

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
December 10, 2008**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices at 6:30 p.m. on Wednesday, December 10, 2008.

Present were Chairman Jon Britt, Vice Chair Joe Blakaitis, Ron Forlano, John Fricker and Claiborne Yarbrough.

Absent: None.

Also present were Director of Community Development Andy Garman, Permit Coordinator Sandy Cady and Council Liaison Dave Wessel.

Others Present: Olin Finch.

Absent: None.

Chairman Britt called to order the Regular Meeting of the Planning Board for December 10, 2008 at 6:32 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Final Review of Renewable Energy Survey

Director Garman stated that he had incorporated all of the comments that were provided by Member Fricker's son. He stated that a few formatting changes were made and thought the present survey form could be incorporated into the Town's newsletter. Vice Chair Blakaitis asked if it would be on the Town's website. Director Garman stated it could be put on the web if the Planning Board wished to have it there as well as in the newsletter. Member Yarbrough asked if the web survey program builds a database behind it. Director Garman stated it would. Member Yarbrough asked if the paper responses would be compiled with the electronic ones to have one (1) database. Director Garman stated it could be done that way or they could be kept separate. He added that he wasn't sure the exact survey would be put into the electronic survey program. Member Fricker asked Director Garman if he had a preferred recommendation for the survey. Director Garman stated it should be done in a format. Member Yarbrough agreed and felt it shouldn't be something that causes more work for staff. Director Garman thought the paper copy of the survey would reach a broader audience than the electronic one.

Vice Chair Blakaitis felt that the paper surveys would not be returned if citizens had the option of filling it out on the web. Member Yarbrough thought there could be a link on the website

regarding the survey for people to access. She suggested an email to the subscriber list with a link to the survey. She further suggested that if a paper copy is sent out, it should have a postage paid option so people could mail it back to the Town. Director Garman stated that was a good suggestion, but wasn't sure the Town could do one with the postage paid so people could send it back. He noted that the Town has to pay a fee for the bulk mail permit when they send out large mailings.

Chairman Britt felt the key was to keep it as easy as possible and suggested having a note included with the mailing letting people know they can fill the survey out online instead of mailing it back in. He asked the Board if they were happy with the actual survey. Member Yarbrough thought it was great. Council Liaison Wessel suggested changing questions 23, 28 and 30 from "check all that apply" to "circle all that apply".

Vice Chair Blakaitis asked if the Town should allow a wind turbine to exceed the maximum height limit of thirty-five (35) feet. He wondered if it was confusing in that a person may interpret it to read that the Town allows wind turbines, but the maximum height allowed was thirty-five (35) feet. He thought it should be clarified so people know that the maximum height was for buildings or structures. He asked if question 2 was clear regarding paying more for renewable energy. Director Garman stated that the question was designed to gauge how strongly someone felt about renewable energy. Council Liaison Wessel suggested the question be reworded to say; "...would you be willing to pay..." Vice Chair Blakaitis stated he would strike the whole question, but had no objection to leaving it on the survey.

Member Fricker suggested adding a phrase; "...apart from the cost of installation..." He felt that the question did not talk of the cost for start up. Member Yarbrough stated it was not worth putting in. Vice Chair Blakaitis thought the survey was good but thought it should be shorter.

Member Forlano suggested clarifying the structural height for question 21. Director Garman stated he would make the change. Chairman Britt suggested putting in Council Liaison Wessel's suggestion of "...would you be willing..." for question 2.

Director Garman stated he would go ahead and try to get the survey worked into the electronic survey format as well as having it as an insert in the newsletter.

Chairman Britt asked if there should be something in the survey that would state when it needs to be returned so the results could be presented at the Council Retreat. Director Garman noted that the Retreat will be held February 18 and 19, 2008. He stated he would have to find out when the newsletter would be going out but thought he would have some preliminary results from the electronic survey for the Retreat.

Vice Chair Blakaitis asked if the newsletter was sent out using a set schedule. Director Garman stated that staff tries to do it on a quarterly basis.

Vice Chair Blakaitis stated that he noticed at the Kitty Hawk meeting that they were going to allow wind turbines on rooftops in certain zones. Chairman Britt stated that he walked away from the meeting thinking that it would be a long time before the technology would be affordable. Vice Chair Blakaitis asked if the roof top turbines were expensive. Member Forlano

stated that they were in the \$60,000 range for a 10 kilowatt unit. He added that there were problems with the weight of the unit and most roofs not being able to hold a unit of this weight as it would need steel girders. He felt it was not very practical in that there were no bearings and it was all magnetic so the units would be well engineered for what it would cost. He noted that the speaker glossed over the price. He felt it would be a buyer beware type of issue. Chairman Britt noted that the manufacturer of one of the rooftop units was based out of Canada. Member Forlano stated that they would work best on a pitched roof and was designed for new construction and not existing. Director Garman noted that the Kitty Hawk ordinance was looking to allow roof top units up to sixty (60) feet but did not specify any other restrictions.

Vice Chair Blakaitis asked if there would be an item on the agenda each month regarding renewable energy. Director Garman stated that he was under the impression that the Board would wait for the survey results. He thought there were a few things the Board could start working on.

Member Yarbrough asked if the survey results would be used to obtain input from Council regarding their expectations. Chairman Britt didn't think that was the case. Member Forlano thought there wasn't a clear directive from Council yet. Member Fricker thought the Board reviewed the past minutes and received a clear directive. Member Forlano agreed. Member Fricker noted that the Board was supposed to move forward on not just wind, but any other type of alternative energy. Vice Chair Blakaitis agreed. Chairman Britt agreed with Director Garman that the Board should move forward once the survey results come back.

Director Garman stated that by looking at the Town of Kitty Hawk's draft ordinance, there were items the Board could work on that would not require much from the public or surveys. He noted that the survey would help the Board with setbacks and height restrictions. Member Forlano had a concern with the Kitty Hawk ordinance, mainly with the issue of waiving the neighbor's rights. He wondered what would happen to a future landowner and felt it would be creating a nonconforming condition that would be passed on to future landowners. He stated that he did not like the idea that a neighbor could waive a condition. Chairman Britt and Vice Chair Blakaitis agreed.

Director Garman stated that at the next meeting he would have a very preliminary ordinance for the Board to start dissecting. Chairman Britt stated that he was content to get the survey results first and then move on from there.

NEW BUSINESS

Discussion of Electronic Message Board Signs and Vehicle Signs

Director Garman stated that the issue was referred to the Board by the Town Council at their November 5, 2008 meeting. He thought the direction from the Council was that the Board should come up with definitions to prohibit electronic message board signs. He asked the Board if it was their understanding as well. The Board agreed it was. He stated that there were several different ordinances in the Board's packet that dealt with electronic digital signs. Director Garman thought that a lot of the ordinances helped the Board define the different components they would want included in the definition.

Member Fricker thought the bullets detailed in the memo were pretty clear. He felt that if they were tied together, it would give the essence of what they were trying to accomplish. Director Garman agreed. He thought some of the ordinances were either too general or too specific and since the Town was not permitting any of the types of signs, the Board would not have to discuss light levels and districts. He stated that there would just be a place in the sign ordinance under "Prohibited Signs" that would refer to the definition.

Chairman Britt suggested that Director Garman write up something for the electronic message board sign. Director Garman stated that he would draft a definition for electronic message board signs with the four (4) bullet points and bring it back at the Board's January meeting.

Director Garman stated that he had researched several ordinance definitions for vehicular signs. He noted that one was from the Town of Cary but that he did not like the term "parked along the roadway", as he could see it being challenged. He wondered if it meant being parked in parking spaces along within a certain distance of the roadway or in view of the right-of-way. Member Fricker thought the language the Board would want was that the vehicle would be parked so it was conspicuous from the roadway.

Member Forlano thought the Board could treat the signs like the ones in courtyards, as long as they are not discernable from the sight of view. Member Fricker thought the difference was that a sign was normally in a fixed location, but a sign on a vehicle could be moved to a number of locations. He thought making it discernable would be going too far unless there was an out. Chairman Britt thought it would be an enforcement headache.

Member Yarbrough thought it would be better to address the size of the sign and not the location. Chairman Britt agreed. Director Garman clarified that if the sign was over ten (10) square feet, they would not be allowed. Chairman Britt stated that the Board was discussing items that would be enforceable. He thought there may be a way to phrase in the ordinance that vehicle signs could be allowed but they could not be parked adjacent to the roadway if it's above a certain size. Director Garman stated that he could define an actual distance based upon mapping the areas in Town. Member Fricker stated he would prefer the ordinance to state: "...any vehicular sign larger than ten (10) square feet must be parked in the least conspicuous place relative to Route 12..."

Director Garman pointed out that Ocean Atlantic Rentals has a large truck that they park in the back corner of their lot and do not park it to maximize its visibility. Chairman Britt agreed. Vice Chair Blakaitis asked about the vehicles that are used as signs but the people drive them back and forth to work. Chairman Britt stated that this is where the size comes into play. Director Garman explained that the Board was focusing more on where the vehicle would be parked and less on what it would be used for. Chairman Britt agreed.

Member Fricker felt the phrase; "...adjacent to Duck Road..." was ambiguous and harder to enforce as opposed to the phrase "...as far from Duck Road as reasonably possible". Chairman Britt agreed. Staff stated they could do some research on distance versus adjacent by doing some mapping and visual aids to help come up with a reasonable distance.

Member Forlano referenced the City of Bloomington's ordinance regarding vehicles that remain parked after normal business. He felt that would be an issue if it is permitted in Duck. Chairman Britt noted that cargo trailers have logos on them and felt they should be addressed in the ordinance.

Director Garman noted that some shop owners attach things to vehicles to draw attention such as Christmas lights or neon signs. Chairman Britt stated he would like to leave that issue alone at this time. Member Yarbrough didn't think the Board could do anything at this time about it.

Director Garman stated that staff would do an analysis using mapping software to come up with a standard for the distance as well as coming up with examples of what certain area restrictions would be.

Discussion of Vertical Additions to Non-Conforming Structures

Chairman Britt stated that the item was brought to his attention by Steven Nolan and he wished for the Board to discuss it.

Director Garman stated that the issue was a recent project that was presented to staff where a homeowner had an existing uncovered deck they wanted to extend and cover a portion of it with a roof. He added that the surveyor drew the setback line in the rear yard at twenty (20) feet. He noted that the house was in the Poteskeet subdivision and that staff had seen several instances like this in the subdivision. He stated that the issue was that the setback was twenty (20) feet, but in reality the Town's setback was twenty-five (25) feet in the rear yard. He noted that when the house was built, the ordinance at the time stated that a nonconforming structure which was encroaching into a setback would allow a vertical addition if it was a heated space. He added that if it was an unenclosed deck, the owner could only add another unenclosed deck above or below it. He stated that the ordinance was changed in 2004 to allow vertical additions to the heated space of structures that do not increase the footprint. He wondered if the Board and Town Council would want allow flexibility to allow a screen porch or a roof over a deck if it was encroaching in certain conditions.

Chairman Britt asked if the Board wanted to allow a deck to become a covered screen porch as opposed to an enclosed heated space. He thought that was what the Board needed to think about. Director Garman went on to review the history on why the Town encounters these type of situations and how Dare County dealt with lots that were less than 15,000 square feet before the Town incorporated.

Member Fricker asked if the Board was to approve a roofed screened in porch on a property, would there be a lot of other owners that would want to do the same. Member Forlano stated that there were many properties the Board could be looking at in the future with different scenarios but with the same basic idea. Director Garman pointed out that decks do not count as lot coverage. Member Fricker asked if the Board approved Mr. Nolan's request, would it limit the lot coverage. Chairman Britt noted that the Board was not discussing one (1) specific house, but were discussing whether or not to allow it. Director Garman stated that the lot coverage would not be the same.

Chairman Britt thought the question was whether the Board wanted to allow a deck to become a screened porch. He thought the Board needed to be specific on it. Director Garman pointed out that the property owner asked if they would be eligible for a special exception to allow the roof over the deck, but because the ordinance was so specific, he didn't see how staff could recommend approval to the Board of Adjustment when it was clearly not allowed by the Zoning Ordinance. Vice Chair Blakaitis asked if the ordinance would have to be changed. Director Garman stated it would.

Member Yarbrough clarified that staff was recommending the Board ask Town Council to allow them to review the issue. Director Garman stated that staff wasn't, but that he was just putting it before the Board for discussion. He thought one of the big questions was what the difference was between a roofed screened porch and a deck. Member Fricker stated that he thought there was a big difference. Chairman Britt disagreed and stated that he didn't see a lot of difference. Member Fricker asked if the Board would have to be willing to amend the ordinance in all instances to permit it. Director Garman stated they would.

Member Fricker stated that he was opposed to amending the ordinance. Vice Chair Blakaitis didn't think it was a question of whether it looked more imposing because it would be covered, but whether the Town would allow properties to go up and cover them. He stated he was on the fence on the issue. Member Forlano stated he wasn't sure how he felt about the issue. Member Yarbrough thought if the Board drafted something specific to allow screen porches, it should be allowed. Chairman Britt agreed with Member Yarbrough's comments. Vice Chair Blakaitis stated that based upon the Board's discussion, he did see a problem with amending the ordinance.

Director Garman stated that Mr. Nolan could apply for a Zoning Text Amendment. He noted that the discussion was one out of courtesy to him.

Chairman Britt stated that he agreed with Vice Chair Blakaitis and Member Yarbrough's comments. He stated that he does see problems with it and noted that the Board was split on the issue and should leave it alone. Member Forlano stated that he was opposed to amending the ordinance. Member Yarbrough stated that she could see potential for other problems. Chairman Britt stated that he did not see any reason to recommend the issue to the Town Council or to discuss it further. Director Garman stated that he would contact the property owner to advise him of his options.

APPROVAL OF MINUTES

Planning Board Meeting October 8, 2008

Chairman Britt stated that the Board did not approve the minutes at the last meeting and asked for a motion.

Member Fricker moved to approve the minutes as presented. Vice Chair Blakaitis seconded.

Motion carried 5-0.

Planning Board Meeting November 12, 2008

Chairman Britt directed the Board to review the minutes from the November 12, 2008 meeting.

Member Fricker had one change to Page 3 of the minutes.

Vice Chair Blakaitis moved to approve the minutes as amended. Member Fricker seconded.

Motion carried 5-0.

OTHER BUSINESS

Chairman Britt noted that the Town Council Retreat would be held on February 18 and 19, 2008.

STAFF COMMENTS

Council Liaison Wessel noted that there was a beach nourishment seminar on December 11, 2008. He encouraged members of the Board to attend.

Director Garman stated that he had attended a meeting regarding a beach and inlet management plan.

BOARD COMMENTS

None.

ADJOURNMENT

Chairman Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 8:13 p.m.

Approved: _____
Jon Britt, Chairman