



Agenda

Town of Duck Planning Board – Regular Meeting

Paul F. Keller Meeting Hall

Wednesday, September 11, 2019 – 6:30 p.m.

1. Call to Order
2. Public Comment
3. Old Business
 - a. **Ordinance 19-04:** *Text amendment proposal to establish review standards for the Village Commercial Development Option as a special exception.*
 - b. **Ordinance 19-05:** *Text amendment proposal to remove criminal sanctions and penalties from applicable sections of the Town Code.*
4. Approval of Minutes
 - a. *Minutes from August 21, 2019 Regular Meeting*
5. Staff Comments
 - a. *Project Updates*
 - b. *October Meeting Date – 10/16*
6. Board Comments
7. Adjournment



TO: Chairman Blakaitis and Members of the Town of Duck Planning Board
FROM: Joe Heard, AICP, Director of Community Development
DATE: September 11, 2019
RE: Text Amendment: Village Commercial Development Option Standards

Proposal

During the Town's Annual Retreat on February 21, 2019, the Duck Town Council authorized the Planning Board to work with Town staff and the Town Attorney to evaluate and recommend improvements to the Town's standards for the Village Commercial Development Option (VCDO).

Planning Board Review & Comments – 8/21 Meeting

At its meeting on August 21, 2019, the Duck Planning Board reviewed a draft ordinance revising the review process and criteria for the Village Commercial Development Option. At this meeting, a majority of the Board members agreed to eliminate the use of a scoring system to quantify VCDO proposals. As a couple of concepts were discussed, but no clear direction provided, staff has prepared two draft ordinances for the Planning Board's consideration:

- Attachment A – Draft ordinance eliminates the scoring system and converts scoring criteria to guidelines. This approach provides some guidance for the applicant, Planning Board, and Town Council to decide if a Village Commercial Development Option proposal is consistent with the desired function and character of the Village Commercial District.
- Attachment B – Draft ordinance eliminates entirely any specific criteria or guidelines. This approach offers the Planning Board and Town Council more flexible decisions based on the general findings in Subsection C. However, it also provides minimal guidance for the applicant and staff as to what the Board will consider favorably during its review.

Changes from the last draft ordinance are made in red to highlight the proposed amendments.

The Board members are asked to consider these differing approaches and provide the staff with guidance as to which approach you prefer. As both draft ordinances are in final format, the Board will have the option of making a recommendation to Town Council if you like one or the other version and wish to move it forward at this time. You are also welcome to consider additional changes and bring the ordinance back at your October meeting.



Consistency w/ CAMA Land Use Plan

The Town of Duck's adopted CAMA Land Use Plan contains a variety of goals, policies, and objectives relating to commercial development in Duck Village. The Planning Board may consider these statements during the development of standards for the VCDO.

GOAL #4: Ensure continued development of small, specialty-type shops and the vitality of existing businesses.

POLICY #4a: Duck supports small, specialty-type shops and commercial development in areas zoned for such activities and encourages the continued existence and development of locally owned businesses and encourages commercial building designs, color designs, and construction materials and methods that reflect Duck's coastal village character.

POLICY #4d: Duck will continue to regulate building intensity and oversized structures by enforcing, and amending as necessary, the zoning ordinance. The zoning ordinance regulates building intensity factors such as building height, lot coverage, and building setback(s) for commercial and residential building development. The ordinance also specifies maximum and minimum building sizes for commercial buildings.

OBJECTIVE #4b: Develop commercial building/development design guidelines and standards including signs, landscaping, and building color(s), styles, and materials.

OBJECTIVE #4d: Actively seek ways to provide and ensure a safe environment for pedestrians in commercial areas and to minimize pedestrian-vehicular conflicts in commercial areas; and to improve circulation patterns in commercial areas.

OBJECTIVE #4e: Encourage shared use of parking and loading/off-loading areas through the development review process.

OBJECTIVE #4i: Periodically assess land use type needs, commercial zoning district boundaries, economic development conditions and emerging trends, and the types of permitted uses allowed in zoning districts.

GOAL #5: Remain aesthetically pleasing while maintaining coastal village image.

POLICY #5a: Duck will adopt and enforce ordinances and procedures to regulate land use, development, redevelopment, and community appearance and explore incentive programs such as grants, group purchases, and recognition programs to enhance community appearance.

OBJECTIVE #5d: Encourage landscaping and landscaping features maintenance throughout the Town's commercial areas by business owners and in residential neighborhoods through neighborhood community associations.



GOAL #7: Develop and implement development design standards.

POLICY #7a: Duck supports the concept of development design standards.

GOAL #12: Ensure that development and use of resources or preservation of land minimizes direct and secondary environmental impacts, avoids risks to public health, safety and welfare and is consistent with the capability of the land based on considerations of interactions of natural and manmade features.

POLICY #12a: Duck will use its police powers to adopt and enforce ordinances and procedures to regulate land use, development, and redevelopment in accordance with the goals and policies of the land use plan and supports applicable State and Federal laws and regulations regarding land uses and development in areas of environmental concern.

OBJECTIVE #12b: Adopt regulations and procedures that provide clear direction to assist local decision making and consistency findings for zoning, divisions of land, and public and private projects.

OBJECTIVE #12c: Enforce, and amend as necessary, the Town zoning ordinance which includes designation(s) of permitted and conditional uses intensity and density criteria.

OBJECTIVE #12e: Establish mitigation criteria and concepts that may include but are not limited to cluster subdivision design, enacting local buffers, impervious surface limits, and effective innovative storm water management alternatives.

GOAL #15: Ensure adequate parking and loading/off-loading areas.

POLICY #15a: Duck supports the provision of well designed, properly marked and designated, and functional parking and loading/off-loading areas.

POLICY #15b: Duck will seek ways to provide and ensure a safe environment for pedestrians in commercial areas; to minimize pedestrian-vehicular conflicts in commercial areas; and, to improve circulation patterns in commercial areas.

OBJECTIVE #15d: Study requiring bicycle racks at commercial establishments.

GOAL #18: Ensure redevelopment is consistent with Town image and land use and development goals.

POLICY #18a: Duck will provide clear direction to assist local decision making and consistency findings for zoning, divisions of land, and public and private projects.



POLICY #18b: Duck will ensure redevelopment is consistent with established community appearance standards, improves public safety, and protects or preserves the natural environment.

2027 Vision

The Town of Duck's 2027 Vision contains six unifying principles. Three of these principles relate to the commercial activity and character of Duck Village:

Duck and Our Village

Surrounded by our residential neighborhoods, Duck Village is the heart of Duck. Our collection of small shops, restaurants, offices, parks and boardwalks combine to shape the Duck experience. The development of the Village has a coastal residential style and scale and its continuity creates an energetic and walkable experience. Our quality of life is enhanced through innovative solutions that protect and preserve the Village's unique character and environment.

Enhanced Movability

Duck is a pedestrian first community that is safe and easy to navigate by walking and cycling. Our multi-use trail, sidewalks, soundside boardwalk, and beach provide a variety of ways to explore and discover Duck. Collaboration with various organizations enables us to optimize our traffic flow in our unique seasonal environment.

Vibrant, Thriving Business Community

The business community plays an essential role in creating the Duck experience. A high level of collaboration and coordination ensures that we have a vibrant town where each and every individual can enjoy the recreation, arts, music, shopping, dining, and lodging unique to Duck.

ATTACHMENTS:

- A. Draft Ordinance 19-04 (Convert Scoring Criteria to Guidelines)
- B. Draft Ordinance 19-04 (Remove Specific Criteria Entirely)

DRAFT
CONVERT SCORING CRITERIA TO GUIDELINES

**AN ORDINANCE ESTABLISHING REVIEW STANDARDS
FOR THE VILLAGE COMMERCIAL DEVELOPMENT OPTION
AS A SPECIAL EXCEPTION**

Ordinance 19-04

WHEREAS, the Town Council has found that, due to the pattern of development in Duck Village, it is desirable to offer relief from certain development standards in instances where necessary to encourage development of a scale and character complementary of Duck Village; and

WHEREAS, the Town Council has found that establishing approval criteria for the Village Commercial Development Option will benefit applicants, other interested parties, and decision-makers by offering clear, consistent standards; and

WHEREAS, the Duck Planning Board voted unanimously to recommend approval of this ordinance at its public meeting on August 21, 2019.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Duck, North Carolina:

PART I. Subsection 156.065 shall be added to the Duck Town Code containing the following wording and standards:

156.065 SPECIAL EXCEPTION: VILLAGE COMMERCIAL DEVELOPMENT OPTION.

The Town Council may, by special exception permit, modify certain development standards to facilitate development that maintains and enhances the character of Duck Village.

(A) *Purpose.*

(1) The Village Commercial Development Option is intended to help implement the Town's adopted Vision and CAMA Land Use Plan by allowing development or redevelopment of a size, scale and architectural character that complements Duck Village.

(2) The Village Commercial Development Option provides opportunities for custom site-specific development review to implement town policies encouraging shared access and parking, limited vehicular access, bicycle and pedestrian accommodations, a mix of land uses, compatible building design, tree preservation, adequate stormwater management, and public infrastructure and amenities; thus reinforcing the Village Commercial District as an exceptional and distinctive place to live, work, shop, dine, and recreate.

(B) *Applicability: Criteria.* The Town Council may approve modifications to the development standards contained in this chapter, subject to the following limitations:

- (1) Minimum structure setbacks cannot be reduced by more than 50%.
- (2) Maximum lot coverage may be increased by no more than 10% provided that stormwater improvements meeting the following criteria are provided on the development site:
 - (a) Stormwater runoff from the built-upon area of the site must be directed into an approved stormwater management system designed to accommodate the volume of runoff generated by a 4.3 inch design storm. Interstitial soil storage can be included in the design storm calculation.
 - (b) The stormwater management system shall be designed in accordance with the standards, methodology, and procedures prescribed in the state *Stormwater Best Management Practices Manual (NCDENR BMP Manual)* with the exception of the design storm which shall be 4.3” rainfall event over a two hour period as noted above.
 - (c) Project designs shall utilize low-impact development principles and best management practices as the primary method for the treatment of stormwater.
 - (d) Stormwater plans must be prepared by a state licensed professional engineer. Prior to the issuance of a certificate of completion for the project, a state licensed professional engineer must certify that the proposed improvements have been constructed in accordance with the project design.
- (3) Reduction in the amount of required parking for the site is limited to a maximum of five (5) parking spaces or 20% of the minimum parking requirement for the site, whichever is greater. Additionally, the amount of reduction cannot exceed 50% of the minimum parking requirement.
- (4) Landscape buffers against abutting residentially zoned or used properties cannot be reduced to less than five feet (5’) in width unless an opaque fence or wall is provided.
- (5) Building size or height increases are not permitted.
- (6) Proposed uses must be included on the list of permitted uses for the Village Commercial (V-C) zoning district.
- (7) The requested modification cannot be used to remedy existing violations on a property.

(C) *General Findings.* In order to grant approval of a special exception under the Village Commercial Development Option, the Town Council must find that the applicant has provided substantial evidence that the development proposal complies with all the following general criteria:

(1) The development proposal is consistent with the Town’s adopted vision and land use plan; and

(2) The development proposal is consistent with the desired scale, character, and function of Duck Village; and

(3) The subject property, including the development proposal, ~~achieve a score of at least nine (9) points based on the specific scoring criteria~~ contains many of the characteristics outlined in the guidelines listed in Section 156.065(E); and

(4) The requested modification is the least necessary to accommodate the proposed development and meet the intent of the Village Commercial Development Option; and

(5) The requested modification will not negatively impact adjacent properties or the surrounding area.

(D) *Exceptions.* ~~Applicable review standards under Subsection 156.065(C)(3) are dependent on the type and scale of project being proposed.~~ Due to their modest scale, the following types of projects are not required to comply with the ~~specific criteria~~ guidelines listed in Subsection 156.065(E) and Town Council does not have to make a finding as outlined in Subsection 156.065(C)(3):

(1) *Change of Use.* Change of use with no site improvements resulting in an increase of five (5) parking spaces or fewer to the minimum number of parking spaces required.

(2) *Small Development Projects.* Proposed development not exceeding either of the criteria listed below:

(a) New construction or expansion of structures not exceeding 1,000 square feet or 10% of the existing structures on the property, whichever is lesser; or

(b) Site development or improvements not exceeding a footprint of 1,000 square feet or 5% of the lot size, whichever is lesser.

(E) ~~*Specific Criteria. Guidelines.*~~ During its review, Town Council will consider the following ~~specific criteria~~ guidelines in determining if a Village Commercial Development Option proposal is consistent with the desired function and character of the Village Commercial District. ~~Points will be assigned by the Town Council based on findings of compliance with the following criteria.~~

<u>Description</u>	<u>Points</u>
Mixed Uses:	
—Mixture of office/commercial/institutional uses	1
—Accessory residential (one point per unit for long-term lease)	1
Building Design:	
—Consistent with commercial design guidelines outlined in Section 156.111	1-2
Building Location:¹	
—Orientation toward front of property, preserves important site features	1-2
Lot Coverage:²	
—Minimizes lot coverage or enhances stormwater drainage/filtration	1-2
Parking Areas:	
—Minimizes parking in the front yard, enhanced landscaping in the parking design	1
Pedestrian-Friendly:	
—Location close to public sidewalk and/or boardwalk	1
—Connection of sufficient width to public sidewalk and/or boardwalk	1
Bicycle-Friendly:	
—Convenient connections to the public bike path	1
—Provides bike racks and/or public bike equipment or amenities for public use	1
Inter-Property Connections:	
—Provides vehicular and/or pedestrian connections between properties	1
Trees/Vegetation:	
—Preserves significant trees and vegetation. Exceeds required planting requirements	1-2
Historic Preservation:	
—Preserves historic structures or other features	1-2
Public Amenities:³	
—Installation of desired public amenities such as water fountains, benches, etc.	1-2
Public Infrastructure:⁴	
—Provides desired public infrastructure improvements such as the installation of —sidewalks, fire hydrants, stormwater improvements, etc. meeting a public need	1-3

¹The preferred location of buildings and related site improvements includes orientation toward the street, dual-orientation for soundfront properties on the boardwalk, preservation of significant site features, parking to the side or rear, close proximity to sidewalk or boardwalk, and minimizing impacts on adjoining residential properties.

²Minimizing lot coverage can include, but is not limited to, use of semi-pervious surfaces for parking and other features and use of the State's *Stormwater Best Management Practices*.

³Public amenities are features offered for public enjoyment including but not limited to water fountains, benches, artworks, and rain/sun shelters. Such features can be public owned or privately owned, but permanently available to the public.

⁴Public infrastructure includes facilities essential to the function of the community including but not limited to sidewalks, fire hydrants, stormwater improvements, and equipment.

(1) *Mixed Uses.* The property contains a mixture of complementary uses with special emphasis on the provision of long-term accessory dwelling units.

(2) *Building Design.* Building design is consistent with the commercial design guidelines outlined in Section 156.111.

(3) *Building Location.* The preferred location of buildings and related site improvements includes orientation toward the street, dual orientation for soundfront properties abutting the boardwalk, preservation of significant site features, parking to the side or rear, and minimizing impacts on adjoining residential properties.

(4) *Lot Coverage.* Minimizing lot coverage can include, but is not limited to, use of semi-pervious surfaces for parking and enhanced stormwater drainage such as that outlined in the State's *Stormwater Best Management Practices*.

(5) *Parking Areas.* Parking is minimized in the front yard and enhanced landscaping is included in the parking area design.

(6) *Pedestrian-Friendly.* The building location is in close proximity and has a connection of sufficient width to the public sidewalk and/or boardwalk.

(7) *Bicycle-Friendly.* The site contains convenient connections to the public bike path. Bike racks and/or public bike equipment or amenities are provided for public use.

(8) *Inter-Property Connections.* Provides vehicular and/or pedestrian connections between properties.

(9) *Trees/Vegetation.* Preserves significant trees and vegetation. The landscaping plan exceeds required planting requirements.

(10) *Historic Preservation.* Preserves historic structures or other features.

(11) *Public Amenities.* Amenities offered for public use and enjoyment, including but not limited to, water fountains, benches, artworks, and rain/sun shelters. Such features can be public owned or privately owned, but permanently available to the public.

(12) *Public Infrastructure.* Provides desired public infrastructure improvements meeting a public need. Public infrastructure includes facilities essential to the function of the community, including but not limited to, sidewalks, fire hydrants, stormwater improvements, and equipment.

(F) *Submission Requirements.* A complete special exception application for the Village Commercial Development Option must include a site plan containing the following information:

(1) Building locations, building heights, number of dwelling units, proposed uses and gross square footage of all uses;

(2) Total area of the application property;

- (3) Proposed setbacks from all property lines;
- (4) Proposed methods and layout of landscaping and screening;
- (5) Proposed methods of ingress, egress and internal circulation;
- (6) Topographic contours and conceptual grading plan;
- (7) Proposed improvements to adjacent rights-of-way;
- (8) Proposed layout of parking area showing individual parking spaces and landscaping;
- (9) Proposed on-site pedestrian walkways and other pedestrian/bicycle accommodations;
- (10) Calculations for proposed lot coverage and required parking;
- (11) Proposed development schedule outlining the phases of development, if applicable;
- (12) Locations of existing and proposed easements and property lines;
- (13) Location and description of any structure proposed to be moved or demolished;
- (14) Conceptual architectural elevations depicting the proposed architectural design, materials, and dimensions of all elevations; and
- (15) Other information deemed necessary for the Planning Board and Town Council to understand the details and design of the proposed project.

(G) *Site Plan Approval.*

(1) The Town Council may impose conditions as part of the approval of any Village Commercial Development Option application as deemed necessary in the public. Surety in a form acceptable to the town attorney may be required to ensure compliance with conditions imposed by the Town Council.

(2) Approval of the site plan accompanying the application for the Village Commercial Development Option will also constitute approval of the proposed development as to scale, heights, setbacks, parking, required public improvements, and other development standards specifically addressed.

(3) The Director of Community Development may permit minor deviations from the footprints of structures and improvements on the approved site plan, provided that the proposed deviations are in substantial accord with the conceptual development plan, will not result in increased square footage of development, and will not result in increased height of any structure.

(4) Unless otherwise granted during the approval process, a Village Commercial Development Option designation will expire 18 months following the date of approval by the

Town Council unless construction of the proposed development has commenced. The Director of Community Development may grant a single 12-month extension provided that the applicant adequately demonstrates due diligence toward initiation of the development.

PART II. Subsection 156.036(C)(6) shall be removed from the Duck Town Code in its entirety and all subsequent subsections in 156.036(C) be renumbered accordingly.

PART III. This ordinance shall be effective upon its adoption.

Don Kingston, Mayor

ATTEST:

Lori Ackerman, Town Clerk

Date adopted: _____

Motion to adopt by: _____

Vote: _____ AYES _____ NAYS

DRAFT
REMOVE SPECIFIC CRITERIA ENTIRELY

**AN ORDINANCE ESTABLISHING REVIEW STANDARDS
FOR THE VILLAGE COMMERCIAL DEVELOPMENT OPTION
AS A SPECIAL EXCEPTION**

Ordinance 19-04

WHEREAS, the Town Council has found that, due to the pattern of development in Duck Village, it is desirable to offer relief from certain development standards in instances where necessary to encourage development of a scale and character complementary of Duck Village; and

WHEREAS, the Town Council has found that establishing approval criteria for the Village Commercial Development Option will benefit applicants, other interested parties, and decision-makers by offering clear, consistent standards; and

WHEREAS, the Duck Planning Board voted unanimously to recommend approval of this ordinance at its public meeting on August 21, 2019.

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(2) The Village Commercial Development Option provides opportunities for custom site-specific development review to implement town policies encouraging shared access and parking, limited vehicular access, bicycle and pedestrian accommodations, a mix of land uses, compatible building design, tree preservation, adequate stormwater management, and public infrastructure and amenities; thus reinforcing the Village Commercial District as an exceptional and distinctive place to live, work, shop, dine, and recreate.

(B) *Applicability: Criteria.* The Town Council may approve modifications to the development standards contained in this chapter, subject to the following limitations:

- (1) Minimum structure setbacks cannot be reduced by more than 50%.
- (2) Maximum lot coverage may be increased by no more than 10% provided that stormwater improvements meeting the following criteria are provided on the development site:
 - (a) Stormwater runoff from the built-upon area of the site must be directed into an approved stormwater management system designed to accommodate the volume of runoff generated by a 4.3 inch design storm. Interstitial soil storage can be included in the design storm calculation.
 - (b) The stormwater management system shall be designed in accordance with the standards, methodology, and procedures prescribed in the state *Stormwater Best Management Practices Manual (NCDENR BMP Manual)* with the exception of the design storm which shall be 4.3” rainfall event over a two hour period as noted above.
 - (c) Project designs shall utilize low-impact development principles and best management practices as the primary method for the treatment of stormwater.
 - (d) Stormwater plans must be prepared by a state licensed professional engineer. Prior to the issuance of a certificate of completion for the project, a state licensed professional engineer must certify that the proposed improvements have been constructed in accordance with the project design.
- (3) Reduction in the amount of required parking for the site is limited to a maximum of five (5) parking spaces or 20% of the minimum parking requirement for the site, whichever is greater. Additionally, the amount of reduction cannot exceed 50% of the minimum parking requirement.
- (4) Landscape buffers against abutting residentially zoned or used properties cannot be reduced to less than five feet (5’) in width unless an opaque fence or wall is provided.
- (5) Building size or height increases are not permitted.
- (6) Proposed uses must be included on the list of permitted uses for the Village Commercial (V-C) zoning district.
- (7) The requested modification cannot be used to remedy existing violations on a property.

(C) *General Findings.* In order to grant approval of a special exception under the Village Commercial Development Option, the Town Council must find that the applicant has provided substantial evidence that the development proposal complies with all the following general criteria:

(1) The development proposal is consistent with the Town’s adopted vision and land use plan; and

(2) The development proposal is consistent with the desired scale, character, and function of Duck Village; and

~~(3) The subject property, including the development proposal, achieve a score of at least nine (9) points based on the specific scoring criteria in Section 156.065(E); and~~

~~(4) (3) The requested modification is the least necessary to accommodate the proposed development and meet the intent of the Village Commercial Development Option; and~~

~~(5) (4) The requested modification will not negatively impact adjacent properties or the surrounding area.~~

~~(D) — Exceptions. — Applicable review standards under Subsection 156.065(C)(3) are dependent on the type and scale of project being proposed. The following types of projects are not required to comply with the specific criteria listed in Subsection 156.065(E) and Town Council does not have to make a finding as outlined in Subsection 156.065(C)(3):~~

~~(1) Change of Use. Change of use with no site improvements resulting in an increase of five (5) parking spaces or fewer to the minimum number of parking spaces required.~~

~~(2) Small Development Projects. Proposed development not exceeding either of the criteria listed below:~~

~~(a) New construction or expansion of structures not exceeding 1,000 square feet or 10% of the existing structures on the property, whichever is lesser; or~~

~~(b) Site development or improvements not exceeding a footprint of 1,000 square feet or 5% of the lot size, whichever is lesser.~~

~~(E) — Specific Criteria. — During its review, Town Council will consider the following specific criteria guidelines in determining if a Village Commercial Development Option proposal is consistent with the desired function and character of the Village Commercial District. Points will be assigned by the Town Council based on findings of compliance with the following criteria.~~

Description	Points
Mixed Uses:	
— Mixture of office/commercial/institutional uses	1
— Accessory residential (one point per unit for long-term lease)	1
Building Design:	

—Consistent with commercial design guidelines outlined in Section 156.111	1-2
Building Location:¹	
—Orientation toward front of property, preserves important site features	1-2
Lot Coverage:²	
—Minimizes lot coverage or enhances stormwater drainage/filtration	1-2
Parking Areas:	
—Minimizes parking in the front yard, enhanced landscaping in the parking design	1
Pedestrian-Friendly:	
—Location close to public sidewalk and/or boardwalk	1
—Connection of sufficient width to public sidewalk and/or boardwalk	1
Bicycle-Friendly:	
—Convenient connections to the public bike path	1
—Provides bike racks and/or public bike equipment or amenities for public use	1
Inter-Property Connections:	
—Provides vehicular and/or pedestrian connections between properties	1
Trees/Vegetation:	
—Preserves significant trees and vegetation. Exceeds required planting requirements	1-2
Historic Preservation:	
—Preserves historic structures or other features	1-2
Public Amenities:³	
—Installation of desired public amenities such as water fountains, benches, etc.	1-2
Public Infrastructure:⁴	
—Provides desired public infrastructure improvements such as the installation of sidewalks, fire hydrants, stormwater improvements, etc. meeting a public need	1-3

¹The preferred location of buildings and related site improvements includes orientation toward the street, dual orientation for soundfront properties on the boardwalk, preservation of significant site features, parking to the side or rear, close proximity to sidewalk or boardwalk, and minimizing impacts on adjoining residential properties.

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- (4) Proposed methods and layout of landscaping and screening;
- (5) Proposed methods of ingress, egress and internal circulation;
- (6) Topographic contours and conceptual grading plan;
- (7) Proposed improvements to adjacent rights-of-way;
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- (10) Calculations for proposed lot coverage and required parking;
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- (13) Location and description of any structure proposed to be moved or demolished;
- (14) Conceptual architectural elevations depicting the proposed architectural design, materials, and dimensions of all elevations; and
- (15) Other information deemed necessary for the Planning Board and Town Council to understand the details and design of the proposed project.

~~(G)~~ (E) *Site Plan Approval.*

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(2) Approval of the site plan accompanying the application for the Village Commercial Development Option will also constitute approval of the proposed development as to scale, heights, setbacks, parking, required public improvements, and other development standards specifically addressed.

(3) The Director of Community Development may permit minor deviations from the footprints of structures and improvements on the approved site plan, provided that the proposed

deviations are in substantial accord with the conceptual development plan, will not result in increased square footage of development, and will not result in increased height of any structure.

(4) Unless otherwise granted during the approval process, a Village Commercial Development Option designation will expire 18 months following the date of approval by the Town Council unless construction of the proposed development has commenced. The Director of Community Development may grant a single 12-month extension provided that the applicant adequately demonstrates due diligence toward initiation of the development.

PART II. Subsection 156.036(C)(6) shall be removed from the Duck Town Code in its entirety and all subsequent subsections in 156.036(C) be renumbered accordingly.

PART III. This ordinance shall be effective upon its adoption.

Don Kingston, Mayor

ATTEST:

Lori Ackerman, Town Clerk

Date adopted: _____

Motion to adopt by: _____

Vote: _____ AYES _____ NAYS



TO: Chairman Blakaitis and Members of the Town of Duck Planning Board
FROM: Joe Heard, AICP, Director of Community Development
DATE: September 11, 2019
RE: Text Amendment Regarding Civil Penalties for Violations

Proposal

Proposal to amend the Town’s Zoning Ordinance and other development-related ordinances by eliminating references to criminal penalties in the Town Code and modifying penalties for zoning and many other types of violations to be solely civil penalties.

Town Attorney Comments

In a memorandum regarding the Village Commercial Development Option and related issues provided to the Town of Duck in August 2018, Town Attorneys Robert Hobbs and Ben Gallop reviewed the Town Code and offered the following analysis and recommendation regarding how the Town applies penalties to violations of Town zoning standards.

“Removal of Criminal Charges for Zoning Violations: Currently, Town Code Section 156.999(D) provides that violations of the Town’s Zoning Ordinance subject a violator to either a civil penalty or criminal penalty, or both. Under the North Carolina Constitution, where an ordinance violation can be a criminal violation, any civil penalties collected must be paid the local school board and cannot be retained by the municipality. Since it is rare for criminal penalties to be charged for zoning violations, many municipalities make all or all but a small subset of zoning violations only subject to civil penalties and civil remedies. By doing so, the municipality can retain any civil penalties collected. Of course, the ultimate goal of enforcing zoning violations is compliance with the Zoning Ordinance; civil penalties are often an important part of the process of obtaining that compliance.

While civil penalties typically aren’t considered a potential source of revenue, the inability to recover civil penalties to offset the costs of litigation can often be a determining factor in whether a municipality should bring a lawsuit to enforce its ordinances. This disincentive can delay the ultimate goal of compliance in some cases.

Recommendation: At a minimum, we recommend that the Town Council consider modifying Town Code Section 156.999(D) to expressly provide that violations of the Town’s Zoning Ordinance cannot be enforced by criminal penalties. Should there be specific violations that the Council desires to retain criminal penalties, they should be expressly applied in the ordinance only to those violations. We would recommend that Town Staff provide a list of any such exceptions they believe Council should consider. Ultimately, the Town Council may wish to expand this



concept to the entire Town Code. We believe that to be a good practice. Other local towns, i.e. Southern Shores and Nags Head, have somewhat detailed lists in their ordinances of violations of the Town Code are subject only to criminal penalties. Such an overhaul of the concept would be more work than just modifying Town Code Section 156.999(D) and would again require input from Town Staff.”

Staff Analysis

During initial conversations with the Town Attorneys, it became apparent that while changes were being recommended to penalties in the zoning ordinance chapter, there are many other chapters of the Town Code requiring similar changes. After receiving authorization from Duck Town Council, the attorneys reviewed the entire Town Code and have authored the proposed amendments outlined in the attached draft ordinance (Attachment A).

Changes are recommended to several ordinances under the purview of the Planning Board including the Flood Damage Prevention (Chapter 150); Repair, Closing or Demolition of Abandoned Structures (Chapter 153); Subdivisions (Chapter 155); and Zoning (Chapter 156).

Planning Board Comments – 8/21 Meeting

At its public meeting on August 21st, the Planning Board asked several questions about the ordinance drafted by the Town Attorneys, including:

- Should the Planning Board act on an ordinance that contains standards with which the Board has no involvement? (such as firearms, noise, etc.)
- Should the Board members make recommendations regarding sections of the ordinance with which the Board has no involvement?
- Does the Board have leeway to recommend changes to the draft ordinance?
- What is the purpose and intent of the changes from criminal to civil penalties?

In response to some of these questions and concerns, Town Attorney Robert Hobbs split the original draft ordinance into an ordinance addressing development related ordinances that the Planning Board will fully review and an ordinance dealing with other chapters of the Town Code over which the Board has no jurisdiction.

In response to questions by staff, the Town Attorney provided a summary of the recent State law relating to civil and criminal penalties (Attachment B). This law does not appear to require local communities to change from civil penalties, but rather that communities provide the State with a list of ordinances containing criminal offenses to be studied by a State commission.

The Town Attorney plans to be in attendance at the Planning Board meeting to answer any questions that the Board members have regarding the ordinance.



Consistency w/ Land Use Plan

Although the Town of Duck's adopted CAMA Land Use Plan does not specifically address the use of civil versus criminal penalties, it offers many recommendations encouraging the enforcement of adopted standards and codes.

As part of its recommendation, the Planning Board is asked to determine whether the proposed text amendment is or is not consistent with the intent of the adopted CAMA Land Use Plan.

Staff Recommendation

Staff recommends APPROVAL of the proposed text amendment.

ATTACHMENTS

- A. Draft Ordinance 19-05
- B. UNC School of Government – Reporting Requirements

**AN ORDINANCE TO REMOVE CRIMINAL SANCTIONS AND PENALTIES
FROM THE LAND USE PROVISIONS OF THE TOWN CODE
FOR THE TOWN OF DUCK, NORTH CAROLINA**

Ordinance 19-05

WHEREAS, under the North Carolina Constitution, where an ordinance violation can be a criminal violation, any criminal penalties collected must be paid to the local school board and cannot be retained by the municipality; and

WHEREAS, since it is rare for criminal penalties to be charged for zoning and other ordinance violations, many municipalities make all or all but a small subset of zoning and other ordinance violations only subject to civil penalties and civil remedies. By doing so, the municipality can retain any civil penalties collected; and

WHEREAS, civil penalties are often an important part of the process of obtaining compliance with a municipality's code of ordinances; and

WHEREAS, the Town Council and Planning Board have found that the removal of criminal sanctions from the land use provisions of the Town Code is reasonable and consistent with the recommendations of the Town's adopted CAMA Core Land Use Plan; and

WHEREAS, the Town Council and Planning Board have determined that the removal of criminal sanctions from the land use provisions of the Town Code is consistent with the Town of Duck 2022 Vision; and

WHEREAS, the Town of Duck Planning Board voted _____ to recommend approval of this Ordinance at its public meeting on _____, 20____.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Duck Town Council of the Town of Duck, North Carolina, as follows:

PART I.

1. Section 10.99 of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§ 150.27 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

(P) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this chapter, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific

work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. ~~Violation of~~ Any person violating a stop-work order constitutes a misdemeanor; shall be subject to a civil penalty in the amount set forth in § 10.99 per violation. The person cited for the violation must pay the civil penalty within 5 days of being cited for violating the stop-work order. In the event the person cited for the violation does not pay the penalty within the prescribed time, the town may bring a civil action to recover the penalty and the associated court costs.

19. Subsection E and the penalty provision of Section 150.28 of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§ 150.28 CORRECTIVE PROCEDURES.

(E) Failure to comply with order. If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he or she shall be ~~guilty of a misdemeanor and shall be punished in the discretion of the court.~~ subject to the civil penalty set forth in § 10.99 per violation. The person cited for the violation must pay the civil penalty within 5 days of being cited for the violation. In the event the person cited for the violation does not pay the penalty within the prescribed time, the town may bring a civil action to recover the penalty and the associated court costs.

Penalty, see § 150.99

20. Section 150.99 of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§ 150.99 CIVIL PENALTY.

(A) Violation of any of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall ~~constitute a misdemeanor.~~

~~—(B) Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50 or imprisoned for not more than 30 days, or both. Each day the violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Duck from taking other lawful action as is necessary to prevent or remedy any violation.~~ result in a civil penalty. The civil penalty shall be in the amount set forth in § 10.99 per violation, unless a penalty has already been specified within the chapter. The person cited for the violation must pay the civil penalty within 5 days of being cited for the violation. In the event that the person cited for the violation does not pay the civil penalty within the prescribed time, the town may bring a civil action to recover the penalty and the associated court costs.

21. Subsection B and the penalty provision of Section 153.07 of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§ 153.07 IN REM ACTION BY INSPECTOR; PLACARDING.

(B) Use or occupation of a building ~~so posted shall constitute a misdemeanor~~ that has such a placard posted on the main entrance shall result in a civil penalty in the amount set forth in § 10.99 per violation. The person cited for the violation must pay the civil penalty within 5 days of being cited for the violation. In the event that the person cited for the violation does not pay the civil penalty within the prescribed time, the town may bring a civil action to recover the penalty and the associated court costs.

Penalty, see § 10.99

22. Section 154.99 of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§ 154.99 CIVIL PENALTY.

(A) Any person ~~adjudged guilty of knowingly and willfully undertaking any~~ who undertakes development requiring a minor development permit without first acquiring a like permit, or of ~~who exercises~~ conduct exceeding the authority of a permit, or of failure who fails to observe the agreed modifications of a conditioned grant, or ~~of violation of~~ who violates any other applicable ~~regulations~~ regulating adopted by the Town of Duck or the Commission pursuant to the CAMA shall be ~~guilty of a misdemeanor, and for each violation shall be liable for a~~ subject to a civil penalty of not less than \$100 ~~nor more than \$1,000 or shall be imprisoned for not more than 60 days, or both~~ and not more than \$1000 per violation. The person cited for the violation must pay the civil penalty within 5 days of being cited for the violation. In the event that the person cited for the violation does not pay the civil penalty within the prescribed time, the town may bring a civil action to recover the penalty and the associated court costs.

(B) In addition, if any person continues or further commits any of the above violations after written notice from the Local Permit Officer, ~~the court may determine that~~ each day during which the violation continues or is repeated shall constitutes a separate violation subject to ~~the foregoing penalties.~~ a civil penalty of not less than \$100 and not more than \$1000 per violation.

23. Subsection D and the penalty provision of Section 155.04 of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§ 155.04 ADMINISTRATION AND ENFORCEMENT.

(D) Violations.

(1) Any person who, being the owner or agent of the owner of any land located within the jurisdiction of this chapter, transfers or sells the land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land, before the plat has been properly approved in

accordance with this chapter and recorded in the Office of the Register of Deeds, shall be ~~guilty of a misdemeanor~~ subject to the civil penalty set forth in § 10.99 per violation. The person cited for the violation must pay the civil penalty within 5 days of being cited for the violation. In the event that the person cited for the violation does not pay the civil penalty within the prescribed time, the town may bring a civil action to recover the penalty and the associated court costs.

(2) The description of metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the penalties provided therefore.

(3) The town may also seek injunctive relief for the illegal subdivision, transfer and conveyance of sale of land.

Penalty, see § 10.99

24. Subsection A of Section 156.164 of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§ 156.164 ADMINISTRATION OF OATHS.

(A) Generally. The Chairperson of the Board of Adjustment or any member temporarily acting as Chairperson and clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. ~~Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.~~

24. Subsection D and the title of Section 156.164 of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§ 156.999 CIVIL PENALTIES.

(D) Violations of this chapter shall subject the offender to ~~either a civil penalty or a criminal penalty, or both,~~ in accordance with the specific penalty provisions contained within the respective chapter and section, where applicable. Offenders violating this chapter shall be subject to civil penalty upon the issuance of a citation for the violation. The civil penalty, if not paid to the Town Clerk within 15 days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt. Unless otherwise provided by a specific provision of this chapter, the civil penalties shall be no more than \$500 for each violation, and each day any single violation continues shall be a separate violation.

25. It is the intention of the Duck Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances for the Town of Duck and to accomplish such intention, sections of this Ordinance may be renumbered, captions added, sections retitled, section references corrected and repealed provisions deleted.

PART II. This ordinance shall be effective upon its adoption.

Don Kingston, Mayor

ATTEST:

Lori Ackerman, Town Clerk

Date adopted: _____

Motion to adopt by: _____

Vote: _____ AYES _____ NAYS

DRAFT

Coates' Canons Blog: Ordinance Report Requirement – Round Two

By Trey Allen

Article: <https://canons.sog.unc.edu/ordinance-report-requirement-round-two/>

This entry was posted on August 30, 2019 and is filed under Enforcement, General Local Government (Miscellaneous), Ordinances & Police Powers

Last year the General Assembly enacted Session Law 2018-69 (An Act to Assist the Criminal Law Recodification Working Group). The Act directed the State's counties, municipalities, and metropolitan sewerage districts to submit lists of their criminally enforceable ordinances to two joint legislative committees by 1 December 2018. It further directed every reporting jurisdiction to include a description of the conduct prohibited by each ordinance. I wrote about the Act in the blog post available here.

Earlier this month the General Assembly enacted legislation that (1) extends the ordinance list deadline to 1 November 2019 and (2) exempts some counties and municipalities from the reporting requirement. S.L. 2019-198. The legislation also imposes a consequence on non-exempt local government units that fail to meet the new deadline.

This blog post answers questions raised by the legislation amending the Act.

Why has the General Assembly extended the ordinance list deadline?

Twenty-eight of the state's 100 counties and 316 of the state's 552 municipalities didn't submit the ordinance lists specified by G.S. 2018-69. It's possible – albeit unlikely – that some of those jurisdictions have no criminally enforceable ordinances. The obvious inference, however, is that many jurisdictions that should have submitted ordinance lists failed to do so. The extended deadline is one indication that the legislature still wants the missing data. Another indication of the legislature's interest is the new consequence – see below – that will apply to any covered unit that misses the 1 November 2019 deadline.

Which ordinances should appear on a local government unit's ordinance list?

I addressed this issue at length in my first blog post on the Act. In brief, any violation of an ordinance adopted by a county, municipality, or metropolitan sewerage district (MSD) constitutes a misdemeanor under G.S. 14-4 unless (1) the local governing board has provided otherwise or (2) the ordinance regulates the operation or parking of vehicles. G.S. 153A-123(b); 160A-175(b). Put differently, an ordinance that doesn't regulate the operation or parking of vehicles is criminally enforceable unless the relevant local governing board has taken action to decriminalize the ordinance. A covered unit must include all of its criminally enforceable ordinances on the list submitted pursuant to the Act.

Which local government units must submit ordinance lists by the 1 November 2019 deadline?

The Act originally applied to all counties, municipalities, and MSDs in North Carolina. With the 2019 changes, the Act now exempts counties with fewer than 20,000 residents and municipalities with fewer than 1,000 residents, as determined by the 2010 federal census. The requirement that all MSDs provide lists of their criminally enforceable ordinances remains unchanged.

What happens if a covered unit fails to meet the 1 November 2019 deadline?

In its original form, the Act didn't impose any legal consequence on noncompliant units. The legislation amending the Act puts some teeth into the extended deadline. If a covered unit fails to submit its ordinance list, complete with descriptions, by 1 November 2019, “[n]o ordinance adopted [by the unit] on or after January 1, 2020, and before January 1, 2022 . . . shall be subject to the criminal penalty provided by G.S. 14-4[.]” In other words, noncompliant units will lose their ability for

two years to adopt ordinances that are criminally enforceable. Note that ordinances adopted prior to 1 January 2020 will continue to be criminally enforceable. Moreover, noncompliant units will still be able to use the civil remedies discussed in the blog post found here to enforce ordinances adopted during the two-year period.

What if a unit that misses the 1 November 2019 deadline amends an older ordinance between 1 January 2020 and 1 January 2022? Suppose, for example, that such a unit adds overgrown vegetation to its nuisance ordinance during that two-year period. The result might be that, unlike the rest of the ordinance, the overgrown vegetation provision won't be criminally enforceable.

If a covered local government unit previously submitted its ordinance list, must the unit resubmit the list by 1 November 2019?

No. The amendments to the Act don't create a second reporting requirement; rather, they extend the initial deadline for submitting ordinance lists. It plainly wasn't the legislature's intent to require units to submit the same ordinance lists twice. But if a covered unit has adopted any criminally enforceable ordinances since the original 1 December 2018 deadline, it will need to submit an updated list by 1 November 2019.

How detailed do the descriptions of prohibited conduct need to be?

A unit's list must describe the conduct that each ordinance criminalizes. My earlier blog post considers the level of detail that units should provide. It even contains a sample description based on my hometown's noise ordinance.

Where should units send their ordinance lists?

As amended, the Act directs covered units to send their ordinance lists to the Joint Legislative Administrative Procedure Oversight Committee. (It originally instructed units to send their ordinance lists to the Joint Legislative Oversight Committee on Justice and Public Safety as well.) As a practical matter, this means that units should send their lists to the committee's co-chairs, whose contact information can be accessed through the committee's website. To help ensure that nothing slips through the cracks, Susan Sitze, a staff attorney at the General Assembly, has asked that units copy her at susan.sitze@ncleg.net.

When should units send their ordinance lists?

The amended Act instructs units to submit their lists "no later than November 1, 2019." It's not clear whether this means that the committee must receive the lists by 1 November 2019 or that units must send them by 1 November 2019. If a unit submits its list by e-mail, the difference is largely irrelevant. Because units that miss the deadline will temporarily lose their power to adopt criminally enforceable ordinances, the prudent course is to submit the lists in plenty of time for them to reach the committee by 1 November 2019.

Should units submit their lists by mail or e-mail?

The Act doesn't specify whether units should send their ordinance lists by mail or electronically. Although this apparently leaves each unit free to use whatever written medium it prefers, I have been told that electronic reports are preferable.

What will the State do with the ordinance lists?

The title of the Act indicates that the ordinance lists will be used by "the Criminal Law Recodification Working Group." To the best of my knowledge, the General Assembly hasn't taken steps to confer formal status on that entity.

The legislation amending the Act directs the General Statutes Commission (GSC) to study the ordinance lists. (The GSC is an appointed body that, among other things, identifies technical, conforming, and other changes that need to be made to the General Statutes.) Based on its review of the lists, the GSC will make recommendations concerning whether any conduct currently criminalized by local ordinances “should have criminal penalties provided by a generally applicable State law.” (The GSC must do the same with respect to conduct criminalized by the North Carolina Administrative Code.) The GSC’s recommendations are due to the General Assembly and to the Joint Oversight Committee on General Government by 1 May 2020.

Local governments can’t prohibit the same conduct that’s illegal under state (or federal) law. G.S. 160A-174(b)(6) (city ordinance preempted if elements of offense defined by ordinance are identical to elements of offense defined by state or federal law); *Craig v. Cnty. of Chatham*, 356 N.C. 40, 45 (2002) (preemption provisions in G.S. 160A-174 govern county ordinances). If the GSC’s recommendations prompt the General Assembly to outlaw some conduct that’s currently prohibited only in certain counties or municipalities, the effect will be to preempt the local ordinances forbidding that conduct.

Links

- www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2017-2018/SL2018-69.html
- www.ncleg.gov/EnactedLegislation/SessionLaws/HTML/2019-2020/SL2019-198.html
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_14/GS_14-4.pdf
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_153a/GS_153a-123.html
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_160a/GS_160a-175.html
- www.ncleg.gov/Committees/CommitteeInfo/Non-Standing/472
- www.ncleg.gov/Committees/CommitteeInfo/NonStanding/151
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_160a/GS_160a-174.html

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
August 21, 2019**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, August 21, 2019.

Present were: Chair Joe Blakaitis, Vice Chair Marc Murray, James Cofield, and Sandy Whitman.

Absent: Tim McKeithan.

Also present were: Director of Community Development Joe Heard, Council Liaison Jon Britt, and Permit Technician Kay Nickens.

Absent: Permit Coordinator Sandy Cross.

Others Present: Philip Ruckle, Jay Blose, and Karen Blose.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for August 21, 2019 at 6:34 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Ordinance 19-04: Text Amendment Proposal to Establish Review Standards for the Village Commercial Development Option as a Special Exception

Director Heard stated that the Board had in front of them the final ordinance format highlighted with several changes from the July 10, 2019 meeting, noting that there were not a lot of substantive changes from the last meeting. He pointed out that Member McKeithan had requested to include criteria dealing with dual orientation for properties that have a soundfront location. He stated that wording was added to clarify criteria for public infrastructure. He noted that the intent is to give examples of the types of infrastructure that could be provided while allowing other options as well.

Director Heard stated that he suggested one change in the ordinance by adding the word “permanently” in the public amenities section. He explained that it was something that has come up in some communities that he has visited where applicants have provided amenities initially, then a few years later restricted access or changed it. He stated that if the intent is to provide a public amenity of some sort, then it needs to be permanent. He added that if an applicant wants to change a required amenity, they should have to come back before the Planning Board and Town Council to do so.

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Director Heard stated there was a change to Page 3 of the draft ordinance in that the Board decided on a cumulative score of nine points instead of eight. He reminded the Board that they added a large number of extra potential points in the scoring system so the nine is to break even with the potential extra points that can be earned.

Director Heard stated that the changes to Page 2 relate to comments from Town Engineer Mike Robinson. He noted that they are both items that Town Engineer Robinson suggested adding to the draft ordinance. He added that they have to do with standards in order to allow for up to 10% additional lot coverage. He stated that he and Town Engineer Robinson had considered a variety of different engineering options that can be used, but it made things more complicated. We agreed that it would be best to give an engineer the opportunity to design something that will work (which Town Engineer Robinson would be reviewing as part of the process). He stated that the Board would have a chance to review the solution and if they felt that it works, then there is no reason to dictate a certain solution when there are other potential solutions available. He stated that it was kept fairly generic in the draft ordinance so as to give the applicant some flexibility of design in order to come up with a good solution.

Director Heard reiterated that the draft ordinance is in final ordinance format with no changes to the content or organization of it. He stated that the Board could take a look at the draft ordinance before moving it forward to the Town Council with a recommendation from the Planning Board.

Vice Chair Murray asked how Director Heard and Town Engineer Robinson came to up with the 4.3-inch rainfall event over two hours. Director Heard stated that it is a standard that the State has for state stormwater permits. He noted that many of the lots in Duck Village are smaller than the size that would trigger a State permit. He wanted a standard that is higher than what someone typically has to achieve in order to give the applicant a reward of an additional 10%. He added that the 4.3 inch stormwater management calculation includes interstitial soil storage, what can be held in the soil itself through infiltration. So, the standard is higher than what the Town would typically require but less than what the State would require for a larger project.

Member Whitman clarified that the soil would hold 4.3 inches of rainwater. Director Heard stated that it would be included in the calculation. He stated that in sandy soils there is space in between that can hold a certain amount of water that soaks directly into the ground. He stated that it will allow an engineer to include that in their calculations.

Member Cofield asked what the Board is hoping to accomplish at this meeting. He noted that Member McKeithan is not present and he doesn't think the Board is going to forward the draft ordinance to Council. Chair Blakaitis thought the intention is that if the Board is satisfied, the ordinance will be forwarded simply as Director Heard had completed everything the Board had asked him to do. He added that it is not necessary to forward the draft ordinance at this meeting. Director Heard noted that Member McKeithan was sent the draft ordinance electronically in order to give him the opportunity to review it. He added that he had not received any comments back from him. Chair Blakaitis stated that originally there would have only been three members present on the original meeting date, which would not be enough to forward the draft. Since four members are present, it is appropriate to send it forward if the Board wishes.

Member Cofield stated that he reviewed the penalties in the draft ordinance, which he thought were changing from criminal to civil. He asked why it is in front of the Board. Director Heard stated that it is a separate ordinance that the Board will be considering later. Member Cofield understood but wondered why it is in front of the Board. He noted that at the Board's last meeting, he felt they rushed through the points. He stated that he has a problem with awarding of points in some of the categories beginning with the mixture of office/commercial/institutional uses. He stated that the Board had discussed accessory residential for long-term lease and that the Town does not have the ability to enforce it. He wondered why the Town would award a point when the Town cannot enforce it. Chair Blakaitis asked what the Town cannot enforce. Member Cofield stated that it cannot enforce the long-term lease of an accessory residential. He added that the Board discussed it somewhat at the last meeting. He reiterated that if the Town cannot enforce that, he isn't sure why a point should be awarded for it.

Member Cofield stated that he does not see a sufficient reason to award a point for connection of sufficient width to a public sidewalk and/or boardwalk. He thought it seems natural that any builder/developer/owner would already do that. Member Cofield suggested offering 1-2 points for Public Infrastructure instead of 1-3 points.

Chair Blakaitis stated that after seeing the ordinance put together in its final form and looking at what the Board was trying to accomplish, he thought that on Page 1 there are two statements that sum things up – the Town wants to offer relief from certain development standards for the Village Commercial District and explains how to do it. In the second statement explains that the Town wants to do something and how it will be achieved. He clarified that everything on Pages 1 and 2 as well as part of Page 3 explain how staff will approach the submissions by applicants. Director Heard stated that the section identifies that the applicant can apply for relief only under the circumstances. Chair Blakaitis agreed.

Vice Chair Murray stated that they serve as guidelines for the applicant. Chair Blakaitis agreed. He wasn't sure why the draft ordinance needs to be complicated by point system and the chart. He wasn't sure why the Board needs to assign certain points from the chart that make it almost a concrete go-ahead for the applicant if they receive 9 points. He thought that it should be evaluated just like any other application except that there are exceptions being made to help the applicant. He thought the chart is non-essential and the items after the chart can be woven into the beginning of the ordinance in order to make the ordinance a lot shorter and less complicated.

Vice Chair Murray clarified that Chair Blakaitis is also in favor of striking Subsection (C)(3) because it is the first reference to the scoring system later in the ordinance. Chair Blakaitis stated that he did not specify what should be stricken, but if the chart is removed, the Board will have to remove some additional wording from the draft ordinance.

Vice Chair Murray clarified that subscripts 1 through 4 are clarifications for items in the chart. Chair Blakaitis thought they could be. Vice Chair Murray stated that if the Board likes those, they would have to be incorporated as numbers under the *General Findings* section. Director Heard stated that there were previous discussions as to whether or not the Board wants to see these criteria as guidelines or a firm scoring system. He added that at the time, the Board asked that it be set up as a chart with the scoring system. He stated that if the Board is not comfortable with that approach, it can be changed. Chair Blakaitis thought that removing the scoring system

will give staff more freedom. Director Heard stated that it also makes it trickier for staff because with just guidelines, staff does not know what the Board or Council will consider, so it made it harder for staff to advise something whether they meet them or not.

Chair Blakaitis pointed out that there had to be a valid reason why the Town allows a reduction in setbacks as well as the other items. He added that when staff is reviewing an application, that reason should be given so staff is able to evaluate it. Vice Chair Murray understands Chair Blakaitis' point with regard to the criteria being less clear in the ordinance as it is written. He asked if the draft is clearer than the ordinance that currently existed. Director Heard stated that the way he envisions it, parts of the ordinance will be changed from a point-based chart system to guidelines. He added that some of the items can still be listed to help the applicant understand the kind of things that the Planning Board and Town Council want to see. Chair Blakaitis commended Director Heard for his hard work on the ordinance but isn't sure that the ordinance is the right thing for Duck.

Member Whitman asked how the ordinance would work for a developer. Director Heard stated that the way the scoring system is set up, it describes the specific things they can do to get points. He added that if the Board shifts the ordinance to guidelines, then they can still look at it and staff will encourage them to do those things, but there is nothing that states if they do certain things that they will be approved. Chair Blakaitis asked if the developer meets his point criteria under the current draft, what happens. Director Heard stated that it is one criterion that will be met, but there are still be other things they have to address for approval by Town Council.

Member Cofield agreed with Chair Blakaitis, but for different reasons. He stated that as the Board is closing in on the final draft of the ordinance, he forced himself to look at what the Board is actually saying to an owner/applicant. He stated that he has a problem with why the Board is giving points for certain items. He noted that it is a subjective judgment as to why an applicant receives a certain number of points for things. He added that if he receives enough points, it takes an important element of the Planning Board and Town Council away from them reaching a decision, which is similar to what Chair Blakaitis just discussed. He thought he would rather have guidelines in front of an applicant and the applicant will have to justify why it makes sense to the Town.

Chair Blakaitis thought if the applicant meets all of the points in the chart, it makes it easy for the applicant. He thought it also makes it hard for the applicant at the same time. Member Whitman thought it helps to give an applicant the blueprint of what the Board is looking at before they come to a meeting.

Vice Chair Murray stated that he is inclined to agree with Member Cofield as he articulated what he was trying to say several meetings ago in that he felt it takes the Board's discretion away, which makes him uncomfortable. He added that Member Cofield's position is that once an applicant checks all the boxes, they should receive their permit, but he is not comfortable with asking if the boxes work for each case. He noted that, although for different reasons, he and Member Cofield agreed.

Chair Blakaitis suggested that the Board leave the boxes alone and look at the first two pages of the draft ordinance. He asked if it gives the Town enough to work with. Director Heard stated

that it is better than what is currently in place. Chair Blakaitis asked why it is better. Director Heard stated that even if they are changed to guidelines, the guidelines will be more descriptive than what is in place presently. Chair Blakaitis asked if it only applies in the Village Commercial District. Director Heard stated he is correct.

Vice Chair Murray pointed out that if the list is eliminated entirely, there are some limits under (B) *Applicability* on the concessions that the Town can make, and he believes that Subsection (7) is the only one that needs to be added as it is the most important. He thought dealing with heavier rainfall events is important because it is something the Town is dealing with. He asked why the heading of *Applicability* is titled as such because they are the actual requirements. Director Heard explained that they are only limitations on what an applicant can apply for. Vice Chair Murray stated that when he sees the word “applicability”, he wonders which properties it applies to. He knew it is about the Village Commercial District because it is a special exception application for it. Director Heard stated that it defines the circumstances when offering relief is applicable. He stated that if the Board wishes to reword it, he will make it clearer. He suggested calling it Limitations. Vice Chair Murray stated that it makes more sense to him but isn’t sure if it will work from a language perspective that’s typical in zoning ordinances. Director Heard stated that he will look at it and offer some changes.

Chair Blakaitis thought the Board set out to make the changes without making it overly burdensome. He added that when Council handed it down to the Planning Board, he believed that the reason was to see what the Board can do to the Village Commercial Development Option to make it more amenable. Council Liaison Britt explained that there is a current ordinance that has been used frequently, but it is time to bring it back to look at it. He didn’t think the intent is to make it overly restrictive, but to bring it back to look at it and make some changes. Chair Blakaitis clarified that the Board should look at it and make it more amenable. Council Liaison Britt stated he is correct.

Director Heard stated that Subsection (B) applies specific gateway standards to the Village Commercial Development Option. He stated that it shows limitations so that approval isn’t necessarily carte blanche. He added that there are some good reasons to put some logical and reasonable restrictions on it. Chair Blakaitis thought Director Heard can make a determination and the Planning Board can make a follow-up determination. Director Heard stated that the draft ordinance also establishes more objective criteria, another recommendation from the Town Attorney’s memorandum. The Board and Town Council would be making more defensible decisions that are not subjective.

Member Cofield thought the Board started off with the same purpose in that they want there to be some baseline standards, but now as the discussion is finishing, he is taking a second look. He thought another word that can be used is Standards as opposed to Applicability. Vice Chair Murray agreed.

Chair Blakaitis noted that three Board members have expressed some objection to the chart, but for differing reasons. He wondered what the ordinance will look like if it is drawn up without the chart so the Board can see what it looks like. Director Heard stated that he can eliminate the entire criteria-based system. He stated that another option that was discussed previously is keeping them in as guidelines. He asked if the Board wants to keep something in the ordinance

that gives applicants some idea of what the Planning Board will be considering. He noted that without a point-based system, it will be a more subjective type of decision, which is not a problem. He asked if the Board members want to have something in the ordinance that gives applicants some idea of what to expect. Chair Blakaitis asked what applicants expect currently. Director Heard stated that there is almost nothing specific in the ordinance. He added that there are some general statements about consistency with the character of the Village and a few items that related to pedestrian/bicycle aspects. Chair Blakaitis stated that he can see the Board pulling things out of the ordinance and not assigning points to them.

Vice Chair Murray pointed out that there are many regulations in the ordinance for development that are not related to a special exception. Director Heard agreed. Vice Chair Murray stated that any applicant can be sent to those requirements and if they cannot meet them, they can ask for a special exception, which limits the relief that is granted. He asked if the Board wants to say that the applicant is more likely to be granted relief if they incorporate some of the ideas. Member Cofield stated that he would say that the "Town encourages" and then list the various items.

Member Whitman thought the Town Attorney had stated that there needs to be some type of list for applicants to look at instead of them coming back to the Board saying that they did everything they could and that they weren't told that there were other things they had to do. Director Heard noted that the Town Attorney wasn't that specific, adding that the recommendation involved making more defensible decisions. If there is a criterion that has to be met, the Board can point to it and state what items the applicant meets and then approve or deny the application. He stated that it gives the Board something firm to stand on, adding that the more subjective the decision is, the more open it is to be challenged.

Chair Blakaitis stated that there have been several instances where the Planning Board had a recommendation from the Town Attorney and they wanted to go in a different direction, and it worked. He felt that the Board should not tie itself to an attorney or their recommendations. He added that the attorney is looking out for the Town, but it is not necessary sometimes.

Member Whitman asked what would happen if someone comes in and can meet only one of the criteria for constructing an office above a store. He asked if that will qualify for a special use. Vice Chair Murray stated that it will qualify them to apply for a 10-foot setback reduced to five feet. He wondered why the applicant needs nine points. Director Heard thought the intent of the point-based system is to try to quantify whether a project meets a lot of the characteristics of the Village. He pointed out that no project will have all of the characteristics, but it defines at what point someone has enough of the characteristics that the Board wants to see. He stated that it can be laid out as a guideline to give people an idea or leave it with the general criteria that is listed under B, which is in the existing ordinance. Chair Blakaitis pointed out that there are a lot of areas where one can move freely in the draft ordinance but cannot in the existing ordinance. Vice Chair Murray noted that there are limitations in the draft ordinance. Member Cofield stated that he likes that the limitations are set out clearly.

It was *consensus* of the Board to have Director Heard revise the ordinance with the changes discussed and bring it back to the next meeting.

Ordinance 19-05: Text Amendment Proposal to Remove all Criminal Sanctions and Penalties from the Duck Town Code.

Director Heard stated that the proposed amendments were discussed previously with the Board being asked to look at the removal of criminal charges for zoning violations. He stated that staff reviewed the current ordinance and drafted amendments along with a memorandum and then met with the Town's attorneys. He stated that he asked the attorneys if the same rationale existed as other penalty sections are located all throughout the Town Code, well beyond just zoning. He stated that the Town attorneys wanted to take a look and see what else needs to be changed because their opinion is that they want the changes made.

Chair Blakaitis thought some of the changes would be due to a State regulation. Director Heard stated that there is State legislation requiring that communities make this change. He noted that Duck would be ahead of the curve by a few months. He stated that the Town attorneys reviewed the entire Town Code and pulled out all the instances in which criminal penalties are noted. He added that while a majority of the amendments deal with ordinances that do not have to come before the Planning Board, there are several ordinances that come before the Board for consideration.

Member Cofield stated that he was struck with some items that are beyond the Planning Board's authority and are questionable. He stated that firearms, explosives, etc. are ones that strike him as being beyond the Board's authority. Director Heard explained that the Board does not need to worry about those as they are only recommending the changes on which the Board has authority. He added that it is proposed as a single ordinance because there is no particular reason for Council to have two separate ordinances – one for just the Planning Board and one for everything else. He stated that the attorneys put it all together for consideration by the Council, adding that it would not have come to the Planning Board if it was just those other items, but because it did include some of the ordinances that the Board deals with, the Planning Board is being asked to look at it.

Member Cofield stated that false alarms and disturbing the peace should not be excluded. Chair Blakaitis stated that they will be taken care of, but not by the Planning Board. He asked if this is something that should be postponed or should be done now.

Karen Blose of 105 Waxwing Court was recognized to speak. Ms. Blose noted that every violation carries the same penalty. She asked if it is for the same intent. Director Heard stated that it is how it was set up. He stated that that aspect of the Town Code does not change as the only thing the draft ordinance is intended to do is shift the criminal penalties to civil penalties. The main reason for this is so that the Town can collect the civil penalties directly as criminal penalties by state law are given to the school board.

Karen Blose stated that in other jurisdictions, different types of violations carry different gradations of penalties. She thought the Board may want to think about whether or not enacting one penalty that hits all of the violations is in the best interest of the Town. Director Heard pointed out that the penalty amounts are already in existence and are not being changed as a result of enacting the new ordinance. Chair Blakaitis stated that it is a point to consider and thought the penalties should be left in while telling Council that there are questions about it.

Karen Blöse stated that she understood the change from civil to criminal. She suggested that the Board do a study to see what other towns are doing as it is not in accordance to other towns.

Vice Chair Murray noted that all of it struck the term “misdemeanor” since it was no longer criminal, but civil. He inquired if a person would still be charged by Dare County for criminal activity. He asked if a firearms violation is not a criminal offense. He further questioned if the Town is only making them criminal in order to collect a fee. Member Cofield stated that it is the same problem he has with the draft ordinance. Vice Chair Murray clarified that there is no record recorded for civil penalties.

Member Cofield suggested that Director Heard review each of the subheadings of the draft ordinance and flag which ones were under the Planning Board’s authority as it will help the Board members. Director Heard stated that Pages 6 through 9 note what is under the Planning Board’s authority.

Chair Blakaitis asked how the Board will be passing judgment on it. Director Heard stated that the Board will give a recommendation to the Town Council. He stated that the Board has been given a draft ordinance from the Town attorneys. He added that it is a required part of the process that the Planning Board review and make a recommendation on any text amendment to the ordinances that they develop. Chair Blakaitis asked if the Board is supposed to read the draft ordinance and change what they do not like. Director Heard stated that these are specific recommendations from the Town attorneys. He stated that if the Board sees something they do not like, staff will send the comments back to the Town attorneys.

Vice Chair Murray clarified that there is no option for separating them. He asked why zoning code violations and Town Code violations are not separated. Member Cofield thought firearms, explosives, etc. should be a criminal penalty. Chair Blakaitis noted that it is not up to the Board. Member Cofield agreed, adding that it will be helpful if Director Heard flags what is under the Board’s authority.

Vice Chair Murray stated that he is uncomfortable voting on something that is not up to him. Council Liaison Britt stated that he has a lot of the same questions the Board members have. He thought that it will be figured out at the Council level. Vice Chair Murray felt that an explanation from the Town attorney at a Planning Board meeting before it is voted on will be a good idea. Member Cofield agreed with Vice Chair Murray, adding that he is not in favor of changing some items from a criminal violation to a civil violation, which is what the Board is being asked to do.

Chair Blakaitis noted that the way the draft ordinance is set up, the Board cannot approve part of it. He stated that it is appropriate to see if it can be separated. Vice Chair Murray asked if this is an urgent matter or not. Chair Blakaitis stated that the Town is ahead of things by a few months. Director Heard stated that it is not urgent. Chair Blakaitis noted that the issue of firearms refers to something that is not in front of the Board.

Vice Chair Murray asked what it does for police enforcement for the Town. Council Liaison Britt stated that when Council made the recommendation to send to the Planning Board, he thought it was more along the lines of what is done with regard to planning and zoning. He

doesn't think Council totally understood what will come out of it with regard to the ordinance. Director Heard stated that Council approved sending the recommendation to the Planning Board to look at the whole Town Code instead of just the Zoning Ordinance.

Member Cofield asked if the Board is being asked to set the dollar amount for the fines. Director Heard stated that the Board is not. Chair Blakaitis stated that the Board is being asked to eliminate the criminal citations in the ordinance, which will satisfy the new State Legislature actions. Council Liaison Britt stated that when the Board is finished, if they want to look at fees it can be done. Chair Blakaitis agreed. Director Heard stated that with regard to Member Cofield's comments, it is certainly something that the Town could look at in the future, but it didn't need to be a part of the draft ordinance in front of the Board. He stated that there are limitations in State law that outline what the Town can and cannot do.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Minutes from July 10, 2019 Regular Meeting

Member Cofield moved to approve the July 10, 2019 minutes as presented. Member Whitman seconded.

Motion carried 4-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of August 7, 2019, Town Council Meeting

Director Heard gave a short update on the August 7, 2019 Town Council meeting to the Board and the audience.

Project Updates

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

October Meeting Date

Director Heard stated that the scheduled October Planning Board meeting date conflicted with the State Planning Association meeting he will be attending in Wilmington, North Carolina. He asked the Board if they will consider moving the meeting to another date. Chair Blakaitis

suggested it be held on Wednesday, October 16, 2019. Member Whitman stated that he would not be able to attend that meeting as he would be out of town.

After further discussion, Chair Blakaitis suggested that the meeting be scheduled for October 16, 2019. It was *consensus* of the Board to change the date.

BOARD COMMENTS

Member Whitman commended Director Heard on the new walkway by Osprey Landing. Director Heard stated that it is a retrofit after the fact due to damage to the grass and bank by pedestrian traffic. He stated that it will be re-seeded in the fall, adding that a small walkway was constructed at Osprey Landing.

Chair Blakaitis thanked Director Heard for the detail he put into the draft ordinance. Member Cofield thanked Director Heard as well.

ADJOURNMENT

Member Cofield moved to adjourn the meeting. Vice Chair Murray seconded. There was no vote.

The time was 7:44 p.m.

Approved: _____
Joe Blakaitis, Chairman