

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
July 13, 2016**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, July 13, 2016.

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

Absent: Vice Chair Marc Murray.

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

Others Present: Phillip Ruckle, Sandy Whitman, Ali Breaux, Doug Brindley, David Pergerson, Clark Twiddy and Mike Wilson.

Others Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for July 13, 2016 at 6:31 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Text Amendment: Proposal to Add Definitions and Standards for Short Term Rentals and Rooming Houses

Director Heard stated that as the Planning Board was putting forth proposals related to permitted and prohibited uses in the Town, the Council identified a list of uses that they wanted the Board to look at more closely with one of those uses being short term rentals. He stated that the Board is looking at the rental of entire houses and the rental of individual rooms within a house for short periods of time.

Director Heard stated that the Board has had some conversation on the issue over the last two meetings. He added that at the last meeting, after discussing a variety of potential solutions, the Board decided to get a better feel for what the issues are before moving forward with recommendations on solutions. He stated that the Board asked staff to make arrangements to obtain input from the local rental realty agencies. He noted that the staff report contains comments that were received via email. Additional comments were distributed prior to the Board meeting. He pointed out that there are representatives from Sun Realty, Brindley Beach, Twiddy & Company and Carolina Designs Realty present to provide comments to the Board on their perspective about any concerns, issues or opportunities that they see regarding short term

rentals. He noted that staff also had an opportunity to speak with two of the lodging properties in Duck – Sanderling Resort and Advice Five Cents Bed and Breakfast – and copies of their comments are in the staff report.

Chair Blakaitis thanked Director Heard and thanked Town Attorney Robert Hobbs for attending the meeting. He reminded the Board that there are several legal issues that they are considering regarding Airbnb and VRBO. He suggested that those issues be addressed at this meeting.

Member McKeithan thought the Board was going to have the guests give a short presentation to let the Board know their concerns about short term rentals. He stated that he would like to hear their comments about the changing environment with more short term rentals coming in. Chair Blakaitis thought their written comments reflected their concerns. Member McKeithan pointed out that there are individuals in the audience that have not made any comments. He wants to hear what they have to say. Chair Blakaitis agreed.

Ali Breaux with Sun Realty was recognized to speak. Ms. Breaux stated that she is concerned about unregulated short term rentals, such as Airbnb and VRBO, as well as Craigslist and public flyers. She stated that there are a variety of concerns, such as how taxes are being collected and who addresses problems with the home. She stated that realty companies can police any over-occupancy and are generally available to protect the integrity of the homes. She noted that realty companies are required to be licensed, which is a benefit to making sure that the rental is controlled in a licensed environment.

Chair Blakaitis asked Ms. Breaux if her main concerns are with the regulation and control of Airbnbs and VRBO or if they are directly affecting the business in Duck. Ali Breaux thought that some independently rented properties are probably well operated, but there isn't a lot of recourse for guests who have a negative experience in these situations.

David Pergerson of Carolina Designs Realty was recognized to speak. Mr. Pergerson pointed out that the Board had received written comments from Monica Thibodeau. He encouraged the Board to ask questions throughout their discussion.

Chair Blakaitis asked Town Attorney Hobbs if the Town had any legal obligations if it limits or allows the daily rental of individual rooms in a single family residence. Town Attorney Hobbs thought there is already a precedent set with the Town regulating these operations that appear to be similar to boarding houses. He thought that many municipal codes have definitions on boarding houses and regulations dealing with them. He thought the key will be the definition, which has been proposed in the staff report. He felt it is a good idea to the extent that the Town wants to continue to regulate that type of operation. He pointed out that the Town already has definitions in the code dealing with bed and breakfast inns and bed and breakfast homes. He thought it will be important to make sure whatever definition the Board decides to adopt for boarding houses should differentiate between those two concepts to allow staff to interpret and enforce the regulations.

Town Attorney Hobbs has reviewed a number of different definitions of the concepts. He stated that one definition drew a distinction between a boarding house type of stay versus a bed and breakfast being more like a short-term stay. He thought that trying to get into the business of

regulating short term rentals of an entire house will be difficult to enforce. He felt it isn't advisable at this stage. He noted that a study was completed of the ten largest cities in North Carolina dealing with short term rentals and found that none of them are regulated or actively enforced. He advised that this is one issue on which Duck should not necessarily be a pioneer, especially as some of the concepts are fairly new and still undergoing legal challenges. He suggested taking a slower approach to see how the state and federal law develops over the next few years.

Town Attorney Hobbs pointed out that the Town of Cornelius, NC has a special local act from the General Assembly that allows them to potentially ban or regulate short term rentals. He didn't think they have enacted any ordinances related to it, but did have a local act. He noted that the question was why they have to have it unless there was some question as to whether the state or county has the ability to regulate them.

Town Attorney Hobbs stated that he liked the approach in the staff report proposing a definition of "rooming house" because there has been some enforcement of that type of provision in the past. He felt the Board should move forward with consideration of a definition.

Member McKeithan stated that the Board is discussing potentially defining rooming houses. He added that the staff proposal notes that rooming houses are to be put on the prohibited list in all zoning districts. He thought if the Board went that route, it is taking the pioneering route and being one of the first to completely put rooming houses on the prohibited list. He noted that he is not in favor of that approach. Town Attorney Hobbs stated that the towns that have adopted something have taken a very passive approach to it. He added that he isn't a fan of adopting an ordinance that won't be enforced.

Member McKeithan clarified that Town Attorney Hobbs is not in favor of putting rooming houses on the prohibited list. Town Attorney Hobbs stated that he did not research specific litigation dealing with boarding houses and how they have been upheld. He thought it did seem to be a fairly common provision in ordinances from other communities, but the ones he recalls have a limited scope and tend to be apply in certain zoning districts. They might require conditional uses or address safety, parking, and other types of requirements. He noted that it isn't to say that the Board cannot prohibit them in every zoning district. He stated that he would want to research it more to see if it can be litigated.

Member McKeithan asked Town Attorney Hobbs if he felt that Duck is in a more precarious situation than some of the other towns and larger cities in North Carolina that do not have such a high percentage of homes in the rental market. He thought that Duck will be one of the last towns to take the lead in policing individual rooming houses when such a high percentage of homes are being rented. He felt that Duck should not be the pioneer in setting the precedent when it has a high degree of rental homes in the area. Town Attorney Hobbs stated that this is a developing issue and thought that it didn't seem to be a pressing issue for the town. He thought that unless it is a major concern, he urges caution and waiting to see what other communities do with regard to regulating rental properties.

Member Cofield noted that the staff report states that the Town of Duck can enforce restrictions against renting individual rooms or portions of a residence on a nightly basis. He stated that he

was struck by the word “can”. He asked if the Town enforced these standards. Director Heard stated that it had. Member Cofield reiterated that he was struck by the word “can”. He asked if it would be better to state that the Town of Duck already enforces restrictions. He added that it gave the impression that the Town doesn’t enforce it. Director Heard stated that his intent was to clarify what the Town can and cannot do, which was why it was worded that way in the staff report. Member Cofield noted that the answer is that the Town already enforces it. Director Heard stated he is correct. He added that it isn’t an issue that comes up frequently. He stated that the Town does not have a definition of rooming houses in the ordinance. So, staff has used an interpretation that something being rented on a daily basis is a different type of use than the permitted “short term rental” and therefore not allowed. Member Cofield asked what was done. Director Heard stated that staff sent a letter notifying the owner of a violation. Member Cofield asked if the Town fined the owner. Permit Coordinator Cross stated that the owner complied by discontinuing the use.

Member Cofield referenced Ali Breaux’s comment regarding the established industry being regulated and licensed. He asked Ms. Breaux what a non-licensed entity can do that Sun Realty cannot. Ms. Breaux stated that they can do what Sun Realty does, but may not pay occupancy tax, which was a growing concern. Member Cofield stated that he had circulated an article to the Board and Town officials which mentioned a lawsuit in Boston, Massachusetts charging individual Airbnb owners with racial discrimination. He thought it is the Town’s obligation to enforce non-discrimination statutes. He asked Ms. Breaux if that is something Sun Realty can address. Ms. Breaux stated that they have a fair housing and real estate commission. She added that these clauses are in every owner’s management and leasing agreement.

Member Cofield pointed out that the Town and Dare County have an interest in collecting taxes. He asked Town Attorney Hobbs for a suggestion about how the Town can make sure that these taxes are paid. Town Attorney Hobbs thought that since occupancy tax has come into effect, there have been people that have not paid. He added that the County has the ability to follow up on occupancy tax not being paid on a known rental. He thought there has to be a balance of the need to collect every collectable dollar with the staff and resources available to try to collect it. He thought it is why there has not been a proactive effort to seek out people that have not paid in the past, because it may be a difficult task.

Member Cofield stated that his interest is to make sure as a member of the Planning Board that everyone is playing on a level playing field. He added that it doesn’t seem to be the case. He asked if Town Attorney Hobbs had any suggestions for regulations dealing with discriminatory rental practices. He questioned if the Town should turn a blind eye to this issue. Town Attorney Hobbs didn’t think the Town should turn a blind eye to the issue. He thought this is a developing legal issue and it will make sense to first work with existing anti-discrimination regulation at the federal and state level and court system, rather than the town taking an approach that may not be defensible. He reiterated that Duck should not be the test case for certain types of regulations. Member Cofield stated that he doesn’t want Duck to be complicit with regard to discrimination. Town Attorney Hobbs agreed. He added that he can look into what avenues or powers the Town has in that regard. Member Cofield stated that he is interested in how it will come to the Town’s attention. Town Attorney Hobbs thought it will likely come to the Town’s attention via someone reporting it to Town staff. He didn’t think it is a good idea for the Town to get into the regulation of rentals in general. He added that it seems like itias a fairly well regulated industry

and isn't sure how much more the Town can bring to it. Member Cofield thought it is regulated from the organized entities, but added that the Board is discussing the non-licensed rental activities, which is where his concerns are. Town Attorney Hobbs added that, from a practical standpoint, it will be hard to identify those persons that are not involved in professional management and other areas. He asked if the Board wants staff to go through VRBO listings or drive around and try to locate opportunities for enforcement that are not necessarily reported to them. He asked what the Board wants staff to do in that regard, assuming the regulations are adopted for unregulated rentals.

Member Cofield asked if the Town can adopt ordinances that apply the same standards to independent rental activity that licensed rental companies are required to enforce. He asked if the Town can require anyone that rents their house or a portion of the house to abide by a non-discrimination statute. Town Attorney Hobbs thought the Town can enforce an ordinance that regulated the public health and safety. He stated that federal laws deal with discrimination, which is more than likely preempting the local regulation. He stated that since there are already laws on the books at the federal level, he doesn't think that adding similar laws on the Town level would accomplish much.

Member Cofield pointed out that most states and cities have anti-discrimination statutes. He asked if it is in the Town's interest to see that taxes are collected. Town Attorney Hobbs stated that it is. Member Cofield asked why it would not be seen as a proper function of the Town to adopt an ordinance that requires tax payment. Town Attorney Hobbs stated that he will want to look at the text of such an ordinance before passing judgment. Member Cofield stated that the Town relies on Town Attorney Hobbs to write them. He stated that his interest is to make sure that all parties are playing on the same level playing field. He added that he would like to see those two elements [requiring tax payment and anti-discrimination] required for anyone that rents their property. He thought it is an appropriate objective for the Town and the direction the Board should take. He added that regulations should be adopted that put unlicensed rental activities on the same level as what the organized industry is responsible for doing. He didn't see a reason to exempt them.

Member McKeithan agreed with Member Cofield's comments regarding having a level playing field instead of taking the other approach. He thought singling out Airbnb or VRBO properties puts the Town in a bad position legally. He thought that the term "rooming house" should be defined, along with adding requirements for them, but not take the approach of prohibiting them. Chair Blakaitis thought Director Heard had indicated that rooming houses can be put on the prohibited list. Member McKeithan stated that he was in favor of Member Cofield's suggestion of coming up with a standard that applied to the rental companies, Airbnb, VRBO, and other private owners renting a part of their homes. Chair Blakaitis agreed, adding that Member Cofield is recommending enforcement. He noted that the Board keeps going back to enforcement of how owners rent their houses. He stated that if the Board wants everyone to operate on the same playing field, there has to be enforcement. He asked how staff will accomplish that and if it is fair for the Board to burden staff with something like this at this early stage with the development of this process. He stated that the potential burden on staff is his concern. He added that the Board already heard from staff on what they can do, but to create another "detective agency" within staff may be challenging. He pointed out that the realtors in

Town do a wonderful job, because they are all open books and do their own policing. He wondered if the Board needs to change anything right now.

Director Heard stated a concern that the Board will be taking rules that exist currently and putting the burden of enforcement on the Town rather than existing agencies that are already charged with enforcement. He added that with regard to taxes, the Town contracts with Dare County to collect them. Therefore, Dare County is tasked with the responsibility to make sure that sales, occupancy and property taxes are being paid. He pointed out that by adopting something that is Duck-specific, the Town will be taking that responsibility back as far as some of the enforcement related to taxes. He noted that North Carolina has negotiated an agreement with Airbnb as a result of a lawsuit and Airbnb pays occupancy taxes on its lodging properties in the state.

Member Cofield asked if Airbnb actually pays occupancy taxes to Dare County. Director Heard stated that when people use Airbnb, the tax amount is included on the bill. Member McKeithan stated that he has stayed at an Airbnb property and can verify that the occupancy taxes were taken at the time the bill was paid. He added that his neighbor has used VRBO and they automatically charge the occupancy taxes when they rent a home.

Director Heard stated that with regard to discrimination, there are existing state and federal laws and adopting a Duck specific law puts the burden of it on the Town to enforce what is already enforced by other agencies. He added that there are avenues to pursue discrimination cases if staff becomes aware of issues.

Council Liaison Burdick thought the HB2 law prohibits any town from enacting any non-discrimination laws. He thought if that was the case, it was a non sequitur. Town Attorney Hobbs stated that he will have to research that issue. Member Cofield asked if the proposed amendment to HB2 passed a few weeks prior will take that part of the statute away and leave the bathroom requirements. Council Liaison Burdick stated that it gave back the ability to sue in the state court. Member Cofield thought it is in the Town's interest to see that everyone who operates a business of renting a room or rooms is playing on a level playing field. He further thought it was incumbent upon the Town to make sure that same regulations are followed by everyone in the business.

Chair Blakaitis asked if the Town follows up with rental agencies in Duck to make sure they are complying with all of the laws and paying taxes. Director Heard stated that staff does not. He added that Dare County collects the taxes. Ali Breaux suggested sending information out in order to push the people who rent their properties to do the right thing.

Chair Blakaitis asked the Board for recommendations on what should be done. Member Cofield stated that he wants Town Attorney Hobbs to complete more research on the tax and discrimination issues. Chair Blakaitis asked the Board if the issue should be continued and let Town Attorney Hobbs complete some more research or proceed in making a decision at this meeting.

Member Forlano agreed with Member Cofield that the playing field should be leveled between the individual owner of a home who rents it independently and a professional management

company. He added that Town Attorney Hobbs has indicated that there are larger municipalities than Duck that have shied away from the policing of any regulations put on the owners. He didn't think that the Town should try to police the individual owners to do the right thing. He stated that there are many things that rental management companies do to protect the health and welfare of the individual. He noted that Director Heard indicated that the Board can enforce the regulations, but if it proliferates over the years, many people will be renting space in their homes. He doesn't think the Town will be able to enforce any kind of regulations. He doesn't think the Board should be concerned at this point and felt that Town Attorney Hobbs' suggestion of waiting to see what will happen in other municipalities is smart. He stated that he would like to wait and see what happens.

Member McKeithan asked if Member Forlano was saying that he wasn't in favor of the proposal of defining a rooming house and making it a prohibited item. Member Forlano agreed with not touching the rooming house aspect, because the Board will be addressing accessory dwelling units next. He wondered what an accessory dwelling unit is – if it is 700 square feet or less. He thought that a room can be an accessory dwelling unit.

Chair Blakaitis stated that he is in favor of cleaning up some definitions and agreed with Member Forlano in not going any further on the issue at this time. He thought it will be helpful if Town Attorney Hobbs completes some research and comes back to the Board. He recommended tabling the issue for now. He agreed that everyone should be on a level playing field, but thinks that enforcement will be challenging for staff. He thought Ali Breaux's suggestion of sending something out is a good one and something the Town can do. He feels that there is no reason for the Board to act further on the issue at all.

Member McKeithan clarified that what the Town and staff have enforced dealing with rooming house situations and whether or not they needed to be removed. He asked for an explanation. Director Heard explained that the interpretation that has been used in the past. The Town has a specific provision that was created when it adopted zoning back in 2004 and allows short-term rentals in residential districts. He stated that it appears the intent was that the Town wanted to be clear that an owner can rent his/her house. He added that short term rentals are listed as a permitted use in the ordinance. However, it is not a use that is defined in the ordinance. He stated that staff has interpreted the term "short term rentals" to be weekly rentals. He reiterated that it is not something that has been brought up or enforced with much frequency, but there have been occasions where staff has received a complaint about a property and have used that interpretation to enter into enforcement measures. He noted that staff is relying on an interpretation, which is not as strong legal standing as if the term is defined.

Chair Blakaitis thought that changing the definition of short-term rentals is a problem, because the old definition is out of date. He suggested holding off on rooming houses until the Board finishes its discussion on accessory dwelling units. He added that he does not want it on the prohibited list.

Member McKeithan asked what staff is enforcing currently. Director Heard stated that someone is renting rooms within a house. Member McKeithan asked why the Town had to take exception to that. Director Heard explained that renting individual rooms on a short-term basis is not consistent with the definition or operation of a single-family residence. He added that many

communities have a separate definition for a boarding or rooming house. In most of those cases, it is a prohibited use in certain zoning districts. He stated that rooming houses are more commercial in nature and not necessarily uses that are compatible with a single family residential neighborhood. He reminded the Board that Duck is different from many other communities in that it has a high percentage of homes that are vacation rentals or second homes.

Member McKeithan thought some changes need to be made. He added that the big homes are being rented for 3-4 days, which is allowed, yet the Town is taking exception to a person renting a room in their house. He wasn't sure what is requiring the Town to enforce it. Director Heard stated that it gets back to it being a level playing field. He thought one of the core issues had to do with health and safety codes. He wondered why a person renting a number of rooms in a residence is any different than a bed and breakfast. He noted that a bed and breakfast is a facility that has to be licensed, requires a conditional use permit, meet a variety of health and safety standards, and operate in a professional manner.

Ali Breaux noted that under State occupancy codes, a short term rental is anything that is rented for periods of 90 days or less. She added that properties can rent for three days or more and still be considered a vacation rental. She noted that once you get into one and two night stays, it gets into the motel/hotel range and there are a different set of regulations that are typically not permitted under residential mortgage situations.

Chair Blakaitis asked if a one or two day rental is the premise upon which the Town enforces. He asked why the Board is worried about Airbnb and VRBO if Director Heard is already enforcing one or two day rentals. Director Heard responded that the reason the Board is discussing it is that a concern was brought up at the Council level. The question was asked if there are concerns that need to be addressed by the Town. Chair Blakaitis asked if the Board decides not to act further, Town staff will continue to enforce as they have been. Director Heard stated that staff will unless they are instructed otherwise.

Chair Blakaitis asked again why the Board is discussing the issue. Director Heard replied that the Town will be better served by clarifying its intent and the definition, which will help staff to avoid a prolonged legal issue. Chair Blakaitis agreed, adding he has no objection to clarifying definitions. He thought the short term rental home should be clarified, but hold off on rooming houses until a decision is made on accessory dwelling units. He doesn't see the Board taking any action on short term rentals right now.

Member McKeithan asked if the Board accepts the definition of rooming houses along with short term rentals and listing it as a conditional use permit or putting it on the permitted table. This will make it easier on staff enforcement. He added that he is in favor of defining short term rentals and rooming houses, but letting rooming houses be a permitted use.

Member Cofield moved to table the discussion until the Board hears back from Town Attorney Hobbs.

Chair Blakaitis asked in what way will Town Attorney Hobbs' answers influence the Board to create an ordinance based on what is currently in front of them. He didn't think it will happen.

He agreed with Town Attorney Hobbs about not addressing the issue at this time. He didn't see the Town moving forward with the issue right now.

Town Attorney Hobbs asked Chair Blakaitis if he wants him to look into the issue of boarding houses. Chair Blakaitis thought Council Liaison Burdick wants Town Attorney Hobbs to look into the issue regarding HB2 discriminatory practices. He thought it was something that can be included in the Board's information packet. Town Attorney Hobbs asked if he should complete any research on boarding houses. Chair Blakaitis didn't think it is needed. He stated that he is willing to allow research on boarding houses, but thought the Board will come to the same conclusion at their next meeting on the issue. He didn't think the Board wants to create an ordinance. He asked for consensus of the Board to not take any action at this time and bring it back at a future meeting if Council directed.

Motion carried 4-0 to advise Council that the Board will not take any action on the issue at this time until they have more information and will review it again sometime in the future.

Chair Blakaitis thanked the representatives from the realty companies that were present for the meeting.

Chair Blakaitis asked the Board what they wish to do with regard to the definition of a boarding and rooming house. He asked if they should be clarified now or left alone. Member McKeithan thought it will help staff if the Board did both. Chair Blakaitis didn't think rooming houses can be defined until the discussion concluded regarding accessory dwelling units. Chair Blakaitis asked if the Board can agree to accept the new definition of short term rentals. Member McKeithan asked how it can be done to make it legal. Town Attorney Hobbs stated that the Board can make a recommendation for a text amendment to the Council for the proposed definition. He added that the definition made sense at it talked about the rental of an entire house and entire property for at least one day.

Chair Blakaitis asked if there is any problem with changing the definition as recommended by staff. Town Attorney Hobbs clarified that there isn't a current definition. Director Heard stated that it is adding a definition since there presently isn't one. Town Attorney Hobbs asked if the Board wants to put a cap as far as duration since the current proposal does not have one. He pointed out that the other definitions use a period of 90 days or less. Chair Blakaitis stated that the proposed definition references a single night or longer period of time.

Chair Blakaitis noted that the question before the Board is if a minor text amendment is needed with the recommendation to Council to change both definitions and, if so, he felt the Board should hold off until they are finished with their discussion on accessory dwelling units. Director Heard reminded the Board that staff has been working off an interpretation, so having a definition will be helpful in clarifying the intent and standards.

Chair Blakaitis stated that the Board reached a consensus to not move forward with a text amendment for short term rentals and rooming houses. He asked if it would be appropriate to not recommend moving forward to Council. However, if the Board decides to change the definitions of rooming house and short term rentals, it will have to be attached to the consensus not to move forward. Director Heard stated that the Board can recommend changing the

definition of the two items as a text amendment. Chair Blakaitis felt that the Board should discuss accessory dwelling units and then come back to recommend a text amendment. Town Attorney Hobbs stated that at some point in time, it will make sense to have the terms defined in the ordinance.

Member Forlano thought the Board is discussing two separate definitions. He stated that he doesn't see a problem with the short term rental definition as suggested. He added that with regard to the rooming house, he thought it is something that can be discussed when the Board discusses accessory dwelling units. Town Attorney Hobbs suggested doing more research on the boarding house definition as it should be very well thought out so it is clearly distinguished from a bed and breakfast.

Member McKeithan asked if the definition will be changed for short term rental home to say that it is a residential dwelling unit rented to paying customers for a single night or a longer period of time. He added that the Board is changing the concept of short term rentals and doesn't think it needs to be rented in its entirety. He proposed that the Board strike it and define what a short term rental is. Member Forlano doesn't think the Board wants to use the word "unit". He agreed with Town Attorney Hobbs with regard to the entire home, but a short term rental unit means renting a room or a couple of rooms. Member McKeithan stated that that is what he is proposing to include. He added that if it isn't, then the Town will be in the same dilemma regarding enforcing the rental of a room or the lower level of a house. He thought the Board should define that short term rental means that a person is paying for a room for one night or more. He proposed to broaden the definition to include short term rental of a unit.

Member Cofield stated that it will open up and make a short term rental a permitted use in the RS-1 district. He stated that he is not willing to go in that direction. He stated that he would rather leave it as is instead of expanding the definition, which will make it a permitted use. He noted that staff will not be able to do what they have to do. Chair Blakaitis asked if that is true. Director Heard stated that the result will be that anyone is able to rent out rooms anywhere in the Town. He thought that is Member McKeithan's intent. He stated that it will be a change to what the Town has traditionally allowed, but if that is the direction that the Town wishes to go, then staff can craft the ordinance accordingly.

Town Attorney Hobbs stated that a possible approach can be that if the Board decides they want to further elaborate on the rental of rooms, regulations are not necessarily needed or definitions related to the rental of a house or residence as a whole whether it was for one day or 50 days. He added that the Board already dealt with that issue as they were trying to get at which was the regulation of rooms versus the house itself. Director Heard pointed out that above the proposed definition for short term rental, the first option was to remove the term "short term rental" across the board based on Town Attorney Hobbs' advice that the Town cannot differentiate between the duration of a rental as long as the residence is being used as a single family residence. He added that the term can be eliminated completely. If the Board and Council wish to regulate individual room rentals, it can be dealt with separately.

Town Attorney Hobbs thought the Board may wish to consider going back to the original action, which is to not take any action at all. He added that the Board can study the regulation of rental rooms to try to find the best, most defensible way to do it beyond the reference model. He stated

that once the Board finishes that task, they can consider the possibility of removing references to short term rentals in the ordinance altogether. Chair Blakaitis thought this approach makes the most sense.

Member McKeithan asked if the Board should recommend removing short term rental homes. Town Attorney Hobbs stated that the Board should not do that yet. He added that Director Heard needs some ability to enforce what he has been enforcing with the current ordinance. He suggested that the Board do it globally by addressing all of the issues at one time versus piece meal review. Chair Blakaitis clarified that both definitions will need more information and review at a later meeting. Member Cofield thought it was a good idea. Town Attorney Hobbs stated that he will complete some research and work with Director Heard on providing some recommendations for the Board.

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 at their last meeting, there seemed to be a good understanding of the issues and standards that can be adopted for accessory dwelling units. He added that where the Board had an issue was what can be regulated. He stated that the Board members provided a number of questions that Town Attorney Hobbs can answer at tonight's meeting.

Chair Blakaitis asked Town Attorney Hobbs if the Town can include a provision that an accessory unit be owner occupied. Town Attorney Hobbs thought that the answer to that and most of the Board's other questions is "No". He handed out two cases to the Board, explaining that towns and counties have the statutory ability and power to regulate uses, but do not have the power to regulate ownership. He noted that the one case dealt with a situation where someone wanted to convert a rental property into a condominium and the Town of Chapel Hill denied it. The owner sued and won. The court determined that it is beyond the Town's authority to regulate things like occupancy and who must reside on a property.

Town Attorney Hobbs stated that in the case from the City of Wilmington, the City Code required the owner of a garage apartment to reside in either the main residence or the garage apartment. The property owner appealed and the court held that the section of the Code requiring owner occupancy is unconstitutional. Town Attorney Hobbs stated that the City is entitled only to regulate the use of a property owner's single family residence with accessory use of a garage apartment, but not the ownership.

Town Attorney Hobbs stated that the actual occupancy of the residence in either case was by a single family. He noted that if the question is in order to have an accessory dwelling unit that it must be owner-occupied, he thought that the case law appears to limit the Town's ability to make that distinction.

Chair Blakaitis noted that it is interesting because most of the Board's questions in the staff report are directed towards owner-occupied situations. He added that it means the only other thing that the Board can consider is an accessory structure that doesn't need to be owner-occupied and can be sold or rented. Town Attorney Hobbs felt the most legally defensible position is where the Town is dealing solely with the use and not with owner-occupancy. Chair

Blakaitis reminded the Board that Vice Chair Murray had asked the question several times at the last meeting and that he clearly favored allowances for the non-owner-occupied situation and asked many times what the harm was. He thought it was answered at the end of the meeting by the Board saying that they didn't think there was any harm.

Member Cofield stated that there was some discussion at the Board's last meeting if there is a stated purpose that the Town is trying to achieve, then there was some sense that the Town may be able to require owner-occupancy if it meets the stated objectives that the Town is trying to achieve. Town Attorney Hobbs stated that he read the case that he handed out to the Board and doesn't think it provides exceptions for other reasons. He thought that any time there are regulations that attempt to require owner-occupation, the town puts forth some reasons why they feel that owner-occupations make sense. He added that there is a precedent set in the other court case that he handed out to the Board. He reminded the Board that towns are not only creatures of the General Assembly, but they only have the powers that the General Assembly granted and did not have unlimited powers.

Member McKeithan stated that the Town of Manteo has a requirement that the accessory unit has to be occupied by an owner of the property. Chair Blakaitis thought they were on shaky ground. Town Attorney Hobbs stated that it has likely not been challenged in court, so it is not known if the requirement will be upheld in court. He thought it will not hold up in court if it is challenged.

Member McKeithan asked if the Board recommends approval of accessory dwelling units, it will mean that a person can own a house, create an accessory unit, not live in that unit or the property at all, and turn it into two rental units. Chair Blakaitis thought he is correct. Town Attorney Hobbs thought it is a possible scenario. He thought the Board needs to understand those possibilities if they want to proceed and allow the use.

Chair Blakaitis thought there are two important considerations. First, there is probably a small amount of property in Duck that will be able to add accessory units because of the covenants and lot coverage. The other consideration is that the Board has discussed the idea of limiting accessory dwelling units to one bedroom. He thought it is no different than adding a bedroom in a house. He added that it will provide another rental room, but wondered what the difference is between an accessory building with one bedroom versus a bedroom addition to a larger house. He thought the Board came to the decision that there is nothing wrong with it.

Member Cofield thought the majority of the Board is for owner occupancy. He stated that if that is not an option, he isn't sure what the draft ordinance will accomplish. Chair Blakaitis noted that the Board does not have to approve an allowance for accessory dwelling units. Member Cofield felt that if the Board cannot restrict it to owner occupancy, he isn't sure what the push is to approve accessory dwelling units. Member Forlano clarified that Member Cofield does not agree with the eight potential benefits listed in the staff report. Member Cofield stated that he does not. He felt it is a way to essentially create duplexes. Member Forlano asked what the negative impact will be. Member Cofield thought it will defeat what the Town was trying to do in preserving single family residential neighborhoods. He stated that his interest is in looking at an in-law apartment instead of an accessory dwelling unit is to capture what happens in those

apartments in communities that allow them. He added that if the Board is not trying to do that, he doesn't see the purpose of creating the ordinance.

Chair Blakaitis asked if an owner can build two structures on the same lot. Permit Coordinator Cross stated that it can be done. She noted that dwelling units are specifically defined as having to have a kitchen. She explained that to have a dwelling unit separated into two buildings, staff will require a non-conversion agreement for the building without the kitchen. Chair Blakaitis asked if such situations are non-conforming. Permit Coordinator Cross stated that they aren't because they meet the criteria for a single dwelling unit.

Chair Blakaitis thought that if the Board decided to go the direction of an accessory dwelling unit, then the text amendment will work with a few changes. He noted that the Board has not been directed by Council to approve an accessory dwelling unit ordinance. The Board was simply asked to investigate it as some thought it may be a good idea. He felt that it will not apply to many properties in Duck.

Member Cofield suggested leaving the issue alone. Member Forlano stated that he is concerned with property rights. He clarified that he cannot create an apartment within his own home and rent it out. Town Attorney Hobbs stated that it will depend on the ordinance and the regulations. Director Heard stated that under the present ordinance, Member Forlano is not allowed to do so in a single family residential zone. Member Forlano asked if that will hold up in court. Town Attorney Hobbs stated that it will. He added that it is a use that the Town is regulating and not the occupancy or the owner. Chair Blakaitis asked if the unit will have to have everything that a separate house will have, such as a kitchen. Permit Coordinator Cross stated that any dwelling unit will have to meet the same standards. Director Heard explained that it doesn't prohibit someone from renting a room within a house long-term, but if they are creating a separate dwelling unit, then it is prohibited. Member Forlano clarified that he can create a rooming house. Director Heard stated that it depends on the definition. Member Forlano clarified that he can create a long-term rooming house. Director Heard stated that he can as long as the residence complies with the Town's definition of a single family dwelling.

Member Forlano asked for clarification that a five bedroom house sharing one kitchen and living room will not be considered five units. Director Heard stated he is correct. Chair Blakaitis stated that it begs the question of the intent of an accessory unit for an in-law suite. He added that if there is room in the house and it can be designed to be independent from the rest of the house, it can have people living there. He wondered why it won't be permitted. Member Cofield noted that it can be done under the current ordinance. Chair Blakaitis disagreed, adding that the kitchen and such need to be shared. He stated that if an owner wants it to be completely independent, it cannot be done.

Member Cofield stated that an in-law apartment is not permitted. Chair Blakaitis agreed. Member Cofield thought if that cannot be done, then why change the ordinance to allow accessory dwelling units. Chair Blakaitis thought it is two different things. He added that he can understand not being able to put another building on a property, because it cannot be owner operated.

Member Cofield stated that he wants to leave the issue alone. Member Forlano stated that he has a question about property rights but under the conditions the Board heard, there wasn't much that can be done. Member McKeithan stated that he does not want to pursue the issue further. It was *consensus* of the Board to not move forward with the issue.

Director Heard stated that he will draft a letter outlining the Board's decision to be reviewed by the Board members prior to be sent to Town Council.

NEW BUSINESS

Presentation on New Preliminary Flood Maps for Dare County

Director Heard stated that on June 20, 2016, several representatives of the NC Floodplain Mapping Program presented information about the newly released flood maps for Dare County to local public officials. He added that they offered a similar presentation to the general public later the same day. He stated that the presentation offered general information about the preliminary flood map changes, preliminary map review process, and timeframe for the implementation of the final flood maps. He explained that when the new flood maps are adopted, it will impact hundreds of individual property owners throughout Town. He noted that, depending on the flood zone, a property owner may have to comply with greater or lesser construction standards and pay higher or lower insurance premiums.

Director Heard stated that staff will be engaged in efforts to educate the public about the preliminary flood maps and how they can provide comments or appeal a determination on the maps. He noted that the Town will have a link to a video on the Town's website regarding using the Flood Risk Information System website. He added that there will also be a list of Frequently Asked Questions and forms to assist residents and property owners about how to check the preliminary flood zone for their properties.

APPROVAL OF MINUTES

Minutes from the June 8, 2016, Regular Meeting

Member Cofield moved to approve the June 8, 2016 minutes as presented. Chair Blakaitis seconded.

Motion carried 4-0.

CONSIDER AMENDED DATE FOR SEPTEMBER PLANNING BOARD MEETING – SEPTEMBER 14, 2016

Director Heard stated that he will be attending the annual conference of the North Carolina Chapter of the American Planning Association in Asheville from September 13 through September 16, 2016. He wanted to see if the Board is amenable to looking at an alternative date for the Planning Board meeting. The Board members discussed several potential dates. Member Cofield stated that he prefers not to push the meeting a week later. Chair Blakaitis pointed out

that the meeting cannot be held the week before because of the Council meeting. He added that the Board has their second meeting the fourth Wednesday of the month, which is not often.

Member Cofield stated that he may not be in Town if the meeting is after September 14, 2016. Chair Blakaitis stated that he may have a scheduling issue as well.

Director Heard stated that there is a possibility that the Board may have an application to consider for a project. Chair Blakaitis thought the date should be set so that all Board members can attend. Director Heard stated that if he cannot attend, he can have another staff member attend in his absence. Member McKeithan noted that he will not be able to attend the meeting on the currently scheduled date of September 14, 2016.

It was *consensus* of the Board to keep the meeting date for September 14, 2016.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of July 6, 2016 Town Council Meeting

Director Heard gave an update on the July 6, 2016 Council meeting to the Board and audience.

Project Updates

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

BOARD COMMENTS

Member Forlano stated that recently, a lady was trying to move a trash can out of the Duck Trail, but ended up being hurt when the can fell on her. He thought that the Board could bring it up to Council and Town Manager Chris Layton that trash cans that are left in the Trail are a hazard for bicyclists and pedestrians. Chair Blakaitis asked who the trash can belong to. Member Forlano stated that it was his trash can. He added that when the trash was emptied, the can was knocked over into the Trail. He thought the issue is something that should be looked at but isn't sure what can be done.

Member Cofield concurred that any trash or recycling can on the Trail is a hazard.

Chair Blakaitis thanked Town Attorney Hobbs for attending the meeting.

ADJOURNMENT

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

The time was 8:57 p.m.

Approved: _____
/s/Joe Blakaitis, Chairman