were two new items that were added to the agenda and discussed earlier, the modules could be watched at this meeting or be deferred to another meeting. He thought the audience would lose interest in the modules. Chair Blakaitis agreed. Director Heard stated that there is a deadline of December 31, 2020 for the adoption of the standards to bring the Town's ordinances into compliance with the new state statutes. He added that because of COVID-19, the deadline has been extended and the Town will not need to adopt the changes until the spring of 2021.

Chair Blakaitis suggested that since everything will be pushed back, the Board can pick another date where they may not have anything on the agenda in order to watch the modules. Vice Chair Cofield agreed. Director Heard stated that it was the original intent for this meeting, but the other two issues had come up. Chair Blakaitis stated that if timing is getting tight, then a second meeting could be held to watch the modules. Vice Chair Cofield agreed.

APPROVAL OF MINUTES

Minutes from March 11, 2020, Regular Meeting

Vice Chair Cofield moved to approve the March 11, 2020 minutes as presented. Member Murray seconded.

Motion carried via roll call 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of Recent Town Council Meetings

Director Heard gave a short overview of the recent Council meetings.

Project Updates

Director Heard gave a short overview on various projects going on in Town.

BOARD COMMENTS

None.

ADJOURNMENT

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

There was no vote.

The time was 7:38p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman