

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
June 12, 2019**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, June 12, 2019.

Present were: Chair Joe Blakaitis, Vice Chair Marc Murray, James Cofield, and Tim McKeithan.

Absent: Sandy Whitman.

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

Absent: None.

Others Present: Philip Ruckle, James Blose, and Karen Blose.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for June 12, 2019 at 6:31 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion/Consideration of the Village Commercial Development Option

Director Heard stated that he wants to review the draft ordinance with the Board members as it is the working document that the Board will be using and contains the components of a potential ordinance that the Board can look at recommending to Council regarding the Village Commercial Development Option. He stated that every section that has been changed based on the conversations and decisions at the Board's last meeting are highlighted in the draft ordinance.

Director Heard stated that at its last meeting, the Board made some key decisions that will be built upon going forward. He explained that most of the discussion was around Subsection B: *Applicability*. He stated that the Board discussed in depth what situations a person would be able to ask for a Village Commercial Development Option and what limitations would be put on the relief to be granted. He thought the items in the draft ordinance accurately reflect the decisions the Board. He added that just because the Board made the change a certain way in the draft ordinance does not mean they cannot look at it again and make more changes.

Director Heard stated that the following changes were made to #2 to read as follows: "Maximum lot coverage may be increased by no more than 10%..." He reminded the Board that for a commercial property, the maximum lot coverage would increase from 60% to 70%. He added

that this ratio is the same for what the Town allows for residential properties. He stated that the Board discussed adding in some criteria that is similar to someone having a residential property seeking additional lot coverage. He added that one thing likely to change moving forward is the 1.5-inch design storm in Subsection B(2)(a) as it will likely be larger for commercial properties than the residential standard. He will be conferring with the Town's engineer on providing greater details to the Board.

Member Cofield asked why. Director Heard explained that commercial properties already have to meet a higher standard for stormwater management. So, if an owner seeks additional lot coverage, they should meet a higher standard. Member Cofield asked why stormwater standards higher for commercial over residential if the water runs off to the ground the same way it does for residential properties. Director Heard stated that part of it is generally accepted standards. He explained that if someone is looking to obtain a State stormwater permit, there are higher standards in place for it. He stated that with regard to commercial properties, there is typically higher intensity development with more activity. Member McKeithan pointed out that the lot coverage is a factor. Director Heard added that the 60% maximum lot coverage for commercial properties creates more runoff than the 30% limitation for residential properties.

Director Heard stated that the other listed criteria are required for residential projects such as needing a licensed engineer to complete the stormwater management design. He stated that the Board had a good discussion on the maximum and/or minimum number of parking spaces with respect to how much of a reduction an applicant will be allowed to ask for. He stated that he added a cap on the minimum. He thought Member McKeithan had brought up some scenarios, particularly for a smaller project, where the applicant could potentially reduce the parking from eight spaces to three. He added that the proposed cap would only come into play for smaller projects and would limit the amount of reduction. He noted that the Board did not discuss an exact number, so the 50% is negotiable, but he put it in the draft ordinance as a number to limit the amount of reduction.

Director Heard stated that Subsection B(6) has a wording change that is not substantial, but the Board felt it better accomplishes what they are looking for. He stated that at the Board's last meeting, they had asked him to prepare the specific criteria as a point system, which is reflected in the draft ordinance under Subsection D: *Specific Criteria*. He stated that because of those changes, he had to alter C(4) to reference a scoring system. He explained that the way it is reworded to state that the applicant must, "...achieve a score of at least eight points..." He noted that there is no particular magic to that figure and thought the Board may want it to be higher, which they can consider. He stated that Council will have to make a finding that the project scores at least eight points based on the specific criteria in Section D. He added that for the purpose of discussion, he weighted a few of the criteria differently in order to give the Board an idea of what it may entail. He went on to review the point system in the draft ordinance with the Board and audience.

Vice Chair Murray asked if an applicant is wanting to achieve eight points in their design, Director Heard would counsel an applicant to have more than eight points in their proposal. He asked how it will be explained to an applicant. Director Heard stated that staff will tell the applicant that it is a minimum amount that they need to reach, but staff cannot tell them how many points they will receive for each criterion unless the Board and Town Council develop

definitive criteria. He added that he will advise the applicant to achieve as many of the criteria as possible as it will make it a better project that will be more favorably received.

Member Cofield thought the mixture of uses including accessory residential (owned or long-term lease) is something that the Board recognizes and agrees is an admirable quality. He stated that other jurisdictions have a similar objective and the way they achieve that is by having income limitations on the rental of those units. He stated that to just have “residential” does not achieve the objective without some kind of income consideration. Director Heard agreed, adding that the Town’s attorneys would likely advise that even the “long-term lease” wording is not enforceable. He explained that the Town can approve a residential unit but cannot control ownership or significantly limit how it is used. He stated that the only way to accomplish what Member Cofield is suggesting is establishing a housing program similar to many large communities where subsidies are provided and lease rates are a contractual matter. Member Cofield agreed. Director Heard stated that it is a much more complicated way of doing things. Member Cofield stated that he is not arguing against this provision but stating that what is in the draft ordinance does not realistically achieve the objective that the Board to create long-term rental units.

Chair Blakaitis asked if the Board has a consensus that they wish to keep the point system in the draft ordinance. Vice Chair Murray stated that he is generally uncomfortable with going from zero requirements to requirements, but thought he is outnumbered on that issue. Chair Blakaitis asked if the Board keeps the point system, is it okay with Vice Chair Murray. Vice Chair Murray stated that it is better. Member McKeithan and Member Cofield stated that they are in favor of the point system. It was *consensus* of the Board to keep the point system in the draft ordinance.

Member Cofield asked if Goal #4 in the staff report was pulled from the Land Use Plan. Director Heard stated that the listed goals and objectives are verbatim from the Land Use Plan.

Director Heard stated that he is challenged by how to fairly and effectively deal with existing properties. He stated that he wants the Board members to take a close look at the standards and think about how certain existing properties can meet the point system requirements.

Vice Chair Murray asked about existing conditional use permits under the Village Commercial Development Option that requested amendments, similar to what the Board had at their last meeting. Director Heard stated that if the applicant had an approved project and came in for an amendment a year later, if changes to ordinance were adopted in that period in between, then the amended proposal will have to comply with it. Vice Chair Murray clarified that only the amended part will need to comply. Director Heard stated he was correct, adding that under the proposed VCDO, they will have to show that the project as a whole meets the criteria for the points. Vice Chair Murray noted that the applicant at the last meeting had certificates of occupancy for two buildings of a three-building project. He asked if he would have to go back and include characteristics of those two completed buildings with the third building. Director Heard thought the property would be looked at as a whole. He reminded the Board that the VCDO is only for someone asking for relief, not for someone coming in for a change in use and not every conditional use permit. He noted that it could potentially come up if there is a change of use where there is no intent to change anything on the site except a use which kicks in a higher

parking requirement that the applicant cannot accommodate on the site, so they would be asking for relief.

Chair Blakaitis asked if the Town has the flexibility to use any of the approaches that would have been used with the original system that is in place. Director Heard stated that the Town would not if the draft ordinance is adopted. Member Cofield clarified that the application will have to fall under the Village Commercial Development Option. Director Heard stated that it will if the applicant is requesting relief from the parking requirements. Member Cofield asked if the applicant is seeking a change of use that will require more parking, it will have to be considered under the Village Commercial Development Option, not as an amendment or change to the conditional use permit for the project. Director Heard stated that the application is a change as it is an amendment to the conditional use permit. Vice Chair Murray clarified that the applicant will have to apply for a special exception under the new ordinance. Director Heard stated he is correct.

Vice Chair Murray pointed out that under the current ordinance, the Town has a lot of discretion, but under the proposed ordinance, the Town would have significantly less discretion to give relief to an applicant asking for something that may be reasonable. He added that trying to deem whether something is reasonable or not is much easier on a case by case basis than on a scoring sheet. Chair Blakaitis stated that Vice Chair Murray has a good point. Director Heard stated that there are ways that the Board can potentially address this issue. If it was something that the Board likes, staff can draft standards concerning when the criteria kick in, such as “only for new construction”. He added that there could be another lesser level of criteria for a change of use. Member Cofield suggested a change of use that is above a certain level, such as 20% of the property.

Director Heard noted that it appears that there is some interest related to new projects but not so much for smaller type projects. He asked if it is something the Board wants to consider. Chair Blakaitis stated he wants it considered as he felt it gives the Board more flexibility. He doesn't think the Board should develop a hard and fast rule. He felt there needs to be some flexibility. Vice Chair Murray agreed.

Vice Chair Murray stated that he does not want to create an environment that discourages change or riding a building into the ground when it is past its useful life because it has some zoning benefit. Member Cofield thought it could apply to new construction as well. Council Liaison Britt didn't think the Town will want to have standards making it difficult to make significant changes to projects or to fill spaces. Chair Blakaitis concurred that flexibility is needed.

Vice Chair Murray asked if it makes sense to review the list. Chair Blakaitis stated that it would. Director Heard stated that the Board completed everything in the draft ordinance through Subsection B but will be reviewing it at the Board's July meeting.

Vice Chair Murray stated that C(3) under *General Findings* has caused some debate – “The site is of adequate size and configuration to accommodate the scale and layout of the proposed development.” He felt that this concern is addressed with lot coverage in that the applicant either makes it or they don't. He wasn't sure if it should be stricken or if there is a compelling reason to change it. Director Heard thought the argument for it would be that if the Board or

Council is reviewing the project and comes to the conclusion that the applicant is trying to squeeze too much on to the property, it provides rationale for denying the application – it is intended to address that type of scenario. Vice Chair Murray commented that it seems arbitrary to him. Chair Blakaitis thought it took care of itself if the applicant meets the other requirements, but it is also a flag if the proposal does not meet other requirements. He didn't think it is necessary to keep.

Vice Chair Murray suggested striking C(3) from the draft ordinance. Member Cofield asked if the only way around the lot coverage requirement is to go before the Board of Adjustment. Chair Blakaitis stated that it isn't. Member Cofield asked if the Planning Board can grant it. Director Heard stated that the draft ordinance will allow the Board to grant lot coverage relief. Member Cofield thought C(3) should remain in the draft ordinance. Member McKeithan stated that he is in favor of striking it from the ordinance. It was *consensus* of the Board to strike C(3) from the draft ordinance.

Vice Chair Murray felt that the Board could not discuss C(4) in depth with regard to the number of scores required until they go through the list and are comfortable with the weighting issue. He added that it will have to be revisited. Member Cofield asked that the Board give a little more thought to a couple of the items. He stated that the Board had discussed in depth the idea of preserving what exists in Duck. He stated that, for him, that goal includes preserving historic structures and other features. He noted that it is one of the stated goals of Duck and more weight should be given to something that preserves historic features. He thought preserving significant trees and vegetation can be something to which the Board gives more weight.

Chair Blakaitis thought the Board should review the numbering system in order. He and Vice Chair Murray agreed with Member Cofield regarding the historic structures. Chair Blakaitis asked about the mixture of office/commercial/institutional uses. Vice Chair Murray stated that he is fine with it as it is. Chair Blakaitis asked about the residential uses. Director Heard stated that long-term rental can be suggested but likely not enforced. Member Cofield stated that if it cannot be enforced, more weight should not be given to it. Member McKeithan agreed. Vice Chair Murray stated that it isn't totally a lost cause in the sense that it is market driven to a degree. If the stock of one to two-bedroom dwellings is increased, eventually it will outstrip the demand for Airbnb's. Director Heard noted that the majority of recent residential conversions, such as those at Barrier Island Station, are four-bedroom apartments that are being solely rented out as long-term rentals and have been successful. He added that commercial districts are one of the logical places for these type of rentals as it can be an intense use with a lot of activity.

Chair Blakaitis clarified that mixed uses should be left as is. Vice Chair Murray thought it is good to be left as is. Director Heard stated that with regard to accessory residential, there may be some consideration given to how much. He explained that the way it is set up currently in the draft ordinance, an owner would receive two points whether they add a one-bedroom apartment or eight two-bedroom apartments. He asked if the Board thinks there needs to be greater weight given to the provision of more units. Vice Chair Murray noted that that the higher the density, the more likely it will be used for the intended purpose. He wasn't sure about the best scoring system to capture the number of units. Director Heard stated that he will draft something for the Board's consideration.

Chair Blakaitis directed the Board to review Building Design. Vice Chair Murray stated that he is uncomfortable with the ranges but felt the Board could become more comfortable as they are discussed. He noted that he does not want things to be arbitrary but isn't sure how to remedy that during this discussion. Chair Blakaitis asked why design guidelines are in the draft ordinance when the State has said that municipalities cannot control the architectural design of buildings. Director Heard stated that municipalities cannot control architectural design for residences but can for commercial uses. Vice Chair Murray wondered if it should be in a subsection. He asked if there are enough elements in the commercial design guidelines to score that or if it is cumbersome. Director Heard thought there are enough design elements in the existing ordinance. He stated that he can provide it to the Board for their reference.

Vice Chair Murray stated that he likes the one and two points as it makes more sense. Chair Blakaitis asked Vice Chair Murray if he agrees with the points. Vice Chair Murray felt that for the commercial design guidelines, the Board may want to expand the number of points as it gives an applicant something to check off.

Chair Blakaitis directed the Board to look at the building location category. He noted that it may overlap somewhat with building design. Director Heard explained that building design is the architecture of the building itself. He noted that there is some overlap between this and the pedestrian friendly and bicycle friendly categories because if a building is located closer to a sidewalk, the owner will potentially receive points for both of those categories. He stated that the other aspect is preserving important site features which may involve double dipping in terms of trees and vegetation. He explained that if an owner is preserving a significant Live Oak, then they may receive points in multiple categories. Member Cofield thought trees and vegetation is important to preserve.

Vice Chair Murray asked how an applicant presents the preservation of one tree over others. Director Heard stated that in most instances, there will be some subjectivity to the decision. He explained that an applicant needs to make a reasonable attempt at doing something that meets the criteria. He stated that staff understands if the entire site is comprised of Live Oaks, then it makes it undevelopable if nothing is removed, which is not the Town's intent. In that situation, the applicant should attempt to design the site in a way that limits the number of trees removed and saves the most substantial trees. He stated that it will be a decision that the Board and Town Council has to make as to how far an applicant has to go to meet the criteria. Vice Chair Murray pointed out that in the Applicability section, the Town limits the amount of relief that can be given for building setbacks. He added that if a developer came before the Board asking if he can reduce his side setbacks to one foot, the adjacent property is a CenturyLink building, and the Live Oak can be saved - the Board can no longer allow that trade-off. Member Cofield stated he is correct, adding that there are some trade-offs that an owner/applicant will make as well as some that the Board does not want to allow. He stated that there have to be some standards. Chair Blakaitis agreed.

Vice Chair Murray asked how an applicant would present minimum lot coverage. Director Heard stated that the applicant could come in and say he is using permeable pavement and explain the ways they are trying to address the criteria. Chair Blakaitis thought it is important for the Board to consider one to two points for it. He thought it is more important than some of the

other items since it stands out. It was *consensus* of the Board to make lot coverage worth up to two points.

Vice Chair Murray asked if the Board can create a percentage of parking under Parking Areas. Director Heard stated that the more the Board defines something, the less flexibility they have, but if the Board knows exactly what it wants, it would be best to define it. He stated that there can be different ways to go about achieving that goal. Vice Chair Murray suggested taking a different approach for different sides of a street in relation to noise. He stated that while there is a compelling interest to have buildings close to the street, there is also a compelling interest to utilize the soundfront. He added that the Town can encourage soundside businesses to tie into the boardwalk, just like the Town wants them to tie into the sidewalk. It was *consensus* of the Board to explore this concept further.

Member Cofield noted that there is Roadside Bar & Grill as well as Duck Deli, while on the other side of the road is the Blue Point Restaurant. He added that the Blue Point's orientation toward sound means that the noise doesn't travel toward a residential neighborhood. Vice Chair Murray thought the Town wants to encourage that to continue. Member Cofield agreed.

Vice Chair Murray thought Pedestrian-Friendly could be worded as follows: "A connection of the same width..." He thought "convenient" is subjective, but the connection should be the same width as the connecting sidewalk or bicycle path. He added that he does not want someone to make a connection that is 18 inches wide as that isn't a functional concession. He added that they may want to keep it as small as possible due to lot coverage concerns. He stated that if they make the connection, they should get the point. Chair Blakaitis and Member McKeithan agreed. Vice Chair Murray stated that the same should apply for the bicycle path.

Member Cofield thought there could be same type of permeable surface such as what Duck Deli has in their parking area, as opposed to having a solid concrete walkway. Vice Chair Murray agreed, adding that it would still be prorated coverage and is a percentage reduction for permeable surfaces. Director Heard pointed out for commercial it is not presently a reduction at all but is a reduction for stormwater management calculations. Chair Blakaitis asked why permeable surfaces isn't one of the criteria in the draft ordinance. Director Heard stated that it falls under lot coverage. He added that it is fairly general in the draft ordinance since it is one of several ways for someone to minimize lot coverage and enhance stormwater drainage filtration. Chair Blakaitis thought if it is specifically mentioned, applicants will be drawn to it. Director Heard stated that if it is a criterion that the Board feels is important, it can be added as a new category.

Vice Chair Murray pointed out that if the Board wants to encourage permeable pavers or parking of any sort, the Board needs to give a lot coverage credit for it because it costs about three to four times as much as conventional concrete. He added that if the lot coverage is counted the same way, the applicant has no incentive to do it unless they are applying for a State stormwater permit, which means that they disturbed more than an acre, which would rarely happen inside the Village Commercial zone. Member Cofield stated that gravel can be used, which was less expensive. Vice Chair Murray stated that it will still count as coverage. Member Cofield understood the additional costs and is agreeing that credit should be given. Vice Chair Murray

noted that in certain applications gravel is fine, but compared to a permeable paving surface, he isn't in favor of it.

Director Heard stated that it is an issue outside of the parameters of what the Board is discussing in dealing with the Village Commercial Development Option, but the Board can let the Town Council know that it is an issue of importance and worth looking at creating some allowances to encourage that type of development. Vice Chair Murray thought it is a good idea. Director Heard stated that staff will draft something for the Board to review before it goes before Town Council.

Chair Blakaitis directed the Board to look at the Bicycle-Friendly criteria. Vice Chair Murray thought it was covered already.

Chair Blakaitis agreed and directed the Board to review Connections. Vice Chair Murray stated that connections between two properties is pretty straightforward and no changes are needed. Chair Blakaitis agreed. Vice Chair Murray stated that the way the Waterfront Shops and Stan White Realty's driveways are connected is great. He added that it would be even better if they had also tied it in around the rear, but that would have cost the applicant and there needs to be some incentive. He wasn't sure if the Town should offer another point. He added that he cannot think of any other instance where it would be possible to have two 20-foot wide drive aisle connections between adjacent commercial properties, so it is a moot point. Vice Chair Murray asked if there has to be some separation between a second connecting drive. Director Heard stated that it is internal to the properties, so there are not the same separation standards as for streets. He noted that the reason for driveway separation on the street is to limit curb cuts on NC 12, but that is not an issue for internal connections. Chair Blakaitis pointed out that no one will do it anyway because they don't have the space.

Chair Blakaitis directed the Board to look at Trees/Vegetation. Vice Chair Murray asked if this is a one-point item and the applicant saves two trees, would they receive two points. Director Heard stated that was not his intent in the draft, but the Board can set it up that way. Chair Blakaitis directed the Board to look at Historic Preservation. Vice Chair Murray agreed with Member Cofield's earlier suggestion that it receive more weight. Chair Blakaitis agreed, adding that he recommends putting one to two points in the draft for consideration.

Chair Blakaitis directed the Board to look at Public Amenities. Director Heard stated that he thought about scenarios for existing properties and these are the ways that those properties can comply, whether it is a change of use from one thing to another or a small addition where the applicant can pick up points by improving the property. Vice Chair Murray thought that if it is just a change of use, there should be a lower score requirement. Director Heard added that the Board has discussed looking at those situations differently. He stated that it is one of the reasons why he considers a weighted approach as something that existing properties can achieve. Chair Blakaitis thought the Board may not need a list, but Director Heard should list the types of public amenities that may qualify since the questions will be asked. Director Heard stated that the Board can be definitive about only allowing certain amenities or keep the list of suggested amenities, which is how it is currently worded. Chair Blakaitis pointed out that since there are points involved, Director Heard needs to know what it will be. Director Heard stated that unless

the Board is defining it, it will be subjective. Chair Blakaitis thought it may need some further thought. He wasn't sure it should be worth two points.

Chair Blakaitis directed the Board to look at Public Infrastructure. He asked if this criterion is redundant. Vice Chair Murray thought it seems like more serious investments on the part of the applicant. Director Heard agreed. Council Liaison Britt stated that the Fire Department had put in a fire hydrant on his property, but by Code it wasn't necessarily required, but he did it anyway. Chair Blakaitis asked why the fire hydrant was installed. Council Liaison Britt stated that the fire department wanted it and it made sense to serve the properties, but he had to pay for it. Chair Blakaitis asked why Council Liaison Britt had to pay for it. Council Liaison Britt stated that it is how it works. Director Heard pointed out that the same thing was done for the restaurant at 1184 Duck Road. Member Cofield noted that it is common.

Chair Blakaitis asked if the Board needed to review Section C(4). Vice Chair Murray thought the Board is going to discuss whether to keep the total at eight points or not. He thought Director Heard will be making so many changes to the table that it doesn't need to be discussed at this time. He noted that the remaining draft ordinance continues to refer to the Village Commercial Development Option application. He added that because it is changing to a special exception, this will have to change as well before the ordinance is adopted. Director Heard stated that the Board is changing the process to a special exception thought the current draft is the most appropriate way to refer to it.

Director Heard asked if the Board wants him to highlight the changes from this meeting. Vice Chair Murray suggested highlighting and underlining the changes from this meeting. Chair Blakaitis agreed. Director Heard stated that he will do that. Vice Chair Murray suggested that the yellow highlighted areas in the draft ordinance remain as such and then underline the changes that were made at this meeting. Director Heard stated that there will be some significant changes related to adding another level of criteria for things that are not considered significant projects. Member Cofield suggested a percentage change. Vice Chair Murray asked if it should be a percentage of size change or percentage of value. Member Cofield opined that it should be size. Director Heard stated that he prefers size over value as it is more consistent and measurable. Member Cofield agreed.

Director Heard summarized that the Board eliminated one of the findings and staff has a handful of things to tweak under Specific Criteria to include other ideas the Board wants incorporated into that. He stated that they will be the main changes the Board will be looking at for their July meeting. Member McKeithan clarified that Director Heard will also be looking at a possible change of 1.5-inch designed storm. Director Heard stated that he will.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Minutes from May 8, 2019 Regular Meeting

Member Cofield moved to approve the May 8, 2019 minutes as presented. Member McKeithan seconded.

Motion carried 4-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of June 5, 2019 Council Meeting

Director Heard gave a short update on the June 5, 2019 Town Council meeting to the Board and the audience.

Project Updates

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

BOARD COMMENTS

Chair Blakaitis asked for a status report on the development at 1166 Duck Road. Director Heard stated that the property owners at 1162 and 1166 Duck Road are working together to achieve something significant for both of them. He explained that they bought the property between them and divided it with one third going to the property to the south and two thirds went to 1166 Duck Road. He added that the swimming pool has been moved to another location where it is better suited. He stated that 1162 Duck Road has received final approval for their pool and improvements. He added that 1166 Duck Road involves a significant renovation to the house in addition to moving the pool and building the bulkhead. He stated that it is a substantial project being constructed in phases.

ADJOURNMENT

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

The time was 8:12 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman