

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
December 14, 2016**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, December 14, 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: Sandy Whitman, Roisin McKeithan, Mike Dehus of Ken Green and Associates, and Tom Rose.

Others Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for December 14, 2016 at 6:33 p.m.

**PUBLIC COMMENTS**

Roisin McKeithan of 140 Mallard Court was recognized to speak. Ms. McKeithan stated that, while she is not an attorney, there was some misleading language in some of the Town's ordinances. She added that one of the terms is "residential area". She thought most of Duck is described as a residential area, but few people actually reside in these areas of Duck. She stated that the other term is "single family dwellings". She explained that a lot of the homes in Duck are built to accommodate more than one family. She noted that the number of bedrooms in some homes are not designed for single families but for multiple families or couples. She stated that when these terms are used in the Town's ordinances, it should be realized that they are loosely applied in effect.

Ms. McKeithan thanked the Planning Board for all of their hard work. She stated that she wants to speak about rental rooms in homes that were owned by owner-residents. She stated that she knows the Board is speaking about only one small part at this meeting with regard to the term "short-term rental", but wanted to let the Board know it is important to her and that she will be addressing Council at their January meeting.

Ms. McKeithan stated that she doesn't rent rooms or have a second home that she rents, but was concerned about the range of the entities in Town. She noted that Airbnb and VBRO have many gray areas. She pointed out that she has stayed at Airbnb properties and is just like the people that rent through Airbnb. She added that if something were to happen to her or her husband, they may have the need to rent a room in their house. She stated that without year-round residents,

Duck would not be the great place that it currently is. She added that the year-round owners and residents and voters are the nuts and bolts that make Duck great.

There being no one else wishing to speak, Chair Blakaitis closed the Public Comment session.

### **OLD BUSINESS**

None.

### **NEW BUSINESS**

#### **Special Exception 16-002: Application for a Special Exception Permit to Allow a Ground-Floor Addition 28 feet in Width to Encroach 7.5 feet into the Minimum Rear Building Setback for the Existing Single-Family Residence at 107 Wampum Drive**

Director Heard stated that the applicant is seeking a special exception permit to allow a ground floor addition 28 feet in width to encroach 7.5 feet into the minimum rear building setback for the residence at 107 Wampum Drive. He explained that Subsection 156.030(D)(5) of the Zoning Ordinance requires a minimum rear yard setback of 25 feet. He stated that if the application is approved, the applicant will be able to locate the proposed addition as close as 17.5 feet from the rear property line.

Director Heard stated that the property contains a four-bedroom single-family residence, which was constructed under the standards of Dare County in 1984. He explained that the property is located in a built-out residential neighborhood and surrounded on all sides by other properties zoned RS-1. He added that the adjoining properties contain single-family residences and three abutting properties are undeveloped. He noted that an adjoining property to the west is developed with a five-bedroom single-family residence and swimming pool in 2008 and complies with all of the minimum setback requirements. He stated that the adjoining property contains several encroachments into the required setbacks – 7.8 feet in the rear setback; 13 feet for the swimming pool and concrete patio; and 5.1 feet in the eastern side setback.

Member Cofield asked if the adjoining property was built as per the ordinances in force at the time through Dare County. Director Heard stated that the original house would have complied with the County standards; however, the pool would not have. He wasn't sure why it wasn't flagged or why it was approved by Dare County back then as it clearly did not comply with the standards. He thought that there is a possibility that the County standards did not apply to the patio surrounding the pool. Member Cofield stated that it would be helpful to him to know if Dare County granted the special exception. Director Heard stated that they did not. He added that there was nothing in the files to that effect. He pointed out that the site plan did not show any of it in the setbacks so the encroachments appear to be something that occurred during construction when the location was altered in some way.

Member Cofield asked if the posts that support the deck are viewed as a part of the setback requirements or outside of them. Director Heard stated that the posts usually comprise of the outer edge and are be part of the setback requirements. Member Cofield asked what would

happen if they is cantilevered. Permit Coordinator Sandy Cross was recognized to speak. Permit Coordinator Cross stated that the cantilevered section would still need to be within the setback.

Director Heard stated that there was a prior special exception request at 114 Wampum Drive with similar circumstances that the Board of Adjustment heard back in 2006. He stated that the Board of Adjustment voted unanimously to approve the special exception. Member Forlano asked if the case had gone before the Planning Board or directly to the Board of Adjustment. Director Heard stated that, at that time, special exceptions were heard by the Board of Adjustment, but now are heard by the Planning Board and Town Council.

Director Heard stated that the Poteskeet Village was subdivided and established in 1980. He added that lots in the subdivision exceed the minimum lot size at the time they were created and were generally rectangular in shape. He noted that due to the narrow width of the property at the time of development, lots in the subdivision were oriented sideways from a more traditional subdivision layout with most properties wider along the Wampum Drive frontage, but shallow in depth.

Director Heard stated that at the time of its approval and construction in 1984, 107 Wampum Drive complied with Dare County setback standards, adding that the minimum rear yard setback was calculated at 16.5 feet and the residence constructed with a rear setback of 17.5 feet. He stated that Duck's current standards included minimum building setbacks of 25 feet from the front and rear property lines. He noted that with a lot depth of 82.52 feet for 107 Wampum Drive, it left 32.52 feet of buildable depth on the property. He pointed out that the existing residence was located 28 feet from the front property line and extended 37 feet in depth, leaving a rear setback of 17.5 feet.

Director Heard stated that the applicant expressed an intention to apply for a building permit for extensive improvements to the existing property, including a large addition and decking to the western side of the residence. He stated that the improvements included the enclosure of the entire ground floor level with 1,117 square feet of heated space and 257 square feet of garage/storage space. He added that a swimming pool would be added to the west of the residence.

Director Heard stated that a majority of the proposed improvements are located within the current minimum building setbacks and could be permitted by the Community Development staff; however, a portion of the proposed ground floor addition will encroach into the minimum rear setback for the property. He added that the applicant is seeking a special exception to allow the improvements under the 210 square foot area of the residence. He noted that the area under consideration for the special exception is proposed for use as a 7x14 foot golf cart/storage area with an exterior doorway facing east and a 7.5x14 feet expansion of a proposed game room.

After reviewing the special exception findings, Director Heard stated that it is staff's opinion that the application met the findings and staff is recommending approval, subject to the following condition: "The property owner must maintain the existing dune and vegetation at the rear of the property as a buffer against the adjoining properties."

Chair Blakaitis clarified that he was correct in assuming that anything the applicant wanted to do to the property, except taking out of the discussion the rear setback situation, was already approved by staff and met all of the requirements regarding vegetation, the driveway and the addition to the house. Director Heard stated that the full proposal had not been submitted to staff at this point in time. Chair Blakaitis clarified that it appeared that it would. He further clarified that the Board was not taking that into consideration at this meeting. Director Heard stated he was correct. Chair Blakaitis asked if the house already sat on an encroachment and the footprint is not expanding, why the Board is considering the special exception request. He asked why it isn't a staff issue. Director Heard stated that the ordinance has some provisions for allowing things of that nature, but this is not one of them. Chair Blakaitis asked why. Director Heard stated that it would require an amendment to the ordinance. Chair Blakaitis clarified that if nothing was being done to the rear of the house, except the items that comply with zoning, the Board would not be looking at the application. Director Heard stated that the proposal is increasing the amount of heated area that encroaches into the rear setback which is why it is in front of the Board. Chair Blakaitis asked if that is the main reason. Director Heard stated that it is.

Council Liaison Burdick noted that the applicant is not increasing the footprint of the house, which is already grandfathered. He added that he is having difficulty as to why it isn't an administrative procedure. Director Heard pointed out that grandfathering does not allow additional encroachments. Council Liaison Burdick stated that it is not encroaching additionally. He added that the applicant is not enlarging the footprint of the house, therefore, there is no additional encroachment. Chair Blakaitis explained that it is because the applicant is making a change, which is what triggered the encroachment. Council Liaison Burdick stated he isn't sure. Director Heard stated that the applicant is proposing to add an entire additional story of improvements in the area where it is encroaching.

Vice Chair Murray pointed out that the encroachment is non-conforming and by adding finished space in the encroachment, it was a widely accepted zoning interpretation that the non-conformity is increasing. Council Liaison Burdick felt it is illogical in that the applicant is not increasing the encroachment, but they are adding space within the existing footprint. Permit Coordinator Cross pointed out that it is a non-conformity. Council Liaison Burdick pointed out that it is grandfathered. He stated that the question is what was in the ordinance that the Board had to go through this procedure as opposed to it being approved administratively.

Director Heard stated that it was not an interpretation, but it was clearly spelled out in the ordinance when staff can administratively approve improvements to nonconforming structures. He added that this case is not one of the situations spelled out in the ordinance. He stated that in talking with Town Attorney Robert Hobbs about the situation, back in 2006 the Town had an almost identical situation where the Town required the applicant to go through the same process. Chair Blakaitis pointed out that the facts were different in that case. Director Heard stated that it was the same in that it was filling in a ground floor. Council Liaison Burdick clarified that it went before the Board of Adjustment. Director Heard stated that at that time, the Board of Adjustment was the body that heard the case.

Council Liaison Burdick stated that the only reason he was questioning things is that he wondered if the Board is taking a lot of time for something that Town staff should be capable of

doing. He added that it is not a change of the structure of the encroachment, but filling in the bottom floor. He likened it to changing a garage to two bedrooms. Chair Blakaitis thought it may be something that will need a text amendment in the ordinance down the road. He added that Council Liaison Burdick's point was good to bring up. Council Liaison Burdick asked if Council should be addressing it from the standpoint of whether a text amendment is needed so that they were not unduly burdening applicants as well as staff. Chair Blakaitis thought it was a good suggestion and suggested that Council Liaison Burdick bring it up to the other Council members. Council Liaison Burdick stated that he planned to.

Member Forlano stated that he would be in agreement with Council Liaison Burdick, but pointed out that the key item was that it was a non-conforming area that the applicant wanted to improve. He added that if it is not a non-conforming area, he agrees that staff should allow it administratively. Council Liaison Burdick stated that it is not non-conforming because it was within Dare County's rules and within those rules, an owner is grandfathered regardless of what a town does. Member Forlano pointed out that it is still non-conforming. Director Heard agreed. Council Liaison Burdick agreed, adding that if the non-conformity is not changed, what will be done. Member Forlano stated that it is being changed. Council Liaison Burdick stated that the applicant is staying within the blueprint of the house.

Member McKeithan stated that if the proposal would have gone to a second floor, there would be issues for neighbors if it obstructed the view. He thought the point is that anything done in the encroachment area has to be evaluated. Council Liaison Burdick stated that he isn't saying not to evaluate it. He added that he was suggesting that it was more of an administrative function. He stated that the question is if there is something in the analysis that stated that it is serious enough to take it to the Planning Board and then to Council or if it is something that staff should permit administratively.

Vice Chair Murray thought that the reason that most municipalities don't is because of the number of possible permutations that will have to be put into a text amendment. He added that this is not an issue that is designated as one that staff was allowed to decide. He stated that in order for the Board to write a text amendment to designate staff to do so, the question becomes where does the Board stop the text amendment. He stated that the text amendment becomes cumbersome as the Board goes through all of the permutations. He stated that the Planning Board and sometimes the Council tend to write the ordinance in the simplest way possible and for issues that are outside of the purview of odd cases, there will be a hearing on it. Council Liaison Burdick agreed that there could be a lot of permutations, but the only thing he was going by was that the house was built under Dare County rules and is grandfathered. He added that there is nothing the Town could do about it as long as the applicant was not changing the footprint of the house and were within all of the other constraints in place. He asked if the Town was not unduly burdening both the applicant and staff in forcing a three-layer consideration of something that may be simply taken care of by Town staff alone. He added that it was his impression when he read through the staff report. Chair Blakaitis stated that it was his impression as well. He thought if a permutation did not change the footprint, it should be the governing factor.

Council Liaison Burdick noted that the recent public hearing on the ordinance on splitting a house for apartments and as long as it was within the footprint of the house, it was acceptable.

Member Forlano pointed out that the house was conforming in that situation. Council Liaison Burdick stated that the non-conformity was not changed from the standpoint that the Town was not forcing a homeowner to make it less non-conforming. Member Cofield thought the issue was appropriate for the Planning Board to discuss, particularly when a use is increased in a non-conformity. He added that what the Board did not know was what was considered when Dare County granted the original permit. Chair Blakaitis stated that it was Dare County's rules at the time. Vice Chair Murray noted that it was the percentage of the depth of the lot.

Member Cofield stated that it was misleading to say that the structure is not impacting neighboring properties that are not developed. Director Heard stated that the property in front of the Board sat lower than the lots to the rear of it. Chair Blakaitis stated that the applicant was changing slats to a wall. Member Cofield reiterated that it is misleading that there are no impacts. Vice Chair Murray thought Director Heard's point is that the bottom floor of the house is underneath the existing improvements. Member Cofield understood, but pointed out that if a house is built on the rear of the two properties, it will be more than one story high. Chair Blakaitis agreed. Member Cofield added that saying that it will not have any visual impact upon the neighboring properties is misleading because it implies that there are houses to the rear of the subject property.

Member Cofield asked if it will help to have a knee wall at the dune. Director Heard stated that the existing dune vegetation will be maintained. Member Cofield asked why a dune wall is not recommended. Director Heard stated that maintaining a visual buffer is being recommended. He added that there would have to be a nexus between the condition and what is being proposed and the knee wall didn't change the appearance, but helped support an area. Member Cofield stated that he interprets the recommendation as saying that the applicant has to protect the dune vegetation.

Member Cofield asked again why a knee wall is not recommended. Chair Blakaitis asked what a knee wall will accomplish. Member Cofield explained that it protects the dune. Vice Chair Murray pointed out that by definition, the applicant would have to tear the dune up to put the wall in. Chair Blakaitis asked if the knee wall will protect the dune from erosion. Member Cofield stated that it would. Chair Blakaitis pointed out that if it is well vegetated, there will be no erosion. Vice Chair Murray added that the applicant is not proposing anything that will affect any erosion of the dune.

Member Forlano asked how the ordinance read regarding improvements to a non-conforming entity. He asked how it specifically read. Chair Blakaitis thought that the 50% rule applied to a non-conformity if an owner changed a structure by more than 50% percent. He added that they would have to comply with the new rules. Vice Chair Murray stated that it applied to flooding. Director Heard stated that one of the criteria is a provision for vertical additions to non-conforming structures, which is in the current ordinance. He went on to read the provision: "...notwithstanding any other provision of this chapter, for single-family dwellings built prior to July 3, 2002, the principal structures that encroach into the minimum required yard of a residential zoning district, second or third story additions shall be permitted over the existing building footprint exclusive of uncovered decks, provided that the completed structure shall not exceed the maximum building height of the zoning district..." He stated that the reason the issue was brought forward was because the ordinance very specifically states that second and third

story additions, which means it very specifically did not include ground floor additions. He wasn't sure why the ordinance was written the way it was, but it is the wording of the section that staff looked at in applying to this. Chair Blakaitis noted that it seemed to give more weight to what the Board was discussing. Director Heard agreed.

Vice Chair Murray clarified that, from a special exception standpoint, the Board is allowed to approve it if it meets all of the criteria. He added that the only criteria in question was #3. Chair Blakaitis noted that #4 was in question as it didn't apply. Director Heard agreed. Vice Chair Murray noted that #3 was the hardship condition. Director Heard stated that the wording didn't go that far as hardship is not in it. He added that it needed to be determined whether the requested special exception seemed unreasonable or impractical. He noted that because of that, staff is in favor of approving the special exception permit.

Chair Blakaitis stated that he is always cautious and suspicious of any variance or special exception that infringed on setbacks or other areas of zoning. He added that, just like the last situation for concrete, the Board was in consensus that it did not meet all of the criteria necessary. He thought the same thing should apply everywhere. He noted that had this been an actual construction project to increase the footprint, he would not adamantly disagree with it because he did not agree with Item #3. He didn't think there was any unreasonable or impractical conditions to the applicant. He pointed out that the applicant bought the property, he knew how big it was and should know what could and could not fit on it. He stated that in this case, there was a condition that pre-existed and was grandfathered, which was fine with him. He stated that he strongly disagreed that Item #3 in any way meets the condition.

Vice Chair Murray clarified that Chair Blakaitis did not feel that it fulfills Item #3 but was comfortable moving forward. Chair Blakaitis stated he was correct, adding that it was because it was an existing structure. Vice Chair Murray stated that all of the elements that the applicant wanted to put under the existing house could be put out to the side of the house, which would increase the footprint and lot coverage, which the Board did not want to encourage. He added that enclosing under the house seemed reasonable to him. He felt that the applicant met the criteria for Item #3.

Member Cofield agreed with Chair Blakaitis' comments. He thought Item #3 was not met and agreed that the applicant could add to the side, but it was an existing structure and they were only building out what is already in place. Chair Blakaitis noted that he and Member Cofield agreed with the philosophy but only because of the present conditions. Vice Chair Murray stated that the word in the ordinance is "impractical" and he thought it would be impractical to ask the applicant to do something different than what they have proposed. He thought it met the third provision. He understood that if it didn't meet the third provision, the Board cannot approve the application. He stated that he is uncomfortable with two Board members saying that they felt like it doesn't meet the third provision but are okay with it. Chair Blakaitis thought he was just stating a philosophy of what a special exception is supposed to be, but thought in this case that Vice Chair Murray is correct.

Vice Chair Murray thought the terms "unreasonable" and "impractical" are a lower bar to reach than the creation of a hardship. He thought it is more practical to put the improved space under

the existing house than it will be to increase the footprint. He thought it met the criteria for Item #2.

Chair Blakaitis asked the applicant if he is planning to enclose the entire area under the house as it currently existed or just part of it. Mike Dehus of Ken Green and Associates was recognized to speak. Mr. Dehus stated that they are enclosing the entire area under the existing house. Chair Blakaitis clarified that the applicant will be making use of the entire house in addition to what they are asking. Mr. Dehus stated that they tried to stay within the current zoning requirements and enclose only a portion of the house, but ended up creating a hardship on their part in order to create a space that is adequate for interior recreation.

Vice Chair Murray moved to recommend that Special Exception 16-002 be approved with the noted conditions and that it meet all of the requirements. Member McKeithan seconded.

Motion carried 5-0.

**Text Amendment: Proposal to Clarify the Town of Duck's Intention to Permit the Short-Term (Daily) Rental of Single-Family Residences by Amending the List of Uses Permitted in Residential Zoning Districts and the Permitted and Prohibited Use Table in Section 156.040 of the Zoning Ordinance**

Director Heard stated that on April 6, 2016, Town Council requested that the Planning Board and Community Development staff consider and address a list of concerns about land uses identified by the Council members. He explained that Council had raised questions and concerns regarding the growing number of properties being rented on a daily basis and individual rooms being rented within a single-family residence.

Director Heard stated that the Planning Board reviewed and discussed the issue for several months and developed a proposal to manage short-term rental activities in Town. He reminded the Board that they had recommended text amendments that contained two main elements: (1) clarify that the rental of single-family residences on a daily basis is permitted in Town and, (2) allow a property owner to rent up to two rooms within a residence on a daily basis, subject to a variety of conditions.

Member McKeithan asked how the Town was dealing with the issue of Airbnb or rooms within a house. Vice Chair Murray stated that the Town was not doing anything. Council Liaison Burdick stated that it was an administrative, complaint-driven situation.

Director Heard stated that at their November 2, 2016 meeting, Council held a public hearing and gave thorough consideration to the Board's proposal. He added that after much deliberation, Council expressed concerns about the potential allowances for renting rooms on a nightly basis and decided not to pursue that approach. Vice Chair Murray pointed out that Council did not want to express prohibition. Chair Blakaitis stated that it was more important. Vice Chair Murray stated that there was an implied prohibition but no express prohibition. Chair Blakaitis stated that Council didn't want to encourage or discourage it.

Member McKeithan noted that it left the Town in the position of having to enforce rooming houses and boarding rooms. Director Heard stated that it was on a complaint basis. Council Liaison Burdick explained that if someone was renting out a room in their house and a complaint was lodged, Town staff would investigate it and if the person was doing so, they would be cited. Member McKeithan thought that Council may not want to pursue the issue but he still thought it was unfair to the comments Ms. McKeithan raised during public comments in that 10% of the people living in Duck may want to legally rent out a room in their house. He didn't want that to be avoided. Council Liaison Burdick stated that Council did not want to get into the rooming house business in Duck. Member McKeithan stated that the Town already was. Council Liaison Burdick disagreed, adding that Council did not want to formally open that issue. He stated that every town was dealing with the same issue. He stated that at this point, Council has taken the step of eliminating the definition of short-term rentals so a homeowner could rent a property for one day or four days, etc. He added that the Town has opened the door for creating apartments, whether they were garage apartments or segregating a floor on a house and renting it out. He noted that the only thing Council stayed away from was individual room rentals, where someone was renting different rooms to a number of people at the same time.

Member McKeithan clarified that Council Liaison Burdick was stating that Council was trying to get away from the boarding house concept of renting out multiple rooms. Council Liaison Burdick stated he was correct. Member McKeithan pointed out that a person could still do daily rentals, Airbnb or VRBO as long as they did not break up the house to other units. Council Liaison Burdick disagreed, adding that a house could be broken up within one floor within the footprint of a house and call it an apartment. Member McKeithan stated that Member Cofield had stated that a person could rent out two bedrooms to a family as opposed to two separate people. Chair Blakaitis stated that it was just two rooms and not people. Council Liaison Burdick stated that Town Council adopted the ordinance regarding accessory dwelling units, but did not adopt the proposal for rooming houses. Vice Chair Murray concurred. Member McKeithan pointed out that Council sent everything back to the Planning Board. Director Heard pointed out that Council Liaison Burdick was referring to the accessory dwelling units. Vice Chair Murray agreed, adding that Council did not do anything with regard to room rentals. Council Liaison Burdick agreed, adding that Council did not want to do anything with them. Vice Chair Murray pointed out that they weren't prohibited or permitted.

Member McKeithan stated that room rentals were prohibited. Vice Chair Murray disagreed. Member McKeithan pointed out that the Town has to enforce that. Vice Chair Murray disagreed. He asked Director Heard how the Town deals with room rentals if a complaint is received. Director Heard stated that it was not presently a permitted use and staff would investigate by looking to see if there were advertisements or evidence to document that it was going on. He added that if it was, staff would send a letter with a Notice of Violation and the person would have to cease the activity.

Member McKeithan stated that he was trying to figure out the distinction on what Council Liaison Burdick stated with respect to a person being allowed to rent out an Airbnb to one person or one family as opposed to the boarding house concept. Council Liaison Burdick stated that if the owner had an accessory unit or if the owner rents the entire house, they could. Member Forlano pointed out that an accessory unit could be only one bedroom. Council Liaison Burdick wasn't sure that was correct. Vice Chair Murray thought it could be. Director Heard stated that

it could be but it would be a separate unit. He added that an entire unit would be rented and not renting out one bedroom in a house.

Council Liaison Burdick stated that he owns a house that has two bedrooms, a dining room and kitchen on the ground floor. He added that he could rent it out as an accessory dwelling unit because it was within the footprint of the house. Member McKeithan asked if it could be rented through Airbnb. Council Liaison Burdick stated that it could be rented through whomever he chose. Member McKeithan stated that he wasn't sure that Director Heard would not have to investigate that. Director Heard stated that how it was rented was not the issue, whether it was through Airbnb, VRBO, Homestay, etc., it was the use that would be regulated. Council Liaison Burdick stated that it was a defined, accessory dwelling unit. He added that his neighbor has a large two-car garage with an office and other things above it. He pointed out that his neighbor could convert it, if it was less than 800 square feet, into a one-bedroom apartment and rent it out as an accessory dwelling unit.

Vice Chair Murray asked if someone wanted to rent out their garage as an accessory dwelling unit, they would have to apply for a permit. Director Heard stated that they would. Council Liaison Burdick stated that Council had agreed to the accessory dwelling unit, but when they discussed rooming houses, they decided they did not want to make a decision on it. He pointed out that the draft text amendment was to clean up the problem of short-term rentals. Member McKeithan understood but was still trying to understand if the Town would have to investigate complaints and if so, what would qualify as unacceptable and would be a complaint. Council Liaison Burdick stated that if someone decided to rent a room, and it wasn't permitted as an accessory dwelling unit, then a complaint would be justified. Vice Chair Murray pointed out that an owner could obtain a permit. Council Liaison Burdick agreed. Member McKeithan asked if it was correct. Director Heard stated that it would have to be a separate, distinct dwelling unit and could not be a room in a house.

Vice Chair Murray explained that the Board was specific about keeping things small and not what requirements went into it. Council Liaison Burdick stated that it would have to have a separate entrance and parking. Member McKeithan pointed out that it was the definition of an accessory dwelling unit. He added that the Board had discussed a person renting two rooms in a house. Council Liaison Burdick stated that Council was opposed to that. Member McKeithan stated that there were other discussions about renting two bedrooms to one family unit but not two separate rooms to different people. Council Liaison Burdick explained that it has to be an accessory dwelling unit in order to do that. Vice Chair Murray added that the issue was part of the rooming house ordinance, so when Council decided not to pass it, it was discarded.

Member McKeithan stated that at one time, the Board had sent to Council that rental units could not be located in an accessory dwelling unit. Vice Chair Murray explained that it was in the rooming house ordinance, not the accessory dwelling unit ordinance. He added that Council passed the accessory dwelling unit ordinance and threw out the rooming house one. Member McKeithan stated that the Board had changed the ordinance that individual rental rooms could not be located in an accessory dwelling unit. He added that one could rent two rooms in an accessory dwelling unit to a family unit. Vice Chair Murray stated that the whole unit could be rented. Council Liaison Burdick stated that the entire accessory dwelling unit could be rented.

Member McKeithan noted that the point was that it could be rented to one renter and not two different renters taking two separate bedrooms.

Chair Blakaitis stated that he understood what Member McKeithan was discussing and trying to ensure, but he didn't think the Board was doing that. He added that what was before the Board was to eliminate some wording.

Vice Chair Murray suggested that the Board move forward with a motion. He thought Member McKeithan's concerns were separate from what was before the Board. Chair Blakaitis agreed. Vice Chair Murray asked if the text amendment was not passed by the Board, it would automatically go back to Council. Director Heard thought there would need to be some kind of response presented to Council. Chair Blakaitis stated that if the Board denied the text amendment, it left the wording in the ordinance as it currently existed. Council Liaison Burdick stated that, legally, the Town needed to remove short-term because there wasn't a definition that would stand up in court.

Member Cofield moved to approve the text amendment as presented. Member Forlano seconded.

Motion carried 5-0.

**Discussion of Potential Sign Ordinance Amendments: Initial Consideration of Concepts and a Process to Evaluate Potential Amendments to Sign Standards in the Zoning Ordinance Consistent with the Recent U.S. Supreme Court Decision in *Reed v. Town of Gilbert***

Chair Blakaitis stated that he read through the item and thought the Supreme Court had nothing on their agenda that day and to even vote on something so silly was ridiculous. He stated that he read it twice and thought it is silly. He asked if Attorney Ben Gallop was supposed to be at this meeting to guide the Board. Director Heard stated that it was an introductory discussion and there was no intention of any action being taken or going in depth to specific changes to consider at this meeting. He added that he wanted to give the Board the background and lay out the kind of things that the Board would be asked to look at.

Chair Blakaitis asked how the Board would move forward. He asked if the Board would pick individual items from the Town's sign ordinance. Director Heard stated that, before the Board's next meeting, Attorney Gallop would identify specific things that the Board and Council would need to consider. Chair Blakaitis stated that he looked at the Town's sign ordinance and could see many things that needed to be specific regarding content. He thought if the Town does nothing, it would not cause any issues. He wondered who had time to sue someone over a sign ordinance.

Director Heard stated that this issue was the difference between 50 – 60 years of decisions that supported the way that the Town's ordinances were presently written and the U.S. Supreme Court went back and threw all of it out. He explained that, in the past, the way things were interpreted by other courts was if an ordinance could differentiate different types of signs as long as they weren't specifically discriminating against a specific type of sign, an ordinance was

allowed with its own special criteria and allowances that were different from other types of signs. He stated that as long as a town treated all views equally, the Court supported it. He stated that with regard to *Reed v. Town of Gilbert*, the Court took it up a step and told them that a category could not be created for a certain kind of sign. He explained that if one had to read a sign to know what rule to apply to it, it did not meet the new decision. He further explained that if someone had to read a political sign to know it was a political sign in order to apply the standard, then it was a content based sign, which was no longer permitted under the decision.

Chair Blakaitis asked how a town would allow political signs to be posted. Director Heard stated that sign standards relating to the content/message of a sign and differing sign standards depending on the content of a sign can no longer be regulated. He added that the following signs can still be regulated: number of signs; sign location; sign height, size and dimensions, sign lighting and other physical characteristics, differences between temporary and permanent signs; and differences between signs in different zoning districts.

Chair Blakaitis pointed out that the Supreme Court had stated that they were not sure if it would work and would have to wait for future litigation. Director Heard thought it was the analysis. Member Cofield thought that all political signs and real estate signs would come under the category of temporary signs. Chair Blakaitis thought they should. Director Heard stated that the Town can create an umbrella category over all of those and set criteria that would apply to all of them. He explained that as the Board looked at it, there may be instances where the Town can be more flexible for certain types of signs than in the current ordinance. He added that there may be instances where the resulting ordinance may be more restrictive for certain types of signs. Chair Blakaitis thought all signs would be subject to severe scrutiny by the law, adding that certain ones have to be.

Director Heard stated that Attorney Ben Gallop will be at the Board's next meeting and have more direct guidance on individual things in the Town's ordinance that the Board may want to look at. Vice Chair Murray asked if the Board can have a copy of the current ordinance with items that do not fall into those categories stricken so it could be eliminated for the next meeting. Director Heard stated that they were outlined in the Board's packets, including the types of signs the Board may have to address. Vice Chair Murray suggested keeping the ordinance in an outline as ordinance specific as it may help the Board from getting confused about the "what ifs" for signs.

Member Cofield thought the Town's Seasons Greetings sign was very attractive and well done. He wondered if it was one that would potentially be outlawed but could be something that would need to be put into a certain category.

## **APPROVAL OF MINUTES**

### **Minutes from the October 12, 2016, Regular Meeting**

Member Cofield moved to approve the October 12, 2016 minutes as presented. Vice Chair Murray seconded.

Motion carried 5-0.

## **OTHER BUSINESS**

None.

## **STAFF COMMENTS**

### **Summary of November 2 and December 7, 2016 Town Council Meetings**

Director Heard gave an update on the November 2, 2016 and December 7, 2016 Council meetings to the Board and audience.

### **Project Updates**

Director Heard updated the Board and audience about Town projects.

## **BOARD COMMENTS**

Member Cofield asked for an update on the Sun Realty building and garage. Director Heard stated that staff has not received a request for a Certificate of Occupancy yet, but the project is substantially complete with no planning or zoning issues.

Member Forlano stated that he still has an issue with the idea that a homeowner cannot rent a room to a student without someone complaining to the Town. He understands that the Town is trying not to get into a situation where rooming houses are created. He stated that he would like to see Council revisit the issue with some strict guidelines to allow homeowners to rent rooms. Director Heard stated that long-term rentals are permitted but the daily rentals are not. He explained that if the room is being rented to people who are using the house as a single dwelling, it is allowed as long as it functions as a single-family residence.

Chair Blakaitis asked if Member Forlano could rent a room to a student as long as he is living in the house. Director Heard stated that he could, as long as it is functioning as a single household. Member Forlano clarified that he is not allowed to rent out as an Airbnb. Director Heard stated that he is correct. Council Liaison Burdick stated that if Member Forlano had a separate dwelling unit, he could. Member McKeithan wondered what is considered a short-term rental.

Vice Chair Murray noted that the motion the Board sent to Council at a previous meeting changed the language to individual rooms. He asked if that was the language that was received in the proposed ordinance. Director Heard stated that he made the change to the draft ordinance. Vice Chair Murray stated that he wanted to make sure it was in the draft ordinance because during the Council meeting, he made the comment to Council. Vice Chair Murray noted that the draft ordinance stated that rental rooms could not be located in accessory dwelling units.

Member McKeithan pointed out that the draft ordinance was supposed to have been modified to state: "...individual rental rooms could not be located in an accessory dwelling unit..." He wasn't sure what was presented to Council. Council Liaison Burdick stated that Council had adopted the language that was in the draft ordinance. Vice Chair Murray pointed out that Council did not adopt the draft ordinance, but sent it back to the Planning Board.

Vice Chair Murray thought the Board could have done a better job on the rooming house or Airbnb portion of the draft ordinance. He felt that the Board got hung up because it was mixed in with the accessory dwelling units since they were always discussed together. He felt that the language – “rental rooms cannot be located in an accessory dwelling unit” – was put in by Director Heard without the Board’s input. He noted that the it was a concern of Member Cofield’s that they would be commercially rented. He felt it was a concern of one or two Planning Board members but not the entire Board. He added that when the Board reviewed the ordinance at their meeting to review it, this was the one thing that Member McKeithan had emailed a comment about and he, Member Forlano and Member Cofield discussed it at that meeting for quite a while. He felt it would have been time that the Board could have spent in refining an ordinance that Council would not have rejected. He thought the issue needed to be sent back to Council.

Member McKeithan noted that the character of the Town is 90% rental and added to the support of not segregating one group regarding a commercial enterprise in a residential area. He added that it is not a residential area as the Town is 95% commercial. Vice Chair Murray agreed with the sentiment but didn’t think it served to make the case. Member McKeithan stated that Council is saying is that rooming houses are a commercial enterprise in a residential area. Vice Chair Murray agreed but thought the Board should tell Council what it is. Council Liaison Burdick stated that that reason is not why the ordinance was sent back to the Board. He explained that it was described as a rooming house and Council decided that they did not want to be in the rooming house business.

Member McKeithan pointed out that the rooming house definition has changed. Council Liaison Burdick disagreed, adding that the Board came up with the definition of a rooming house. Vice Chair Murray pointed out that the Board was guided in that direction by Town Attorney Robert Hobbs. Council Liaison Burdick stated that there isn’t anything that prohibits the Board from re-thinking the issue. He thought Council’s feeling is that they don’t want to go near the issue. He stated that if a student is renting a room in a house, it is fine, but if there was a five-bedroom house and three different people living there, it may cause issues. Vice Chair Murray noted that it is currently allowed. Council Liaison Burdick disagreed. Vice Chair Murray stated that unrelated people can live in the house for an entire summer. Member McKeithan added that they can as long as the owner is not living in the house. Vice Chair Murray stated that whether the owner lives there or not, the people can live there; they just can’t visit on a nightly basis. Council Liaison Burdick stated that it conflicted with the bed and breakfast owners and hotel/motel rooms.

Member McKeithan stated that there are no hotel/motel owners in Duck. Council Liaison Burdick disagreed, pointing out that the Sanderling Inn is a hotel. Member McKeithan stated that the Sanderling Inn had reported at the Board’s meeting that they don’t have any concern about the issue. Council Liaison Burdick disagreed. Vice Chair Murray stated that the only place that would be in competition would be with the bed and breakfasts. He hoped that the Board has the opportunity to bring the issue before Council again. Council Liaison Burdick stated that the Board needs a different approach in order to bring it back before Council, adding that rooming houses are not the way to go. He suggested coming up with another approach that will satisfy the objectives of the Board. Vice Chair Murray thought the main complaints are

from bed and breakfasts. He felt that if bed and breakfasts are concerned with unfair economic competition, the Town can limit the competition.

Chair Blakaitis pointed out that the Board was involved in accessory dwelling units and Airbnbs and had so many things to consider that they didn't know what was right or wrong. He added that now that the Board has something that Council approved in accessory dwelling units, the Board has a cleaner slate. Council Liaison Burdick suggested that the Planning Board members read over the Town Council minutes to see what each Council member had discussed and use it as a starting point for discussions.

Director Heard stated that he will look into whether the individual rooms were included in the ordinance that was presented to Council. He added that regarding the clause about accessory dwellings not being able to be rented was one of about 10 to 12 suggested items that he put in the draft ordinance with an explanation to both the Board and Council with regard to why they were things that could be considered. He added that there were things that the Board pulled out of the draft ordinance before it was sent to Council; however, the provision about not renting accessory dwellings was not one of them. Vice Chair Murray stated that the Board thought by adding to it, that they were clarifying. Director Heard stated that it was there in the other draft.

Vice Chair Murray asked how many meetings the clause was in the draft ordinance that the Board discussed. Director Heard stated that he would look into it and provide the Board with copies along with an explanation about why it was something that could be considered. Vice Chair Murray pointed out that the Board discussed the issue at length in the meetings prior to the one that Director Heard was not able to attend regarding whether or not they would provide affordable housing. He added that it was essentially dismissed each time. He suggested that it be pointed out to the Board at future meetings. Member McKeithan stated that he appreciated the Board looking at his comments at previous meetings regarding the issue.

Member Forlano asked if the issue can be brought up at the Council Retreat along with a presentation as to what the Board would like to see accomplished. Chair Blakaitis thought if it was brought up to the public, it would cause more issues. Council Liaison Burdick didn't think it was a good idea. Member Cofield noted that the Board is discussing the issue like they are all on the same page; however, that is not that case. Vice Chair Murray agreed, adding that there can be a vote from the Board. Member Cofield didn't feel that the Board is moving towards a vote at this time. Chair Blakaitis stated that there could be a consensus at any point during a meeting.

Council Liaison Burdick stated that if the Board had a new approach to the issue, maybe a better approach would be to have Director Heard bring it back to Council noting that the Board has an approach that they would like Council to consider.

Member Forlano thought Ms. McKeithan's comments earlier in the meeting were something that should be brought up at the Council meeting. Ms. McKeithan stated that she intended to speak at the Council meeting about it. Council Liaison Burdick stated that Ms. McKeithan could bring it up at any Council meeting during Public Comments.

Director Heard stated that there was a suggestion earlier in the meeting that the Board may want to consider a text amendment to look at the situation where an addition is on the ground floor as

well as the upper floors. He asked the Board if they wanted that brought forward to Council. Council Liaison Burdick suggested that the Planning Board look at it. He added that if the Board did not want to bring it to Council, he would bring it up at the next meeting. The board members opted to get direction from Town Council.

**ADJOURNMENT**

Member Cofield moved to adjourn the meeting. Member McKeithan seconded. There was no vote.

The time was 8:46 p.m.

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