

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
October 14, 2015**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, October 14, 2015.

Present were: Chair Joe Blakaitis, Ron Forlano, Tim McKeithan, Marc Murray and James Cofield.

Absent: None.

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

Others Present: Sandy Whitman.

Others Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for October 14, 2015 at 6:32 p.m.

WELCOME NEW PLANNING BOARD MEMBER JAMES COFIELD

Chair Blakaitis welcomed new Planning Board member James Cofield. He stated that the Board was pleased to have him.

James Cofield was recognized to speak. Mr. Cofield stated that he was happy to be a member of the Planning Board.

ELECTION OF VICE CHAIRMAN

Chair Blakaitis noted that the Board needed to elect a new Vice Chairman. He stated that he had no preference on who should be nominated as he felt that each individual on the Board was great. He asked for nominations.

Member Forlano nominated Member McKeithan. Chair Blakaitis seconded.

Member McKeithan stated that he appreciated the nomination but didn't think he had the experience or time to take on the extra responsibility. He thought the Vice Chairman should attend all of the Town meetings and he didn't have time to do so.

Member McKeithan nominated Member Forlano. Chair Blakaitis seconded.

Member Forlano stated that he has previously served as both the Chair and Vice Chairman on the Planning Board. He stated that he would like to see someone else serve as the Vice Chairman.

Member Forlano nominated Member Murray. Member McKeithan seconded.

Member Murray accepted the nomination, but noted that he wasn't sure he would be able to attend all of the Council meetings. Chair Blakaitis stated that it was not a necessity for him to attend the Council meetings.

Motion carried 4-0.

PUBLIC COMMENTS

None.

OLD BUSINESS

None.

NEW BUSINESS

Text Amendment: Review Proposed Amendments and Draft Presentation regarding the Definition of "Building Height" and a new Definition for "Average Finished Grade" in Section 156.002 of the Town Code

Director Heard stated that he wanted to highlight the reasons why the Board was considering the item. He stated that the main reason the process started was due to the recognition that there was an aspect of the Town's ordinance in the definition of building height as it dealt with buildings in flood zones. There may be an inequality in the way the Town measures height in A flood zones, depending on the type of construction. He stated that the height of structures built with an enclosed area on a slab are measured from the top of the slab. Conversely, the height of a structure built on pilings can begin measurement at the required flood elevation. He stated that one of the things the Board looked at was if there was a reasonable way to address the discrepancy and have an ordinance that seemed to deal fairly with both scenarios.

Director Heard stated that the other items that came about in discussions and with the committee that met was providing flexibility for dealing with existing non-conforming buildings. He noted that there are a large number of buildings in Town that were built under Dare County's jurisdiction and, either due to how the County measured height or lack of documentation at the end of the project, ended up being slightly higher than what the Town would currently allow. By looking at building height differently, there may be a way to address the situation without the individuals needing to obtain a special exception or variance.

Director Heard stated that a third item discussed was a proposal that the Board has before them. The major benefit would be that it would allow more traditional roof slopes and architecture. He added that it would provide flexibility for someone to design a building in a little different way and for people to have rooflines that were of a more typical, traditional pitch as opposed to something that was more flat in an attempt to squeeze in under the Town's current rule for measuring to the peak of rooflines. He noted that it was up to the Board to decide if they are

comfortable with the concepts and if it is something they wanted to send to the Town Council. He added that if they did wish to send it to Council, Vice Chair Murray has provided some visuals, but if there were other aspects of the presentation that the Board wants staff to develop, it can be done.

Member Cofield asked how the recommendation was revised. Director Heard stated that the way that the recommendation addressed it was by not dealing with the measurement of height at the bottom of a building, which was what the original discussion was about, but by allowing more flexibility at the top of the building so it was addressing the issues in an indirect manner.

Chair Blakaitis noted that the committee met regarding two items in Paragraph 1 and Paragraph 2 with subparagraphs. He stated that the committee made the recommendation to clean up Subparagraph A and B under Item 2. He pointed out in Item 2, Subparagraph A that the committee clarified it by eliminating “finished grade in an A zone”. He added that in Subparagraph B, the committee changed some of the wording to clear it up in cases where flood protection elevation was lower than the finished grade. He stated that those two paragraphs were clarified to make them more understandable. He stated that Subparagraph C dealt with the V zone and was not changed at all. He added that the committee was not attempting to go into the V zone and make any changes because the ordinance was clear enough.

Chair Blakaitis pointed out that Subparagraphs A and B were originally one paragraph and were separated for more clarity. He stated that when the committee finished, they looked at how building height is measured. There was a suggestion made to change the way it was measured by using the midpoint of the roof rather than the peak. He noted that it was now in front of the Board for their discussion. Director Heard noted that it was in Subsection 1. Chair Blakaitis thought this concept was the most challenging part of the proposal and asked the Board members if they had any suggested changes to Subparagraphs A and B.

Vice Chair Murray stated that in the committee’s discussions, they talked of the difference between the top of the slab where an enclosure or known enclosure was present. Chair Blakaitis agreed and added that the committee chose to leave the language as it was.

Member McKeithan noted that at the March meeting, there was different wording. He added that it said the following: “...the height measurement shall begin at two feet above the highest adjacent grade measured from the bottom of the lowest horizontal member...” He pointed out that it was no longer in the text amendment. He asked if it was eliminated. Director Heard stated that the Board had recommended that the language be changed and Council changed it back in June. He stated that the discussion the Board was presently having was due to a discussion of a text amendment to reword some of the flood elevation requirements. He added that the change was made for that purpose. Member McKeithan noted that “highest adjacent grade” was a change in itself. Chair Blakaitis noted that the wording is consistent with the Town’s standards for “free and clear of obstruction”.

Chair Blakaitis asked the Board if they had further suggestions or if they wanted to leave the paragraphs as the committee had put forth. It was *consensus* of the Board to recommend the suggested amendments to Subparagraphs A and B.

Member McKeithan asked for clarification on Page 2 where the language read: "...provide greater flexibility when dealing with existing non-conforming buildings...", asking if they weren't already grandfathered. Chair Blakaitis explained that if the Town were to use the new system of averaging building height, it would take care of many non-conformities. Director Heard added that the Board was discussing if someone was looking to place an addition onto an existing building that was at the same height. He added that the ordinance may require the builder to step down if they did not obtain a variance or special exception. Chair Blakaitis noted that the Board was not purposely looking to do that.

Chair Blakaitis asked Vice Chair Murray how the drawing he presented was related to the definition of building height. He further asked what the numbers were in the attachment. Vice Chair Murray stated that it was to give the Board a community picture. He stated that there were two concerns voiced by members of the community as well as members of Town Council – viewscapes and density. He wanted to illustrate that varying roof heights did not really affect viewscapes, but varying topography did. He added that 43 foot tall homes were the tallest that he could envision under the proposed change.

Chair Blakaitis asked how a wider house could use a 12:12 pitch roof. Vice Chair Murray stated that it was a question of the length of the lumber used for the roof trusses. Chair Blakaitis clarified that the house would be higher. Vice Chair Murray stated that the roof would be taller. Member McKeithan asked if the house was wider and the Town allowed the builder and owner to come up with a 12:12 roof, the examples shown would be above 43 feet. Vice Chair Murray agreed but added that the Board was discussing an average of 35 feet, so it was a question of math. He stated that the Board was trying to create an environment where a homeowner could choose to build a steeper pitched roof on a narrower building, but were not stuck building a flat roof on a typical sized building.

Member McKeithan thought Vice Chair Murray had stated if the building was wider and had a 12:12 pitch; that would make the roof higher than the 43 foot high example. Vice Chair Murray agreed, adding that roof height was a function of rise and run and so the wider the building, the taller the roof. He noted that it would exceed the 35 foot average, so it would not be allowed. Member McKeithan confirmed that Vice Chair Murray was proposing to have a maximum 35 foot average roof height. He added that if the contractor was building a wider building, he would not be able to have a 12:12 pitch roof. Chair Blakaitis noted that the average would likely be higher than 35 feet. Vice Chair Murray stated he was correct.

Vice Chair Murray stated that he was proposing that the Board look at building height and roof height separately, to some degree, and come up with a sensible way to allow people to build more architecturally pleasing roofs, which would have a steeper pitch. He added that the average approach seemed like a logical first step. He noted that other municipalities use it and it seems to work well. He stated that if the Board decides to take that route, then they would need to decide where the low point is measured, where the high point is measured, and what the average number is that would be acceptable to the Board as well as Council.

Council Liaison Burdick commented that Council made it clear they did not want to go above 35 feet in height in previous decisions. He stated that they did not permit the Sanderling Inn to do it, even though architecturally it may have resulted in a much nicer building. He stated that the

Board can recommend what it wants, but would most likely have a difficult time convincing Council as they did not want to set any precedent. He cautioned Vice Chair Murray to be extremely careful in attempting to get Council to change the 35 foot height limit. Vice Chair Murray recognized Council's sentiments, but felt it was the Board's responsibility to be totally separate from the political aspects. He thought that the Sanderling Inn, which Council Liaison Burdick was using as an example to maintain the status quo, as the best example not to maintain it. He noted that a strong concern of the citizens objecting to the Sanderling project was that allowing greater height would allow greater density. He added that now the Town now has the density that everyone dreaded, in a less attractive package.

Council Liaison Burdick stated that he wasn't disagreeing with Vice Chair Murray, but letting him know that there was a very strong feeling to not allow building height over 35 feet. He stated that it wasn't just the feeling of Council, but also the Town's citizens. He stated that from a builder and architect standpoint, what Vice Chair Murray was discussing made sense, but from a citizen standpoint, there was an outcry over the Sanderling Inn proposal. He added that the final vote for Council was 5-0 to deny the request. He stated that Council told representatives from the Sanderling Inn to go back and design the building to fit into the 35 foot height limit. He stated that the issue could be brought in front of Council, but noted that Council was in favor of the 35 foot height limit as the maximum height in Duck.

Chair Blakaitis asked Vice Chair Murray to explain to the Board what other estimates or changes did not allow high density, specifically four story buildings. He asked how it would work. He couldn't remember why it would prevent or help prevent four story buildings. Vice Chair Murray stated that there were other issues in the building code that may prevent four story buildings. He added that residential structures typically were not permitted to be more than four stories. He felt that Building Inspector Cory Tate should be contacted regarding it. He added that some applications that had a fourth story and it had to be sprinklered, which met the commercial code. He stated that in the committee's discussion, they thought that by making the roof height measurement a combination of a top plate or eave of the ridge, they eliminated the possibility that someone could go to a four story flat top, 35 foot building. He reiterated that Building Inspector Tate should be asked about the issue. He stated that as the ordinance was currently written, there could be a 35 foot flat top building with four stories. However, he conceded that the building code could potentially prohibit a four story flat top building.

Member Forlano stated that he was in agreement with the Town holding to the 35 foot height limit. He thought the Board may be opening the door for future abuse. He stated that he did not see that as a detriment except if the Board was discussing architectural rooflines as historically the Town has been able to work well within the 35 foot height limit. He stated that he would like to leave the minor revisions in the ordinance but not revise how roof height should be measured.

Chair Blakaitis asked what kind of presentation would be given to Council of the Board decided to recommend it move forward. Director Heard stated that staff would like to have different drawings showing how the width of the building would play a part in the overall height of the roof. He added that he would like to put together a collection of photographs that would show buildings with different types of rooflines so there would visually be an understanding of what the Board was trying to accomplish and what the benefits would be by allowing the additional flexibility.

Vice Chair Murray thought Director Heard should add a survey of some degree of the existing structures in Town in order to illustrate the building height. He thought it would be helpful. Chair Blakaitis asked what the single, most important point would be to get across to Council. Director Heard stated that from staff's standpoint, their goal was to make sure that the proposal was understood as far as the pros and cons. He added that the staff isn't pushing it one way or another, but wants to provide accurate background information.

Chair Blakaitis thought reviewing the pros and cons would be a good place for the Board to finish up their discussion. He thought the Board knew what the pros were and suggested that the Board discuss the cons.

Vice Chair Murray noted that Member Forlano was worried about future abuse. He thought that was a good place to start as to how someone would abuse it and if they did, how it would affect anyone else. Chair Blakaitis stated that he wasn't sure how anyone could abuse it if they stuck with the average. He thought that a con would be regarding of the structures that were presently non-conforming, the difference in building height would be dependent on where the height was measured. He stated that he was concerned that someone could have outright a 43 foot tall building to the peak of the eave, which was eight feet above the Town's current ordinance height limit. Vice Chair Murray noted that one was not looking at a 43 foot high ridge because it could not be seen. Member Forlano thought it didn't matter when looking at it from the street; but it was still a 43 foot tall building. Vice Chair Murray stated that, from the street, it would not affect the viewscape. Chair Blakaitis agreed. Vice Chair Murray noted that it did not have to be a 43 foot high building.

Vice Chair Murray wondered if the Board came up with a compelling presentation to Council instead of a draft ordinance. He added that they could be told what the committee came up with but were getting the message that anything over 35 feet was not allowed. He stated that Council could be asked if they would entertain anything like it. He thought that issues that the committee had discussed had not been brought to Council. Chair Blakaitis stated that he was correct.

Member McKeithan stated that he was not ready to make a recommendation or proposal to Council after they supported the Board's view of staying with the 35 foot height limit on the Sanderling Inn project. He added that if the Board felt that it needed to be opened up for discussion, including making presentations to Council, it would be premature to make an official proposal to change the 35 height limit in order for a house to potentially be 43 feet high. He felt Council would not allow it. He thought the Board could start a discussion with presentations to Council, but not send them a formal proposal.

Chair Blakaitis didn't think the Board should let the work they've been doing on building height go on forever. He added that it wasn't typically what the Board would send to Council – they don't stand up in front of the Council members and ask what they think of an issue. He stated that the Board and Council have had joint meetings in the past for issues such as this, but he wasn't sure if there should be one on the height issue. He stated that he would like to present the issue to Council but thought the Board should do something at this meeting. He wasn't sure how receptive Council would be. Council Liaison Burdick thought it was appropriate for the Board to bring forward an issue they wished to investigate to see if they would agree to allow the Board to

do so. Chair Blakaitis noted that the Board already investigated the issue. Council Liaison Burdick stated that he wasn't hearing that the Board was ready for a presentation. Chair Blakaitis asked if the Board was ready or not to approve it. Vice Chair Murray stated that he wasn't ready, adding that he wasn't ready, because Council Liaison Burdick made it clear that Council will not approve it. Council Liaison Burdick thought the point of going before Council was to let them know of the ideas and the proposal the Board wants to review with them on building height and how it was measured for the future was appropriate. He added that Council could be asked if they were receptive to the proposal.

Vice Chair Murray thought if the Board was going to present something to Council, it needed to be substantiated with photographs. He stated that unless the Board was willing to gather information, bringing it before Council was not an option at this point. Member Forlano asked if the height was allowed to go to 43 feet, would it increase the bulk of structures. Vice Chair Murray stated that there was an argument that there would be more mass, particularly if it was a home with a gabled roof. He stated that it may be that the Board only applied the regulation to homes with a hip roof. He pointed out that, in the current ordinance, the Town allows 64 square feet of cupola or other architectural additions. He stated that if it was added, it would have absolutely no difference in bulk than a 43 foot tall building with a hip roof. He didn't think that roof height was at the heart of the bulk issues, but that bulk was simply a function of economics. He added that the Town is limiting bulk in other ways with the main way being limiting it through density, which was a good way to limit it.

Chair Blakaitis thought if Council heard the issue through a separate presentation, they will want to know what benefits the Town would get by making the change. He stated that he was not against what was being proposed, but thought their rationale for change in the list would not work. He didn't think that more traditional roof slopes and architecture would be of significant importance, it depends on the perception of what a nice roof is and isn't. He didn't think the flexibility with regard to dealing with existing non-conforming buildings was important enough to move forward with this. He added that the Town does not run into those situations very often.

Vice Chair Murray noted wording about "...maintaining consistency with the CAMA Land Use Plan..." He added that it seemed counter-intuitive. He stated that the point was to maintain the coastal village aesthetic. He stated that his argument to Council would be that it was possible that 8 bedroom, 5,000 square foot oceanfront homes did not maintain a coastal village aesthetic. However, they are allowed under the Town's current ordinance. He wondered why the Town should force that building to have a certain kind of roof on it instead of an aesthetically pleasing pitched roof. Chair Blakaitis asked if houses currently have those kinds of roofs. Vice Chair Murray stated that many do.

Member Forlano stated that it sounded like Vice Chair Murray was saying that the greater the pitch, the nicer the roof looked to him. Vice Chair Murray agreed. Member Forlano stated that he did not see anything objectionable with flat roofs. He added that if the Board was doing this exercise to simply create greater pitched roofs and it could result in a 43 foot tall house, he didn't think it was a good idea. Vice Chair Murray stated that he did not object to flat roofs but objected to 3:12 pitch roofs.

Member McKeithan thought most of the homes in Duck had 6:12 pitch roofs. He added that it would put them within the 35 foot height limit. Vice Chair Murray stated that a home 32 feet in width with a 6:12 pitch roof would have a building height of 34 feet 11 7/8 inches. Vice Chair Murray noted that there are a lot of houses presently in violation of the height limit. Chair Blakaitis asked if Vice Chair Murray was stating that every house with a 6:12 pitch roof exceeded the 35 foot height limit. Vice Chair Murray stated that, mathematically, a 6:12 pitch roof with a width exceeding 32 feet was over the height limit. Chair Blakaitis stated that he saw a lot of houses where it had the 6:12 pitch roof, including his own.

Chair Blakaitis stated that the Board had another conundrum as they came to the meeting to look at Paragraph 1 and make a decision. He added that the Board now had a new idea in front of them – to ask Council to let the Board make a presentation without approving or rejecting the idea. He stated that he didn't like it. He wondered if the Board should approve what they already approved, leaving building height as it is and tell Council they would like to meet with them to discuss another proposal. He stated that the Board could also elect to not approve anything at this meeting, carry it to a future meeting and have a meeting with Council.

Member McKeithan thought the Board had agreed that if they present it in a formal proposal, it would not be approved. He thought that to make a major change that has been in effect for 20 years, it would take a lot of education. The Board would have to get Council to think that it had merit and Council would go out and poll the community. Chair Blakaitis stated that there was no way the Town would get the community to understand the issue. Member McKeithan stated that there was no way that the Board could get Council to approve it without a lot of education and discussion. Even the Board can't seem to agree on it. Chair Blakaitis stated that he wasn't saying that the Board needed to approve or disapprove, but was looking for conversation.

Member Forlano thought the idea of breaking it up, going with what all of the Board members agreed on and taking the one section out to do a presentation at a Council mid-month meeting with the idea that the Board had about roof heights, was good. He thought Council could decide if it had merit or not and if the Board was to review the issue, the Town could potentially end up with taller houses. Chair Blakaitis stated that it was fine. He added that if the Board did that, he would like to send forth what the Board already clarified and let Council know at the meeting that the Board would revisit the issue again if there was any interest by Council in doing it. He added that he did not want to continue it. Member McKeithan pointed out that Council didn't know the Board was discussing the roof height. Chair Blakaitis stated that Director Heard would present it to Council for approval. He added that the Board did not have to do anything with Paragraph 1 at this meeting. Member McKeithan agreed. He thought the Board should move forward with the other concepts on which they were in agreement. Vice Chair Murray agreed. Chair Blakaitis thought the Board should approve what they have already done with Item 2, Paragraph A, B, and C and the definition of building height. He added that Council did not expect the Board to go in anything with Item 1 as the Board was revisiting the issue.

Vice Chair Murray asked Chair Blakaitis how he felt, adding that he seemed opposed to presenting it to Council. Chair Blakaitis stated that he was opposed but thought he was coming around. He added that he didn't want to leave the meeting without the Board doing something. He stated that he would rather send something to Council based on what was in front of the Board and at the same time, ask to have a presentation to Council at a later date.

Vice Chair Murray moved to recommend to Council that the Planning Board approve Section 2, Paragraph A, B and C, as well as the average finished grade definition as presented. Director Heard pointed out that there was also one minor change at the top of Page 3 to Section 1. He noted that the word “average” was being added and would be appropriate to put in the motion. Member McKeithan seconded the amended motion.

Motion carried 5-0.

Director Heard stated that the Board needed to send a memo to Council regarding meeting with them and asking Council if they are interested in looking further into the roofline concept. He stated that he would like to work on a draft memorandum and run it past the Board. He added that it needed to say enough so Council had an idea as to why the Planning Board wanted to meet with Council. Chair Blakaitis agreed.

APPROVAL OF MINUTES

Minutes from the August 12, 2015, Regular Meeting

Vice Chair Murray had corrections to Pages 3 and 5.

Member McKeithan moved to approve the August 12, 2015 minutes as amended. Chair Blakaitis seconded.

Motion carried 5-0.

OTHER BUSINESS

Rescheduling the November Planning Board Meeting Date

Director Heard noted that the November 11, 2015 date for the Planning Board meeting fell on Veterans Day, a Town holiday. He asked that the Board to consider rescheduling the meeting. Chair Blakaitis suggested moving the meeting to another day in the same week.

Vice Chair Murray moved to change the date of the Planning Board meeting to Thursday, November 12, 2015 at 6:30 p.m. Member Forlano seconded.

Motion carried 5-0.

STAFF COMMENTS

Summary of September 2 and October 5, 2015 Town Council Meetings

Director Heard gave a summary of the September 2, 2015 and October 5, 2015 Council meetings to the Board and audience.

Project Updates

Director Heard gave a short update on the various projects going on in Town to the Board and audience.

BOARD COMMENTS

Member Forlano asked if there were any other items that would be coming before the Board at their November meeting beside the Duck Deli project. Director Heard stated that there wasn't anything at this time but there may be other items that may come in for the Board to consider.

Chair Blakaitis thanked Vice Chair Murray for his work on the building height information that the Board had discussed earlier.

ADJOURNMENT

There being no further business to discuss, Chair Blakaitis adjourned the meeting. There was no second or vote.

The time was 8:30 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman