

**TOWN OF DUCK
TOWN COUNCIL
MID-MONTH MEETING
May 20, 2020**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 1:00 p.m. on Wednesday, May 20, 2020.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Nancy Caviness; Councilor Sandy Whitman; and Councilor Rob Mooney.

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Christopher Layton; Town Attorney Robert Hobbs; Police Chief John Cueto; Director of Community Development Joseph Heard; Director of Marketing and Special Events Christian Legner; Assistant to the Town Manager Alyson Flynn; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Fire Chief Donna Black and Public Relations Administrative Assistant Betsy Trimble.

Mayor Kingston called the meeting to order at 1:12 p.m. He apologized for the delay in the start time as there were technical difficulties. He asked Council to give a roll call on attendance for the audience that was watching the meeting virtually.

**PUBLIC HEARING/DISCUSSION/CONSIDERATION OF ORDINANCE 20-03,
AN ORDINANCE ESTABLISHING TEMPORARY ACCOMMODATIONS FOR
REGULATIONS DURING A DECLARED EMERGENCY**

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

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs opened the public hearing. He stated that Director of Community Development Joe Heard would give a presentation.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that Council was being asked to consider two different items relating to the issue:

1. Consider adoption of Ordinance 20-03 – developed with significant input from Attorney Ben Gallop, the draft ordinance seeks to accomplish two objectives: (a) create allowances for the Mayor to authorize the Town Manager or designee to establish reasonable temporary accommodations in regulations consistent with an emergency declaration and in the interests of public health, safety, welfare, and

economic well-being of the community and (b) establish general parameters for the types of accommodations that can be developed.

2. Consider a recommendation to the Mayor and Town Manager regarding specific temporary allowances for businesses subject to restrictions during the current COVID-19 crisis.

Director Heard stated that Dan Lewis of the Outer Banks Restaurant Association and part-owner of Coastal Cravings and Coastal Cantina restaurants in Duck submitted a written request to Town Council on May 3, 2020, asking the Town to adopt special provisions for restaurants as they are permitted to reopen under COVID-19 restrictions in the near future. He stated that as Governor Roy Cooper begins a phased lifting of current restrictions, it was anticipated that restaurants will be limited to 50% capacity and compliance with other social distancing restrictions. He pointed out that the two main components of Dan Lewis' request were as follows:

- Allowances for the temporary establishment or expansion of outdoor dining/seating areas to accommodate for the loss of permitted occupancy in the restaurant.
- Allowances for the use of carts, kiosks, or food trucks on the same site as the restaurant.

Director Heard stated that as Dan Lewis had made similar requests in other municipalities and Dare County, most communities have engaged in some initial consideration of concepts to address the concerns of the Outer Banks Restaurant Association. He reviewed what the other municipalities were doing with Council and the audience:

Town of Southern Shores – No action on the request.

Town of Kitty Hawk – Considering the following standards: (1) Temporary provisions allowing outdoor seating/dining in grass areas and roped off portion of parking areas. (2) Temporary allowances for on-site food trucks, tents, and additional signs.

Town of Kill Devil Hills – Considering the following standards. Generally: (1) All mobile vendors/food trucks and outdoor dining areas must be in compliance with the requirements of the Dare County Environmental Health Department. (2) No mobile vendor, nor outdoor dining, shall be located within the public right of way, required landscaping area, drive aisle/fire lane. Each service area should be separated by a barrier if a parking area is utilized. (3) All areas must be kept clean of litter and maintained in a safe and sanitary condition. Trash receptacles shall be provided on-site. (4) Peddling is not allowed. (5) Not more than 25% of required parking may be used for mobile vendors/food trucks or outdoor dining. (6) All State and local orders regarding social distancing and crowd gathering must be followed. Mobile vendors/food trucks: (1) Shall locate on current restaurant sites. (2) Lighting and sound must comply with the Kill Devil Hills Town Code. (3) Adequate parking shall be provided. (4) Service shall be “to

go”. Outdoor dining: (1) Limited to existing restaurant establishments. (2) Outdoor seating cannot be an expansion such that the result is a net increase in overall seating.

Town of Nags Head – Already allows on site food trucks. Considering the following standards: (1) Requirements for a temporary permit to be reviewed administratively. (2) Temporary provisions for outdoor seating/dining up to the previously allowed capacity of the restaurant.

Town of Manteo – (1) Reviewing temporary tents on a case by case basis through specially called Planning Board meetings. (2) Providing public picnic tables to increase the ability of seating/dining areas in downtown Manteo as many downtown restaurants have no parking or open space. (3) Will consider other temporary standards.

Dare County – Already allows on site food trucks. Considering temporary provisions allowing on site food stands: (1) Limited to one food stand. (2) Comply with Health Department standards. (3) Access to public restrooms. (4) Comply with building setbacks. (5) Have at least 10 parking spaces on site. (6) One temporary sign no more than 12 square feet in size. Considering temporary provisions for outdoor seating/dining: (1) Requires submission of a site plan with administrative review. (2) Located in excess parking areas, setback areas, and other areas not occupied by above ground infrastructure or septic systems. (3) Allows parking shifted to other commercial properties within 400 feet. (4) Excess parking can be created by a reduction restaurant capacity due to State restrictions. (5) Located on decks and porches. (6) Access to public restrooms. (7) One temporary sign no more than 12 square feet in size.

Director Heard noted that the Dare County Environmental Health Department requires that any on premise food carts, food stands, or food trucks must follow all State food service rules and must be approved, permitted and inspected by the Environmental Health Department. He added that such food service units must have adequate septic disposal. He stated that the Dare County Health Department commented that, in order to allow for social distancing, outdoor seating for restaurants can be expanded provided seats are moved from inside the facility to outside. He added that the outdoor seating could not be an expansion such that once a return to full service is allowed, the result is a net increase in overall seating which would be beyond the permitted capacity and size of the wastewater system. He noted that any restaurant applying for increased outdoor seating must sign an acknowledgement and increased outdoor seating areas cannot be located over the active septic system or any tanks.

Director Heard stated that at their meeting on May 13, 2020, the Planning Board voted 4-1 to recommend approval of the proposed text amendment to create allowances for the Mayor to authorize the Town Manager or designee to establish reasonable temporary accommodations in regulations during a declared emergency. He pointed out that the Board members voting in favor noted that the proposed ordinance allows the Town to make timely, responsive, and effective accommodations to Town standards in times of emergency. He added that in his opposition, Vice Chair James Cofield expressed a concern that the ordinance removes the Planning Board and full Town Council from

decisions relating to development standards that may temporarily impact the entire community.

Director Heard stated that in addition to the ordinance recommendation, the Planning Board also offered suggestions as Council considers developing its own recommendations to the Mayor and Town Manager regarding specific temporary allowances for businesses subject to restrictions during the current COVID-19 crisis.

Director Heard stated that the Planning Board suggested the following temporary accommodations: General – (1) All businesses must comply with Federal, state, and local orders regarding operating capacity, social distancing, crowd gathering, and other restrictions relating to the COVID-19 crisis. (2) Businesses must obtain necessary approval from the Dare County Environmental Health Department prior to establishment of food trucks or outdoor seating/dining areas. (3) These temporary standards should be re-evaluated with each phase of reopening adopted by the State. (4) Waive any typical permit fees associated with these temporary provisions.

Director Heard stated that for food trucks: (1) Allow a food truck on the same site as the restaurant with which it is associated. (2) The food truck can only be used for storage and/or food preparation and not sales or customer service. (3) No additional signage is permitted relating to the food truck. For outdoor seating/dining: (1) Allow the establishment of new outdoor areas or expansion of existing outdoor areas to accommodate the restaurant capacity lost by State capacity restrictions. (2) Consider the use and limitations on the use of parking areas for outdoor seating/dining. For tents: (1) Allow tents to be permitted in association with the establishment.

Director Heard noted that Town Attorney Hobbs suggested adding language to the draft ordinance that states that it would be consistent with the Town's adopted Land Use Plan, should Council adopt the ordinance.

Councilor Caviness asked if the date implied that once the declaration was enacted, it would go into effect automatically and would end when the declaration was lifted or if it was there and Council would have to request that it go into effect and then request that it comes to its conclusion. Town Manager Layton stated that Councilor Caviness was referencing more of an order. He noted that this public hearing was for the authority for an order and the next phase would be an actual order with the understanding that this was only for emergency purposes and then the order would state what iteration it would be. Director Heard added that the wording in the ordinance stated as follows: "...the temporary accommodation shall not extend beyond the termination of the declaration of emergency or the end of the circumstances causing the need for the accommodations..." He stated that there was an automatic clause that would close it out at the end of the emergency declaration in any instance.

Mayor Pro Tempore Thibodeau understood that the ordinance gives a vehicle to allow Council to temporarily change the circumstances and normal rules. She stated that she was concerned about the language that was just read that it shall not extend beyond the

termination of the declaration of emergency or the end of the circumstances under the declaration, causing the need for the special accommodation. She stated that it was a little loose and she wanted to voice her concern that the intent was to make it very temporary. She worried that it could get broadened and not knowing any circumstances in the future that this could apply, she thought the intent was to keep it very temporary. She asked if that was correct. Director Heard stated that once the restaurants were no longer restricted, even though there was still an emergency declaration in place, the temporary accommodations would be gone at that point because restaurants would no longer be subject to the restrictions.

Mayor Pro Tempore Thibodeau thought her concerns were more broad than the circumstances the Town was finding itself in right now, which no one could have predicted. She thought it was coming across as almost permitting some kind of marshal law on the local government authority. She stated that her only concern was not particularly related to what was going on, but with this broadened power, she was thinking ahead to make sure it was not something that someone could take advantage of in the future.

Town Attorney Hobbs stated that this was a novel situation and thought the Town has done a good job in addressing the issues. He stated that his office has provided guidance to Town staff in drafting the ordinance. He noted that Part 1 of the ordinance does limit the various ways that the ordinance would apply as it was not a universal application and it would be limited. He stated that he did not have any concerns regarding the ordinance being abused or used contrary to the purpose that it was adopted.

Town Manager Layton pointed out that there was an existing section of the Town Code that dealt with emergency proclamations. He thought the reason for the draft ordinance was because those rules do not get into the accommodations that Council was discussing.

Town Attorney Hobbs asked if anyone else had questions for Director Heard. There were none. Town Attorney Hobbs asked if any members of the Planning Board wanted to make a presentation. Director Heard stated that the Planning Board reviewed the proposed ordinance at their meeting on May 13, 2020 and recommended to the Town Council that they adopt the ordinance as proposed.

Town Attorney Hobbs asked if there were any presentations from the public and if there were any comments that had come in since the Council agenda went out.

Town Manager Layton stated that he would read the comments that have come in. He stated that Jon Britt wrote the following: "Good Day, After further thought and speaking with other merchants, I now do not agree with food trucks being allowed. The main focus of this order should be to help the restaurants offset their loss of inside seating by expanding outside seating options when feasible. I would also like to see this made as easy as possible on the restaurants from a time and money standpoint. Let the businesses be creative and innovative with their ideas, as long as it does not affect public safety. I would also like to see consideration of allowing retail to expand outside when possible.

Social distancing is going to be difficult in these stores. These are stressful and difficult times and the Town should do everything it can to help our merchants survive this summer. We are all in this together and thank you for addressing these issues so quickly.”

Town Manager Layton stated that Jeffrey Beaulieu of 105 Skimmer Way wrote the following: “Given our town’s economic uncertainty, is there any pause being considered for our proposed new safety building?”

Town Attorney Hobbs asked if there were other public comments or presentations. There were none. Town Attorney Hobbs then closed the public hearing and turned the meeting back over to Mayor Kingston, adding that the ordinance would pass with four votes on the first reading.

Councilor Mooney didn’t think that anywhere in the discussions that anyone was talking about food trucks in the traditional sense. He clarified that they would not be able to sell directly from the vehicles. Town Manager Layton stated that it remained to be seen and was the next step.

Councilor Caviness moved to adopt Ordinance 20-03 as presented with the additional language as suggested by Town Attorney Hobbs.

Motion carried 5-0 via roll call.

Mayor Kingston stated that Council needed to discuss the second part which was the order for temporary accommodations. He noted that there was some sense of urgency and he believed that Governor Roy Cooper would move North Carolina from Phase 1 to Phase 2 which will allow for reopening of restaurants with restrictions. He stated that he did not know all of the details yet but had heard of some via conversations prior. He reviewed the draft order with Council and the audience. He stated that he anticipated changes to Phase 2 and wasn’t sure how long Phase 2 would be in effect, but it will change as the State enters Phase 3 and new or amended orders will be in place.

Mayor Kingston noted that the order does not allow for food trucks, kiosks or carts. He pointed out that they were not permitted in Duck by ordinance and was based upon public input which has been mostly negative with regard to the use of food trucks. He added that it was a temporary order and he anticipated that Phase 2 would last through July 4th if not longer. He stated that it was not talking about the expansion of business capabilities but looking at moving the capacity from indoors to outdoors. He noted that any expansion of capacity required a normal conditional use permit process. He thought if one or two businesses used food trucks, it was an unfair advantage to the other restaurants in Town. He thought the intent was to get the restaurants back up and running and to allow them to add as much capacity as they could indoors and outdoors as the State goes through Phase 2.

Mayor Pro Tempore Thibodeau thought it looked comprehensive. She stated that she did not have any suggested changes.

Councilor Caviness thought with regard to some of the businesses that were near another business that had picnic tables, that there should be some general courtesy and consideration that the outdoor area doesn't start to spread out and negatively impact other businesses. She wasn't sure what could be done other than to ask the businesses to be courteous of one another. Town Manager Layton pointed out that Town staff could not enforce courtesy, but staff did ask the businesses to submit a plan that shows how to meet the guidelines so they can see how it will be addressed. He added that the difficulty with orders was the enforcement of complaints, which will be through the police department. He stated that staff will mediate as much as possible, but prolonged issues could end up being a law enforcement issue. He added that there was no intent to write tickets, but with a plan there was something that could be referenced if an issue arose.

Mayor Kingston stated that earlier in the day he saw a four-page sheet of regulations that were pretty strict with regard to the dining, but it did not speak too much to outdoor dining. He added that he also saw some recent correspondence that said that outdoor dining would be limited to 12 seats per every 1,000 square feet. He stated that it was quite a bit of open space for outdoor dining and will be challenging to control. He stated that he wanted the businesses to be up and running and successful with minimal disruption from the Town.

Councilor Whitman asked if the regulation regarding 12 seats per 1,000 square feet was from the State. Town Manager Layton thought it was based on the Fire Code. Director Heard stated that the State Health Department developed guidelines based on their expectations and their figure was a substitute for situations where there was not an applied fire capacity for the business. Councilor Whitman clarified that all of the restaurants in Duck have been given numbers from the fire inspections. Director Heard stated that staff has been putting together a list of restaurants and their capacity. He added that it will be based on the building code/fire code allowances with regard to capacity.

Town Manager Layton stated that for the interior, everyone has an occupancy limit. Councilor Whitman clarified that the total would include the exterior. Town Manager Layton thought the 12 to 1,000 was in with the additional outdoor space. Director Heard stated that it would apply if there wasn't an assigned occupancy. Town Manager Layton thought the complicating factor were those that already had outdoor dining.

Mayor Kingston pointed out that part of the order has each restaurant working with Town staff with respect to what their plan was for moving forward. Mayor Pro Tempore Thibodeau stated that it sounded reasonable.

Director Legner noted that Dan Lewis had a written comment. She went on to read his comment as follows: "I respectfully ask for reconsideration of the proposal to follow

Planning Board approval for food trucks to be used for storage and preparation only. No other businesses would be impacted.”

Mayor Kingston stated that the plan moving forward would be to wait for the Governor’s announcement later today and based upon that announcement and any additional guidance received, he would work with Town Manager Layton and Director Heard to make amendments as necessary. He stated that, moving forward, he would like to get it in place as the State moves to Phase 2.

It was *consensus* of Council to issue the Mayor’s order.

DISCUSSION/CONSIDERATION OF ORDINANCE 20-01, AN ORDINANCE CONTAINING COMPREHENSIVE AMENDMENTS TO CHAPTER 150, FLOOD DAMAGE PREVENTION

Mayor Kingston reminded Council that there was a public hearing on the ordinance at their May 6, 2020 meeting and this was a follow up to it as Council had deferred further discussion on it based upon additional comments that may have come in over the last 24 hours.

Director Heard stated that he wanted to address two issues that came up during the May 6, 2020 public hearing where Council received public comments relating to the building industry that expressed concerns regarding a couple items in the draft ordinance as proposed by the Planning Board. He stated that one of the issues had to do with the establishment of a minimum local elevation standard of 10 feet that would apply across all properties, even those located in an X zone.

Director Heard stated that the second issue had to do with standards that were recommended for lateral additions, meaning additions that would extend outward from the existing house or structure at the same level as the existing floor. He pointed out that in that instance, a recommendation was to allow lateral additions to be constructed at the same level only if they were 25% or less of the square footage of that adjoining floor. He added that anything higher, greater or larger would have to be stepped up to meet the elevation requirement if it was a situation where the house floor level happened to be below the standard.

Director Heard stated that there were a lot of points brought up regarding the two items. He pointed out that should Council decide that they wished to go to a lower standard than the 10 foot as proposed by the Planning Board, there were additional changes to the draft ordinance that would have to be made. He explained that there was a corresponding adjustment that would need to be made to the freeboard requirements in the A zone districts since the requirements were reduced based on the fact that the Town was looking at a 10-foot standard. He added that the requirements in the draft ordinance for the freeboard were substantially lower than all of the other towns on the Outer Banks.

Director Heard stated that Council has been asked by members of the development industry to amend the thoroughly considered recommendations of the Planning Board and adopt standards that were inconsistent with the Town's stated adopted goals that would have long-term negative impacts for individual property owners and the community as a whole. He stated that he was now before Council as an advocate for a more effective approach for the community's resiliency.

Director Heard stated that Council had a Power Point slide show in their packets to alleviate the hearsay on the issue. He noted that there were photographs that provided some really good examples of where past flooding has happened in Town. He stated that Council also had documentation that there were historical flood levels of approximating eight feet in Duck. He stated that it showed how the depth of flooding, intensity, and frequency of storms has increased in Duck over the past two decades. He pointed out that there were scientific models used during a recent NOAA sea-rise study that predicted a two-foot sea level rise for the Outer Banks as early as 2035. He noted that the importance of that was if Council looked at the standards being considered, that was the approximate timeframe that the new flood maps and ordinance would be in place, which was estimated to be 10-15 years before they would be revised by FEMA. He added that the ordinance would be in place throughout that time period when the highest and quickest estimate of two-foot sea level rise would be seen. He stated that sea level rise wasn't about storm surge, but it directly impacts the water table, as sea level rise pushes the water table up and the Town would see areas impacted that aren't usually impacted by storm surge.

Director Heard stated that if the community experiences flooding approaching an eight-foot elevation in the past, it would certainly be reasonable to anticipate that there could be significant flooding events – whether it was storm surge or rainfall – that could be two feet higher if a two-foot sea level rise was seen. He stated that it could be anticipated within that period that there will be a greater likelihood to see storms occurring at a higher level than the eight-foot that was adopted in the past.

Director Heard stated that the proposed flood damage prevention ordinance and the 10-foot local elevation standard were designed to protect property owners and minimize flood damage as the potential for flooding height and damage increases over the next 10-15 years as well as into the future. He stated that Town staff had an opportunity to attend many floodplain management training sessions and in those there were representatives that provided information and presentations regarding ways communities could minimize flood damage. He noted that one thing staff has been told repeatedly over the years was that the best way to prevent flood damage to a structure was to elevate it, adding that nothing minimizes the damage and prevents damage as much as elevating a structure.

Director Heard stated it was something that leads the Town to look at a higher standard with the 10-foot local elevation, which was a way of minimizing damage and probably the most successful way the community could minimize it. He noted that if the Town did not go that route and if Council looked at adopting lower standards such as the eight-foot suggestion, over the next 10-15 years that the ordinance was in place, the result could be

hundreds of structures built or improved over that time that were constructed at a lower level and would be more susceptible to damage in the future and would likely become non-conforming structures with the preparation of adopting of the new flood maps in 2035. He added that it would be creating a situation of more non-conformities in the future.

Director Heard noted that there were a number of studies that supported the significant benefits of elevating structures. He stated that it was true that some of the information that was presented from the development industry was accurate in that there would be modest increases in initial construction costs should there be a higher elevation, specifically if the building was two feet higher there would be two foot longer pilings, which would be an increased expense. He added that if the house was higher, there would be longer stairways for access to the house.

Director Heard explained that there were instances for individual projects where there may be other costs but those were decisions of the individual owner. He added that these were the two primary things that Council was considering. He stated that there were not substantial differences in housing costs that would be preventative or difficult for someone to work with. He stated that building one foot above the 100-year flood elevation added \$90 million to construction costs per year for new construction, but saved \$550 million in damages, which was more than a 6:1 cost benefit ratio.

Director Heard stated that FEMA has completed numerous studies on different aspects of flood mitigation and as part of that, it concluded that every dollar spent on flood mitigation projects included things such as elevating houses, but also included demolishing homes that were in floodplains and had repetitive flooding. He added that it saves \$7 in future FEMA payouts for damages for every \$1 spent on mitigation grants. He pointed out that there have been properties in Dare County that have taken advantage of some of that money over the years as through the programs to elevate homes higher. He stated that according to their studies, FEMA noted that they have saved \$7 for every dollar they spent in payouts. He noted that as a community, it was money well spent.

Director Heard stated that the Town has recognized these issues and opportunities during its previous and current planning efforts, such as the resiliency study, the vulnerability assessment, land use plan, hazard mitigation plan and the Town's 2027 Vision. He noted that all of those have features that address the community's resiliency and how it could improve the resiliency through adoption of higher standards and other measures. He stated that the visioning efforts have allowed the Town the opportunity to step back, not look at a specific proposal, and take a look at what the Town wants in order to move forward in the future. He stated that a substantial amount of public input was included as well as input from Council, Planning Board and others.

Director Heard stated that each of the efforts have stressed the Town's interest in being a more sustainable and resilient community. He suggested that the proposed 10-foot local elevation standard was more consistent with the Town's stated goals in developing regulatory standards that address sea level rise and other natural hazards; minimizing

harm to people and properties; improving long-term resilience to the community; and protecting the public health, safety and welfare. He stated that the Town's existing flood maps were adopted in 2006 and scientific observations, local documentation, and common sense tell that sea level rise and the increasing frequency and intensity of the storms were leading to a greater potential for higher flooding since the existing flood maps were adopted. He stated that the required flood elevations presently under the current flood maps in Duck were as high as 10-foot elevations in AE flood zones with an additional one-foot freeboard requirement that brings it to 11 feet for the regulatory flood protection elevation under the current standards. He added that 79% of all of the properties in Duck that were presently in an A zone and subject to these elevation standards were being shifted out of that zone into an X zone which has no standard flood elevation.

Director Heard stated that the proposed 10-foot local elevation standard keeps the elevation standards in line with the highest of the current flood elevation standards for the A zone properties. He added that all of those properties that would be pulled out of those elevation standards, staff was proposing to go back and set the standard at the highest level of that. He noted that anything lower than a 10-foot local elevation standard would result in a reduction of elevation requirements for many properties. He explained that all of the properties in the AE10 zone would be reduced if the Town adopted anything less than 10-feet as proposed under the ordinance. He stated that if the Town adopted the eight-foot local elevation standard that was proposed, it would result in reduced elevation standards for approximately 667 properties – nearly 25% of all the properties in Duck – over what they have had for the past 14 years. He noted that it seemed inconsistent with the goal of being a more resilient community if the Town took actions to reduce the elevation requirements.

Director Heard stated that there were additional savings to property owners through the NFIP community rating system, adding that it has a class rating from nine to one, which was used to determine flood insurance premiums. He stated that the higher the standards the Town has, the more points it receives and ideally the Town could be bumped up a class and if it is, it results in a savings of 5% to property owners in Duck.

Director Heard stated that there were some concerns expressed that Duck was seeking to establish a higher elevation standard than some of the other towns on the Outer Banks. He pointed out that most of the communities on the Outer Banks were proposing an eight-foot local elevation standard, with only Duck and the Town of Nags Head proposing a 10-foot standard. He stated that the other towns and unincorporated areas of Dare County contain a much greater percentage of structures that were built at lower elevations, so adopting higher standards in those areas would be inconsistent with their current development patterns and would result in a much greater percentage of non-conforming properties.

Mayor Kingston stated that Council delayed action on the ordinance in order to receive additional public comments. He asked if additional comments have come in. Director

Heard stated that he did not receive any additional comments. Director Legner stated that no additional comments have come in.

Town Manager Layton stated that he had a discussion with Jay Overton earlier in the day. He reminded Council that the building community and realtors had an issue with the 10 foot as they were concerned about it. He added that they were also having issues regarding the lateral additions. He stated that his comment to Mr. Overton were that he thought the Planning Board and staff did a good job and that personally he felt that the 10 foot was showing that staff took the concept of resiliency seriously. He stated that Mr. Overton brought up as a major concern the issue of lateral additions. He stated that his takeaway was that there was a group of people, including the Town, that have built to standards and now if someone purchased a home with an existing condition, limiting the addition to 25% did not increase the Town's resiliency but increased only part of it. He stated that it puts Duck at a disadvantage in other communities due to selling or building homes, the potential for that could kick in. He stated that in his discussions with Jay Overton, he did not indicate that he had a great issue with the 10-foot going forward, because that was on the table, so if someone was purchasing new or building to that standard, then they could do that.

Town Manager Layton stated that if an individual was buying a home, tearing it down and rebuilding it, the same instance applies as they are making that decision to be in Duck, and they know that the 10-foot issue is there. He added that if it was a substantial improvement, the 50% grandfathered rule would kick in and decisions would have to be made as to how that would be dealt with. He noted that those were all at the consumer level and not an after the fact issue. He stated that he let Jay Overton know that he would share his concerns with Council.

Mayor Kingston asked if it was a good compromise based upon the comments that were received from the building community. Town Manager Layton stated that they were his words and he saw it as a compromise that was defensible and allows the Town to move forward with its resiliency while not penalizing people for the change.

Mayor Pro Tempore Thibodeau stated that a lot of work has gone into the ordinance over the years, which started with ridiculously altered flood maps, and everyone agreeing that better standards needed to be created. She stated that the idea that everyone could have a similar standard in Dare County would be beneficial. She noted that Duck stood ahead of other communities in terms of forward thinking and Director Heard made excellent points regarding the fact that the Town would be lowering some standards based on the new flood maps pulling people out of an existing zone. She stated that her concern has been the standardization that the community at large could understand and if the Town had a standard ordinance or rules it would be a lot easier on everyone on the entire Outer Banks to understand. She noted that she knew that it was not done that way in the past and it seemed like a good goal. She believed that 6% of the Town's properties would become non-conforming with the higher elevation. She thought it was approximately 164 properties.

Mayor Pro Tempore Thibodeau stated that she understood the need to be thinking forward and the fact that the Town was put in this position by really low, new flood maps that do not seem to be based on any good data but based on flawed models. She applauded everyone trying to get together and the idea of doing something standardized but was worried that Duck will be different which will be difficult to explain the difference to others, which concerned her. She stated that she liked the idea of allowing people to do more with their lateral additions because there were people that want to expand their property. She thought if Duck was going to use higher standards, that it needs to be very vocal about the difference and make it very clear as well as easily digestible by the public since the Town will stick out with higher standards. She reiterated that she would be in favor of allowing more consideration for lateral additions. She felt that there wasn't much that could be done with 25% lateral improvements and could be difficult for people as well as limiting what they could do to their properties.

Mayor Kingston asked what staff would use as a reasonable percentage to allow for lateral additions without the 10 feet. Director Heard stated that the percentage was established at the Planning Board's meeting where they forwarded their recommendation to Council. He stated that there was some discussion and they were trying to make sense of something and did some quick calculations. He stated that it wasn't a substantial allowance the way it was proposed in the draft ordinance, but the intent of the Planning Board was they were looking at going higher. He wasn't sure what a reasonable higher figure would be.

Councilor Whitman asked out of 160 units, how many could be built much larger with the lot setbacks. Director Heard stated that he had not completed an individual study as to what properties would be non-conforming as he didn't have the information to be able to provide to Council. He thought the home builders and their information that was presented at Council's May 6, 2020 meeting made some comments to let the other development standards and zoning development standards limit what people could do. He noted that while it was not as limiting in Duck as it was in other communities with smaller lots, Duck had larger lots, so it wasn't as limiting.

Town Manager Layton noted that another limiting factor would be if the 10 foot was adopted and lateral additions were allowed, they would be legal non-conforming structures with the 50% of the value being the limiting factor.

Councilor Mooney asked how the Planning Board arrived at 25%. Director Heard stated that the draft ordinance that was put together by staff had no provisions with the initial recommendation to the Planning Board was that lateral additions were not allowed to be built below the flood standard. He stated that the Planning Board received a lot of input which they took into consideration and felt that they wanted to at least allow for a modest addition and 25% was the figure they came up with.

Councilor Mooney thought the Planning Board did a good job with regard to the 10-foot rule. He noted that the arguments against it that Council heard at their May 6, 2020

meeting was that by going up an additional two feet has the potential to be disastrous. He thought maybe the Council wanted to reconsider the 25%.

Mayor Kingston noted that Council could amend the ordinance if they wanted to pursue that. He added that it wasn't necessary to have an additional public hearing on it. Director Heard stated that the change would only apply to the 10 foot versus eight foot. He added that if Council changed the 25% or removed it completely, it would be an administrative change.

Director Legner read Jay Overton's comment as follows: "I have more information and statements to make if allowed, one sided discussion. Let lateral additions be controlled by existing zoning regulations, that's why they are there. With regard to the adoption of the FDPO ordinance and having to live with it for 10 to 15 years, that is not correct. It can be looked at whenever the Town desires with the regard to local standards. We could go with eight feet and lateral additions per zoning in adoption today and revisit the FDPO in five years when new information is available."

Mayor Kingston clarified that Jay Overton was suggesting that the ordinance be revisited in five years. Mayor Pro Tempore Thibodeau thought what Council heard at their May 6, 2020 meeting was the fact that these ordinances could be changed at any time. She noted that the Town may not see any flood maps for a while, but the ordinance could be changed any time Council wanted to.

Councilor Caviness stated that her concern regarding the 25% and trying to figure out some revision to it was arbitrary. She felt that Council should adopt the ordinance as presented with the 10 foot and 25% and if Council was presented with information that suggested doing 30 or 35% and could get a handle on what that will look like, then Council could make a revision going forward. She thought that Council trying to figure out how to revise 25% without any statistics was a shot in the dark with both of the pieces that seem to be part of this discussion.

Mayor Pro Tempore Thibodeau thought Council could eliminate the 25% and allow the developmental standards that were in place to stay in place. She stated that everyone has lived with them for a long time and they seemed to keep things in check with regard to larger development. She added that there was also the 50% rule of the value which she felt that both would be a way to not have to worry about the percentage at all. Councilor Caviness and Councilor Whitman agreed.

Councilor Caviness moved to adopt Ordinance 20-01 with the revision of eliminating the restriction of lateral additions and adding that the ordinance was consistent with the Town's Land Use Plan.

Mayor Pro Tempore Thibodeau reiterated that Council has a way to express the differences Duck has versus other towns. She stated that she wanted to make sure that the Town uses the opportunity to express the difference in our developmental standards so that it was easy and overt to understand. Mayor Kingston agreed.

Motion carried 5-0 via roll call.

DISCUSSION/CONSIDERATION OF RATIFYING ORDINANCE 20-02, AN ORDINANCE AMENDING THE DEFINITION OF BUILDING HEIGHT IN FLOOD ZONES

Director Heard stated that the ordinance was heard at Council's May 6, 2020 meeting. He reminded Council that they took a vote and action with the understanding that there was a 24-hour comment period.

Town Attorney Hobbs reminded Council that the ordinance included the consistency statement.

Mayor Pro Tempore Thibodeau moved to ratify Ordinance 20-02 as presented.

Motion carried 5-0 via roll call.

Mayor Kingston called for a five-minute recess. The time was 2:43 p.m.

Mayor Kingston reconvened the meeting.

PRESENTATION OF PROPOSED FY 2021 BUDGET

Mayor Kingston recognized Town Manager Layton.

Town Manager Layton gave a presentation on the proposed Fiscal Year 2021 Budget to Council and the audience, noting that he was not proposing a tax increase. He then handed out the proposed Fiscal Year 2021 budget.

Mayor Kingston thanked Town Manager Layton for his presentation.

Mayor Pro Tempore Thibodeau moved to set the public hearing for the Fiscal Year 2021 budget for June 3, 2020.

Motion carried 5-0 via roll call.

Mayor Kingston asked if the mid-month meeting should be scheduled at this meeting or if it should wait. He thought it should be planned.

Councilor Caviness clarified that the budget had to be adopted by the end of June. Mayor Kingston stated she was correct.

Mayor Pro Tempore Thibodeau thought Council needed time to discuss the budget. She was fine with the work session whether it was before or after the public hearing. She wasn't sure what was on the mid-month agenda, but Council would need time to discuss

the budget. She thought it could be done at the June 3, 2020 meeting and then at a subsequent meeting. Mayor Kingston agreed. He thought there was too much in play. He added that it did not have to be adopted until June 30, 2020. He thought Council should have the work session at their June 17, 2020 mid-month meeting.

Town Manager Layton recommended that Council have a mid-month meeting and after the public hearing, Council could set an additional work session before the mid-month meeting.

Councilor Whitman asked if there had to be a 10-day notice for the meeting. Mayor Pro Tempore Thibodeau thought there needed to be. Mayor Kingston stated that Council could call a special meeting. Town Manager Layton suggested tabling the June 3, 2020 meeting to another date.

Mayor Pro Tempore Thibodeau thought Town Manager Layton was suggesting an additional work session for the budget. She asked what would work for the rest of Council.

It was *consensus* of Council to hold budget work sessions on Wednesday, June 10, 2020 at 3:00 p.m. and Wednesday, June 17, 2020 at 1:00 p.m.


Mayor Kingston noted that the next meeting would be the Regular Meeting on Wednesday, June 3, 2020 at 7:00 p.m.

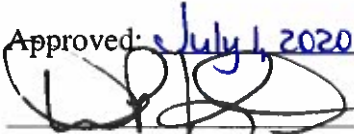
ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0 via roll call.

The time was 4:58 p.m.


Lori A. Ackerman, Town Clerk

Approved: July 1, 2020

Don Kingston, Mayor

