

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
March 6, 2019**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, March 6, 2019.

**COUNCIL MEMBERS PRESENT:** Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Nancy Caviness; Councilor Chuck Burdick; and Councilor Jon Britt.

**COUNCIL MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Town Manager Christopher Layton; Police Chief John Cueto; Fire Chief Donna Black; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Director of Marketing and Special Events Christian Legner; Public Relations Administrative Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

**OTHERS ABSENT:** None.

Mayor Kingston called the meeting to order at 7:05 p.m. He asked Public Relations Administrative Assistant Betsy Trimble to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

**PUBLIC COMMENTS**

Mayor Kingston opened the floor for public comments. He asked that any comments regarding the public hearings be held off.

Mayor Pro Tempore Monica Thibodeau was recognized to speak. Mayor Pro Tempore Thibodeau stated that she was present on behalf of the League of Women Voters and went on to present the 2019 Citizen Guide to Council and the audience.

There being no one else wishing to speak, Mayor Kingston closed the time for public comments.

**CONSENT AGENDA**

**Minutes from the February 6, 2019, Regular Meeting; Government Education Access Channels Committee Proposed 2019-2020 Budget; and Government Education Access Channels Committee Interlocal Agreement and Standing Operating Procedures**

Councilor Burdick moved to approve the consent agenda as presented.

Motion carried 5-0.

### **SPECIAL PRESENTATION**

#### **Presentation by Tim Sweeney, Dean, Dare County Campus, College of the Albemarle**

Tim Sweeney of the College of the Albemarle was recognized to speak. Mr. Sweeney went on to give a presentation on all of the different programs of study offered at the Dare County campus, noting that the campus has expanded their Certification in the Workforce Development Pathways as well as their dual enrollment Pathways for high school students to Council and the audience.

Mayor Kingston thanked Tim Sweeney for his presentation.

### **PUBLIC HEARINGS**

#### **Public Hearing/Discussion/Consideration of CUP 19-001, a Conditional Use Permit Application by Gold Key, LLC to Establish a Coffee/Smoothie Take-Out Business (Eating Establishment) in an Existing Unit of the Barrier Island Shoppes at 1247 Duck Road**

Mayor Kingston turned the meeting over to Town Attorney Robert Hobbs.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. He stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine, and cross-examine witnesses. He asked that anyone wishing to testify come forward to be sworn in.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman proceeded to swear in the applicants and staff for the public hearing.

**The following persons were sworn to provide testimony during the hearing: Joe Heard, Ben Cahoon, Necla Radar, and Beaman Hines.**

Town Attorney Hobbs opened the evidentiary portion of the hearing. He stated that Director Heard would give an overview.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the applicant was requesting a conditional use permit to establish a coffee/smoothie take-out business in a 442 square foot unit of the Barrier Island Shoppes at 1247 Duck Road.

Director Heard stated that the property was currently zoned Village Commercial and contained the Barrier Island Shoppes shopping center. He stated that the center presently contained a variety of office, retail, and residential uses housed in a single, multi-story building. He noted that even though it appeared to function as a single site, the subject property is wrapped around the north and east by a large, V-C zoned property that contains parking shared by the Sunset Grill Restaurant and the Barrier Island Shoppes.

Director Heard stated that the applicant was 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 pointed out that an eating establishment was a conditional use in the Village Commercial zoning district.

Director Heard stated that the Barrier Island Shoppes was constructed in 1984 and contained a total of 11,052 square feet, which exceeded the maximum building size standard of 5,000 square feet in the V-C District. He added that as the center was constructed long before the Town incorporated, the building was considered a legal, nonconforming use and could continue to be used with the current layout and dimensions. He noted that the subject unit was previously occupied by a retail tackle shop and was relatively small in size as it contained only 442 square feet. He stated that even though the space would be redistributed differently, the size of the unit would remain the same under the proposed change of use. He noted that the existing setbacks complied with the Town's standards and would remain the same under the proposed change of use.

Director Heard stated that the subject property was 32,861 square feet in size which complies with the minimum lot size of 20,000 square feet for the V-C district. He added that the total lot coverage of 64.8% exceeded the maximum lot coverage requirement of 60% in the V-C zoning district and although it was presently nonconforming, the existing lot coverage would remain the same under the proposed change of use.

Director Heard stated that the current development has two driveways for ingress/egress from Duck Road. He stated that with a width of 26 feet, the southern driveway complied with the maximum width standard of 30 feet and the driveway width of 29 feet at the road edge also complied with the Town's maximum requirement of 40 feet. He added that the second driveway to the north was 25 feet in width and 32 feet at the roadway with the existing access drive complying with Town standards and would remain the same under the proposed change of use.

Director Heard stated that most of the existing parking lot was 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 the drive aisle widths ranged from as wide as 27 feet in front of the building to as narrow as 19 feet by the rear of the building. He added that although the narrower drive aisle to the rear of the building was not ideal, staff was not aware of any significant problems with the functionality of the current parking layout. He noted that the existing drive aisles would remain the same with the proposed change of use. He pointed out that 12 spaces on the south side of the building can only be

accessed from inside the gates of the Barrier Island Station timeshare development and these spaces back directly onto the main access road through Barrier Island Station. He stated that due to their location, it was highly likely that these spaces were typically used by guests or visitors to the adjoining Barrier Island Station office.

Director Heard stated that the Barrier Island Shoppes and Sunset Grill Restaurant have operated under an informal shared parking arrangement for several decades. He explained 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 found a reference to the shared parking arrangements in a deed recorded in 1982, which was prior to the construction of the current improvements on both properties. He noted that the Sunset Grill Restaurant property presently contained 44 parking spaces on the west side of Duck Road and 90 parking spaces on the east side. He added that the Barrier Island Shoppes property contained 29 parking spaces on the east side of Duck Road. He pointed out that due to the variety of office, retail and residential uses in the Barrier Island Shoppes, it requires a total of 73 parking spaces. He stated that, together, the Sunset Grill Restaurant and Barrier Island Shoppes require a minimum of 212 parking spaces, but only 163 spaces exist for the two properties, which leaves a deficiency of 49 parking spaces to serve both sites.

Director Heard stated that in spite of the deficiency with the parking calculations, the parking area typically functions well in meeting the parking needs of the businesses. He added that while Sunset Grill Restaurant is open for business during daytime hours in season, their greatest business is conducted during the evening hours. He noted that most of the businesses in the Barrier Island Shoppes have been open during daytime hours, but cease business activity in the evenings, so the parking needs have maintained a balance. He stated that the two properties have coexisted with a shared parking arrangement for many years, so the existing parking situation was a legal, nonconforming situation and under this scenario, both businesses can continue to operate with the current parking situation but could not be expanded in a manner that increases the parking needs on either property unless approved for reduced parking requirements under the Village Commercial Development Option.

Director Heard stated that the proposed change of use to a coffee/smoothie take-out business resulted in an increase of parking requirements for the site. He stated that when classified as a retail space, the 442 square foot unit required a minimum of 2.2 parking spaces, but as an eating establishment, the proposed use requires a minimum of five parking spaces. He explained that the proposed increase was counter-balanced 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 spaces for the apartment. He stated that in total, the minimum parking requirement was being reduced by 1.6 parking spaces through the two use changes. He stated that the minimum parking requirement would round down to 73 spaces and although not initially proposed, the subject business could add up to 12 customer seats without exceeding the five seat

minimum parking requirement for the business. He pointed out that the applicant recently obtained a permit to convert additional office space to another four-bedroom apartment, which required administrative approval only as a permitted use with no site changes. He stated that the change resulted in a further decrease of parking requirements for the site.

Director Heard stated that at its February 13, 2019 meeting, the Planning Board voted 4-1 to recommend 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 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.

Mayor Kingston pointed out that 40 employees were noted for the offices at the Barrier Island Shoppes. He asked if there were 40 employees there. Director Heard stated that it may be something that was subject to change as some of the uses change, but it was what was provided to him. Mayor Kingston clarified that the actual number of employees was unknown. Director Heard stated he was correct, adding that 40 employees was the number provided to him. Mayor Kingston asked if the parking spaces on the south end were restricted and not for after-hours use. Director Heard stated that staff was counting those towards the amount of parking that was available, but there were limitations as to when they could be used.

Councilor Caviness asked what the number of parking spaces were required for the proposed new business. Director Heard stated that it was five. Councilor Caviness asked if they would be able to have parking spaces that were signed, marked or dedicated to them. Director Heard stated that it was subject to the individual property owner's decision. He explained that if they wanted to do that, it could be done. He added that there may be some restrictions on the ability to do that due to the shared parking agreement and if they start dedicating parking spaces to individual businesses, it would negate the spirit of the shared parking agreement. Councilor Caviness agreed that it would violate the notion of shared parking but pointed out that 100% of the parking lot at night was overrun by Sunset Grill Restaurant. She added that it may not be a problem for any business that operates during the day, but for any business that would go into that space that wants to do business in the late afternoon or evening, there would not be any parking spaces available for their customers. She stated that there would either be customers from Sunset Grill Restaurant or people would walk, which was an option. She noted that people may not be parking down the side of Duck Road, but they would be

driving in and out of the two parking lots to try to find a parking spot. She stated that Sunset Grill Restaurant demands a lot of parking and she was wondering if the applicant expected to have any chance of their customers trying to park there, if they would be able to have designated parking. Director Heard pointed out that the business owner was present and could speak to the hours of operation for the business.

Mayor Kingston asked about the parking for the apartments. Director Heard stated that permits have been issued for the second conversion for the apartments. Mayor Kingston thought the same question regarding parking could be raised for the apartments. Councilor Caviness wondered if they would have dedicated parking spaces for the tenants.

Mayor Pro Tempore Thibodeau clarified that the second apartment didn't need to be factored in when the parking calculations were completed. She asked if that would come in later. Director Heard stated that staff issued a permit for the conversion since the Planning Board meeting. Mayor Pro Tempore Thibodeau clarified that it was not part of the conditional use permit. Director Heard stated she was correct. Mayor Pro Tempore Thibodeau asked where the septic field was located. Director Heard stated that it was located at Barrier Island.

Councilor Caviness asked if the northeast corner of the parking lot where all of the boats were clustered was still problematic. Director Heard stated that staff has not had to address the issue. Councilor Burdick noted that the septic was redone. Councilor Caviness asked if it took care of the ponding water problem. Councilor Burdick stated that it did.

Town Attorney Hobbs asked the applicant to make a presentation.

Ben Cahoon of Cahoon and Kasten Architects was recognized to speak. Mr. Cahoon stated that he was representing the applicant. He stated that with regard to the parking, the property line for the building runs through the middle of the driveway so the parking spaces on the north could not be accessed without coming onto the Barrier Island Station property. He stated that the applicant has applied for and received a Health Department permit for the unit. He stated that with regard to the rest of the building and the parking issues, the applicant intends to have a plan in place and was in the process of applying for permits to convert the apartments. He noted that the Town's ordinance allows up to 50% of the building to be a residential use. He added that it was able to be done because the building was sprinklered. He stated that one unit has been permitted and converted into an apartment with construction starting on it shortly. He added that there would be two more units that would be converted with the target being workforce housing.

Ben Cahoon stated that most of the occupants in the apartments would not have vehicles at the property since they would be working at Sunset Grill Restaurant or somewhere where they could ride a bicycle or walk. He pointed out that the applicant was allocated parking spaces for the apartment units as per the Town's ordinance. He stated that the wastewater permit was for 80 employees at 25 gallons per day, which was how the

building was originally permitted. He noted that 80 employees do not work in the building and the applicant has been backing that number down as the units were converted. He stated that the number they used on the application was based upon the square footage of the office as the Town's ordinance requires one parking space for every 200 square feet as well as one parking space for every two employees. He explained that they took the number of parking spaces that were in the first calculation and called it the number of employees, which was approximately 40 and then used that for the one space per two employees. He stated that there were enough parking spaces for 26 employees. He stated that the applicant's proposed business would be heavy at breakfast and lunch time and would taper off significantly in the evening. He added that the offices hours would taper off after 5:00 p.m., which helps with the parking situation.

Councilor Caviness asked how many apartment units would be at the site. Ben Cahoon stated that there would be four. Councilor Caviness clarified that they would each be two-bedroom apartments. Mr. Cahoon stated that they were larger than that and that there were currently two 4-bedroom units now. Councilor Caviness clarified that there would be four 4-bedroom apartments. Mayor Pro Tempore Thibodeau stated she was incorrect. Mr. Cahoon stated that it would be two 4-bedroom apartments. Councilor Britt asked if the apartments would primarily be used for Sunset Grill Restaurant's staff. Ben Cahoon stated that they would.

Councilor Caviness stated that if the apartments were going to be used for Sunset Grill Restaurant's staff, then the statement about people walking to the site may be fine but she thought it was a big assumption to make. She added that people would have to have a vehicle to do other types of things. Ben Cahoon agreed. Councilor Caviness stated that it could not be assumed that there won't be a need for any vehicles there because they would all be walking to Sunset Grill Restaurant. Mr. Cahoon agreed, adding that the target for the apartments were for the summer workforce that were primarily service workers.

Councilor Burdick noted that in the current apartment, some of the individuals worked at Sunset Grill Restaurant. Councilor Caviness stated that her concern still stood since there was a building with homes and businesses and whatever it was, from this day on, those businesses have a right to have dedicated parking that doesn't get overrun by Sunset Grill Restaurant customers. She understood that there was a grandfathered, shared parking arrangement but thought observation would say that Sunset Grill Restaurant customers overrun the parking lot. She thought that anyone that lived there, whether they get around by foot or bicycle, had a right to park their vehicle and not have restaurant people parking there. She further thought that anyone that has a business there has a right to have some dedicated parking spaces for their customers. She pointed out that there was a big deficiency in the lot which concerned her for the prosperity and future of whatever goes in the building.

Town Attorney Hobbs asked if any sworn witnesses wished to address the application. There were none. He asked if Council had any remaining questions.

Mayor Kingston asked the applicant if she was concerned about parking for her new business. Necla Radar was recognized to speak. Ms. Radar stated that she would be doing mostly online ordering with things on the go and would complement Sunset Grill Restaurant's business. She stated that she did not believe in competition and wanted to help the Duck community. She stated that she was hoping for a lot of walk-in traffic and was not concerned about the parking.

Councilor Caviness asked Necla Radar if she would have evening hours. Necla Radar stated that she would.

There being no one else wishing to speak. Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston.

Mayor Pro Tempore Thibodeau thought it would be a great fit for the space. Councilor Burdick thought it was a good addition to the area. Councilor Caviness stated that she recognized that parking could be an issue, but the deficiency still concerned her.

Councilor Burdick moved to approve Conditional Use Permit 19-001 as presented with the findings and conditions.

Motion carried 4-1 with Councilor Caviness dissenting.

**Public Hearing/Discussion/Consideration of CUP 19-002, an Application by FEG Development Company Requesting the Following Conditional Use Permits for the Loblolly Pines Shopping Center at 1187 Duck Road: Conversion of an Existing Retail Unit to a Post Office; Addition of Customer Seating (14 Seats) at Tullio's Bakery; and Use of the Village Commercial Development Option to Reduce the Required Number of On-Site Parking Spaces**

Councilor Burdick asked to be recused from the public hearing due to a personal financial interest he had.

Mayor Kingston moved to recuse Councilor Chuck Burdick from the meeting.

Motion carried 4-0.

Mayor Kingston turned the meeting over to Town Attorney Robert Hobbs.

Town Attorney Hobbs stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. He stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine, and cross-examine witnesses. He asked that anyone wishing to testify come forward to be sworn in.



Town Clerk Ackerman proceeded to swear in the applicants and staff for the public hearing.

**The following persons were sworn to provide testimony during the hearing: Joe Heard, Michael Strader, and Gunnell Rupert.**

Town Attorney Hobbs opened the evidentiary portion of the hearing. He stated that Director Heard would give an overview.

Director Heard stated that the applicant was requesting conditional use permits for the Loblolly Pines Shopping Center at 1187 Duck Road for the conversion of a 900 square foot retail space to a post office; for the addition of customer seating of 14 seats at Tullio's Bakery; and for the use of the Village Commercial Development Option to reduce the required number of on-site parking spaces.

Director Heard stated that the property was currently zoned Village Commercial and contained the Loblolly Pines shopping center. He stated that the building was constructed in 1986 and presently contained a total of nine units in an 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 stated that the center had several changes to its parking layout, access, and tenancy during its early years and 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 that was limited to four seats in order to maintain compliance with minimum parking requirements; and CUP 18-005 to convert a 900 square foot retail space to an ice cream shop where the applicant was required to remove two seats from Pizzazz Pizza to achieve compliance with minimum parking standards. He noted that the removal did not occur as the applicant was requesting to keep those seats as part of the current application.

Director Heard stated that the applicant proposes to convert an existing 900 square foot retail space into a post office, which was a conditional use permit in the Village Commercial District. He added that the applicant was proposing to bring the existing, nonconforming seating at Tullio's Bakery and two seats at Pizzazz Pizza into compliance. He stated that intensifying the use of the bakery was also a conditional use in the Village Commercial District.

Director Heard stated that the existing Loblolly Pines shopping center contained a total of 11,051 square feet, which was greater than the maximum building size standard of 5,000 square feet in the Village Commercial District. He pointed out that as the center was constructed long before the Town incorporated, the building was considered a legal, nonconforming use and could continue to be used with its current layout and dimensions. He stated that the unit proposed for the post office was located in the northern wing of the center and was presently part of All Ducked Out, which was a retail store. He added that

the unit was approximately 900 square feet and All Ducked Out would continue to occupy the adjoining unit since a new wall would separate the uses as part of the project. He stated that the existing pergola structure adjoining Pizzazz Pizza encroaches over three feet into the front setback and the northern wing encroaches 0.2 feet into the northern side setback. He noted that the remaining setbacks complied with the Town's standards and although nonconforming, the existing setbacks would not be impacted by the proposed changes of use and would remain the same.

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

Director Heard stated that the subject property presently contains 46 parking spaces with the amount of parking available being six spaces short of complying with the minimum parking standards. He stated that the applicant was seeking relief through the Village Commercial Development Option to modify the minimum parking requirement and find that 46 parking spaces were adequate to serve the existing and proposed development on site. He stated that in support of the request for the Village Commercial Development Option, the applicant notes that much of the customer traffic to Loblolly Pines arrives on foot or by bicycle, therefore, the amount of vehicular parking needed is less than typical shopping centers.

Director Heard noted that Loblolly Pines shopping center also has additional parking available that adjoins the subject property and, although not located on the property and not counted in the parking calculations, there was a gravel parking area that accommodates six vehicles within the Poteskeet Drive right-of-way. He added that vehicles in these spaces back directly onto Poteskeet Drive and the informal, gravel parking area has been in place for several decades.

Director Heard stated that the applicant was seeking approval of the Village Commercial Development Option to modify the minimum parking requirement and find that 46 parking spaces were adequate to serve the existing and proposed development on the site. He added that approval would allow the 46 parking spaces instead of the 52 parking spaces required to accommodate the uses in Loblolly Pines. He explained that the Village Commercial Development Option offers flexibility from a variety of development

standards in the Village Commercial District on a project-specific basis and that the Planning Board was asked to determine if the proposed development was consistent with the intent of the Village Commercial Development Option and warrants approval of the requested modification to the development for parking.

Director Heard noted the stated purposes of the Village Commercial Development Option were as follows:

1. To facilitate appropriate development in the Village Commercial District.
2. To assist in the creation of a mixed-use development of a size, scale, and architectural character that will complement the Village Commercial District that is at the heart of Duck.
3. To provide opportunities for custom site-specific development review to implement Town policies encouraging shared parking, limited vehicular access, pedestrian accommodations, and a mixture of land uses.
4. To reinforce the Village Commercial District as an exceptional and distinctive place to live, work, and recreate.

Director Heard stated that while evaluating the proposed development for compliance with the intent and objectives of the Village Commercial Development Option, Community Development staff evaluated the existing site and proposed improvements and offered the following comments:

- An existing gravel parking area in the Poteskeet Drive right-of-way directly adjoins the subject property and provides six additional parking spaces, exactly the amount being sought under the parking modification.
- The subject property adjoins the Duck Village sidewalk and bicycle lane. The shopping center is in close proximity to these facilities and easily accessible to bicycles and pedestrians.
- The proposed addition of a second bicycle rack provides additional facilities for customers biking to the property.
- The shopping center has preserved a cluster of loblolly pine trees in the front parking area.
- The Loblolly Pines shopping center consists of a single, L-shaped building with parking in front. The size of the building is inconsistent with the scale of commercial development presently required and desired in Duck. The shopping center was constructed in 1986, many years before the incorporation of Duck and adoption of these standards.

Director Heard stated that at its February 13, 2019 meeting, the Planning Board voted unanimously to recommend 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.
4. Parking lot striping and parking bumpers must be added in the central portion of the parking area to identify individual parking spaces.

Director Heard stated that during the evaluation of the proposal, the Planning Board discussed some of the existing site nonconformities and, similar to the recent Scarborough Faire application, the parking available in the adjoining right-of-way balanced the amount of on-site parking and the Board was comfortable recommending a parking reduction under the Village Commercial Development Option. However, the Board members did not find it appropriate to grant Village Commercial Development Option flexibility to deal with other existing nonconformities, such as the building setbacks. He stated that Board members pointed out that the applicant had not removed two seats from Pizzazz Pizza as required under a prior conditional use permit. He noted that it was explained that keeping those seats was part of the current application and they were factored into the parking calculations. He stated that Board members felt it appropriate to physically identify individual parking spaces in the central parking area and added the condition to do so. He stated that striping was recommended on concrete parking areas and parking bumpers in the gravel areas.

Mayor Kingston stated that he was concerned about the delineation of the parking spaces from the standpoint of markings. He pointed out that the conditional use permit talked of the center area, but the rest of the parking lot was not well striped nor was the southern area coming off of the road. He stated that it was marked on the blueprint, but there was no delineation of those parking spaces either. He asked if the Planning Board discussed delineation of the rest of the parking lot. Director Heard stated that the Planning Board discussed it and the delineation was a condition of the permit.

Mayor Kingston stated that his second concern had to do with safety. He stated that now that there would be outside seating, vehicles could pull right up to the sidewalk when they park. He noted that there was no safety from the standpoint of vehicles pulling in and accidentally hitting someone. He asked if there was any discussion of bumpers around the building for the parking spaces. He stated that it was a key safety issue for him. Director Heard stated that it was not discussed at the Planning Board meeting.

Mayor Pro Tempore Thibodeau asked Mayor Kingston to clarify his concerns. She asked if he was discussing the central area that was gravel. Director Heard stated that he was referring to the parking spaces in the front of the building and the fact that there were not any physical barriers between the parking spaces and the adjoining entrance. Mayor Pro Tempore Thibodeau wondered how it would be delineated. She assumed that timbers would be installed to direct drivers as to where they could pull up to park. She thought it may work and didn't think the gravel would be striped. Director Heard stated that

bumper stops would be used. Mayor Pro Tempore Thibodeau asked Mayor Kingston if he was talking about the same thing. Mayor Kingston stated that he was talking about the paved parking area. Mayor Pro Tempore Thibodeau stated that there would be a paved bumper as opposed to someone pulling up too far and hitting the window.

Councilor Britt stated that he saw the need for the parking stops in the area of the gravel and striping but thought putting striping on gravel would look ridiculous. He noted that Council never made anyone do that before and didn't think it should be a requirement. He didn't think there needed to be any striping by the Loblolly pine trees.

Councilor Caviness stated that she would like to see more trash receptacles since there were a lot of food establishments in the shopping center. She stated that there was more trash accumulating on the sidewalk from the shopping center over any other in Town. She stated that she would rather see more trash receptacles instead of the striping. She added that she didn't consider the bumper stops.

Mayor Kingston asked if there was any discussion by the Planning Board about it. Director Heard stated that there was not a discussion about the spaces that adjoin the building. He stated that their intent was to have the bumpers on the gravel and have the striping on the concrete parking spaces.

Councilor Britt stated that he wanted to be sure that the gravel would not be painted. Mayor Kingston stated that he was concerned about the safety issue, especially with the post office and the pharmacy as there will be a lot of traffic. Councilor Britt stated that the shopping center has been there a long time and felt that Council was deliberating at this point. Mayor Kingston noted that there hasn't been an outside eating establishment at the shopping center.

Mayor Pro Tempore Thibodeau clarified that the two extra seats at Pizzazz Pizza were inside the building. Director Heard stated she was correct. Mayor Pro Tempore Thibodeau clarified that the 14 seats at Tullio's Bakery was something that was never permitted. Director Heard stated she was correct.

Councilor Britt asked what the rationale was for not including the setbacks in the Village Commercial Development Option. He added that the Planning Board wanted to leave out the two inches on the back wall and three inches on the pergola to bring the whole thing into compliance. He asked if it was something that Council could reintroduce at this meeting as he didn't agree with the Planning Board's decision to not include it. Director Heard stated that it was up to Town Attorney Hobbs. Councilor Britt noted that it was on the original application. Director Heard stated that it was not on the original application, but it was something that the applicant requested. Councilor Britt stated that he was at the meeting and it was requested. Town Attorney Hobbs clarified that the applicant requested it at the Planning Board meeting. Director Heard stated that they did, explaining that under the Village Commercial Development Option, the Council has the ability to do some reduction and/or flexibility of the setbacks. He explained that the applicant had requested that they consider the existing, nonconforming building setbacks

and the possibility of bringing those into compliance through the Village Commercial Development Option. He stated that the Planning Board discussed it and decided not to support it. Councilor Britt stated that they discussed the northern wing being possibly no more than the way they used to measure and record setbacks, which was the reason it was 9.8 feet as opposed to 10 feet. He stated that he wanted to bring up that it was on the applicant's original request as part of the Village Commercial Development Option. He didn't see any reason why Council wouldn't put it in there in order to bring everything into compliance.

Mayor Pro Tempore Thibodeau asked what the difference would be. Director Heard stated that, functionally, it was a legal, nonconforming use and could remain and could be repaired in its present location. He noted that it was not conforming, but where it may come into play would be if the property was being sold or possibly related to a mortgage. He stated that if a potential buyer was looking at it, even if it was legally nonconforming, it would raise red flags. Councilor Britt thought it seemed to be an unnecessary complication.

Town Attorney Hobbs stated that with regard to considering it, he thought Council would want to hear from the applicant as far as any recommendation along those lines and for Council to have sufficient evidence presented during the hearing as to exactly what was proposed with regard to the development option with respect to setbacks in order to decide if there was sufficient evidence to include that as part of the permit. He stated that it sounded like it has been discussed at the Planning Board meeting and they did not bring it forward to Council, but it didn't mean that Council could not consider it if there was sufficient evidence. He asked how much evidence was in Council's packets. Director Heard stated that there wasn't. He explained that the applicants had a conversation and agreed that it wasn't a big deal with them whether or not it moved forward as they were okay with not pursuing it.

Town Attorney Hobbs clarified that it was a verbal discussion and nothing was presented by the applicant. Town Manager Layton stated that there was a statement about it in the project narrative in the conditional use permit application. Town Attorney Hobbs asked if it was a request for that option. Director Heard stated that it was and was after the original application, but before the Planning Board meeting.

Councilor Caviness asked if the application had a formal request to consider the setback issue or not. Director Heard stated that the original application did not include it, but prior to the Planning Board meeting, the applicant revised their narrative to include that. Councilor Caviness clarified that nothing would preclude the applicant from coming forward again to deal with that issue. Director Heard thought that was what Town Attorney Hobbs wanted to clarify.

Town Attorney Hobbs asked how Director Heard considered the Planning Board's disposal of that additional request. He asked if it was considered to be not acted on or acted on and denied. He further asked if they made some type of recommendation to Council about that specific aspect of the application. Director Heard stated that it was

acted on and denied. He explained that the Planning Board specifically discussed it and specifically stated that their approval of the Village Commercial Development Option did not include that. Town Attorney Hobbs asked if it could be interpreted as being a recommendation to the Council from the Planning Board that that aspect of it not be approved. Director Heard state that it was how he interpreted it. Town Attorney Hobbs stated that it was still a recommendation, but Council could act on it independently because it was simply a recommendation. He added that if Council found that there was sufficient evidence presented about that option both in the written materials and the presentation from the applicant about that option, if Council chose to, they could, but he felt that Council should hear from the applicant to see what the applicant had to say.

Town Attorney Hobbs asked the applicant to make a presentation.

Michael Strader of Quible & Associates was recognized to speak. Mr. Strader stated that he did not have anything further to present to Council but wanted to let them know that he and Gunnell Rupert were available to answer any questions or concerns. He stated that the applicant wanted to be accommodating and that was why he was willing to remove that one option. He stated that the applicant did not take any exception to the conditions set forth in the recommendation, including the delineation of the current undelineated parking spaces. He stated that the applicant also took note of the suggestion regarding the bumper stops and would take it into consideration. He stated that they were requesting that Council consider the utilization of the Village Commercial Development Option allowing for the conceptual development plan to specify the proposed setbacks. He stated that they would appreciate the opportunity to address any questions or concerns Council may have.

Town Attorney Hobbs stated that there was a condition that was suggested as far as adding parking bumpers to the parking spaces adjacent to the building. He clarified that the applicant would be agreeable to that if it were added as a condition. Michael Strader stated that they would be agreeable to the conditions that were in writing. He noted that the condition of the bumper stops was brought up earlier in the meeting, which the applicant was willing to consider. Town Attorney Hobbs stated that Council needed to know whether the applicant supports that condition or not before they start their deliberations.

Gunnell Rupert was recognized to speak. Mr. Rupert stated that he was agreeable to the striping and parking delineation on the entire site. He added that he would put bumper stops at all of the gravel parking spaces and stripe the concrete spaces but preferred not to add bumper stops to them as there were 8x8's that would take care of any potential safety issues. He stated that he would add more trash cans to the site.

Councilor Caviness asked if bumper stops could be installed on Poteskeet Drive. Gunnell Rupert stated that he could add them. Town Manager Layton pointed out that those spaces were not on the applicant's property. Director Heard stated that the applicant would have to obtain approval from NC Department of Transportation.

Town Attorney Hobbs stated that there was a mention about the lack of a need for striping in the gravel area. He asked the applicant if he was in agreement with that. Gunnell Rupert stated that he was. Councilor Britt noted that if the bumper stops were against the building, the parking spots would be deeper and reduce the drive aisle.

Councilor Britt asked the applicant about the setbacks. Gunnell Rupert stated that if it could still be considered, he would like for it to be. He noted that he was not planning to sell the building as his mother owned it. He added that he may want to eventually buy into it and would have to borrow against it to do so. He stated that it would be nice if there weren't any red flags associated with the building. He noted that if it prohibited the post office from coming in or the change to Tullio's Bakery, he would not want it done. He stated that if it was available under the Village Commercial Development Option, he would be in favor of it being included.

Town Attorney Hobbs asked if any sworn witnesses wished to address the application. There were none.

There being no one else wishing to speak. Town Attorney Hobbs closed the evidentiary portion of the public hearing. He noted that since Councilor Burdick had recused himself from the meeting, his vote would not be counted as he was disqualified from voting. He added that there needed to be three votes in favor of the application to approve it. He turned the meeting back over to Mayor Kingston.

Mayor Kingston stated that he wanted to clarify #4 in the staff report regarding parking lot striping and parking bumpers. Mayor Pro Tempore Thibodeau stated that the language read as follows: "Parking lot striping on the concrete and parking bumpers on the gravel must be added..." Mayor Kingston thought it needed to be clarified. Mayor Pro Tempore Thibodeau thought it needed to be reworded. Town Attorney Hobbs explained that the only change being made was limiting the striping to the paved area and everything else would apply to the entire central portion. Mayor Kingston agreed, adding that the bumpers would be limited to the central portion. Mayor Pro Tempore Thibodeau suggested the language read as follows: "...parking lot striping on the paved portion and parking bumpers in the central portion..." Councilor Caviness suggested the language read that the parking bumpers be in the central portion where it's gravel. Mayor Pro Tempore Thibodeau suggested that it read that parking bumpers be located in the central portion where it's gravel must be added. Councilor Britt suggested it be stated as paved and unpaved instead of paved and gravel. Councilor Caviness agreed. Councilor Caviness read back the suggested language: "...parking lot striping on the paved areas and bumper stops on the unpaved areas..." Mayor Pro Tempore Thibodeau thought the suggested language was good. Mayor Kingston thought Council was in agreement on the suggested language change.

Mayor Kingston asked about the suggested language to add the setback. Councilor Caviness asked if Council could consider the setback piece that has not come forward to Council. Town Attorney Hobbs stated that it was presented to the Planning Board and he had asked Director Heard if the Council should consider the Planning Board's



recommendation to Council as including an action on the setback. He stated that the answer was that the Planning Board did not recommend the setback to be considered as part of the Village Commercial Development Option. Councilor Britt stated that the Planning Board made the recommendation. Town Attorney Hobbs stated that Council could still approve it if they found, despite the recommendation, that there was sufficient evidence to support that in the final decision.

Mayor Pro Tempore Thibodeau thought it came to light due to an updated survey. She stated that inches on the back-lot line and three or five feet on the pergola would clean things up without any impact on anything. She stated that she was in favor of including it. She thought it was adding more time and effort to consider something so minor.

Mayor Kingston clarified that the Planning Board didn't find it appropriate to grant the flexibility. He asked if this was a separate topic that would need to go back to the Planning Board and then come back to Council. Mayor Pro Tempore Thibodeau wondered if the Planning Board discussed it and didn't want to address it because Council was working on the Commercial Development Option. Councilor Britt stated that he didn't know where it came from in the meeting. He agreed with Mayor Pro Tempore Thibodeau that it would clean things up. He added that Gunnell Rupert has gone through a lot of time and expense to get an updated survey to make sure things were correct. He stated that he did not like to leave loose ends on projects and if Mr. Rupert wanted to do something with it, he didn't see any purpose in making him come back before Council to fix it.

Town Attorney Hobbs explained that, having the Council Liaison at the Planning Board meeting, helps in guiding Council on their deliberation. He added that if Council wanted to consider that, then they could adopt the proposed order in concept and then direct staff to make changes to it as needed to include not only changes to the conditions Council may approve, but also to address the setback inclusion as far as the Development Option.

Mayor Kingston asked why the Planning Board did not find it appropriate to grant the flexibility. Councilor Britt stated that they did not justify it. Mayor Pro Tempore Thibodeau thought that "appropriate" was an interesting word for it. She wondered if it was because the Village Commercial Development Option has been a hot topic lately. Councilor Britt reiterated that the Planning Board did not justify it, only that it kind of happened. He noted that he didn't see any reason for them to do it.

Mayor Pro Tempore Thibodeau asked the rest of Council how they felt. She thought it seemed minor. Councilor Caviness stated that it seemed minor but given all of the tensions with some of the recent decisions with regard to conditional use permits, she felt more comfortable with having the application come forward formally with the deliberations being completed that was clear as opposed to whether or not it was discussed or not. She appreciated that it was time and expense, and thought there could be some leniency, such as having a one-time waiver of the fees for this application. She added that she would rather see it come forward in a more formal way as opposed to trying to second guess things. Councilor Britt didn't think there was any second

guessing. He thought Council was talking about two very small amounts and that the Planning Board did not justify that. He stated that he would hate to have to make the applicant incur additional expense and time to get this done, which would be done if he had to come back. He thought Council should do it right the first time.

Mayor Pro Tempore Thibodeau wondered if the Planning Board was thinking that this would be something that Council would decide since it was a little bit of a sensitive topic with the Village Commercial Development Option. She thought the Planning Board didn't feel that they should weigh in on it. She stated that she was perplexed.

Councilor Caviness didn't think the Planning Board has ever been shy about weighing in on what they thought was right. Mayor Pro Tempore Thibodeau pointed out that inches on the back had to be a no-brainer to the Planning Board. She thought the three feet that encroached into the sidewalk area was the issue. Councilor Britt stated that the Planning Board had stated that they did not want to give any setback allowances and nothing more. Mayor Pro Tempore Thibodeau agreed and thought it should be approved. Councilor Britt pointed out that Planning Board Chair Joe Blakaitis was present.

Town Attorney Hobbs stated that Council could vote to reopen the public hearing. Mayor Kingston thought it was a good idea.

Councilor Caviness moved to reopen the public hearing to hear from the Planning Board Chairman.

Motion carried 4-0.

Town Clerk Ackerman proceeded to swear in the Planning Board Chair for the public hearing.

**The following person was sworn to provide testimony during the hearing: Joe Blakaitis.**

Joe Blakaitis of 115 Sandpiper Cove was recognized to speak. Mr. Blakaitis stated that everything that had been discussed was correct, but he disagreed that the Planning Board did not have a reason for their decision. He explained that the reason was that the two items had existed on the property for quite a while. He stated that the Planning Board was already making allowances under the application they had and, therefore, they did not want to make any more and wanted to leave it the way it was. He stated that he could not think of any other reason for their decision as they were making allowances for parking and working with the applicant on everything else, so the Planning Board felt that everything that already existed on the property as a legal, nonconformity should remain. He added that it wasn't up to the Board to worry about whether or not the applicant would be selling the property.

Mayor Pro Tempore Thibodeau clarified that the Planning Board was thinking that it was best to leave the property permitting under the Village Commercial Development Option

in some areas but not in others. Joe Blakaitis stated she was correct, adding that the variances were slight. He stated that he thought the Planning Board saw no harm in leaving it and, in looking back, there may have been no harm in approving it. He thought the way it stood was fine as it would give the applicant everything he wanted, and the Town could move forward on it.

Councilor Caviness stated that she would be more comfortable dealing with the scope of the application in front of Council. She understood it was a minor thing going forward that may come up in the future should the building be sold. Joe Blakaitis thought that while the Planning Board was deliberating, the applicant didn't have any problem with it. He noted that the Planning Board was not contentious with the deliberation.

Town Attorney Hobbs explained that if the Council wished to consider the setback as part of the application and determined not to approve it, then it would not be approved and would not come back to Council ever again. He added that it was not something Council could keep coming back to on a conditional use permit.

Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston.

Mayor Kingston stated that the question was if it should be included with the risk of it being defeated or leave it as a separate issue and run it back through the normal process, if need be. Councilor Britt stated that if there was any compromise on the setback side, Council could possibly consider the small amount of inches on the back of the building, which was the hard structure and could be the problem that may arise in the future, but the pergola was just the pergola.

Town Attorney Hobbs reiterated that he wasn't sure it could come back before Council because it has already been vetted through the system based on the testimony that has been made. He added that Council would not be able to send it back to the Planning Board and have it reconsidered since it was under a conditional use permit process, because it was already before Council.

Councilor Britt clarified that the applicant could not come back before Council. Town Attorney Hobbs stated he was correct. Councilor Britt pointed out that it was now or never. Town Attorney Hobbs stated that Council would need to decide whether or not they agree with the Planning Board that it was not necessary and did not need to approve it or approve it if Council found that they had sufficient evidence presented to them to decide on the issue. He added that if Council agreed with the testimony that it was properly before them, then they would have to act on it and once they act on it, it could not be sent back to the Planning Board and then come back to Council because it wasn't a legislative body, but a quasi-judicial body.

Director Heard thought Council was talking about the applicant coming back in future years and not in the next few months. Town Attorney Hobbs understood the discussion being that it would come back at Council's April meeting as well as waiving the fees.

Town Manager Layton clarified that if Council voted on this and left that portion out, there would not be anything that would prohibit the applicant from bringing a new conditional use permit forward. Town Attorney Hobbs thought it depended on whether there was a determination that that was part of this application, because if it was, then it would not be able to be brought back and it be ruled on the same issue as it would be setting a precedent by acting on a portion of the application that included that issue.

Mayor Kingston pointed out that it wasn't brought forward until Councilor Britt mentioned it during Council's deliberations. Councilor Caviness felt like Council's hand was being forced. Mayor Pro Tempore Thibodeau stated that it was on the application. Councilor Caviness pointed out that it was a sentence that was dropped into the application. She added that 99% of the application was about the parking, but Council did not have a lot of discussion or background about the setback piece and now it's part of the discussion and if Council did not move forward with it, then it hurts the applicant. She stated that she has viewed the application about one piece and now there was another piece to it. She thought it should be clean and have the second piece come forward.

Town Attorney Hobbs stated that if Council considered it to be part of the application and went back through the evidence and found that it was not properly part of the application, it would mean that it was not in the initial application. He noted that it was only brought up at the Planning Board level.

Councilor Caviness pointed out that at the start of the public hearing, Town Attorney Hobbs stated that whatever has happened prior to the hearing was not part of the public hearing. Town Attorney Hobbs agreed.

Mayor Kingston pointed out in the staff report that it stated: "...although nonconforming, the existing setbacks are not impacted by the proposed changes of use and will remain the same..." He asked that when Council looked at the staff report and looked at the report from the Planning Board – which said it wasn't appropriate to deal with - why it would be considered a part of the application. He added that it did not come up until Councilor Britt brought it up during deliberations. Councilor Britt stated that he was the Planning Board liaison, it came up at the Planning Board meeting and he saw no reason for it to come out at that point. He added that he was trying to do the applicant a favor by making it clean, knowing if they came back on their own, Council would do it anyway. He pointed out that it was two inches in the back, which could be as simple as a measurement. He noted that Council has overcomplicated things and he would pull back on his request if it was going to be a problem with it passing; however, he didn't see any reason why it wouldn't be included.

Town Attorney Hobbs thought if Council decided to not include it, and also made a ruling as part of their decision that the setback issue was never a part of the application, then Council would not rule on it, since it was not properly before Council. He stated that if that was the case, then the applicant could potentially come back later to make a separate application under an additional permit application. He stated that even though there was testimony made, Council did not have to agree with the testimony and find that

it was not part of the application, in which case Council would not be denying that part of it or ruling on it, but would only rule on what was before them, which were the other items. He noted that doing it that way, Council would not be setting a precedent or ruling on that particular issue because Council would find that it was never formally part of the initial application. He stated that if Council did it that way and decided that they wanted to approve the application, they would make a motion to approve based on what the Planning Board recommended, which did not include the setbacks and make whatever changes they wished to make to the conditions.

Mayor Kingston asked how important it was with respect to advertising. He pointed out that as he looked at the description for the public hearing, it talked of reducing the number of parking spaces and no other reference to anything else. Town Attorney Hobbs stated that it supports what he had mentioned earlier with factors like that being something that Council was free to consider as far as what was in the application before them. He added that if Council decided that it was not part of the application, despite the discussion at the Planning Board level, then Council may decide that it would not be part of the decision and a ruling would not be made on it. He noted that the applicant could come back later with a separate application since a precedent was not set.

Mayor Pro Tempore Thibodeau felt that Council was divided on the issue as to whether it was minor or not and given the leeway that was just heard from Town Attorney Hobbs, she thought Council could say they did not consider it as part of the application and have it brought back at another time. Town Attorney Hobbs stated that if the applicant wanted to do that, they would have to initiate it. Mayor Pro Tempore Thibodeau agreed, adding that she didn't want to jeopardize things.

Councilor Britt stated that he did not want to jeopardize things and apologized for overcomplicating things. He added that he would support the application.

Councilor Caviness moved to approve Conditional Use Permit 19-002 as presented with the findings and conditions and accept the minor revision regarding the parking bumpers and striping and that Council not consider the setback portion as it was not before them.

Motion carried 4-0.

Councilor Burdick returned to the meeting.

### **OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS**

There was no Old Business to discuss.

### **NEW BUSINESS**

**Discussion/Consideration of Authorizing a Public Hearing on Ordinance 19-02, an Ordinance Amending the Zoning Ordinance of the Town of Duck, North Carolina,**

**by Allowing Beach Buggy Rentals as a Conditional Use in the Village Commercial Zoning District**

Director Heard stated that the applicant – Beaman Hines of Gold Key, LLC – 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:

- (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 stated that if the text amendment was approved, the applicant planned to seek approval for a dune buggy rental business in one of the existing units at Barrier Island Station Shopping Center under a separate conditional use permit.

Director Heard stated that if the Council decided to recommend approval, staff was recommending that Council consider related definitions and/or provisions to clarify what would be permitted. He stated that the applicant was requesting approval for “beach buggy rentals”. He added that if Council wished to limit rentals to that specific type of vehicle, then adding a definition for the term “beach buggy” was important to differentiate this type of vehicle from jeeps or other vehicles that may be rented. He added that, alternatively, if the Council wished to consider broadening the application to include other types of vehicles, then the proposed ordinance could be amended to include all types of vehicles under a broader term such as “vehicle rentals”.

Director Heard stated that at their February 13, 2019 meeting, the Planning Board voted unanimously to recommend denial of the proposed text amendment. He explained that during their deliberations, the Planning Board members raised concerns about the rental and maintenance operations, parking of vehicles, and consistency with the character of Duck Village. He noted that this was an applicant generated proposal and they had the right to come before Council and discuss their reasons why this is a good idea.

Mayor Pro Tempore Thibodeau moved to set the public hearing for Council’s April 3, 2019 meeting to consider Ordinance 19-02 as presented.

Mayor Kingston noted that the Planning Board had recommended denial of the proposed amendment. He stated that it would be a gas station-type operation in Town with more vehicle traffic and would use a lot of parking spaces. He added that it would not be consistent with the character of Duck Village. He stated that he agreed with the Planning Board’s recommendation and noted that the applicant wasn’t present for the meeting. Mayor Pro Tempore Thibodeau stated that they had the right to have a public hearing. Mayor Kingston stated that the applicant had the right to come back and would have to request it. Town Manager Layton noted that this was a request for a public hearing, so if

Council approved it, then there would a public hearing at Council's April 3, 2019 meeting. Mayor Kingston asked what would happen if the request was denied. Mayor Pro Tempore Thibodeau thought Council did not have permission to deny the request.

Councilor Caviness clarified that this was for a text amendment and not for an actual business. Town Manager Layton stated that it was for the text amendment. Town Attorney Hobbs stated that all Council was doing was approving a public hearing. Mayor Kingston clarified that Council could deny a public hearing. Councilor Britt thought Council could, based on the Planning Board's recommendation. Director Heard stated that Council could not deny the right of the applicant to have a public hearing.

Councilor Burdick thought Council had to have a public hearing. Mayor Kingston stated that he was asking for legal counsel. Town Attorney Hobbs thought it was appropriate since the applicant made the application for a legislative change. Councilor Burdick thought it wasn't an issue and should move forward.

Motion carried 5-0.

#### **Discussion/Consideration of Resolution 19-02, N.C. Department of Public Safety Disaster Assistance Agreement**

Town Manager Layton stated that, recently Hurricane Michael has been declared a disaster in North Carolina, which meant that the Town was eligible for reimbursement from FEMA for damages and the response to those damages to the Town's piers as well as debris pick up. He stated that in order to keep the process moving, agents have to be designated formally to represent the Town for the process. He explained that Resolution 19-02 would designate him as the primary agent and Director Heard as the secondary agent.

Town Manager Layton stated that staff was diligently working with FEMA on getting materials together for possible reimbursement on some items. He added that staff had a meeting with FEMA representatives on Friday, March 8, 2019 to continue the discussions, but in order to go further, the resolution would need to be adopted.

Councilor Burdick moved to adopt Resolution 19-02 as presented.

Motion carried 5-0.

#### **ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY**

Town Attorney Hobbs stated that he had no report.

#### **ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER**

### **Update on Departmental Activities**

Director Heard gave a brief overview of the past month's permit activities to Council and the audience.

Director of Public Information, Marketing and Special Events Christian Legner was recognized to speak. Director Legner gave a brief overview of upcoming activities to Council and the audience.

Police Chief John Cueto was recognized to speak. Police Chief Cueto gave a brief overview of the past month's police activities to Council and the audience.

Fire Chief Donna Black was recognized to speak. Fire Chief Black gave a brief overview of the past month's fire activities to Council and the audience.

### **Financial Statement for month of February for FY 2019**

Town Manager Layton reviewed the financial statements with Council and the audience.

### **MAYOR'S AGENDA**

Mayor Kingston stated that he has his mayors meeting on March 19, 2019 hosted by Dare County. He stated that Town of Kill Devil Hills Mayor Sheila Davies and the other mayors talked about stormwater management in February and a second meeting has been scheduled for March 14, 2019. He stated that the Albemarle Regional Solid Waste Management Authority has an opening and Town of Kitty Hawk Mayor Gary Perry was recommending Tina Tice to be appointed to that board. He noted that Duck was a non-participating member of that authority and if there was no objection from Council, he would let Mayor Perry know that Duck was fine with the appointment. It was *consensus* of Council for Mayor Kingston to let Mayor Perry know that they were fine with Tina Tice being appointed to the board.

Mayor Kingston stated that Council discussed beach nourishment at the Retreat and he requested of Dare County Chair Bob Woodard that there be a discussion at a mayor/manager meeting to discuss where everyone was as a meeting had not been held in quite some time. He added that the towns were now in financial planning for the next year as well as future years. He stated that he and Town Manager Layton had attended the meeting on February 28, 2019 with Chair Woodard chairing the meeting along with County Attorney Bobby Outten and explained that the top priority moving forward was renourishment for the Towns of Duck, Kitty Hawk, Kill Devil Hills, Nags Head and Buxton. He stated that they also discussed what the available funds would be going forward as the Town of Southern Shores was interested in a project and Dare County was talking about nourishing the beach in Avon, but in looking at the funds, they have been depleted between the towns and the Town of Nags Head was looking to renourish their beach this year. He noted that there was a potential for a new project in 2022 with \$7.5 million available and in 2027 with \$5 million available. He pointed out that it was not a



lot of money going forward from the standpoint of new projects and the message he received from the meeting was what the Town has what it has received. He thought Duck had about \$2.5-\$3 million for renourishment and the commitment to the Towns would be what they put into the plan initially with the rest up to each town. He stated that the other message they received was that the towns should not do away with their Municipal Service Districts as they would be needed moving forward. He stated that the next meeting would be held in May.

Mayor Kingston stated that the Ocean Rescue contract would be on the April 3, 2019 agenda as Town Manager Layton needs more direction with respect to the coming year as well as the financial figures for the future years. He reminded Council that Ocean Rescue Director Mirek Dabrowski had noted in his presentation that he would need more lifeguards and lifeguard stands. He thanked Town staff for the planning and execution of the recent Council Retreat.

### **COUNCIL MEMBERS' AGENDA**

Mayor Pro Tempore Thibodeau stated that she attended the off-shore drilling presentation with the North Carolina League of Municipalities recently. She stated that they will be looking for community input for the NOAA meeting and the Surfrider Foundation would be publicizing an event for it. She stated that she was a big supporter of the Equal Rights Amendment and went to the legislature on March 5, 2019 regarding having North Carolina be the 38<sup>th</sup> state to ratify the Equal Rights Amendment.

Councilor Burdick gave an update on the recent Tourism Board meeting.

Councilor Caviness stated that the Outer Banks Community Foundation was giving out \$170,000 in scholarships. She noted that the scholarship period was open through the end of March. She stated that the Duck Merchants Association would be starting their new season with a spring and fall meeting as well as a spring and fall social. She added that they would also be continuing with their other events – the Easter Egg Hunt and the Elf Hunt.

Councilor Britt noted that Planning Board Chair Joe Blakaitis' birthday was coming up on March 7, 2019 and he wished him a Happy Birthday.

### **OTHER BUSINESS**

#### **Additional Public Comments**

Mayor Kingston opened the floor for public comments. There being no one wishing to speak, Mayor Kingston closed the time for public comments.


Mayor Kingston noted that the next meeting will be the Regular Meeting on Wednesday, April 3, 2019 at 7:00 p.m.

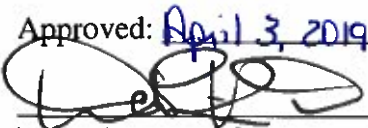
**ADJOURNMENT**

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 10:24 p.m.

  
\_\_\_\_\_  
Lori A. Ackerman, Town Clerk

Approved: April 3, 2019  
  
\_\_\_\_\_  
Don Kingston, Mayor

