

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
October 12, 2016**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, October 12, 2016.

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

Absent: Tim McKeithan.

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

Others Present: Sandy Whitman, Jimbo Ward and Matt Shealey of Beach Realty.

Others Absent: Council Liaison Chuck Burdick.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for October 12, 2016 at 6:34 p.m.

**PUBLIC COMMENTS**

None.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**Special Exception 16-001: Application for a Special Exception to Allow Concrete Parking Spaces in Conjunction with the Construction of a new Single-Family Residence at 152 Marlin Drive**

Director Heard stated that the applicant was seeking a special exception permit to allow a concrete parking surface for five parking spaces associated with the construction of a new single-family residence at 152 Marlin Drive. He explained that Section 156.092(C) of the Zoning Ordinance requires residential parking spaces to be improved with loose stone surface such as gravel, porous pavers or a similar semi-permeable material. He stated that if the application is approved, the applicant will be able to use the five concrete parking spaces to meet the Town's parking standards.

Director Heard stated that on September 4, 2015, a contractor from Beach Realty & Construction obtained a building permit to demolish the existing residence and construct a new, six-bedroom single-family residence. He stated that in order to accommodate the maximum occupancy of 12

people on the Health Department septic permit, the project included the installation of six parking spaces. He noted that one of the parking spaces is located partially under the house and the other five are located to the right of the driveway leading to the house. He added that when the project was completed in July, 2016, Town staff conducted a final inspection and noted that the five parking spaces were concrete instead of gravel or an accepted semi-permeable parking surface. He stated that he reviewed the situation to consider if the concrete surface could be approved for topographic conditions. However, the location of the parking spaces is flat and he decided that it did not warrant administrative relief to address topographic challenges.

Director Heard stated that after discussing the issue with the contractor, it became apparent that the contractor had based the driveway and parking layout on the site plan, which showed the entire area being in concrete instead of basing it on the conditions in the building permit, which specifically noted that all parking outside of the drive aisle had to consist of gravel or a semi-permeable material. He stated that the applicant has opted to ask the Planning Board and Town Council to consider granting a special exception because of the greater expense to remove the concrete and install gravel or another semi-permeable surface, before attempting to make the necessary corrections. He noted that a Temporary Certificate of Occupancy was issued on July 25, 2016 to allow the property owner to have full use of the residence while the special exception application is being considered. He added that a final Certificate of Occupancy can be issued following either the approval of the special exception application or the replacement of the concrete parking spaces with gravel or another semi-permeable material, if the special exception application is denied.

After reviewing his findings, Director Heard offered his opinion that the special exception application meets some of the findings, but does not meet others, and is recommending denial of the application.

Chair Blakaitis asked the applicants to speak on the issue.

Jimbo Ward of Beach Realty and Construction was recognized to speak. Mr. Ward stated that they made a mistake because they did not read the conditions of the permit. He added that they didn't read the conditions because they had an approved site plan that showed five concrete parking spaces that was approved and permitted. He stated that from his perspective, the Town was in error. He added that in his experience, if he was doing something wrong, he would be contacted to correct the error. He stated that if the site plan was in error, he should have been told so he could fix it. He reiterated that this was the Town's error.

Jimbo Ward stated that he did not draw the site plans. They were engineered drawings as requested by most municipalities. He stated that not only did he feel that the Town was wrong, but the engineer was wrong as well. He noted that he should have read all of the information when the permit was obtained. He also pointed out that there were not five concrete parking spaces constructed, but four. He explained that he constructed the last space with gravel at the time that the driveway was installed, because they were close to the maximum lot coverage. He added that by giving up 200 square feet of concrete gave him the space he needed.

Jimbo Ward stated that he takes care of the stormwater runoff in the manner in which a lot has grading. He added that the water on this property drains to the swales on the side of the road.

He stated that he felt that they did everything they could do except for reading the permit. He added that he was throwing himself on the mercy of the Planning Board.

Member Cofield asked if Mr. Ward's engineer brought up any other way of handling stormwater mitigation. Jimbo Ward stated that it can be mitigated a number of ways. He explained that on a development scale, mitigation is done by converting good land to wetlands. He added that on an individual site, planting is often considered. Sometimes a water retention pond is installed. He noted that the lot does not have any water issues. He stated that the swale they installed on each side was made of good construction material. He stated that they are not putting any water on the road. He stated that one way they can absorb more water is through more planting. Member Cofield pointed out that the engineer did not address that question. Jimbo Ward agreed.

Member Cofield asked what the hardship is. Jimbo Ward stated that it is an economic hardship. He added that if he has to remove all of the concrete and replace it with gravel when he could build a 750 square foot gazebo, was silly to him. Member Cofield noted that Mr. Ward addressed the issue of cost but not the issue of the hardship. Mr. Ward stated that the hardship is the loss of income.

Chair Blakaitis asked if the house is a spec house. Jimbo Ward stated that it is. Chair Blakaitis inquired if the house was built by Mr. Ward and still owned by him. Mr. Ward stated he is correct.

Vice Chair Murray understood that in order for the Board to grant the special exception, the applicant has to meet all of the criteria. Chair Blakaitis stated he is correct. Vice Chair Murray understood Jimbo Ward's argument, but is reviewing the application to see if it meets all of the requirements. Chair Blakaitis stated that the Board has to see if the evidence presented to them demonstrates a hardship or has proof behind it.

Member Forlano stated that he was part of the group that developed the stormwater ordinance. He added that the whole object of the ordinance is to address stormwater runoff with permeable substances. He added that when he first received his agenda packet, he drove over to the site on October 7, 2016 and then visited again on October 8, 2015 while it was raining to see if there was any water runoff. He stated that he visited the property again on October 9, 2016 and noticed that there was no water runoff or ponding. He noted that the property is very flat and did not present a problem in the stormwater runoff, which is the main objective of the ordinance. He stated that he does not see the concrete areas as a problem. He understands that certain criteria have to be met for a special exception, but there isn't a stormwater issue on the property.

Chair Blakaitis stated that he was also on the Planning Board when it worked on the ordinance. He agreed with Member Forlano that the Board did not pass the ordinance based on any particular location of property, but because the Board thought it was best for the Town. He agreed that the property does not appear to meet the criteria and the findings of the Town, with the most important finding being hardship. He does not believe that the applicant has demonstrated any hardship. He thought the \$7,000 that Jimbo Ward talked about is not a significant amount of money when compared to the cost of construction. He noted that Mr. Ward admitted that they should have read the fine print on the permit. He didn't think the Board has the right to grant the special exception, noting that it violates the Land Use compatibility in

one area. He thought it is inconsistent with the parking materials standards based on the Town ordinance. He stated that he cannot support granting the exception.

Chair Blakaitis asked at what point the permit was drawn after the initial plans were approved. He asked who caught the fact that the parking spaces were not correct, according to the ordinance. Director Heard stated that it happened during his review of the project. Chair Blakaitis clarified that the applicant was not notified that there was an error on the site plan. Director Heard stated that he notified the applicant by putting it as a condition of the permit. Chair Blakaitis recognized that contractors have a responsibility to look closely at the ordinances and if there was a change, they should have asked why it was changed on the permit.

Member Cofield asked what would cause Director Heard to contact the applicant. Director Heard stated that this proposal had only one issue. Rather than sending it back to the applicant to have it corrected by the engineer or surveyor at a considerable expense, staff makes note of the correction and includes it in the permit. He added that if the correction was something of greater significance, then a new plan would be needed. Chair Blakaitis thought that for the future, staff should call the applicants to let them know of the problem.

Vice Chair Murray stated that as the Town moves forward with developing other ordinances, he hopes that the Planning Board will remember this situation. Chair Blakaitis added that when the Board put exceptions on an application, staff should understand it and follow through with the applicant. Director Heard stated that there have been similar situations where an application has come up subsequently to this one. He added that staff made sure that the notation was made on both documents. Chair Blakaitis pointed out that it costs money to change plans, so he understood not asking the owner to submit a new site plan unless it is a major change, but making a notation and doing like what happened on the permit was common.

Chair Blakaitis moved to recommend that Special Exception 16-001 be denied based on the conditions set forth by staff as it doesn't meet all four of the conditions necessary to grant a special exception. Member Cofield seconded.

Vice Chair Murray asked if the only other remedy is a text amendment. Director Heard stated that it would be an option to change the standards. Vice Chair Murray asked if staff is explaining to applicants when they make the application for a special exception what happens when they come before the Board. Director Heard stated that staff sits down with the applicant and review all of the options.

Motion carried 3-1 with Member Forlano dissenting.

## **APPROVAL OF MINUTES**

### **Minutes from the September 14, 2016, Regular Meeting**

Vice Chair Murray stated that he discussed the last meeting with members of the Planning Board and Town Council and it was clear that, without Director Heard at the last Planning Board meeting to explain exactly what was meant by not allowing the rooming house use in the accessory dwelling units, that he misunderstood it. He asked if he should comment on it at the

public hearing or send some type of correspondence to Council to indicate such. Chair Blakaitis wasn't sure, adding that Vice Chair Murray can say whatever he wants at the Council meeting. Director Heard cautioned Vice Chair Murray that as a Planning Board member, if the Board makes a decision as a whole body, then Vice Chair Murray should not go to Council and express a different opinion.

Chair Blakaitis stated that he and Vice Chair Murray had discussed the issue and he does not understand what was being kept in the ordinance and what was decided. Vice Chair Murray stated that if he had known, he may have voted differently or pressed during the discussion to do what Member McKeithan had asked. He thought from Director Heard's written comments, that it was put in because of some Board members' concerns about the accessory dwelling units being used for rental income and not for affordable housing. He thought it is inconsistent with the other information that was received from Town Attorney Robert Hobbs. He added that it will be impossible to enforce and also would have pressed more at the meeting. He stated that he discussed the issue with Member Cofield and they thought what was being said was when there were multiple rooms in an accessory dwelling unit, they can't be rented separately to separate parties. He stated that he would have agreed with Member McKeithan in suggesting that it be stricken, but several of the Board members thought that Member McKeithan didn't understand the issue when he actually did. He thought that Council should know that the Board voted under a misconception.

Director Heard stated that as it concerns a decision of the entire Board, the question is left up to the Board and Chair Blakaitis. He explained that if the Board as a body wishes to make it clear to Council, he thought that is something that needs to come from the Board, rather than coming from an individual, if they feel that they may have voted or looked at it differently. He noted that Council has already set a public hearing on the matter.

Chair Blakaitis commented that one Council member was vocal about accessory dwelling units being limited to 700 square feet. He added that the Council member thought it doesn't make a difference as to how big an accessory dwelling unit is, whereas the Board thought it better meets the characteristics of the surrounding neighborhood. He stated that the Council member's reasons were that it doesn't make a difference because of the lot coverage ordinances and other things used to control the density of development. Chair Blakaitis stated that Council can change their minds at the meeting. He suggested that Vice Chair Murray attend the Council meeting.

Member Cofield suggested that Vice Chair Murray write up a draft of what was just discussed, circulate it to the Board for approval and submit it to Council as a point of clarification. Vice Chair Murray asked if it could be done via email as long as the Board went through Director Heard. Director Heard thought the Board should have some action at this meeting if they plan to provide additional information to Council. Chair Blakaitis was concerned that Council will send the issue back to the Board. Vice Chair Murray didn't think it is that big of a deal. He stated that if this one condition is in the ordinance or not, he doesn't think it matters as he feels it isn't enforceable. Chair Blakaitis didn't think there would much of an issue in Duck. Vice Chair Murray agreed.

Member Forlano asked what the issue is. Vice Chair Murray stated that there is a provision in the draft ordinance that states if someone wants to obtain a permit to have a rooming house, and rent

up to two rooms in their home, they can do it, but if they have an accessory dwelling unit on the property, they cannot rent rooms in the accessory dwelling unit, only in the main house. Vice Chair Murray added that Member McKeithan had written comments that he did not think it was fair, which he now agrees with. He noted that in the Board's discussions, Member Cofield explained and he accepted the explanation, that what the Board proposed was that a person cannot rent multiple rooms to different parties inside one accessory dwelling unit. He thought the Board also stated that accessory dwelling units that are detached can only be one bedroom. He thought that Member McKeithan had misunderstood things, but it turned out after talking to Council members, that it was the intent that the accessory dwelling units are limited to year-round or long-term rentals. He stated that had he known that, he would have asked how someone can tell where someone is sleeping and would have suggested striking the language.

Chair Blakaitis clarified that Vice Chair Murray would have thought differently. Vice Chair Murray stated that he would have agreed with Member McKeithan in striking the wording. Chair Blakaitis stated he isn't sure where the Board would have come out on it. Vice Chair Murray agreed. Chair Blakaitis stated that he was ambivalent and thought the issue should be left alone. He added that if Vice Chair Murray wants to speak at the public hearing, Council always asks if the Planning Board has any comments. He stated that Vice Chair Murray can explain his issue then.

Member Forlano thought the Board worked diligently on discussing the different issues involved with the size and number of rooms. He thought it was up to the Council to take the Board's proposal and make a decision. Chair Blakaitis reviewed the Council discussion at their October 5, 2016 meeting on the issue with the Board and audience.

Vice Chair Murray asked if Council can rule on one of the text amendments and not the other following the public hearings. Director Heard stated that Council can as they are two separate, distinct text amendments. Vice Chair Murray stated that he wants the misunderstanding to be on record so he will probably mention it at the public hearing.

Member Cofield moved to approve the September 14, 2016 minutes as presented. Vice Chair Murray seconded.

Motion carried 4-0.

### **OTHER BUSINESS**

None.

### **STAFF COMMENTS**

#### **Summary of October 5, 2016 Town Council Meeting**

Director Heard gave an update on the October 5, 2016 Council meeting to the Board and audience.

### **Project Updates**

Director Heard updated the Board and audience about Town projects.

**BOARD COMMENTS**

Chair Blakaitis felt that the Board needs to congratulate itself for how deeply issues are probed at their meetings.

**ADJOURNMENT**

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

The time was 7:56 p.m.

Approved: \_\_\_\_\_  
/s/ Joe Blakaitis, Chairman