

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
September 8, 2010**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices on Wednesday, September 8, 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: Olin Finch of Finch and Company.

Absent: Council Liaison Chuck Burdick.

Chairman Britt called to order the Regular Meeting of the Planning Board for September 8, 2010 at 6:35 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Consideration of an Ordinance to Regulate Solar Energy Systems

Director Garman stated that there was one outstanding item that was discussed at the last meeting that dealt with the placement of the solar panels in the side yard of a property when the property is on a corner lot. He stated that language was included in the ordinance that would limit the placement of solar panels to the rear of the front plane of the dwelling unit, but corner lots were not addressed. He stated that he added language to Subsection 2A that addressed that issue.

Olin Finch of 116 Sandy Ridge Road was recognized to speak. Mr. Finch asked how solar panels that looked like fences would apply with regard to the ordinance. Member Fricker stated that if they were a solar energy system, they would need to meet the setback requirements. Director Garman and the Planning Board went on to discuss solar fences.

Member Fricker stated that he would like to tighten up the definition section of the ordinance. He suggested including "a solar energy system" to two of the definitions to make it clear that they were subsets of the more generic term. He suggested the following language: "...the total conformance in subsystems of a solar energy system that..." Chairman Britt felt the same

language should be in the second definition as well. Member Fricker thought the second one should read: "...a solar energy system that converts..." He suggested the following language in Part 2A to read: "...and to limit adverse impacts of such systems on..." He suggested that Part e 2 (b) be changed to read: "...for utility interactive photo voltaic systems: a copy of the approved interconnection agreement with the local utility." He suggested striking "...shall be provided..." and add a semi-colon. He suggested striking "shall be sealed" and adding a comma for Part 2A (c).

Member Forlano asked how new products would be handled if they were contradictory to the ordinance. Director Garman stated that if it didn't meet the ordinance, then it would have to be approved based on the existing ordinance.

Member Fricker moved that the Planning Board recommend that Town Council adopt proposed Ordinance 10-10 as amended. Vice Chair Blakaitis seconded.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of Town Ordinances related to Variance/Exceptions to Height Regulations

Director Garman stated that the Town Council had reviewed a height variance application at their August 4, 2010 meeting that was submitted by Town Manager Layton to allow a proposed cupola on the new Town Hall Building that would exceed the Zoning District height limitation of 35 feet. He stated that at the conclusion of the matter, the Council had agreed that the Town should review its procedures and criteria for approving height exceptions and/or variances. He went on to review the issues that were noted at the Council meeting with the Planning Board and audience. He noted that he had included in the Board's packets ordinances from other communities that deal with similar situations, adding that they were referred to as exceptions rather than variances and were handled administratively.

Vice Chair Blakaitis wondered if Council was making things too complicated. He wondered if designating a board to hear the exception and changing the language in the existing ordinance would solve the problem. He didn't see any need to make a lot of changes in the ordinance as it was not doing the Town any harm. He thought Director Garman made a good point about exceptions versus variances. Director Garman thought the Board may want to consider how to make the applications more consistent.

Member Gilbreath thought that since the Town received an exception, it could be assumed that it would be the standard from now on. He thought there should be a limit on the height. Director Garman explained that the application the Town presented included findings for the Council to apply based on the circumstances of the application. These circumstances included how the cupola related to building it would be attached to, the purpose of the structure, how the structure relates to the remainder of the property, and how the structure relates to adjacent properties. He didn't believe this approval was something that the Town would not grant to any other commercial business that applied under similar circumstances. He thought the issue with the

ordinance was that the criteria for granting approval of these features does not exist which presents a problem for future boards to make decisions that are consistent and fair.

Vice Chair Blakaitis asked if the Board should address the fact that it should make it more of an administrative function or designate the Board of Adjustment to hear the exception requests. Director Garman stated that if it was handled administratively, it would eliminate the ability to look at each request on a case by case basis, and require a set of objective and strict standards that would have to be met. Chairman Britt agreed with Director Garman's comments.

Member Fricker asked what the Board should consider first – changing the language from variance to special exception; deciding on which body should do the fact finding; or considering the standards that would apply. He thought that Director Garman was suggesting that the Board should discuss which body should be doing the fact finding. He stated that if that was where Director Garman wished to begin, then he thought it appeared that Council had mandated that the Planning Board should find that the Board of Adjustment should be the body. He wondered why it should be the Board of Adjustment and not the Planning Board. Director Garman stated that the Planning Board discusses items that typically go before the Council.

Chairman Britt thought Council sending this issue to the Planning Board was a knee jerk reaction from what happened at the Council meeting with regard to the variance application that was approved for the cupola. He agreed with Member Fricker that these applications should come before the Planning Board. Member Fricker thought it was a logical choice.

Director Garman suggested that regular height variance requests could be left to be handled by the Town Council. Height exceptions for architectural features should be included in a separate section of the ordinance and referred to as such. He stated that it could be listed in Section C under Variances in the ordinance and then rewording the existing language for all other exceptions to the height limit. Chairman Britt stated that he liked Director Garman's suggestion.

Member Forlano thought that anything classified as an architectural feature should not be handled as a variance since hardship could not be proved on an architectural feature. Chairman Britt agreed. Member Fricker noted that the Council did just that with their application. Director Garman disagreed and stated that it was presented as a height exception for an architectural feature and not a variance.

Chairman Britt stated that he liked the idea of creating exceptions and if there was a true variance, it could be handled by the Board of Adjustment, but clear exception language should be crafted. Director Garman suggested changing Section A so that all exceptions to the height limit for certain architectural features or other features would be handled by the Planning Board and Town Council like a typical exception with more specific findings. He further suggested creating another section for exceptions to height limitations for all other zoning districts to be handled by the Board of Adjustment. He noted that it would just be for exceptions and not variances.

Member Forlano asked Director Garman if this would put the Town Hall before the Board of Adjustment. Director Garman stated that it would. Member Forlano asked why. Director Garman stated that it was what Council had asked. Member Fricker wondered if that was the

case, then the Planning Board would be wasting its time considering something and the Council did not want it that way. He thought the Board had an independent obligation to decide what was best.

Member Forlano asked if it was pointed out to Council that architectural features should not go before the Board of Adjustment. Director Garman stated that the features are considered the way the ordinance was written. Member Forlano disagreed and noted that the Town could not prove a hardship with the cupola. Member Gilbreath noted that the Board of Adjustment would have no recourse but to deny the application. Member Forlano agreed and added that no board could prove a hardship on any cupola. Director Garman stated that for an architectural feature, it would not need to be termed as a variance. He added that if it was an exception and went before the Board of Adjustment, they would not be bound by the same hardship standard.

Member Forlano asked if exceptions went before the Board of Adjustment. Director Garman stated that the rules were changed with the quasi-judicial procedures ordinance to have most of the exceptions handled by the Planning Board and Town Council. He noted that it didn't preclude the Board of Adjustment from hearing certain cases.

Member Gilbreath asked how it would have been handled if Sunset Grill & Raw Bar had asked for the same type of variance with regard to Council asking the Planning Board to look at the ordinance language. Member Forlano thought it would be opening things up to everyone. Director Garman thought it was open to everyone to begin with. He stated that if Sunset Grill came in with the same request, they would have to make an application under the provisions of the draft ordinance and would be filed with the Board of Adjustment. He thought it would be reviewed the same way the Town's application was reviewed.

Chairman Britt pointed out that the loophole with the Town's application was because of the zoning classification of the property. Director Garman agreed. He pointed out that the language had permissive statements in the ordinance for the Board of Adjustment. He added that the existing ordinance was not written very well, but was written with regard to the intent versus other regulatory issues.

Member Gilbreath asked if a cap on the height limit should be included in the ordinance for certain features. Director Garman stated that the Board could come up with a cap if they found that one was necessary.

Vice Chair Blakaitis asked how a cap could be defined on a 62 foot high structure such as the Duck United Methodist Church's spire. Director Garman stated that one would have to look at the use of the building, the function of the structure as well as a number of other things before it could be approved.

Member Fricker felt the Council was trying to usurp the Planning Board by changing the procedure from a variance to an exception and have it handled by the Council directly. He thought it was a slippery slope that would be traveled. Director Garman stated that the Council was trying to take the procedure out of its hands. Member Fricker noted that Council made it difficult for anyone to successfully argue against a new height limit. He stated that he was in favor of restricting and making it a needed hardship by keeping it a variance. He stated that he

did not want the Town to turn into buildings that were flat roofed with air conditioning units, water tanks, flag poles and antennas. He added that he wanted to maintain the residential look. He felt that the overall height of a structure should be kept to a minimum of 35-40 feet. Director Garman and the Board discussed the staff report from the Council meeting as well as why some features were specifically called out in the existing ordinance.

Member Forlano felt that the word “variance” should be changed to “exception” in the ordinance and the rest of the ordinance should be left as is. Vice Chair Blakaitis asked if changing “variance” to “exception” would change the tone of the ordinance. Member Fricker thought that it would substantively change how the ordinance would be implemented. Chairman Britt noted that exceptions were basically allowed uses.

Chairman Britt asked if the intent of the ordinance was that it was never to be viewed as a variance to begin with. Director Garman thought that relative to the features in Part A and B of the ordinance, the intent was to keep it as an exception so that a hardship standard would not be applied. Chairman Britt felt that Council should have sent the ordinance back to the Planning Board before they heard the variance request on the Town Hall cupola.

Member Fricker noted that the Board would never make any decisions without caring about what the history of mistakes have been in the past. He stated that the Board can only decide on reasonable goals; what should be in an ordinance to meet the goals; and what could be done that will be easily implemented. He suggested that Director Garman come back with a new presentation that tried to address the inconsistencies in the existing ordinance at the Planning Board’s October 13, 2010 meeting. Chairman Britt suggested that Director Garman come back with a matrix of exception versus variance requirements.

Director Garman asked the Board if an exception should apply to architectural features. He thought the goal of the Council and the Planning Board should be to come up with a standard that could apply to everyone fairly. Member Fricker stated that his personal view was to take out transmission towers; smoke stacks; conveyor and radio/television antennae out of the ordinance if it was handled elsewhere and leave only the run of the mill architectural items. He stated that he would treat commercial, Town property and all areas identically and anything beyond that would have to be handled through the Board of Adjustment. Chairman Britt thought Member Fricker’s suggestion would keep things simple. He added that he liked the suggestion.

Director Garman stated that he would come back with an ordinance that referred to specific architectural features and apply it as an exception in all zoning districts. He added that anything above 5 feet in any district would be handled by the Board of Adjustment as a variance request.

APPROVAL OF MINUTES

Planning Board Meeting July 14, 2010

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

Chairman Britt had a correction to Page 1 of the minutes.

Member Fricker had a correction to Page 3 of the minutes

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

Motion carried 4-0.

OTHER BUSINESS

Overview of Oceanfront Development/Beach Policy Discussion

Director Garman stated that there were areas in Town that suffer from erosion and over the past few years, several structures had to be relocated because of it. In these cases homeowners have had to obtain parking/setback exceptions and/or height variances to accomplish these relocations. He stated that the charge from the Council was for the Planning Board to look at ways the Town may be able to facilitate these requests by including administrative standards in the ordinance to deal with height and setback issues for that are commonplace when oceanfront homes are relocated. He also indicated that these relocations are much more favorable than temporary stabilization methods that may otherwise be utilized such as sandbagging or beach pushing/filling.

Chairman Britt clarified that the idea was to try to make it easier for owners to relocate as opposed to using sand bags and beach pushes. Director Garman stated he was correct. He went on to review the issue with the Board.

Director Garman suggested coming up with some exemptions to the regulations in the case where a homeowner was moving their house to the west. He noted that the 25 foot front yard setback limited how far owners can move their homes. He suggested considering a reduction in the front yard setback in the cases of homes affected by erosion.

Member Forlano asked if sand bags were legal on the beaches. Director Garman stated that they were. Member Forlano asked if permission was needed from adjacent properties to sandbag a property. Director Garman stated that permission wasn't needed, but an adjacent property owner notification would need to be sent out. He noted that sandbag permits are issued by the State and are considered a temporary erosion control method. Director Garman stated that he would come back at the Board's next meeting with more information on the issue.

STAFF COMMENTS

None.

BOARD COMMENTS

None.

ADJOURNMENT

Member Fricker moved to adjourn the meeting. There was no second.

Motion carried 5-0.

The time was 8:41 p.m.

Approved: _____
/s/ Jon Britt, Chairman