

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
August 10, 2016**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, August 10, 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, Council Liaison Chuck Burdick, and Permit Coordinator Sandy Cross.

Others Present: Kent Zimmerman, Woody West, Mark Leahy and Sandy Whitman.

Others Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for August 10, 2016 at 6:33 p.m.

PUBLIC COMMENTS

None.

NEW BUSINESS

Zoning Map Amendment: ZMA 16-001, Herron Property, 1165 Duck Road, Single-Family Residential to Village Commercial

Director Heard stated that the applicant is requesting approval of a zoning amendment from Single-Family Residential District (RS-1) to Village Commercial District (V-C). He stated that the property owners plan to market the property for sale and do not have a specific development proposal associated with the zoning map amendment at this time.

Director Heard stated that the property is approximately 18,000 square feet in size and zoned Single-Family Residential. He stated that the property is rectangular in shape with 100 feet of frontage along Duck Road and a depth of 180 feet. He noted that the property is undeveloped and approximately 1/3 of the property is cleared. He stated that a large, undeveloped wooded property owned by the Four Seasons in Duck Property Owners Association wraps around the east and south sides of the property. He noted that the parcel is zoned RS-1 and contains a community septic field that serves 19 homes in the Four Seasons neighborhood. He added that two properties abut the subject property to the north. One of these is zoned V-C and serves as the parking area for Aqua restaurant and spa. He added that the other adjoining property is also zoned V-C, but is undeveloped except for a small storage shed. This property gains access to

Scarborough Lane through another property under the same ownership. He stated that a property zoned RS-1 is located across Duck Road to the west of this property and contains a single-family residence. He added that a small portion of the property containing Aqua Restaurant and Spa is also located to the west across Duck Road.

Director Heard stated that the Future Land Use Map in the Town's adopted CAMA Land Use Plan designates the property as a Village Commercial Area. He added that the applicants' request to rezone the property to the V-C zoning district appears to be consistent with the recommendation of the Future Land Use Map. He noted that as part of its recommendation, the Planning Board is being asked to make a determination about the consistency of the proposed zoning map amendment with the Town's CAMA Land Use Plan. He stated that staff is recommending approval of the amendment as presented.

Member Forlano noted that the map that was handed out references 1165 Duck Road, which was the property in question. He clarified that it is presently in an RS-1 residential district, adding that the first item Director Heard showed the Board referenced Village Commercial. Director Heard stated that the existing zoning map shows the property in the RS-1 district. He added that the other map he showed the Board is the Future Land Use map.

Member Cofield asked if there were any comments received from the adjacent property owners. Director Heard stated that no comments were received. He added that he received a telephone call from a property owner further down Scarborough Lane who saw the sign that was posted on the property, but he did not express any concerns about the proposal.

Woody West of Ships Watch Realty was recognized to speak. Mr. West stated the he has been working with Director Heard and it has been a pleasure. He noted that the Future Land Use Plan designates the property for Village Commercial use.

Mark Leahy of 105 Bunting Lane (Sanderling) was recognized to speak. Mr. Leahy stated that since the property to the north is also owned by the applicant, it seems an opportunity will be lost by approving the zoning ahead of time. He stated that the last thing Duck needs is another curb cut since the area in question is already extremely congested. He suggested that since the property to the north is owned by the applicant, it makes sense to have this property incorporated into that development plan in order to have a curb cut on Scarborough Lane versus Duck Road. He encouraged the Board to wait to rezone the property until it finds out what is going to happen to the property.

Chair Blakaitis noted that any future development on the property will have to go through a conditional use permit or site plan review process so the Board can look at things before any changes are made. He asked Mr. Leahy if he feels that the combination of the properties should occur first so that Scarborough Lane can be used as an entrance for the properties. Mark Leahy stated that he was correct. He added that he is concerned about pedestrian safety and the beautification of the Town.

Member Cofield thought the comments received were a bit of a stretch without knowing what was planned for the property. He thought Mr. Leahy's comments were well made. He felt that there isn't much resistance to making the parcel commercial, but it will better serve the interest

of the Town if the subject parcel is connected to the other parcels with an entrance on Scarborough Lane.

Woody West stated that the lots in question are three separate lots and there could be three separate buyers. Chair Blakaitis thought that there is an easement through the two properties for access to Scarborough Lane for the lot being considered. Mr. West stated that there is not an easement for access through the other parcels. Member McKeithan thought the easement serves the land-locked property and provides access on Scarborough Lane. Regarding Mr. Leahy's other comment, Director Heard pointed out that the adjoining lot to the north of the subject property is not under the same ownership. He noted that there will not be an opportunity to require a common driveway for access to Duck Road, unless something is worked out between the owners. In regard to the easement, he stated that the easement comes through the property on Scarborough Lane to the land-locked property and does not continue through to the subject property. He added that in North Carolina, the Town cannot engage in contract zoning, when the Town negotiates terms with an owner in exchange for rezoning. He added that the Town cannot condition the rezoning on a potential future project. Chair Blakaitis clarified that the only thing the Board can do is to deny or recommend approval for the property in question. Director Heard stated he was correct.

Vice Chair Murray thought that since the parcel is recommended in the Land Use Plan to be converted to Village Commercial, it seems that the request is consistent with the Plan. He understands the comments about the curb cut and wanting to develop a pedestrian-friendly town and agrees with it, but isn't sure the Board should be addressing those concerns during this part of the approval process. He thought it will be dealt with during the CUP process. He thought that creating an opportunity for there to be successful businesses in the Town for people to walk to is just as important as the curb cut safety. He felt that Duck Road frontage is a key component to developing a successful business in the V-C district to which people will want to walk. Chair Blakaitis agreed with Vice Chair Murray's comments. Member McKeithan thought the application is consistent with the CAMA Land Use Plan.

Chair Blakaitis moved to approve the request to rezone the property as stated without any restrictions. Member McKeithan seconded.

Motion carried 5-0.

Text Amendment: Proposal to Eliminate Provisions for Rezoning Protest Petitions in Section 156.181 of the Zoning Ordinance, Consistent with Recent Changes to State Law

Chair Blakaitis moved to approve the text amendment as presented in the staff report. Member McKeithan seconded.

Motion carried 5-0.

OLD BUSINESS

Text Amendment: Proposal to Establish Standards for the Development of Accessory Dwelling Units

Director Heard stated that at their last meeting, the Board closed out the initial discussion on the issue of adopting provisions for accessory dwelling units (ADUs). The conclusion that the Board members reached was that they did not wish to adopt any new provisions for that type of use and asked him to draft a memorandum to Town Council expressing the Board's decision and why the Board came to that conclusion. He stated that the memo was forwarded to Town Council for consideration. The Council members reviewed the Board's recommendation and expressed interest in sending it back to the Board for further consideration of two issues. He added that Council is interested in exploring the possibility of using ADUs for long-term rentals where they serve a greater public purpose versus having them used as vacation rentals. He noted that an analysis from Town Attorney Robert Hobbs was received earlier in the day, confirming that he is uncomfortable with the Town adopting any standards that limit the length of stay for a rental.

Director Heard stated that the other issue that Council discussed was the potential benefits and concerns. After reviewing the Board's recommendation and staff report, the Council members felt that there needs to be stronger justification than what was given in order to not pursue the opportunity any further. He stated that Council asked the Board to go back and consider if there are allowances that will make ADUs work for the Town and if not, the Board should provide Council with some additional rationale as to why it is in the best interest of the Town.

Chair Blakaitis stated that Council was unanimous in the feeling of sending the issue back to the Planning Board. He thought it is the Board's obligation to discuss it further and see where the members want to go with the issue. He added that the Board was considering owner-occupied and that concept is definitely out.

Member McKeithan stated that there is no guarantee that any of the potential benefits listed will ever be achieved. He added that an accessory dwelling unit can be bought by a person and immediately go into a short-term rental of both units, not accomplishing any of the things that the Town is trying to do if it is an owner-occupied dwelling. He stated that if it cannot be related to owner occupancy, then the potential benefits will never come to fruition.

Member Cofield felt that the question before the Board is for a stronger justification on the Board's recommendation. He added that the justifications in the report are the staff's and they are not recognized as benefits by the Board. He pointed out that at the beginning of the Board's meeting, he had started off by opposing some of the listed benefits. He stated that the Planning Board discussed it and bought into the fact that some of them were potential benefits, but he did not share that feeling.

Vice Chair Murray stated that he wholeheartedly agrees with the potential benefits and thinks that the benefit of providing additional income for property owners is linked to benefit #8 "create more potential year-round residents", because it will make living in Duck more affordable to them. He thought that increasing the vitality of the Town is a public interest. He noted that he was not able to attend the July 13, 2016 Planning Board meeting, but supports the inclusion of ADUs if any of the benefits are possible. He added that a rental unit with an ADU being put into a weekly rental program is no more harmful than a rental unit with the same number of

bedrooms that doesn't have an ADU. He wants to understand what the harm will be in allowing the ADU.

Member McKeithan pointed out that Town Attorney Hobbs said that the proposal of making it be under one contract if the main unit and the accessory unit were rented as one unit cannot be done. Vice Chair Murray stated that the Town does not presently mandate it. He added that he was only proposing it as a way to allay Member McKeithan's concerns. He stated that he isn't sure what Member McKeithan's concerns are. Member McKeithan stated that several members had discussed the benefit ADUs can have if owner-occupied, allowing it to be a grandmother suite or renting it to seasonal workers, but there is no guarantee that any of them will be achieved if the stipulation of owner-occupied is not in place. Vice Chair Murray noted that there is no guarantee, but if it isn't allowed, then there is no possibility of achieving the intended goals. If it is allowed, then there is at least a possibility. Vice Chair Murray added that he still has not heard anyone verbalize a guaranteed or even a probable harm.

Member McKeithan stated that the addition of an ADU in a single-family residential area, creates two rental units on a property and can change the character of the neighborhood. He doesn't think that is desirable. Chair Blakaitis asked why it is any worse than what is currently in Duck. He agreed with Vice Chair Murray's comments. Chair Blakaitis agreed that the Board has not brought forward what the real harm to the Town would be. He added that as far as the potential benefits, he thought the benefits listed in the staff report are all fine. He doesn't think the Board addressed the potential benefits at its July 13, 2016 meeting and made its own list as they developed their proposal.

Member McKeithan pointed out that the Board had hoped that the concept would work out by having some tie-in to owner-occupancy. He added that that was the Board's whole discussion and the meeting ended with the Board feeling that since Town Attorney Hobbs told them that owner-occupancy cannot be mandated, the Board chose not to take any action. He noted that all of the Board members agreed on it with a unanimous vote.

Member Cofield stated that he still feels that ADUs can potentially change the character of a single-family residential neighborhood by having another accessory unit built, particularly if it is detached from the main house. He thought an influx of those types of properties will change the character of a single-family residential neighborhood. He noted that he had expressed this opinion two meetings ago. He agreed with the potential issues that are listed in the staff report and felt that potentially changing the character of a single-family residential neighborhood should be added to the issues list.

Vice Chair Murray asked if a response was received from his email question. Director Heard stated that Vice Chair Murray had sent an email earlier in the day where he had put forth some ideas to try to address some of the issues that other members of the Board had. He added that Town Attorney Hobbs had stated that contracts cannot be used any more than using zoning to regulate rentals. He stated that after brainstorming some more, Vice Chair Murray had asked a question about the Town's ability to limit utilities to a single water or electric meter in order to make the division of units on a single property (condominiums) less likely. Director Heard stated that he discussed the concept with Town Attorney Hobbs and who stated that he will have to look at the specifics. He added that Town Attorney Hobbs' concern is whether or not the

Town had the ability to regulate utility standards at all. He noted that Town Attorney Hobbs had indicated that he is willing to explore it further if the Board wishes.

Member Cofield stated that condominiums have been around for a long time. He stated that almost all conversions of existing buildings to condominiums are not separately metered and under a single meter. He added that there is typically a proportionate distribution of utility costs for all of the condominium units. He stated that even if the Town can regulate meters, it is not something that people will like. Director Heard agreed with Member Cofield, adding that it would not prevent someone creating condominium ownership, but it would make it more challenging.

Member Forlano stated that the Town has zoning districts – RS-1, RS-2, R-2 – and thinks that the Board is getting hung up on the benefits and disadvantages of allowing expansion of a residential property, dictating length of stay, or limiting the number of people in a house. He thought what Town Attorney Hobbs is saying in his case law studies is that Duck doesn't have the right to regulate what happens on a residential property as long as the owners do not do something contrary to what the residential district standards. He noted that the Town has ordinances for lot coverage, bedrooms, setback lines and parking, which he thinks is all the Town can regulate. He doesn't think the Town has the right to tell an individual how they can rent their property, put time limits on occupancy, or regulate how many people can live in a home. He noted that he has an issue with employee housing, but the Town does not have the right to dictate to whom the owner can rent.

Chair Blakaitis thought Member Forlano's comments were appropriate as to what can happen and what may happen, but it is an enforcement issue. Member Forlano agreed.

Member McKeithan wondered if the Board has the authority to prohibit duplexes. He asked if the Town can prohibit ADUs. He thought it has to be approved before an ADU can be established. Member Forlano stated that it is only permitted in certain zoning districts. Member McKeithan didn't think accessory dwelling units are permitted unless the Town approves of it. Director Heard stated that Member McKeithan is correct, adding that the Town has the ability to allow or prohibit the use, but cannot dictate ownership or who an owner rents to. He stated that with ADUs, there is a principal residence that will serve as the primary use and an allowance for a small accessory apartment that will be secondary to the primary use.

Vice Chair Murray reminded the Board that when they started the discussions, they were discussing limiting the size and other building characteristics which the Town is allowed to limit in an effort to make them an accessory use, secondary to the single-family residential use. He noted that there are potential issues and wants to review them, because he feels that he is comparing a residential dwelling with an ADU. He gave an example of a residential house with four bedrooms and the ADU with an additional bedroom, which brought the total on the property to five bedrooms. He stated that he is comparing that to a five-bedroom house. He added that further down on the street may be six to eight bedroom houses. He stated that when he asked about the harm, he was not comparing Duck to a quaint village with three bedroom houses, but wanted to compare the use to current uses that are going on in town. He thought it speaks to the character of the neighborhood issue that the Board was discussing and asked how this allowance

changes the character more than an eight-bedroom house, which is permitted. Member Forlano pointed out that it doesn't change the character.

Member Cofield thought it changes the character of a single-family residential neighborhood, from the building structures in the neighborhood and to the issue of the main house – whether it is five or eight bedrooms – that they are allowed together. He added that an owner is allowed to build an ADU. Vice Chair Murray disagreed, noting that it cannot presently be done. He stated that an owner is limited by what the Town allows with regard to bedrooms for the lot size. Member Cofield thought an owner may be able to depending upon the lot size, which would increase the number of bedrooms from eight to 10. Vice Chair Murray pointed out that an ADU can also be added within a house or at the ground floor of a house.

Member Cofield stated that Vice Chair Murray was comparing things to a house down the street that is to be built. He added that he is talking about a house on a lot today. If it is a five-bedroom house and the owner is allowed to construct an ADU, it can add another one or two bedrooms to the same, existing lot. Vice Chair Murray asked if the same increase can be accomplished with an addition to the house. Member Cofield thought it may be possible. Vice Chair Murray pointed out that it can be done more easily as an addition, because of the other limitations the Town has, such as lot coverage. He stated that he is unclear how it creates an increase in residential density and thinks that it doesn't. He explained that the septic capacity on a lot does not change, so he doesn't see how it is an issue. The number of parking spaces per bedroom does not increase or decrease and he doesn't understand how it increases traffic. The intensity of use on a property is limited to the occupancy capacity. He stated that with regard to additional lot coverage and reduced storm water infiltration, an owner is allowed 30% lot coverage and added that the Board is not proposing change that standard as part of the proposal.

Director Heard understands Vice Chair Murray's comments, but noted that the thought behind why these points were listed as potential issues is that if someone goes in and develops an ADU, they will be adding an additional bedroom. It is understood that adding a bedroom can be accomplished in other ways, but will still increase the lot coverage as well as a need for another parking space.

Member Forlano noted that there are limiting standards as to what can be done on a property up to a certain point, such as the lot coverage, setback, and septic. He thought if someone can satisfy all of the factors, they should be allowed to do the improvements.

Vice Chair Murray agreed that there is the potential to change the character of the neighborhood, but doesn't agree that it is just by allowing ADUs. He thought it is in the way that they are allowed. He added that he sees the opportunity in limiting size, shape and placement of ADUs – all of which can be regulated.

Chair Blakaitis agreed with Vice Chair Murray's comments. He thought that the Board is chasing its tail, because there won't be many ADUs occurring in Town due to the lot coverages and smaller lots. He added that it is almost impossible to add an ADU unless it is done within the walls of an existing house. He additionally noted that there are homeowner associations in Town that will not allow any accessory structures. He stated that the state law accepts associations if they are governed by valid covenants. Director Heard agreed and added that the

Town cannot enforce an association's requirements. Chair Blakaitis stated that he did not see that any of the potential issues as major issues.

Member McKeithan asked if much of the Town is not going to allow ADUs, why bother with an ordinance. Chair Blakaitis thought that the Town realizes that wherever the units can fit, it will be a benefit.

Member Cofield commented that, to look to homeowner associations to do what is recognized as an issue but that the Town doesn't, the associations do not have the funds to challenge or enforce anything. Chair Blakaitis disagreed and thought there are a lot of associations that do not want to bother taking one to court. He added that he lives in an association that would readily take someone to court and has the funds to do so. Member Cofield stated that he knows of three associations that had challenges come up, but rather than challenge, they let it go.

Mark Leahy was recognized to speak by Chairman Blakaitis. He asked if staff has looked at the magnitude of the issue. He stated that there seems to be a lot of harm regarding where ADUs can and cannot be. He thought staff should study how many lots can accommodate an ADU so the Board can understand the magnitude of the problem. He stated that everyone knows that if there is an ADU, it will be rented. He stated that the Town is allowing the structures in order to circumvent zoning. He added that character of a neighborhood may or may not be a factor depending on the lot. He noted that there will be more land disturbance and stormwater issues with the ADUs. He reiterated that if staff can provide the magnitude of the problem, the Board will have a better basis for the discussion.

Member McKeithan clarified that accessory apartments are only authorized in the Village Commercial District. Member Forlano stated that he is correct. Member McKeithan noted that ADUs are potentially permitted in the R-2, RS-1 and RS-2 districts. He clarified that this is what the Board is discussing, not just putting them in the V-C District. Chair Blakaitis stated that the Board is discussing putting them anywhere in Town. Member McKeithan clarified that it will be potentially anywhere in any of the zoning districts. Member Forlano stated he is correct. He added that he had questioned how ADUs can be prohibited in the residential districts.

Chair Blakaitis stated that the Board needs to come up with a list as to why accessory dwelling units are not good for the Town and what the issues are to the Town. He added that the Board will need to develop an ordinance proposal based on what it already knows. He asked what the desire of the Board is. He reminded the Board of what they did at the last meeting, adding that their action was not voted on.

Council Liaison Burdick thought that Council was saying that it wants the Planning Board to deal with the issue and wants the Board's input in developing standards. Otherwise, the Council will have to consider dealing with the issue in its own way. He added that the Council prefers to get the Board's input in a positive manner as opposed to having to prepare an ordinance themselves. He suggested that the Board consider that in their discussion.

Chair Blakaitis thought that the Board needs to move forward on the issue. He did not think the potential issues are serious or will cause any problems for the Town. He thought the Board is stretching things as to what may or may not happen.

Vice Chair Murray clarified that the issue can be discussed again if the results are unwanted. Director Heard stated he is correct. He added that several of the communities in North Carolina that have adopted standards have taken a second look at their ADU standards and tweaked them as necessary. He noted that the Town can always revisit the issue and put additional restrictions in place if needed.

Chair Blakaitis clarified that the Board has reviewed the Town of Manteo's ordinance. Director Heard stated that the Board members previously received a copy of this ordinance. Chair Blakaitis stated that he doesn't remember the outcome, but added that the Town of Manteo is not having any issues with its ordinance. Member McKeithan stated that the Town of Manteo has an owner-occupied ordinance which has not been challenged. Chair Blakaitis stated that Duck can adopt an owner-occupied ordinance, but would be going against the advice of Town Attorney Hobbs.

Member Cofield suggested that the Board adopt the consensus from the last meeting. Member McKeithan agreed. Director Heard reminded the Board that the consensus was to not recommend any changes. Member McKeithan stated that his reasoning is that he thought the possibility of achieving the potential benefits is remote. Chair Blakaitis doesn't think everything is based on owner-occupation. He thought the benefits and issues can be from anything. Member McKeithan thought that there is a greater chance that they will go to short-term rental, negating some of the benefits such as affordable housing, would not be achieved. Chair Blakaitis disagreed.

Vice Chair Murray asked if it is not seen as a benefit if someone wants to move to Duck and renting short-term will be affordable to them. Member McKeithan stated that he would be in favor of it. He added that the Board was told that owner occupancy cannot be a requirement so it can be turned into a person that doesn't live in the house and renting it as two units. Chair Blakaitis noted that it isn't a requirement, but could happen. Member McKeithan agreed.

Vice Chair Murray pointed out that, from an economic perspective, if there is 30% lot coverage and a parking requirement per bedroom. In order to have a detached ADU, one would likely have to eliminate the pool from the property. He added that there has to be a pool if the house is to be put in a rental program. He stated that there is an economic incentive for the property to be owner-occupied since people will not give up their pools to go to a rental program with a detached ADU. He noted that the Town already permits an additional range in a single house if it is not rented and also allows a house to be rented to multiple families. He added that a single-family dwelling in the rental program while the house with the detached ADU has an economic disadvantage due to the lack of a pool. He felt that Council Liaison Burdick has made it clear that Council is going to move forward with the ordinance whether the Board provides input or not.

Council Liaison Burdick believed that Council respects the Board's capacity to come up with ordinances that reflect the things that they want to do as a Town. He added that the sense he got from the August 3, 2016 Council meeting is that the Council does not see sufficient harm in not doing this and there isn't a significant downside. He stated that there are positives to help the Town provide additional rental space for people that want to live in Duck.

Member Forlano stated that economic situations have changed over the years and have changed in Duck as well. He recognized the benefits to some of the homeowners with large homes who bought them for their families. The families have now gone their separate ways, leaving the parents with a large home that they cannot afford, but can rent an apartment to students or others. He thought the benefit will go towards the homeowners as well as the renters. He doesn't feel it is a detriment to the community and does not agree with the need for owner-occupancy.

Chair Blakaitis stated that he thought about it for a long time and does not agree with the original decision any longer. He thought the Board can move forward and craft an ordinance that will be very simple. Vice Chair Murray asked if the Board is resolving to have staff draft an ordinance or work with the draft ordinance from the previous meeting. He added that the Board has discussed the characteristics they want to include and asked Director Heard to revise the proposal. Director Heard stated that it may be difficult for the Board to be comfortable sending something forward without having a draft ordinance in front of them.

Chair Blakaitis thought the consensus of the Board is to move forward with drafting an ordinance at a future meeting, unless one could be crafted at this meeting. He thought it can be done as he doesn't think the Board will be able to place many restrictions on ADUs. Vice Chair Murray pointed out that a square footage restriction can be placed on the premise. Chair Blakaitis agreed, adding that he thought the 700 square foot, one-bedroom restriction from the original draft is fine by him.

Vice Chair Murray asked if the two Board members that are opposed to moving forward with the ordinance feel like they can be comfortable if the Board discusses facets of the ordinance that they want to have incorporated, then move forward. Member Cofield stated that it will not change his view, but he will participate in the discussion. Chair Blakaitis noted that the Board is limited in what it can do. Member McKeithan pointed out that Town Attorney Hobbs has told the Board that they cannot put any restrictions in the ordinance. He added that he doesn't think his opinion will change either. Vice Chair Murray stated that the Board can put a lot of restrictions in the ordinance. Member McKeithan stated that as far as who will own the property and what they can do with it, he didn't see any restrictions the Board can put in the ordinance.

Vice Chair Murray thought that the way that the ordinance is worded and the technical limitations put in it described the Board's intent in writing the ordinance. He noted that each ordinance has a statement of intent at the beginning. He felt that the Board should carefully craft an ordinance. Member Cofield didn't think the Board will come up with an ordinance at this meeting. He thought Director Heard can come back with recommendations at the September 14, 2016 meeting.

Vice Chair Murray asked Council Liaison Burdick if Council will be satisfied with the Board crafting an ordinance at their next meeting. Council Liaison Burdick thought if the Board made a commitment to work on it, it will be fine. He didn't think there is an expectation that an ordinance will be crafted at this meeting. Director Heard stated that in his discussion with Mayor Kingston, he didn't get the sense that there is any urgency on Council's part.

Chair Blakaitis directed Director Heard to draft an ordinance and bring it back at the September 14, 2016 meeting. Director Heard asked if there are any particular items that the Board will like to see in the draft ordinance. Member Cofield stated that he wants to see parking in the ordinance. Vice Chair Murray stated that he will like to see a requirement for parking for ADUs having an unobstructed drive aisle to the street. Chair Blakaitis stated that the square footage and the one bedroom limitations from the previous draft is sufficient.

Council Liaison Burdick thought there may need to be differences in size limitations between a separate building and an existing building. Vice Chair Murray suggested limiting the square footage in a detached ADU and an attached ADU, noting that the Board will have to come up with a different standard. Director Heard stated that one thought can be limiting the size to the footprint of a house so it will not exceed the existing dimensions of the house and not create additional lot coverage. Member Cofield stated that he prefers not having the detached ADUs. Member Forlano suggested a percentage of the main building. Vice Chair Murray stated that he likes Member Forlano's suggestion.

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

Chair Blakaitis stated that at its last meeting when the Board decided not to move forward with trying to regulate Airbnb's, the Board had a discussion about two definitions in the ordinance. He added that Town Attorney Hobbs has provided information about these issues for the Board's consideration, which is contained in the staff report.

Director Heard stated that he wants to know the direction the Board wishes to take, whether they wanted to create any allowances beyond what they have now, restrict it further, or stay with the status quo, but add definitions to clarify how the rules are being enforced presently. Chair Blakaitis thought that is how the Board left it at the previous meeting – that they want to leave things alone, except to clarify items. Director Heard noted that the Board has comments in the staff report from staff and Town Attorney Hobbs that can be used to help with developing some definitions. He noted that the intern who drafted the comments for Town Attorney Hobbs used the term "boarding house". He added that he prefers the term "rooming house", because the definition of boarding house implies that food is served, which is not a component of what is being regulated.

Chair Blakaitis asked about bed and breakfast homes and bed and breakfast inns that are mentioned in the current ordinance. Director Heard explained that there are two types of bed and breakfast uses. Bed and breakfast inns are only allowed in certain commercial districts, while bed and breakfast homes have provisions that limit them to three bedrooms and can only be located along Duck Road. He stated that the other term in the ordinance is "short-term rental homes". He added that it is presently listed as a permitted use in residential districts. It appears that the intent was to clarify that the Town permits homes to be rented on a short-term basis, which was less than 30 days. He stated that the term was listed in certain districts in the ordinance, but has never been defined. He explained what the Town has done with regard to enforcement, when staff receives complaints about units being rented on a daily or other basis, they have determined that anything less than seven days is in violation of the Town's ordinance.

Chair Blakaitis asked if a short-term rental home as defined in the staff report will give the Town more latitude to enforce what it was already trying to enforce. Director Heard stated that it will depend on the definition used, but any definition will clarify the term and make the Town's enforcement more legally sound. Chair Blakaitis stated that it is like a text amendment, because of a change in circumstances. Director Heard stated that the Town already has a clear opinion from Town Attorney Hobbs that the Town cannot regulate the short-term rental of whole houses. He added that one of the options that presented in the staff report is to remove the term "short term rental home" entirely, then treat that use as any other single-family residence. He stated that the question then becomes whether or not the Board wishes to recommend defining and regulating a rooming house.

Member Forlano asked if a rooming house is similar to what is happening with employee housing in Duck. Director Heard stated that it isn't. He explained that the employees are frequently roommates that share a kitchen, but there isn't an owner present that rents out rooms on a nightly basis. Member Forlano asked who the owner is renting to. Director Heard stated that the owner is typically renting the entire house to several people that shared the lease. Vice Chair Murray noted that Town Attorney Hobbs had pointed that out in his memorandum. He added that his concern is that they will preclude roommate type of living arrangements. Director Heard pointed out that it depends on how the term "rooming house" is defined.

Vice Chair Murray clarified that all that the Board is trying to refine and help Director Heard enforce is the rental of individual rooms to different parties in single family dwellings. Director Heard stated he is correct. He added that at this point, the remaining issue on the table is for the Board to decide whether they want to regulate it. Vice Chair Murray asked if there is evidence that complete strangers are renting separate rooms in houses with one kitchen on a short-term basis. Director Heard stated that there is. He added that this type of rental is the core concept of Airbnb.

Member McKeithan thought that part of the issue is that the Town is currently restricting a person who decides that they want to modify their house slightly and have one bedroom with a microwave in another room. He added that it is an Airbnb concept which includes a separate entrance from the main part of the house. He stated that the restriction is that a person cannot own a house in Duck and rent out through Airbnb. Vice Chair Murray clarified that, considering all of the limitations that Town Attorney Hobbs had brought up, it can be done. Director Heard stated that Town Attorney Hobbs considered renting out individual rooms as a separate use, similar to the traditional definition of a rooming or boarding house, as opposed to renting the entire dwelling unit.

Member McKeithan noted that times have changed and thought the Board is basing a lot of its discussion on when Duck was incorporated, which is when it was implemented that a room could not be rented in a house. He added that things have changed tremendously in the way property is rented. He added that Duck probably has the highest percentage of rental homes in the County and the Board is now going to restrict the use of someone renting a room when the house next to it can rent to multiple families. He asked why the Board is doing it and felt that it is being done, because there are regulations stating that it has to be done.

Vice Chair Murray agreed with Member McKeithan's comments. He asked what will happen if the Town tells an owner that he can't rent a room to people and they say they aren't renting it for money but for gifts. Director Heard stated that it is still considered a transaction. Vice Chair Murray asked how it will be enforced. Director Heard stated that there may be advertisements for the rentals or other ways of documenting rental activities that staff can use during enforcement. Member McKeithan noted that in an Airbnb situation, a room is typically rented in lieu of staying at a hotel. He stated that he took exception to the fact that the Town restricts an owner's use of his property in that it is okay to rent the house out to multiple people, but not okay to rent a portion of the home.

Vice Chair Murray agreed with Member McKeithan's comments. He wished that the issue of short-term rentals had been discussed before accessory dwelling units. Chair Blakaitis stated that the Board is not here to do that at this meeting. They are present to discuss how the definitions affect Director Heard's enforcement of the regulations. He added that the Board is not discussing regulating Airbnb properties, nor do they want to. Member McKeithan pointed out that the Town is outlawing Airbnb's if a portion of the house is rented. Chair Blakaitis noted that under the Town's present ordinances, they are not allowed. Member McKeithan agreed and asked if the Board can define a boarding house and make it a conditional use instead of it being prohibited. Director Heard stated that the Board can do that and that option is outlined in the staff report.

Member McKeithan understood that Director Heard and his staff are obligated to investigate the rental of a room in a house due to a Town ordinance stating that they aren't allowed. He added that staff generally does not do anything unless it becomes an issue. He noted that if it is not prohibited, there is no reason to worry about policing them. Chair Blakaitis stated that he does not have a problem with it.

Chair Blakaitis asked where the Board is headed with the regulations. Director Heard stated that one of the points is to clarify what the Town regulates or doesn't regulate. He recommended that the Board define what a rooming house is. He stated that the Board can set certain standards for the use, put restrictions on it, make it a permitted use, a conditional use, etc. He thought that the way the Board can indicate that they are fine with the uses involves defining and adding it to the list of uses in some form.

Chair Blakaitis asked what would be defined. Director Heard stated that he recommends defining the term "rooming house". Chair Blakaitis clarified that Director Heard is attaching rooming house and the meaning of it to the process. Director Heard stated he is correct. He added that there can be conditions put on the operation of a rooming house if the Board and Town Council wish to add them. Vice Chair Murray asked if it will be enforceable. Director Heard stated that it isn't an easy use to enforce, but staff has to investigate situations all the time to determine what's going on. Chair Blakaitis clarified that adding the definition of rooming house and putting it in the right spot will take care of the issue. Vice Chair Murray thought that if the Board wants to go through with the ordinance, it seems that there should be an end result. Member Forlano noted that there are conditions on bed and breakfasts that they can only rent three bedrooms at a time. He added that it is enforceable. Vice Chair Murray agreed, adding that the way the ordinance is written deals with the presence of the bedrooms. Director Heard stated that it is a way to look at this ordinance in that bed and breakfast inns or bed and breakfast homes

require a conditional use permit to establish them. He added that staff can document that a permit was obtained.

Chair Blakaitis clarified that the Board does not have to create an ordinance. He thought all the Board had to do is develop the definition. Vice Chair Murray stated that he is somewhat confused by the issue. Chair Blakaitis stated that he is as well, but is trying to understand. If the Board defines rooming houses and puts it in the table of prohibited and permitted uses, an ordinance is not being created, but the term is being defined. Director Heard stated that the addition of the term is a change to the ordinance.

Member Forlano asked if Town Attorney Hobbs is suggesting that the Board change the ordinance so that the Town does not require owner occupancy any longer. Member McKeithan stated that Town Attorney Hobbs had stated that the Town is not allowed to require owner occupancy. Member Forlano clarified that the Board has to make that change. Director Heard stated that it was Town Attorney Hobbs' suggestion that the Board eliminate any requirement for owner occupancy in a draft ordinance. He added that if it is the Board's desire, staff can write the ordinance to include it.

Chair Blakaitis thought the task before the Board is to provide potential definitions for rooming houses and any other relevant items. He asked what items should be discussed first. Director Heard felt that rooming houses should be discussed first. Chair Blakaitis thought there needs to be a definition for a rooming house. He noted that the Board members all seemed to agree with Member McKeithan but aren't sure how to do it at this meeting. Director Heard stated that the Board has a recommended definition from Town Attorney Hobbs regarding rooming houses. Chair Blakaitis didn't know if it is a good definition.

Director Heard stated that the Board has a basic definition of the term rooming house and what it is meant to address. He added that the other questions will be if the Board wants to allow this type of activity anywhere in Town, if there are certain districts that they feel are appropriate, or if there are certain districts where the Board feels may need some limitations. He noted that the Board can make it an administrative permitted use or a conditional use. Chair Blakaitis asked where it currently exists. Director Heard stated that it does not currently exist. He added that the Board can prohibit rooming houses in certain districts, if it chooses.

Member Cofield thought the Board cannot prohibit them. Director Heard stated that individual rental rooms within a house can be regulated. He added that it is Town Attorney Hobbs' opinion that renting out individual rooms is a different type of use than a single-family residence. He stated that once the Board defines rooming houses, they need to decide where they should be allowed and if they want any conditions on it.

Member McKeithan thought the Board can discuss zoning areas that are appropriate such as R-2, RS-1 and RS-2. Chair Blakaitis asked Member McKeithan if he wishes to exclude rooming houses from those zones. Member McKeithan clarified that he would like them to be allowed in those zones. Chair Blakaitis asked why they shouldn't be allowed in the other zones. Vice Chair Murray thought they can be allowed in all zones. Chair Blakaitis asked where they should not be allowed. Member McKeithan thought that some of them may not be allowed in the Village Commercial zone. Chair Blakaitis noted that one already existed in the Village Commercial

zone above Kellogg's Hardware. Director Heard stated that it was an accessory apartment, which is already permitted in the V-C district. He added that the Ocean Sound Overlay and the Conservation-Public Recreation zones can be two districts that exclude rooming houses.

Chair Blakaitis asked the Board how they felt about the definition of a rooming house. It was *consensus* of the Board to use the definition provided by the Town Attorney. Chair Blakaitis suggested that the term rooming house be added to the chart to all zones except the OSO and C-PR zones. Director Heard asked if the Board wants rooming houses permitted in the other zones as permitted administratively or through a conditional use permit. Chair Blakaitis thought they can be obtained through an administrative permit and limit the bedrooms. Member McKeithan thought it should be limited to two bedrooms.

Chair Blakaitis asked if there was a desire to limit the number of bedrooms. Member McKeithan thought one of the issues Director Heard brought up was someone being allowed to rent out seven or eight bedrooms to different people. Chair Blakaitis thought it is the primary reason for limiting the bedrooms. Vice Chair Murray agreed. He added that owner-occupants will manage it better by being on-site. He stated that he sees a difficulty with enforcing it and isn't sure why the Board is seeking to limit the number of bedrooms. He saw the reason to limit the number but wasn't sure how compelling it is considering the difficulty with enforcement.

Chair Blakaitis stated that if the Board wanted to limit it, it could be limited to one bedroom. Member McKeithan stated that one could have a family of four wanting to rent. Chair Blakaitis suggested limiting it to two bedrooms. It was *consensus* of the Board to limit it to two bedrooms.

Director Heard stated that he will put together a draft ordinance based on the Board's discussion and bring it back to the September 14, 2016 meeting.

Chair Blakaitis asked if the Board needed to agree to modify the definition of bed and breakfast. Director Heard stated that there is a requirement for owner-occupancy. He added that Town Attorney Hobbs noted that it is something that the Town cannot enforce. He stated it was part of every generally accepted definition of that term in everything he has seen. He wasn't sure if it would hold up in court or not. It was *consensus* of the Board to leave the definition alone.

Chair Blakaitis asked what should be done with short-term rental homes. Director Heard recommended striking the term from the list of uses. He added that they will be treated as a single-family residence. It was *consensus* of the Board to strike it.

APPROVAL OF MINUTES

Minutes from the July 13, 2016, Regular Meeting

Member Cofield moved to approve the July 13, 2016 minutes as presented. Chair Blakaitis seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of August 3, 2016 Town Council Meeting

Director Heard gave an update on the August 3, 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

Member Cofield moved to adjourn the meeting. There was no second or vote.

The time was 8:51 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman