

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
June 8, 2016**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, June 8, 2016.

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

Absent: None.

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

Others Present: Willo Kelly.

Others Absent: Council Liaison Chuck Burdick.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for June 8, 2016 at 6:31 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

None.

NEW BUSINESS

Text Amendment: Proposal to Add Section 156.140 of the Town Code Establishing Provisions for the Development of Accessory Dwelling Units

Director Heard stated that he had provided a couple items at the May 11, 2016 meeting for the Board's review. He stated that not much information has been added in the staff report. He noted that there are some minor changes regarding what was given to the Board at their last meeting such as considering the location of accessory dwellings. He added that the most significant thing is that staff has put together a draft ordinance for the Board's review. He stated that the intent is not a firm recommendation from staff, but an example of the format, organization, and potential concepts for an accessory dwelling ordinance. He stated that the Board is free to add or delete any items in the draft ordinance.

Member Cofield stated that he isn't sure that the Board has discussed the potential benefit of establishing conveniently located rental housing for the local work force or seeing it as a benefit

for an accessory unit to a residential. He stated that there are a couple of commercial establishments that have accessory units. He isn't sure that the Board had discussed it and didn't see the concept being beneficial in a single-family residential neighborhood. Director Heard stated that the report is referring to the fact that people who are working in shops and restaurants, teachers, firemen, etc. will potentially have an opportunity to live in the community where they work.

Member Cofield stated that that concept isn't what he envisions as an accessory unit to a single-family dwelling. He stated that what he envisions is an in-law apartment or where someone who works in the house, such as a caretaker, will live in a rental unit in a residence. He added that he does not envision it as a something that will provide additional income for property owners. He stated that it goes against what he envisions as a single-family residence if it is done for tax benefits.

Member Forlano stated that, years ago, Fire Chief Donna Black had reported that she was having a difficult time getting firefighters, particularly ones that needed to be on duty at a moment's notice. He added that the issue came up about 8-10 years ago that it would be good if the Town is able to add firefighters living in the vicinity of where they would be on call. He stated that some of the Town's firefighters live pretty far away. Member Cofield stated that he isn't arguing that there isn't a benefit of having affordable housing for firefighters and police officers, but that is totally separate from the objective of a single-family residence.

Vice Chair Murray disagreed. He felt that allowing accessory apartments is a way to spread out the units throughout the community, where a hostel or an apartment building may not be appropriate. He stated that he views the structures as ones where in-laws or elderly relatives can live in, but if the person passes away or moves on; then it could be useful to rent the unit to a community member. He thought it will be consistent with the single-family residential model.

Member Forlano noted that accessory dwellings can keep a neighborhood residential in nature. He added that it will be the same as renting a bedroom to a single police officer. He stated that he would be against clustering affordable housing in a hostel or apartment building. Vice Chair Murray noted that clustering affordable housing changes the density of the area.

Member McKeithan stated that if an owner wants to rent on a short-term basis, he doesn't think they should be restricted from doing so. He added that if they choose to rent an accessory dwelling on a short-term basis, they should be able to. Member Forlano stated that he does not agree with apartments on the first floor of a house being used for weekly rental. Member McKeithan stated that the Town is not allowed to dictate who a homeowner can rent to. He stated that he is in favor of someone being able to rent it in any way they want as long as they are not violating any Town ordinances or being a nuisance to the community. He stated that the owner may be establishing another source of income and a lot of residents in Duck need the extra income. He didn't think the Town can preclude it from being a short-term rental.

Member Forlano stated that after reading the staff report, he came to the conclusion that the Board may be opening a can of worms. He wondered if the Town wants someone who owns their home to put in an apartment to be rented on a weekly basis or if it was leaning towards the homeowner renting an extra space to someone on a yearly basis. Vice Chair Murray questioned

if the Town can delineate between the two. Director Heard stated that the Town can potentially regulate the use of the accessory apartment, but cannot regulate who it can be rented to. Member Cofield pointed out that the Town of Manteo states in their ordinance that the primary or accessory unit must be owner occupied. Director Heard stated that Manteo isn't the only town with that type of standard, but it's enforceability may be questionable.

Chair Blakaitis stated that he can agree and disagree with each Board member, but if the Board is going to discuss potential benefits, the cart should not be put before the horse. Based on previous conversations, he assumed that the Board favors accessory dwellings. He thinks the Board should structure the ordinance with restrictions, then see if all agree on the potential benefits, whether or not they were benefits, and if an ordinance should be passed along to Council. He noted that each member has different opinions about the benefits, but wondered if the Board can make an ordinance out of it. Member McKeithan stated that he was in favor of developing an ordinance. Chair Blakaitis stated that if the Board is in favor of an ordinance, it will likely have to be structured similar to the Town of Manteo or Currituck County's.

Member Forlano pointed out that Page 2 of the staff report listed one of the factors to consider as only allowing accessory dwelling units on an owner-occupied property. He noted that this standard is not proposed in the staff's draft ordinance. He stated that the staff report notes that this type of requirement may not be legal unless tied to a legitimate purpose. He asked what that statement meant. Director Heard explained that generally, a court might find it illegal or improper as to who could and could not use the property. However, if there is some type of legitimate, broader purpose served by requiring owner occupancy, it may be possible to do it. He stated that if owner occupancy is something that the Board wants to pursue, a discussion can be had with Town Attorney Hobbs.

Vice Chair Murray stated that if the Board can come up with a compelling purpose that is unique to Duck, the biggest issue may be impacts on the person that built the structure. He noted that the Town has a healthy resale market. He stated that if a home occupied by a year-round resident is sold to someone who wants to rent it weekly and it has an accessory structure, an owner occupancy restriction may make the house unsellable as an investment property. He added that the only people able to buy such a house would be people who want to live in Duck. Member Cofield and Member Forlano disagreed. Member Forlano stated that they could use the home and rent the two units. Member Cofield agreed. Member Forlano stated that if a homeowner wishes to put in an apartment on the first floor of his home and two years later he sells the home, it will still be a home and an apartment on the first floor. He stated that if the owner doesn't live there and rents the place, there will be two units that can be rented. Vice Chair Murray stated that there wouldn't be two rentable units if a condition is adopted that the owner has to live in the house.

Member McKeithan stated that he is under the impression that an owner can live in the main house and someone else can live in the accessory unit, whether it is a family member or a renter. He thought the implication is that the owner has to live in the house. Vice Chair Murray wondered what happens when the owner attempts to sell the house. Member McKeithan stated that the new owner will live there. Vice Chair Murray stated that Duck is a town that made up of primarily second homes and rental properties. He wondered if the building inspector will have to go to those homes to prove that the apartment is properly occupied.

Member Cofield stated that, in his subdivision, an owner has built a house and a small unit on the ground floor for himself while he rents the upper floors. Member Forlano stated that this is done all of the time. Vice Chair Murray asked if this practice is allowed. Director Heard stated that having a second, separate unit on the property is generally not permitted. Chair Blakaitis stated that it is very common. Member Cofield stated that the owner sold the house and the new owner rented the entire house as one unit. Vice Chair Murray asked how it can be enforced. Member Cofield stated that he isn't sure. Member McKeithan thought the issue is if the new owner buys the house and rents out two units. He thought they can't if an owner occupancy clause is adopted. Chair Blakaitis thought it was obvious that the Board was not in favor of it.

Director Heard stated that the list contains examples of things that other communities are regulating for accessory dwellings. He added that it is to give the Board some thoughts and any particular concept may not be right for Duck. He stated that he did not include an owner occupancy requirement in the draft ordinance because, as a community where there are a very low percentage of properties that are owner occupied, it will render the ordinance almost pointless if it has to be an owner-occupied property as there will only be a few hundred properties in Town that will be eligible to create an accessory unit. He stated that the other reason has to do with enforcement, in terms of how the Town will know who the accessory dwelling unit is rented to or if the owner has moved away. He stated such a requirement will be difficult to enforce. Chair Blakaitis stated that he agrees with Vice Chair Murray as it is not something the Board wants to see in the ordinance. Member Forlano agreed. Members Cofield and McKeithan disagreed, stating that they want it in the ordinance.

Member Forlano stated that he wants to see the owner living on the premises. Vice Chair Murray asked why. Member Forlano didn't think the Town wants to create rental duplexes. Vice Chair Murray stated that Duck already has the equivalent of rental duplexes with the rental of eight-bedroom homes. Member McKeithan pointed out that they are single-family homes. Vice Chair Murray disagreed, adding that the use is not typically single-family as multiple families gather in the same house. He asked why it matters since the accessory dwelling proposal doesn't increase the allowed density, occupancy, or number of parking spaces.

Member Cofield thought the initial discussion was that if an owner is living in a home and has a special situation such as an in-law, an elderly relative, or a certain circumstance, an accessory unit will serve a real benefit. He added that a lot of communities have homes that are used as another source of income. Chair Blakaitis agreed. Vice Chair Murray stated that if the use is permitted, a town cannot discriminate as to who is allowed to use it.

Member McKeithan noted that duplexes are not allowed in Duck but the Board is considering making an accessory dwelling unit allowed. He thought the proposal is to allow a homeowner to live in a house and create a separate living unit for someone. Vice Chair Murray stated that it is the proposal. He added that once it is allowed, it will be difficult to enforce a requirement that the owner live there. Member McKeithan stated that it may not be easy to enforce, but it will be a violation of the definition of an accessory living unit.

Member Cofield stated that he would like to hear Town Attorney Hobbs speak to the issue as to what the Board can craft that he would be comfortable with. Chair Blakaitis wasn't sure it is

something that the Board can do. Vice Chair Murray clarified that Council asked the Board to consider this issue as they discussed the prohibited use ordinance. Chair Blakaitis stated that they have. Vice Chair Murray clarified that Town Attorney Hobbs has commented on the issue. Director Heard stated that he will be glad to invite Town Attorney Hobbs to attend a Board meeting. Alternatively, if the Board has specific questions, Town Attorney Hobbs can respond to them via email or letter to outline his opinion. Chair Blakaitis noted that if the Board does not make a decision at this meeting, he will appreciate hearing Town Attorney Hobbs viewpoints on the issues being discussed.

Vice Chair Murray stated that he wanted to discuss the potential harms. If the Town wants to create an environment where these situations can happen, what harm is there if someone can rent an accessory dwelling unit to another person. He doesn't see any potential harm and would like to get some more insight on the potential issues.

Member Cofield stated that, with regard to the situation in his subdivision, when new owners bought the house, they increased the number of bedrooms in the house and did not rent the former apartment as a separate unit. Vice Chair Murray asked what the harm will be if the owner does not want to live in his/her house exclusively, but still rent an accessory unit out to others. He doesn't see how anyone in the community will be harmed by it. If someone decides to rent both units, how is the impact greater than renting a larger, single-family house. Vice Chair Murray wondered about the difference between a five-bedroom house with 10 occupants and a four-bedroom house with an accessory dwelling unit. He pointed out that multiple families often rent single-family homes. He doesn't see how it will change the character or density of the community. He stated that rather than the Board discussing ways that they might be able to enforce it, he is confused as to why the Board needs to enforce it. He reiterated that he wants to know what the harm is.

Chair Blakaitis commented that the occupancy, parking, and noise will all be the same. He wondered what harm it will do to the community. Vice Chair Murray stated that there is may be appearance issue with duplexes. However, he noted there are a lot of conditions in the draft ordinance to keep duplexes out of Duck, the primary item being that it limits accessory dwellings to one bedroom. He added that if there is a four or five-bedroom house with a one-bedroom accessory apartment is not be considered a duplex. Member Cofield pointed out that it is a duplex, even with only one bedroom. Vice Chair Murray stated that he thought of a duplex as a mirror image house, which can be a problem from a character and appearance perspective. He reiterated that these appearance issues are eliminated by standards in the draft ordinance.

Vice Chair Murray stated that he does not have a problem with duplexes. He thought Director Heard had crafted a draft ordinance that mandated that the character and appearance of the accessory structures fit in to the character of a single-family residential neighborhood. Chair Blakaitis stated that he doesn't see any harm. Member Cofield stated that he does. Chair Blakaitis noted that the Town prohibited duplexes years ago, but there are at least three in Town that are nonconforming. Director Heard stated that there are properties in the R-2 zoning district where duplexes are potentially allowed. He asked if Chair Blakaitis is referencing a particular area. Chair Blakaitis stated that there are duplexes near the Sanderling subdivision that have been in existence for a long time. Director Heard stated that he will have to look at the specific circumstances as the duplexes may be non-conforming, grandfathered uses or in a zone that

allows them. Chair Blakaitis stated that he agreed with Vice Chair Murray in that he did not see what harm created by having an accessory dwelling unit.

Chair Blakaitis asked the Board members if they thought the draft ordinance looks good and if it is something they want or don't want. Vice Chair Murray thought that a percentage of the main structure may help make the size more consistent in scale. He explained that most of the largest lots in Duck are oceanfront, which are likely to have the lot coverage available for an accessory structure. He added that a typical oceanfront house is 5,000 square feet and an accessory structure to be 700 square feet, it would be the size of a shed. He wondered if the Board can come up with a percentage or ratio. Chair Blakaitis noted that the size of an accessory dwelling unit will likely be limited by the maximum lot coverage. Vice Chair Murray agreed. Chair Blakaitis thought that a unit may not be able to be more than 700 square feet, depending on the lot. Vice Chair Murray stated that it can be up to a certain percentage.

Member Forlano noted that Vice Chair Murray is looking at accessory structure and accessory dwelling as the same thing. He added that Vice Chair Murray is assuming that in order to have an accessory dwelling, there needs to be an accessory structure. Vice Chair Murray disagreed, adding that it can be under the structure. He added that the Board can stipulate that size limitations will only apply to detached buildings. Director Heard stated that these types of limitations can be done. Vice Chair Murray stated that a 700 square foot accessory unit makes sense in a three or four-bedroom home community. Chair Blakaitis thought that limiting the size seems more appropriate for an accessory structure and not something within the house. Vice Chair Murray agreed.

Director Heard showed photographic examples of existing accessory dwelling units in Manteo and Kitty Hawk in an attempt to highlight the variety of ways that an accessory dwelling can be accommodated. Member Forlano asked if the properties in the examples are owner occupied. Director Heard stated that he isn't certain in many cases, but the majority of the ones he is familiar with are owner-occupied. Vice Chair Murray thought it made it easier and more affordable for an owner-occupant. Member Forlano pointed out that the owner living on the property has complete control over the property. He added that when there are two units and the owner is an absentee one, there is no control over the property. He thought the quality of the residence tends to go downhill when the owner is absent. Vice Chair Murray asked how that is different from an eight-bedroom rental home. Member Forlano stated that it isn't different. He thought the Board should look in a different direction. He added that former Mayor Paul Keller had hoped that Duck would be developed for more year-round residents, which has never happened. He thought Director Heard had put all the points in the draft ordinance to try to bring in more year-round residents.

Vice Chair Murray stated that enacting the ordinance will potentially increase, but not reduce benefits to the community more than the status quo. He explained that if someone purchases a vacant lot or wants to build a small house on a lot and the Town enacts the draft accessory dwelling ordinance similar to how it is written, it creates an opportunity for year round residents. He asked again how it will cause harm if an owner builds two units as long as the overall density on the site is not increased. Member Forlano stated that the owner is not on site anymore. Vice Chair Murray asked how that will cause any more harm than if it is just a rental house. He wondered if owner-occupancy is the long term objective, why the Board is not striving to restrict

rental properties. Member Cofield thought the Board wants the ordinance to be fairly limiting when considering an accessory unit. He added that in other communities, the accessory units are considered duplexes. Vice Chair Murray disagreed and thought they are accessory structures. He stated that duplexes are one thing and accessory structures are something different. He explained that a duplex is not detached. He thought the Board must be consistent with the definitions.

Member Cofield stated that the concepts the Board is discussing can result in a multi-family residential structure on one lot. Chair Blakaitis and Vice Chair Murray agreed that it can be viewed in that manner. Vice Chair Murray added that it is no more of a multi-family structure than a five or six-bedroom rental home. Member McKeithan thought the Board is discussing that a person can live in a house and rent or offer an accessory apartment to a family member. He added that the Board has moved onto something else. Chair Blakaitis wondered if the Board agreed with the limitation, would make a difference in Duck since there aren't a lot of people living in Duck full-time. Vice Chair Murray pointed out that no one has yet told him of a harm that allowing the rental of accessory dwellings will cause. Chair Blakaitis stated that it will not cause any harm. Member Cofield doesn't think the Board is trying to create something that is applicable to 80% of the owners in Duck. Chair Blakaitis thought that is a good point because whatever the Board decides will be applicable to 80% of the homeowners.

Member Forlano asked if the Town can issue a Conditional Use Permit to the owner of the house to put in a structure with a condition that once the owner sells the house, then the Conditional Use Permit will no longer be in effect. Chair Blakaitis noted that the Town does not issue Conditional Use Permits for residential properties. Director Heard stated that the Board could set a timeframe on the duration of a Conditional Use Permit, but cannot set a limitation such as what Member Forlano asked about. The Town can regulate the use, not the ownership.

Member Forlano stated that he does not feel comfortable creating a situation where the Town will indiscriminately allow duplexes in Duck, unless they serve the purpose of an owner occupied structure. If that person can no longer afford the property, they should be able to create an apartment to help with the income. Chair Blakaitis noted that there is nothing wrong with that. Member Forlano commented that, based on Director Heard's response, it cannot be done. Vice Chair Murray stated that he wants to be clear about the definition of a duplex. Director Heard explained that an attached accessory apartment is a subset of the term "duplex", which is two attached dwelling units. He stated that there is nothing that requires a duplex to be the same number of bedrooms. He added that a six-bedroom house with an attached one-bedroom apartment is technically a duplex. Director Heard stated that the Town can permit an accessory apartment with restrictions as opposed to allowing a potentially larger duplex.

Chair Blakaitis asked if the Town Council is satisfied with the current standards. Director Heard thought the Board received copies of comments from Council members and there was a question asked about the Town wanting to explore this option. He added that there wasn't much background discussion on this issue from Council. Chair Blakaitis asked if there are any big problems that the Board can identify that currently exist. Director Heard thought the Council members are seeking for the Board to explore the concepts. He added that if the Board feels comfortable with moving a proposal forward, it can be done. He stated that if the Board feels things are fine as are, they can recommend that a change is not needed.

Vice Chair Murray felt that the reasons Members McKeithan and Forlano are putting forward are compelling reasons to consider. However, neither have stated what harm is created that is different from rental homes. Chair Blakaitis asked why Vice Chair Murray needs to know what harm can be caused. He thought the Board agreed it won't cause any harm. Vice Chair Murray stated that if renting accessory dwelling units doesn't cause any harm and creates an opportunity to satisfy the needs that Members McKeithan and Forlano have enumerated, he doesn't understand why the Board does not move forward with it. Member McKeithan clarified that Vice Chair Murray is saying that if a homeowner builds a house, rents out space, and subsequently sells the house, the new owner can potentially have two rental units. He stated that it will mean more rental units than the Town had before it implemented the accessory unit ordinance. Vice Chair Murray pointed out that creating an opportunity to meet a need doesn't mean that harm has been done.

Member Cofield asked Vice Chair Murray if he thinks duplexes and multi-family structures on a lot fit the character of the Town. Vice Chair Murray thought they can be something positive for the community. Member Cofield pointed out that the draft ordinance will prohibit them. Vice Chair Murray disagreed, adding that the Town's current ordinance allows multi-family residential uses in certain zoning districts. Director Heard noted that these areas are very limited. Vice Chair Murray noted that there are a lot of things in the Town's ordinance that came from Dare County and other towns that have not been evaluated thoroughly by the Town of Duck. He added that two Planning Board members have pointed out why allowing accessory dwellings will be useful to the Town, but because of the owner occupancy issue that the Board is uncomfortable with, they are willing to abandon the concept. Member McKeithan stated that he isn't abandoning the concept. He wants a condition that the new accessory dwelling unit will sell as one, where the owner will live in one unit and do what he pleases with the other unit.

Vice Chair Murray thought that Director Heard and Town Attorney Hobbs had indicated that it isn't defensible. Director Heard stated that the requirement may not be legal unless it is tied to a legitimate public purpose. He added that if it is a direction the Board wishes to go, he will like to have Town Attorney Hobbs's direct involvement in the discussion. He stated that there may be legitimate reasons why an owner occupancy requirement can be a compelling interest to the Town, but recommended Town Attorney Hobbs review. Vice Chair Murray stated that that is why he continues to bring up the issue, because he has not heard of any harm being caused by the homes being rentals versus owner occupied homes.

Member Cofield stated that he is bothered that the route Vice Chair Murray is heading circumvents the restrictions on duplexes and multi-family structures. Chair Blakaitis asked if Member Cofield thought it did not put the restriction if owner occupied. Member Cofield thought the Board is discussing a limited situation that applies to about 20% of the houses in Town. Chair Blakaitis pointed out that eliminating owner occupancy makes the standards apply to many more properties. Member Cofield agreed, adding he is not in favor of it. He added that he is in favor of something that will create special conditions in limited circumstances applying to 10-20% of the property owners in Town.

Vice Chair Murray thought that the idea of moving more permanent residents into Town is a good one and having accessory dwelling units is a good way to do it. Chair Blakaitis noted that

it was a hypothetical situation. Member Forlano agreed, but added that Duck is not growing as a full-time community. It is growing as an investment community. Chair Blakaitis asked Member Forlano if he thought it had the potential to eliminate owner occupied. Member Forlano thought it might. Member Forlano asked if there were properties that currently had apartments in them. Director Heard stated that there are a number of duplexes that are grandfathered or legal, nonconforming uses. He thought there are likely some illegally created ones as well. Chair Blakaitis asked what made them illegal. Director Heard stated that close to 85-90% of all of the residential properties in Duck are zoned RS-1, a district which does not permit duplexes. Chair Blakaitis clarified that if the Board puts "owner occupied" in the draft ordinance, the Board is allowing duplexes under special situations. If owner occupied is removed, the Board is creating the potential for duplexes over a wide majority of the Town. Vice Chair Murray stated that it will still be limited by the same limitations that are on every other property.

Chair Blakaitis asked if the Board members have anything they wanted to ask Town Attorney Hobbs. Member Cofield stated that he would like to ask Town Attorney Hobbs to identify how the Board can do what it wants to achieve. Director Heard stated that he wrote down several other items that the Board was discussing: (1) owner occupied, (2) issues of who to rent to as far as short-term or long-term, (3) renting in general versus renting to a family member, and (4) Conditional Use Permit to limit to family members. Chair Blakaitis asked about Vice Chair Murray's example with regard to what happens when a house is sold with an accessory dwelling on it. Director Heard stated that he will add that question to the list.

Vice Chair Murray asked Members McKeithan and Forlano if they will be more comfortable if Town Attorney Hobbs feels that an owner occupancy condition is difficult to enforce or that one of the units has to be a long-term rental and not two short-term rentals. He added that it may achieve a permanent resident, but that resident may not be the owner. Member McKeithan stated that he wants it to be the owner and that he wants to give a break to the owner. Chair Blakaitis noted that that is what the Board had set out to do. Member Cofield stated that it is the way he had envisioned it. Director Heard stated that he will discuss with Town Attorney Hobbs that the Board will like to see that standard in the draft ordinance. He added that he will ask Town Attorney Hobbs how it can happen and if there are other legally justifiable ideas that the Board can look into when adopting the ordinance.

Willo Kelly of the Outer Banks Homebuilders Association was recognized to speak. Ms. Kelly asked if the accessory structure can be a room in a house. She wondered if renting to a student can be included in the draft ordinance. She noted that the RS-1 zoning district does not permit duplexes and the draft ordinance will do away with that. Director Heard stated that it will allow accessory units, which would be defined as a duplex if attached, but only under specific conditions. Ms. Kelly stated that an existing dwelling cannot have two separate dwelling units. Director Heard agreed, adding that if the ordinance is adopted, it will allow accessory dwelling units under certain circumstances. He noted that renting a room is not a separate dwelling unit. He added that the Town has a definition of a dwelling unit and the definition states that it must be physically separated from other rooms or dwelling units and must contain independent cooking, bathroom, and sleeping facilities. He noted that just renting a room or multiple rooms is not an establishment of a separate dwelling unit. He stated that accessory is defined as subordinate to the primary use as a single family dwelling.

Vice Chair Murray stated that Ms. Kelly brought up an interesting point regarding owner occupancy and selling the home. He stated that she had said that when there was a rental contract on a property, it was one rental contract. He asked if that will satisfy, moving forward, if someone purchases a property that has been designed as owner occupied and they put it in a rental program, if it was rented under one contract. Chair Blakaitis clarified that the whole house will be one rental house. Vice Chair Murray stated he is correct. Chair Blakaitis stated that he isn't sure if it will change what the Board was thinking. Vice Chair Murray thought it might change if Town Attorney Hobbs has an issue with the owner occupied clause, as it may solve the concerns of Members Forlano and McKeithan.

Member Forlano asked Member Cofield if he can see a benefit, from a developer's standpoint, if the Board allows two separate units to be rented out as single units. Member Cofield thought it changes the character of a single-family residential neighborhood. Member Forlano asked if Member Cofield can foresee any financial gain from having two separate units on one property to rent out. Director Heard stated that twelve years ago he had written the City of Asheville's ordinance on accessory dwelling units. He explained that Asheville adopted an ordinance that had provisions that limiting units to 500 square feet. He added that the overriding concern was providing affordable housing. He stated that the reason for the 500 square foot rule was to make sure the units are small and affordable. He stated that they had nearly units 50 built the first year the ordinance was in place and nearly 50 the second year. He added that people were building new homes with a garage apartment and renting out both. He pointed out that Asheville is a tourist market, but a majority of these units were not being rented as vacation properties. Chair Blakaitis asked if it did any harm to Asheville. Director Heard stated that it certainly wasn't any harm in the grand scale as Asheville is one of the more desirable places to live in the State of North Carolina.

Member Cofield stated that it can change the character of a single-family residential neighborhood. He added that you won't find true single-family neighborhoods with that type of character. He stated that you can find single-family neighborhoods that allow an in-law apartment that is indistinguishable from the main house. Director Heard noted that accessory dwellings are allowed in many communities. He added that there are entire municipalities that allow accessory dwellings in their new developments. He stated that, while they aren't required to be, these properties are typically more of an owner occupied situation with a rental of the unit to someone else.

Chair Blakaitis thought the whole issue seemed to center on whether it is owner occupied or not. He added that the Board has agreed to ask Town Attorney Hobbs some questions. He asked the Board if they wish to table the discussion until Town Attorney Hobbs responds to the questions. Vice Chair Murray asked if the units are attached or detached is an issue for the rest of the Board. Chair Blakaitis didn't think it is an issue. Director Heard stated that the two can be treated differently. There was no reason why there can't be different standards for one versus the other. Chair Blakaitis thought it should be left for Town Attorney Hobbs to respond.

Chair Blakaitis asked if the rest of the ordinance meets the requirements regarding zoning ordinances and size standards and if the Board wished to move it forward at their next meeting. Vice Chair Murray thought the only issue is if the building is owner occupied, otherwise it will be subject to all of the other development requirements. Chair Blakaitis agreed.

Member Forlano noted that in the proposed ordinance, it states the following: "...the purpose of these provisions for accessory dwelling units..." He added that further down it states the following: "...only one accessory dwelling unit..." He asked if it should be unit or units. Chair Blakaitis thought the statement is referring to dwelling units in the whole town and not units on a single property. Director Heard stated he is correct.

Text Amendment: Proposal to Add Definitions and Standards for Short-Term Rental and Rooming/Boarding Homes

Director Heard stated that the Town may already regulate much of what needs to be regulated. He added that the need for significant changes may be minimal. He shared Town Attorney Hobbs's initial concerns about attempting to regulate short term versus long term rentals. A single-family residence is still a single-family residence whether it is lived in year-round, rented weekly, or rented daily. Director Heard noted that the Town can regulate the type of land use, but cannot necessarily get into issues relating to the ownership or length of rental. He presented Town Attorney Hobbs's comment that as long as it is still functioning as a single-family residence, it may not be relevant if it turns over every day, every week, or year round.

Director Heard stated that Town Attorney Hobbs thought that the Town is within its rights to look at the situation differently if someone is renting individual rooms within the dwelling as it is no longer be considered a single-family residential home. He added that he created a definition of "rooming house" that clearly identifies that it is a different type of use from a single-family residence and will not be permitted if the Town decides to go that route.

Member McKeithan clarified that the use will not be permitted. Director Heard stated that if the Board and Council felt that they want to limit that type of activity, then it can be added to the list of prohibited uses.

Member Forlano clarified that if he rented a bedroom in his house to a college student, he is creating a rooming or boarding house. Member McKeithan noted that it would be considered a boarding house if Member Forlano is feeding the student. Member Forlano asked if it would also be considered a rooming house. Director Heard stated that he is correct.

Director Heard stated that the challenge in the definition is capturing the short term versus long term issue. Chair Blakaitis asked if they are legal definitions that would hold up in court. Director Heard stated that he would have to seek the Town Attorney's advice on that question. He noted that the definition was compiled from other sources, but he doesn't know if they have been challenged.

Member Cofield thought the Board will benefit from hearing from a few of the rental companies in Town. He added that he would like to make the discussion a little broader and invite them to a future meeting. Member McKeithan asked Member Cofield if he also wants to hear from the Airbnb people that are renting or people using VRBO. He thought if the rental companies are invited to make a presentation, the other side should be allowed as well. Member Cofield agreed, adding that he doesn't know much about the issue and would like to hear from them about it. Chair Blakaitis clarified that Member Cofield wishes to solicit opinions. Member

Cofield stated he is correct. Chair Blakaitis noted that the mechanics of how an airbnb works are pretty simple. Director Heard pointed out that there is nothing the Town can do to regulate Airbnb. Chair Blakaitis isn't sure what the benefit will be by asking the Airbnb people to attend a meeting, but he is open to hearing what they have to say. Member McKeithan stated that there are a lot of variables when discussing a rooming house situation. He added that it is potentially trying to regulate a large bag of worms. Member Cofield agreed, adding that he wants to get more information.

Chair Blakaitis asked what the Town has in mind with regard to regulations. Member McKeithan thought it was to make them illegal. Director Heard stated that concerns include potential negative impacts or illegal activities. Chair Blakaitis stated that the concern is that the people are not paying the sales or occupancy taxes, concerns which have been disproved recently. He hoped that the Town Council doesn't think the Board can prohibit people from renting houses on VRBO and other websites. Director Heard thought the concern isn't how they are rented, but the concern is the use of the property. Chair Blakaitis hoped the Board does not have to get into a situation of prohibiting some of the websites from renting homes in Duck. He isn't sure how that would work. Member McKeithan noted that there are many benefits of increasing the rentals in the Town of Duck. He added that during the main tourist season, the Town is close to 100 percent occupancy. He stated that if the Town asked the restaurants and retail establishments if they are in favor of allowing the rentals, he thought they would be in favor of it. He added that it is also creating additional income for the nearly 400 residents that live in Duck full-time, which will be supporting them as opposed to the majority of the homes that have absentee landlords.

Chair Blakaitis asked what staff does when they follow up with enforcement action in cases where an improper use of a property is occurring. Director Heard stated that once staff identifies a property that is advertising, they will send a letter or communicate with the property owner to let them know that it is not a permitted use. Chair Blakaitis asked if there is a penalty in place. Director Heard stated that it is a zoning violation which carries a penalty of potentially up to \$500 per day. Director Heard stated that someone renting individual rooms on a daily basis is considered a violation. Vice Chair Murray asked what will happen if the rooms are rented on a weekly basis. Director Heard stated that it will be the same as someone renting rooms out long-term, which is not a violation. He added that there is a fine line and that is where Town Attorney Hobbs had indicated that it gets challenging. He noted that if a property owner is renting out rooms daily, Town Attorney Hobbs is comfortable that it can be considered a different type of use. He stated that staff has suggested that by defining this type of activity as a rooming house, it becomes clearer that it is a separate use. He stated that it clarified the standards as well as the intent of the Town.

Member McKeithan suggested that if the Board define boarding or rooming house and instead of making it a prohibited use, make it one that will need a conditional use permit. Director Heard stated that it is an option. Member McKeithan stated that it will be a requirement that the owner will have to identify what they are doing and obtain a permit so the Town will have better control over putting safety regulations in effect. Member Forlano asked why it should be done. He added that there are conditions in place for an individual house, such as parking, setbacks, and lot coverage. He asked why a Conditional Use Permit should be obtained to rent out one room on a daily basis. Member McKeithan stated that what Member Forlano described is illegal in the

Town. Member Forlano asked why it is illegal. Member McKeithan stated that the owner would be in violation of the Town ordinance and can be fined up to \$500 per day. He added that it isn't frequently enforced, but if the Board thought a use is going too far, changes can be made.

Member Forlano stated that the Board is discussing allowing accessory dwellings, owner occupied or non-owner occupied. He asked if an accessory dwelling includes one room in a house. Vice Chair Murray stated that it doesn't. He added that an accessory dwelling has a range, a separate entry, and other characteristics that Director Heard brought up earlier in the meeting. Chair Blakaitis pointed out that an in-law suite doesn't have to have those features. Vice Chair Murray stated that it does as defined in the Town's ordinance. Director Heard stated that the definition of a dwelling unit is as follows: "...one room or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy or rental or lease, physically separated from any other rooms or dwelling units which may be in the same structure and containing independent cooking, bathroom and sleeping facilities for a single family..." Chair Blakaitis noted that it is also an accessory structure. Director Heard stated that an accessory structure is a subset of that definition.

Member McKeithan stated that if a conditional use is not currently authorized, renting a room to someone on a daily basis is considered illegal and the homeowner will potentially have to pay a fine of up to \$500 per day if they are caught. Vice Chair Murray added that a Conditional Use Permit cannot be obtained for it presently. He stated that it isn't illegal if permission is not granted. Chair Blakaitis stated that if the Board approves accessory dwellings, it would potentially be allowed.

Vice Chair Murray noted that if an accessory dwelling unit is rented for a few hours or a day, it can be a public health imperative to prohibit it as it can be linked to something illegal. Other than that, the Town is not going to rental houses to perform a test to make sure all residents are in the same family. Director Heard thought part of the concern is unfair competition as far as hotels, and bed and breakfasts having a list of safety and health criteria with which they have to comply. Member McKeithan stated that it is a fairness issue if someone cannot rent one room while another can rent his home to six families. Member Forlano agreed. Director Heard pointed out that there are a lot of other communities trying to deal with this same issue.

Chair Blakaitis asked Willo Kelly what she was seeing in other communities with regard to acceptance and denial. Ms. Kelly stated that she is surprised that communities are dealing with short-term rentals. They are not going away. She added that there are some communities that have tried to address it and find balance so that there is not a detrimental impact on the neighboring properties.

Member Cofield asked if there have been statutes enacted by communities in North Carolina that deal with the issue. Director Heard stated that the City of Raleigh held a recent public hearing on the issue and he was awaiting a response on the outcome. He added that there were many people doing this type of activity that were presenting the benefits as well as dozens of residents who expressed concerns about the impacts and how it has changed their neighborhoods. Member Cofield suggested that Director Heard provide the Board with ordinances from the various towns. Chair Blakaitis suggested that Director Heard bring back the ordinance from the

City of Raleigh at the Board's July 13, 2016 meeting. Director Heard stated he will if the City of Raleigh adopted one.

Vice Chair Murray noted that Duck has not seen any significant issues yet. He asked if the Board can wait until one comes up. He thought the tolerance level for nuisances is much higher than the suburbs of Raleigh. He added that Duck has a unique, short season, but if the Town diversified its product to have more patronage and bring in more money, it isn't a bad thing. Member McKeithan noted that everything was changing. He added that short-term rentals used to be seven days and now the big rental companies have to provide three to four day rentals to continue to satisfy the public. He stated that he supports Vice Chair Murray's suggestion as he doesn't think Duck had a serious, pressing issue.

Chair Blakaitis asked if the Board should proceed next month with anything along the lines of what was discussed. Member Cofield thought the Board was asked by Council. Chair Blakaitis stated that Council asked the Board to look at it but no promises were made. Director Heard added that he had told Council that the Board will discuss the issue. He stated that the Planning Board has the option of letting Council know that they don't think it is an issue and will not be recommending any changes. Chair Blakaitis suggested that Director Heard get some viewpoints on the subject for a future meeting. Member Cofield thought getting more information will be good. Chair Blakaitis directed Director Heard to ask people to attend the July 13, 2016 meeting.

APPROVAL OF MINUTES

Minutes from the May 11, 2016, Regular Meeting

Chair Blakaitis moved to approve the May 11, 2016 minutes as presented. Member McKeithan seconded.

Motion carried 5-0.

Minutes from the May 19, 2016, Lunch & Learn Meeting

Vice Chair Murray moved to approve the May 19, 2016 minutes as presented. Chair Blakaitis seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of June 1, 2016 Town Council Meeting

Director Heard gave an update on the June 1, 2016 Council meeting to the Board and audience.

Project Updates

Director Heard reviewed the project updates with the Board and audience.

BOARD COMMENTS

None.

ADJOURNMENT

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

The time was 8:51 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman