

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
May 12, 2010**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices at 6:30 p.m. on Wednesday, May 12, 2010.

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

Absent: None.

Also present were Director of Community Development Andy Garman and Permit Coordinator Sandy Cady.

Others Present: Council Liaison Chuck Burdick.

Absent: None.

Chairman Britt called to order the Regular Meeting of the Planning Board for May 12, 2010 at 6:33 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion of Policies/Ordinances Related to Renewable Energy (Solar)

Director Garman gave a short overview of an email from Town Attorney Hobbs regarding specific statutes on municipal regulations pertaining to solar collectors. He presented the Board with a rough draft ordinance for their consideration based upon comments received from the April 14, 2010 meeting. He stated that there was concern expressed with regard to ground placement of solar collectors from a safety standpoint. He stated that the Board had in their packets some background information on them. He stated that there was limited concern over visibility from public rights-of-way or adjacent properties. He stated that he tried to take that concern into consideration when drafting the ordinance. He thought there was a preference of roof top over ground mounted installation based on comments from the last meeting. He added that there was some interest in providing incentives with regard to lot coverage and setbacks. He suggested that the Board review the different sections of the draft ordinance and provide comments.

Council Liaison Burdick stated that the Board would be considering two solar systems – one being for heating water and the other for electric. He thought there was a substantial difference in safety quality due to the electrical issue, adding that solar water heating systems were benign.

He thought the Board may want to consider those two systems. He pointed out that if an owner had a ground mounted system, they could not be screened or it would defeat the purpose of the system. He stated that he has solar collectors at his homes and never had any complaints from his neighbors regarding them and added that they were so dark in color they didn't give off a reflection. He reiterated that the Board may want to think about the systems as two pieces instead of one, even though other ordinances do not treat them as such. He asked Vice Chair Blakaitis to comment on the solar panels.

Vice Chair Blakaitis agreed with Council Liaison Burdick's comments regarding the systems being benign. He thought Council Liaison Burdick's comment regarding screening may not be 100% correct in that the ordinance spoke of a fence. He thought one could be put around the panels without interfering with their effectiveness. He noted that there were two types of systems but did not think they needed to be separated. He thought they should be referred to as a whole, calling them solar energy systems and have somewhere in the ordinance a definition of the two systems. He thought the Board could add additional cautions around the differing types.

Member Fricker noted that there were solar panels on the roof of a house on Duck Road near Widgeon Drive. He asked if they were used to generate electricity. Vice Chair Blakaitis stated that they would not if there was just a single panel. Member Fricker assumed the panel was not used for heating water, but generating electricity. Director Garman noted that it could be for hot water. Vice Chair Blakaitis agreed.

Chairman Britt clarified that the Board wanted to review the draft ordinance the same way they have reviewed past ordinances. He stated that he was leaning towards blanket safety guidelines that would cover everything.

Chairman Britt directed the Board to review Definitions in the draft ordinance. It was *consensus* of the Planning Board to keep the language in the ordinance regarding definitions and types of systems permitted in the zoning districts.

Chairman Britt directed the Board to review Height in the draft ordinance.

Member Fricker asked what one would gain or lose by placing a system no higher than the ridgeline of the house. Vice Chair Blakaitis didn't think it made a difference. He added that it depended on the manufacturer and the location of the solar panels.

Member Fricker pointed out that since it would not be an architectural feature, there would be no reason to put it in the same category as chimneys or cupolas. He added that if it was not negatively impacting the efficiency, then why let it go above the height limit. Vice Chair Blakaitis thought there wasn't a reason to let the systems go above the peak of the roof. He added that they should be kept at 3 feet or have it eliminated completely. Member Fricker stated that he did not want to see solar panels sitting past the height limit. Director Garman noted that 3 feet above the existing roof plane provided enough flexibility.

Council Liaison Burdick stated that because solar panels were mounted in order to attract sunlight, they would need flexibility with regard to height.

Member Fricker asked what the 3 feet was referring to in the draft ordinance. Director Garman stated that it was the distance between the plane of a roof and the solar panel itself. Member Fricker stated that if one wanted to tilt something parallel to the roof line, up 30 degrees, the highest point of the solar panel should not exceed the ridgeline of the home. Chairman Britt pointed out that the draft ordinance had that language in it. He agreed with Member Fricker's comments and liked the height definition.

Member Forlano asked what the case would be with a flat roof that was at the maximum height limit. He clarified that solar panels could not be put on that roof. Chairman Britt wondered if an owner of a home with a flat roof could come in for a Special Exception. Member Fricker asked if an owner did not have any room on their roof because their height limit was reached, the panels could be ground mounted. Vice Chair Blakaitis stated that they could not. Member Fricker thought that a Conditional Use provision would be needed in that type of situation. Chairman Britt thought if the homeowner maxed all of their options, there would not be anything else they could do. Vice Chair Blakaitis didn't see why there couldn't be some sort of exception for flat roofs. Director Garman and the Board went on to discuss special exceptions for flat roofs. He recommended putting in some criteria to specify existing houses and added that he would come back to the next meeting with some special exception language.

Chairman Britt directed the Board to review location and placement in the draft ordinance. Director Garman asked if the ten foot setback for ground mounted systems was ok. Vice Chair Blakaitis thought it was more than enough. Member Fricker asked if the panels were constructed in a variety of sizes. Vice Chair Blakaitis stated that they were. The Board discussed having the height of the panels no higher than ten feet. Director Garman noted that a fence could not be constructed higher than six feet in residential districts. He added that it would not screen the panels.

Council Liaison Burdick asked if the Board wanted to screen the panels for safety or aesthetics. Member Fricker stated they wanted to do both. Director Garman thought it was primarily an aesthetic concern with regard to limiting the fence to 10 feet in height. Council Liaison Burdick pointed out that the panels could not be screened effectively whether they were five feet or fifty feet from the ground. Director Garman stated that the Board was not discussing screening, but the height of the panels.

Director Garman asked if the ten foot limit was ok or if it should be lower. Chairman Britt and Vice Chair Blakaitis were fine with the ten foot height limit. Member Fricker thought it depended in part on what the Board decided to do with the setbacks. Director Garman and the Board went on to discuss the location of where solar panels would need to be installed for oceanfront homes.

Member Forlano suggested using ground mounted panels for hot water and pools only. He further suggested that the ground mounted panels would not be able to be used for any other use. He stated that it would eliminate any issues with regard to privacy, fences and safety fences. Director Garman thought there could be a distinction between the two types of systems based on safety. He thought it was defensible distinction to make. Chairman Britt thought if it could be defended, it was a good idea. Member Gilbreath agreed.

Member Fricker stated that he had issues with Member Forlano's suggestion because of the potential of precluding people of their options. He stated that he would rather leave the options open recognizing as a practical matter that a homeowner may not want a solar system on the ground. He reiterated that he did not want to preclude them. Chairman Britt agreed with Member Fricker's concerns. He added that he liked where Member Forlano was going but thought the Board should stay out of the specifics.

Director Garman asked how the Board felt about setbacks. Chairman Britt thought the systems should stay within the setbacks. The rest of the Board agreed.

Council Liaison Burdick asked if an owner could apply for a variance if they have a problem. Director Garman stated that it would be hard to prove that setbacks would be a hardship. Chairman Britt agreed. Council Liaison Burdick stated that he could envision not being able to install a system without changing the setbacks. Director Garman stated that if an owner had a pool in their rear yard and wanted to install ground mounted panels for solar hot water, it would be hard. He added that it was all about the choices. The members of the Planning Board agreed.

Chairman Britt noted that all the Board had discussed was not changing the height as it was considered a strong aesthetic value in Duck. He added that the Board also discussed setbacks. He stated that those were places where the Board would not be willing to make an exception. Director Garman agreed.

Council Liaison Burdick suggested reducing the rear yard setbacks to allow a consistent situation. Members Forlano and Fricker were opposed to Council Liaison Burdick's suggestion. Vice Chair Blakaitis did not see any reason why the Board could not modify the rear yard setback. Director Garman and the Board went on to discuss setbacks.

Chairman Britt directed the Board to review Fencing. He read the portion of the ordinance that dealt with fences to the Board and audience. He asked if there was a building code that dealt with them. Member Fricker wasn't sure but he had seen them in other model ordinances. Vice Chair Blakaitis suggested that the systems be split. He thought that if it was a solar hot water heating system, a fence would not be needed. Director Garman asked the Board if they wanted him to come up with a definition for solar PV and solar hot water to make a distinction and then the Board could make a decision on whether fencing would be necessary. It was the *consensus* of the Planning Board to have Director Garman come up with the definition.

Chairman Britt directed the Board to review the lot coverage section of the ordinance. Council Liaison Burdick thought that 500 square feet for a 10,000 square foot lot was very adequate. Vice Chair Blakaitis agreed. Director Garman noted that he had seen other ordinances that allow up to 20% coverage, which he thought was too much. He noted that lot coverage was not just permeable, but also physical development.

The Planning Board asked Director Garman to bring back more information on lot coverage. Director Garman stated that he could do some more research on typical installations and what the systems would generate. It was *consensus* of the Planning Board to not count the solar systems as lot coverage. Director Garman noted that the Board was leaning towards the first option, and after research on safety and output, a decision could be made whether the systems should be

allowed on the ground and what be a reasonable restriction would be on the area they could cover, such as 500 square feet or a percentage of the lot size with a minimum guarantee.

Chairman Britt directed the Board to review Structural Installation Requirements. Member Fricker noted that the last line in the ordinance read: "...any system shall be installed by a qualified solar installer..." He asked how that was determined. Director Garman stated that he could check with Building Inspector Tate and come back with a good definition.

Vice Chair Blakaitis noted that solar installations were not complex. He thought by restricting an owner from putting them in on their own was not right, as long as the Town had a method to inspect them. Director Garman asked if the language should read: "...all solar photovoltaic in each system shall be installed by a qualified solar installer unless the system is to be installed by the property owner..." Vice Chair Blakaitis thought it should read: "...or owner subject to inspection by the Town of Duck..."

Director Garman and the Board went on to discuss permitting requirements. It was *consensus* to leave that section alone in the ordinance. Council Liaison Burdick asked if there should be shutdown procedures included in the ordinance. Member Fricker suggested separating Part A and Part B – hot water systems and photo voltaic.

Chairman Britt asked if any member had other changes that Director Garman would need to be brought back at the next meeting. Member Fricker thought the decommissioning language on the solar systems should be the same as they are for wind turbines.

Member Forlano stated that he downloaded an article where it stated that it would be very dangerous to fight a fire at a house with the photo voltaic system. He added that the article stated that so much power was stored in the panels and was known to cause major electrical problems. Member Fricker thought if Fire Chief Black was consulted about it, it could be the deciding factor on whether the systems should be on the ground or on the roof. Chairman Britt stated that he would discuss the issue with Fire Chief Black.

NEW BUSINESS

Discussion/Consideration of CUP 10-001, a Conditional Use Permit Application submitted by Joseph and Lisa Goetschius, to Permit a Formula Business as Defined in Town Code Section 156.061 to be Located at 1171 Duck Road, within Suite D-6 of the Scarborough Lane Shoppes.

Director Garman stated that not all members of the Board were present when the Conditional Use Permit was discussed for The Fudgery. He noted that this new application was very similar to that one. He went on to give a short overview of the ordinance to the Board with regard to allowing a formula business in Duck. He stated that the Flip Flop Shop met the criteria for formula businesses. He stated that staff felt it was a routine matter that should be approved.

Vice Chair Blakaitis clarified that the signage met the Town's signage regulations. Permit Coordinator Cady stated that it was a pre-existing sign permit and met the regulations. Vice Chair Blakaitis did not have any issues with the application.

Member Fricker moved to recommend approval to the Town Council, Conditional Use Permit 10-001 for the Flip Flop Shop and in doing so, the Planning Board makes the findings set forth in Ordinance Section 156.061 (D). Vice Chair Blakaitis seconded the motion.

Motion carried 5-0.

APPROVAL OF MINUTES

Planning Board Meeting April 14, 2010

Chairman Britt directed the Board to review the minutes from the April 14, 2010 meeting.

Member Fricker had one modification to Page 2 of the minutes.

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

Motion carried 4-0.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

Member Fricker and the Board commended Director Garman for writing an excellent grant proposal for the northern extension of the boardwalk.

Chairman Britt asked what was done with regard to the Wings store. Director Garman stated that they have not re-applied.

ADJOURNMENT

Chairman Britt moved to adjourn the meeting. There was no second.

Motion carried 5-0.

The time was 7:48 p.m.

Approved: _____
/s/ Jon Britt, Chairman