

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
August 9, 2017**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, August 9, 2017.

Present were: Chair Joe Blakaitis, Tim McKeithan, James Cofield, and Sandy Whitman.

Absent: Vice Chair Marc Murray.

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

Others Present: None.

Others Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for August 9, 2017 at 6:38 p.m.

**PUBLIC COMMENTS**

None.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**Text Amendment Ordinance 17-10: Proposal to Amend Subsection 156.124(C)(1) of the Zoning Ordinance with Standards Allowing a Single Support Railing for Dune Walkover Structures within the Beach Nourishment Project Area**

Chair Blakaitis reminded the Board that the issue was discussed at their last meeting and the Board members asked Director Heard to come up with a text amendment that makes sense, as well as doing some additional research.

Director Heard stated that he attempted to outline the items that the Board discussed at their last meeting in the staff report regarding how they want to handle the ordinance. He stated that, after its discussion, the Board wished to move ahead with a provision adding it was only necessary in the beach nourishment area since it was already allowed outside of that area. He noted that it would be allowed anywhere in the areas outside of the beach nourishment area as people could do more.

Council Liaison Burdick thought the issue was closed after the last Council meeting. He thought Council stated that the long walk to the bottom of the dune and putting in stairs and such were removed. He thought it included everything and that the only thing that was discussed was in the beach nourishment area. Chair Blakaitis and Director Heard disagreed. Director Heard explained that the only place the approved ordinance applies is in the beach nourishment area; the limitations are only within the beach nourishment area. Chair Blakaitis noted that the only reason the issue was brought up is because Council had strong concerns about people getting up the dune slope. Council Liaison Burdick agreed. He thought at the Council meeting that it was discussed what to do in the beach nourishment area because the dune situation is entirely different outside of that area and the last thing the Town wants is people going up and down the dunes outside of the beach nourishment area. Director Heard stated that nothing is proposed to change in the areas outside of the nourishment area.

Member McKeithan pointed out that the provisions are unique to the beach nourishment area. Council Liaison Burdick disagreed. Director Heard stated that owners within the beach nourishment area can do what is proposed in the text amendment and owners outside the nourishment area can do all that and more – they always could. He explained that oceanfront owners have always been allowed to construct a dune walkover structure that goes down the beach. He reiterated that those standards have not changed outside of the beach nourishment area.

Council Liaison Burdick stated that the Town is focused on the beach nourishment area. Chair Blakaitis stated that the Board is talking about a single post and rail up the slope of the dune for dune walkovers. Director Heard explained that the previously adopted ordinance that did not allow them at all in the beach nourishment area, but they are still allowed everywhere else as the rules have not changed. He added that in the beach nourishment area, the Town established certain limitations and now the Board is looking at adding something back. Council Liaison Burdick thought the Board needs to refer to the minutes from the Council meeting as to what Council asked. He thought Council was talking specifically about the problem in the beach nourishment area and not outside the beach nourishment area. Chair Blakaitis stated that that is what the Board is discussing. Council Liaison Burdick disagreed. Chair Blakaitis pointed out that it stated: "...within the beach nourishment area, dune walkovers must be constructed to meet the following standards..." Council Liaison Burdick pointed out that Director Heard had stated that owners can already do that outside of the nourishment area. Chair Blakaitis stated that they can. Director Heard stated that it has always been allowed. Chair Blakaitis noted that stairs can be put in. Council Liaison Burdick stated that he is referencing the post and rail. Chair Blakaitis pointed out that there is one in the Sanderling subdivision that was approved. He added that if stairs are allowed, he sees no reason why a post and rail cannot be constructed in the other areas. He noted that the Board is not discussing it now.

Member McKeithan asked if beach access matting can be installed in an area outside of the beach nourishment area. Chair Blakaitis stated that it can be done. Director Heard stated that it can, as long as it complied with the CAMA regulations. Member Whitman noted that it is presently installed at the Ships Watch subdivision.

Council Liaison Burdick thought the objective is to protect the dunes. He added that in the beach nourishment area, it is a completely different issue. He stated that it seemed to him if the Town

is allowing other improvements instead of stairs, which was what the Town had said people needed to put in to get over the dune, and suddenly the Town allows posts and rails where people can walk on the dune, it allows what the Town is trying to avoid. Chair Blakaitis pointed out that people walk on the dunes now. Council Liaison Burdick disagreed. Chair Blakaitis stated that people walk on the dunes to get up the slope. Member McKeithan thought Council Liaison Burdick was referencing outside of the beach nourishment area. Council Liaison Burdick agreed.

Chair Blakaitis asked why this point is being discussed, adding that the Board is only discussing allowances in the beach nourishment area. Council Liaison Burdick stated that he brought it up because Director Heard made the comment that people can construct similar improvements outside of the beach nourishment area. Chair Blakaitis stated that they can. Council Liaison Burdick stated that he does not think it makes a lot of sense, as the Town's objective is to protect the dunes. Chair Blakaitis agreed. He added that he attended the Council meeting and heard Council state that the Board should discuss additional options to improve access in the beach nourishment area only. He added that the Board had an initial discussion at their last meeting and could not come up with anything that is material or important except for what is being discussed tonight.

Member Cofield thought there was discussion on it at the Board's last meeting and didn't know that the Board is moving towards recommending a text amendment. He thought the Board would just discuss the issue. Chair Blakaitis stated that it is, adding that Director Heard was asked to draft a text amendment to see what it looks like. Director Heard stated that a draft ordinance is in front of the Board for their review.

Director Heard stated that at their July 12, 2017 meeting, the Board discussed a variety of issues and options relating to providing more convenient beach access for people with limited mobility. He stated that the following issues were discussed and addressed:

1. Due to the height of the dunes, narrow width of beach accesses, and maximum slope standards for handicap ramps, it is unlikely that any community beach access will be able to accommodate complete ADA handicap access. So, the Board members focused on standards to improve access for people with lesser mobility limitations.
2. It was noted that beach access matting and planting vegetation will help guide people to stay on the beach access pathway, not disturbing other parts of the dune.
3. While helpful for keeping people on the pathway, sand fencing and post and rope structures will not provide physical support for individuals with mobility limitations.
4. The consensus of the Board was that an allowance for a single railing adjoining the beach access pathway will provide physical support for individuals with mobility limitations, while minimizing impacts on the dune system.
5. This allowance will apply to community and individual beach accesses.
6. These standards will apply only in the beach nourishment area; however, it is understood that similar improvement areas were already permitted elsewhere along the oceanfront.

7. The concept of allowing special exception applications to consider additional access solutions on individual lots was discussed, but not approved by the Board.

Director Heard noted that the Board discussed post-and-rope and sand fencing, but determined that they cannot be leaned on for support. He added that additional support is one of the intended benefits of the draft ordinance.

Member Cofield pointed out that the beach matting went beyond the end coordinates. Chair Blakaitis stated that the Ocean Pines subdivision installed the post and rope system before the Town passed the ordinance. Member Cofield stated that it was not the matting. Director Heard stated he was correct. Permit Coordinator Sandy Cross was recognized to speak. Permit Coordinator Cross noted that post-and-rope structures are not presently allowed in the beach nourishment area.

Chair Blakaitis noted that the Board has in front of them a draft ordinance that is the result of the discussion at the last Planning Board meeting, which allows only a post-and-rail system.

Member Cofield stated that he had initiated a discussion at the Board's last meeting regarding improvements outside of the beach nourishment area. He stated that he is of the opinion that if walkover structures are allowed outside of the beach nourishment area, then they should be allowed within the beach nourishment area. He noted that it has pushed him generally in favor of allowing some kind of structure. He added that consultants and experts have stated that the beach and dune may change considerably over time. He thought the recommendation was to do as little as possible. He stated that he has seen tar and black sand surfacing on the nourished area. He added that he was told that north of the pier there has been some reshaping of the beach contour. He stated that things are likely to change as the experts have suggested. He thought that in the immediate future, the Town needs to be prepared to do something when the area stabilizes. He thought if the Board is to follow the recommendation before them, that there be a provision that if the beach changes, people be required to remove the post and rail structure. He stated that allowing the construction of a post and rail system, recognizing that the area has not stabilized and change is likely to occur, is not in the public interest. He stated that if the Board is to go in the direction of allowing post and rail construction in the beach nourishment area, the Town should have a provision that they be required to move or remove the structure if the beach is not stable and the structure is considered a nuisance. He added that he isn't sure if it will put a burden on Director Heard, but thought that, knowing that changes are coming, it seems irresponsible to allow it without requiring people to remove structures should they become problematic in the future.

Chair Blakaitis asked Member Cofield what would be considered problematic. Member Cofield stated that he did not know enough to answer the question. He added that when the consultants and others who know a lot more say not to do anything now because the beach is not stable and changes are coming. He is predisposed to listen to them. He stated that if the area changes completely and all of the nourished beach is washed away with only post and rails remaining in the surf, it is clearly a condition that would require action. Chair Blakaitis pointed out that it currently occurs with beach stairs. He thought a post and rail structure would wash away pretty quickly. He added that Member Cofield is talking about the dune slope, which is probably the

last thing that would change over the contour of the beach. He thought it will be there for a long time.

Member Whitman asked how far the post and rail will be permitted from the toe of the dune. Chair Blakaitis stated that the Board can make it any distance needed, but people are considering the toe of the dune. Member Whitman clarified that it can only go to the toe of the dune. Permit Coordinator Cross stated he is correct. Chair Blakaitis stated that if the Board moves in that direction, they should limit it to at least 15 feet above the toe of the dune.

Member Cofield thought that from the Board's meeting in June, when they were discussing the issue, the toe of the dune is the beginning of the slope up. Chair Blakaitis stated that it is. Director Heard stated that one of the reasons the ordinance references the toe of the dune, rather than a specific distance is that staff had some empirical data that the exact measurements of the dune face can vary. Although the dune face was designed to be 70 feet in length, the Board may recall that John Wander had completed the measurement in anticipation of purchasing some beach access matting and that it was 75 feet in front of his area. He stated that it is one of the reasons why the more generic term is used. He noted that the toe is defined as one can easily see where the dune ends. He added that in Mr. Wander's case, 70 feet would not have gotten him to the bottom of the dune.

Member Cofield pointed out that since the length varies, the Board decided to stay away from putting a distance out on the beach. He added that Mr. Wander was comfortable with that and that he was looking for a certain number of feet at the toe of the dune. Chair Blakaitis thought that for the matting, the Town was fine with the way it was to the toe of the dune. He noted that the toe of the dune will likely change over time.

Member Cofield asked if there is a regulation regarding how deep posts should go into the ground outside of the beach nourishment area. Permit Coordinator Cross stated that within the area of environmental concern, posts for dune steps are allowed to go four to five feet deep. She noted that the flood zone and building code trigger other issues with regard to how deep a post must be placed. Member Cofield asked if the Board should include those standards in the draft ordinance. Chair Blakaitis thought it should be four feet. Permit Coordinator Cross didn't think it is necessary with regard to a post and rail system. Member Cofield stated that he is at a loss as to why the Town would enforce the rules outside of the beach nourishment area when the Board is looking at post and rails inside the beach nourishment area and not doing the same thing. Permit Coordinator Cross stated that if a stairway not constructed with properly embedded posts, it could cause someone to fall potentially seven feet.

Member Cofield asked if the Board is to pass the ordinance, whomever owns the property should be required to remove a structure should certain conditions necessitate it. He further asked if the Community Development Department can come up with criteria that state when it will be required to be removed. Director Heard stated that both can be done. He explained that the biggest change that would impact the structure will be if the dune begins to erode back toward the west. He suggested some criteria that state the post and rail structure only extend to the toe of the dune. If the toe of the dune retreats, then the structure would also have to retreat. Chair Blakaitis noted that it will put the burden on staff. He added that he did not think it should go all

the way to the toe of the dune if the draft ordinance is sent to Council. He supports allowing the least possible, which is the single post and rail system.

Council Liaison Burdick thought from a safety standpoint, the Town will want to put some limits on construction. He added that the Town has done that for dune walkovers and stairs, but it may not be same standard. He thought, safety-wise, the Town will not want people putting things on the beach and having them fall or get hurt. He noted that the Town's interest is the safety of people and that is how it will be considered. Chair Blakaitis agreed, adding that he doesn't think that the structures that are already in place have any limitations except putting the posts down four feet. He pointed out that there was a discussion regarding CAMA not allowing bottom rails that would potentially block the movement of sand or water. He added that the bottom line was that no one was discussing any new ideas.

Member McKeithan stated that he isn't sure if the Board has the expertise to put requirements on the posts and how deep they needed to be, as well as the separation. Chair Blakaitis thought the Board did and thought the Board would use common sense.

Member Cofield stated that he wants to reiterate that he was struck by the fact that change is coming. He added that if the Board moves forward now, recognizing that change is ahead, then there should be a requirement that the people remove them using wording that insists that anyone that constructs post and rail systems be required to remove it should conditions necessitate such. Chair Blakaitis agreed.

Chair Blakaitis moved to recommend approving the text amendment to install a post and rail structure with the requirement that it not extend to the toe of the dune, but stop 15 feet from the toe. If the ocean impinges on the bottom of the rail, the owner must be required to remove it. Distance between the posts should not exceed 10 feet and posts must be embedded four feet deep, with no cross pieces or bottom rails.

Director Heard stated that if the Board decides to move forward, staff can accomplish the design standards in a definition regarding post and rail structures. Chair Blakaitis thought it is a good idea. He suggested that it be worded to state that the owner will have to remove all or portions of the structure if it is somehow impacted by changes to the dune.

Member Cofield seconded.

Motion carried 4-0.

Chair Blakaitis thought this solution will satisfy the deep concerns about access that he saw at the Council meeting from some of the Council members. He thought the Board had an obligation to do something and felt that the Board finished it quickly.

**Text Amendment Ordinance 17-11: Proposal to Amend Section 156.058 of the Zoning Ordinance by Clarifying the Application Process for Stealth Wireless Telecommunication Antennas**

Director Heard stated that he had sent out an email to the Board members that they did not have to go in-depth into the proposed ordinance; however, he wished to show the Board a short slideshow to let them know what it meant by the term “stealth antenna”. He went on to show a presentation to the Board and the audience.

It was *consensus* of the Board to table the discussion and come back at a later date after Director Heard reviews the recent legislative changes and webinar that he will be attending on August 15, 2017.

Chair Blakaitis stated that it sounds similar to the sign ordinance and thought it is a good idea to have it come back at a later meeting.

Member Cofield asked Director Heard if he will be sending the Board the information on the webinar. Director Heard stated that he will forward the information to the Board.

**Text Amendment Ordinance 17-12: Proposal to Amend the Definition of “Lot Coverage” in Section 156.002 of the Zoning Ordinance by Exempting Public Sidewalks and Similar Public Improvements from Lot Coverage Calculations**

Director Heard stated that the ordinance is intended to proactively address a potential concern that will come up as a result of the Town’s upcoming project to install public sidewalks. He stated that the issue struck him as something that the Board needs to clarify and address in a manner where it doesn’t penalize property owners.

Director Heard stated that there are seven properties in the first phase of the project where the Town has requested easements from the property owners because the proposed sidewalk or multi-use paths will meander onto private property. He noted that in most cases, the reason for the easements is to avoid existing infrastructure improvements. He stated that there are storm drains in front of Scarborough Lane, Scarborough Faire and Twiddy Realty. He pointed out that, rather than spending \$10,000 to take up the drain, move it back onto their property and put the bike path in where it is elsewhere in the right-of-way, the Town is asking the owners if they will consider providing an easement where only a few feet will be impacted. He added that it will put additional impervious surface on their property, which is considered lot coverage. He stated that it doesn’t feel fair that someone would be penalized for allowing a public sidewalk, so he has proposed adding one sentence to the definition of “Lot Coverage” to address the issue.

Chair Blakaitis thought it is a no-brainer.

Member Cofield stated that he wishes to disclose that he has a personal interest in thinking that it is the right thing to do. He added that he had his property surveyed recently and discovered that the Duck Trail encroaches on his property. He noted that he will personally benefit from the ordinance amendment.

Member Whitman moved to approve the text amendment as presented. Member McKeithan seconded.

Motion carried 4-0.

## **APPROVAL OF MINUTES**

### **Minutes from the July 12, 2017, Regular Meeting**

Member Cofield moved to approve the July 12, 2017 minutes as presented. Member McKeithan seconded.

Motion carried 4-0.

## **OTHER BUSINESS**

None.

## **STAFF COMMENTS**

### **Summary of August 2, 2017 Town Council Meeting**

Director Heard gave an update on the August 2, 2017 Council meeting to the Board and audience.

### **Project Updates**

Director Heard updated the Board and audience about several Town projects.

## **BOARD COMMENTS**

Member Cofield stated that in considering recommendations to ameliorate possible traffic issues in front of Norbanks Sailing going forward, in addition to lowering the speed limit, he suggested considering street markings as well. Director Heard stated that he can discuss that concept with N.C. Department of Transportation.

Member Cofield stated that he has been struck that the Planning Board has hearings where the owner of a particular property is not present. He felt the Board is being short-changed when they do not get the opportunity to ask the owners questions. He suggested that Director Heard strongly recommend that the owners be present when their applications were being considered. He added that it is important for the Planning Board to be able to ask questions of the owners. Director Heard noted that if there is an important question that cannot be answered at the meeting, the Board has the ability to defer the matter until the question can be answered. Member Cofield thought it was important that the Board have the opportunity where they can ask the owners questions. He reiterated that it should be important for the owners to be present at the meeting. Director Heard stated that staff cannot legally require the owners to be present for the meeting because they do have the right to be represented by someone else. Chair Blakaitis stated that it is common that the owners do not attend the meetings. He added that Director Heard can emphasize to the owners that the Planning Board can defer listening to the application if they do not have an answer to an important question.

Council Liaison Burdick stated that Director Heard had raised an issue that was bothering him regarding the post and rail system. He pointed out that anyone can install a post and rail structure outside of the beach nourishment area regardless of the condition of the dune. He added that the Town is spending a lot of money and effort to protect the dunes in Duck. He thought that the Board needs to rethink how they want to apply that standard as well as the matting standard outside of the beach nourishment area, suggesting a maximum slope that people can do it as opposed to putting in stairs, which the Town is encouraging people to do. He suggested that it be looked at again and asked Director Heard to present it for him at the September 6, 2017 Council meeting since he will not be present.

Chair Blakaitis clarified that Council Liaison Burdick is asking the Planning Board to look at areas outside the beach nourishment to see if there is something better that can be done. Council Liaison Burdick agreed.

### **ADJOURNMENT**

Member Cofield moved to adjourn the meeting. Member Whitman seconded.

Motion carried 4-0.

The time was 8:05 p.m.

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