

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
November 10, 2010**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices on Wednesday, November 10, 2010.

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

Absent: Member Randy Gilbreath.

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

Others Present: None.

Absent: None.

Chairman Britt called to order the Regular Meeting of the Planning Board for November 10, 2010 at 6:35 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

None.

NEW BUSINESS

Oceanfront Development/Beach Policy Discussion

Director Garman noted that the discussion would be a multi-part one with this discussion dealing more with the zoning side of the issue and then discussing the beach policy side for a future meeting. He thought the Board could start with the issue of height and added that in the Board's staff report he had presented some cases that dealt with this issue. He explained that when a house that was originally built on a slab at 35 feet high is relocated, new requirements would come into play for it to be constructed on a wood foundation. He stated that it would not only have to meet the two foot free and clear of obstruction requirement that the Town adopted in 2007, but the new floor system would have to be accounted for. He stated that the question before the Board was whether they wanted to consider a height exception to account for the additional one foot required for the elevated floor system.

Member Fricker thought it had been done already. Director Garman stated that several cases were approved that way through height variances. He added that the current rules allow oceanfront homes to be built to 37 feet since the first two feet (free and clear of obstruction) are

not counted towards the height. Member Fricker asked if the two feet accounted for the floor joists. Chairman Britt stated that it accounted for the free and clear of obstruction area. Director Garman went on to review the free and clear of obstruction requirement with the Board.

Vice Chair Blakaitis asked if the 35 foot height limit was still being enforced with new homes. Director Garman stated that it was but that it was 35 feet from the two foot free and clear of obstruction line. Member Fricker clarified that an owner could build a 34 foot high home. Chairman Britt stated that he was correct. Member Fricker asked why there were variance situations that allow 37 feet as opposed to 36 for the height. Director Garman stated that there was only one variance case that was considered prior to adoption of the free and clear of obstruction requirement, which allowed the owner to have 38 feet for the height.

Council Liaison Burdick asked if the free and clear of obstruction requirement should be considered just for relocated houses or for all houses. Vice Chair Blakaitis thought it should apply to any oceanfront home. Member Forlano disagreed and thought it should be for the houses that have to be moved. He didn't think the two to three feet should be given for new construction. He thought the houses should be designed so that they stay within the 35 foot limit. Director Garman noted that they are already given two feet. Member Forlano agreed but questioned whether it should be given to them for new construction. Chairman Britt explained that it was there to help Building Inspector Tate clear up any judgments he would have to make regarding the Town's Flood Damage Prevention Ordinance. Director Garman stated that when the ordinance was discussed, there was a consensus to codify the free and clear of obstruction requirement and not count this area towards the overall building height.

Member Fricker understood that the Board had been asked to address whether the Town wanted to give incentives to those who need to move a house because of erosion. He added that he understood the rationale for needing to do so since the alternative would be the Town having to clean up the beach if the house fell into the ocean. He stated that he was in favor of doing something that would provide an incentive for those who must relocate to alleviate erosion concerns but not for new construction.

Member Forlano stated that he was thinking about the equality issue in order to level the playing field. Chairman Britt thought reducing the height limit would encourage ugly rooflines with new construction. Director Garman indicated that in previous discussions the intent was to allow people to meet the new free and clear requirement and achieve the same overall structural design as was previously allowed. Chairman Britt agreed. Member Forlano stated that he had no problem helping those that have homes that were in danger and needed to be moved. He felt they should be given as much leeway as possible, but not for the ones that buy a tear down and want to take advantage of the three feet. Chairman Britt stated that they would not be taking advantage of it since the additional three feet was mandated. He agreed with allowing leeway for owners that need to move their homes due to erosion. Vice Chair Blakaitis pointed out that a new house built on the ocean could do the same thing. Member Forlano agreed.

Chairman Britt clarified that the Board was in agreement that language should be created to allow the extra height necessary to accommodate the free and clear of obstruction requirement and a 12-inch wood floor system for relocated oceanfront homes without requiring a variance. It was *consensus* of the Board to have the language drafted. Chairman Britt asked if the Board was

in agreement with regard to leaving new construction as is. Director Garman noted that it would be a difference of one foot. Chairman Britt stated that he was in favor of leaving it as is.

Member Fricker asked how much one foot could affect the pitch of the roof of a house. Director Garman stated that new construction should have no problem designing to meet the 35 foot requirement. He stated that he would craft language to address the additional foot for relocations.

Director Garman and the Board discussed parking for homes that were moved due to erosion. He stated that the question before the Board was whether there were instances where administrative approval would be recommended such as a reduction of certain setbacks.

Member Fricker stated that he liked how other ordinances allowed tweaking administratively but only to the extent that was necessary. He noted that there was a range of discretion that the director could exercise, which he liked. He thought it would be useful to prioritize things. He wondered what items the Town would most want to preserve in a forced move due to erosion. He thought height was the top priority but asked what the second priority would be – setbacks or parking. Vice Chair Blakaitis thought one may become more important than the other depending on the lot. Chairman Britt thought it would be difficult to come up with the priorities since the lots were all different shapes. Vice Chair Blakaitis agreed with Chairman Britt's comments.

Chairman Britt agreed that the issue should be dealt with on a case by case basis. He suggested working on a carrot approach, but thought it should come before the Board instead of being handled administratively since there would not be that many. He further thought the Board could handle the cases without being overwhelmed.

Director Garman and the Board discussed setbacks for oceanfront homes. Chairman Britt asked the Board if they were in agreement in the case of relocations that they be dealt with on a case by case basis and not be handled administratively. Vice Chair Blakaitis thought that parking and setbacks should be kept on a case by case basis. Chairman Britt thought there should be as much flexibility as possible. Member Fricker agreed. Director Garman stated that in the case of an ordinance for relocations, the Planning Board or Town Council could spell out if they wanted to consider specific items with regard to relocating a house. Chairman Britt stated that he liked an ordinance that would do that.

Member Fricker agreed with everything that had been discussed, but had an issue with putting pools in the setbacks. He asked if it could be one of the specific items that could be considered. Director Garman stated that higher regulatory standards could be adopted through the zoning ordinance. He noted that allowing pools in the setbacks would be opening a can of worms. Vice Chair Blakaitis noted that if the Board was going to consider it, there would be cases where pools would have to be removed from properties.

Chairman Britt asked at what point something would be enacted to allow relocation of the pools. He stated that it needed to be defined as to what would trigger the use of the ordinance. He thought it should be very clear.

Director Garman and the Board discussed the relocation of pools in the setbacks and sandbags for oceanfront properties. Director Garman noted that pools that aren't allowed in the setbacks

would seriously affect the way a homeowner thinks about the design of their home since they would have to make adjustments to bring the pool out of the setbacks.

Chairman Britt noted that the Board needed to stay on track. He added that the Board was in agreement that with a relocation there would be special exceptions to accommodate a move and that it should not be completed administratively. Member Fricker agreed. Chairman Britt asked what would trigger it. Director Garman stated that the Town of Nags Head has an ordinance that helps to facilitate relocations. He added that it stated that the standard could be applied when a house was threatened by erosion and that the home could not be enlarged. He noted that the Town of Nags Head's ordinance stated that the house had to be in imminent danger of collapse. Chairman Britt suggested leaving the language vague for primary structures, but exclude pools or accessory structures.

Director Garman stated that he would come up with an outline of the special exception ordinance that talks about the reason why it was being done, the intent and what it spoke to as far as the ability to reduce setbacks, primary structure setbacks and other factors when a primary structure would need to be relocated due to erosion. He added that one of the findings could be that a special exception would not be granted to accommodate the use of an accessory structure located in the setbacks.

Council Liaison Burdick stated that the issue from realtors was the preservation of oceanfront properties. He thought there may be questions with going too far with the accessory structure issue. He stated that he didn't want it to be difficult for people. Member Forlano stated that it was not the Board's intent and that if the homeowner had the room on their lot, they could move the accessory structure. Chairman Britt agreed.

Director Garman and the Board continued their discussion regarding sandbags to protect oceanfront homes. Chairman Britt asked the Board if they wished to continue the discussion at their next meeting. Member Fricker and Vice Chair Blakaitis stated that they did. Director Garman stated that if the Board wished to see the sandbags on the beach in Nags Head, a mid month meeting could be held during the day and they could take a trip there. Chairman Britt stated that he did not need to take the trip. Council Liaison Burdick stated that he would like to take the trip. Director Garman stated that by taking the trip, it would give the Board a sense of what Duck could be facing in the future. Director Garman went on to show the Board photographs of the beach in South Nags Head that have sandbags.

Member Fricker thought time was of the essence with regard to allowing sandbags to be put in for a house that was imminently threatened. Chairman Britt stated that he did not know previously that the Board could pass a Town ordinance to prevent sandbags. He added that it had the same effect as bulkheading for a soundfront property. Member Fricker stated that the issue was a sufficient charge from the Council to allow the Board to consider it. He wondered if there could be something like a moratorium that would ban sandbags. He asked how soon Council could consider it.

Chairman Britt asked if the Board held a mid month meeting, they could provide something to Council in time for their December 1, 2010 meeting. He further asked if a moratorium could be issued on something that is not currently regulated. Vice Chair Blakaitis stated that an ordinance amendment could be done. Council Liaison Burdick pointed out that it only gave the Town

approximately six months. Member Fricker stated that the Board would only need one to two months. Director Garman stated that if the moratorium was for less than 90 days, there would need to be a seven day advertising timeframe before the public hearing, and for a longer moratorium, there needed to be a 14 day timeframe.

Chairman Britt stated that the Board had the justification to ask for the moratorium since the Town Council had asked them to review the issue. Member Fricker stated that if the Board had a mid month meeting, it would allow for 14 days before the December 1, 2010 Council meeting. He asked if there was another scenario to get the issue in front of Council at their December 1, 2010 meeting. Chairman Britt thought the Board could discuss it now and forward it to Council. Director Garman noted that an ordinance would need to be drafted.

Chairman Britt asked if the Board could recess the meeting and have another meeting on November 17, 2010. Director Garman stated that he had a meeting scheduled for that day. Vice Chair Blakaitis cautioned that the issue could be a double-edged sword. He thought the issue could be wrapped up at the Board's December 8, 2010 meeting. He stated that by taking the moratorium route, it would alert a lot of people that this was in the works. Chairman Britt thought if the Board could, they should move toward imposing a moratorium at their next meeting.

Director Garman noted that he was not immediately aware of any property owners who wished to apply for a sandbag permit. He stated that several properties would currently qualify for them.

Member Fricker pointed out that the Board now had actual knowledge that they could do something and that there are at least one to two houses that could potentially qualify for sandbags. He asked why it wasn't the Board's responsibility to at least advise effectively as possible to Council and then let Council decide whether they want to issue a moratorium. Council Liaison Burdick thought it would be better if the Board proposed the moratorium so Council could take action.

Member Fricker suggested that the ordinance be a one sentence one that read as follows: "Effective on (date) installation of sandbags on oceanfront lots are prohibited." Director Garman stated that the intent would have to be stated in the moratorium ordinance as required by the statutes. He added that there would have to be a number of findings in the ordinance as well. Member Fricker stated that it wasn't a moratorium but an ordinance. Director Garman stated that Council would need to schedule a public hearing so it would be heard at Council's January 5, 2011 meeting. He added that a moratorium would be a surprise to Council. He didn't think Council was anticipating a moratorium.

Chairman Britt suggested that the Board draft an amendment to the ordinance that would prevent sandbags as a Town policy. He added that it would go through the same process as a moratorium but would be quicker. Member Forlano thought there should be a moratorium and allow the public to comment on it. Chairman Britt thought only an ordinance should be written. Vice Chair Blakaitis agreed. Chairman Britt reiterated that he wanted an ordinance amendment completed as soon as possible. Vice Chair Blakaitis agreed and felt that the Board should take the trip to South Nags Head. Chairman Britt didn't feel the need to take the trip.

Member Forlano asked if an ordinance could be drafted by November 17, 2010 that only dealt with sandbags. Chairman Britt stated that beach pushes and fill could be dealt with at the Board's December 8, 2010 meeting. Director Garman thought he could draft something. He added that he was not confident that he could draft it and get it to the Board by Friday, November 12, 2010. Member Fricker stated that the Board did not need five days to look at it. Member Forlano suggested that Director Garman email the draft ordinance to the Board by November 15, 2010. Member Fricker thought 24 hours before the meeting would be sufficient for the Board to review the ordinance.

Council Liaison Burdick noted that Council was meeting at 4:00 p.m. on November 17, 2010. Member Fricker suggested having the Planning Board meeting on the 17th at 1:00 p.m. Chairman Britt suggested recessing the meeting to reconvene. Vice Chair Blakaitis stated that he could not make the meeting if it was at 1:00 p.m. Member Fricker suggested having it at 2:00 p.m. on the 17th. Chairman Britt stated that the meeting would be recessed to reconvene on Wednesday, November 17, 2010 at 2:00 p.m. with the direction to Director Garman to draft an amendment/ordinance that would essentially prohibit sandbags. Director Garman pointed out that he had a meeting regarding the Town Hall to attend on the 17th. Vice Chair Blakaitis asked if the Planning Board meeting had to be on the 17th. Chairman Britt stated that it did not.

Director Garman suggested the recessed meeting be held on Thursday, November 18, 2010 at 5:00 p.m. Chairman Britt suggested that it be held at 4:00 p.m. instead. Director Garman stated that he wasn't sure he could make it then since he had a meeting in Plymouth. Member Fricker asked Director Garman if he was available on Tuesday, November 16, 2010 for the meeting. Director Garman stated he was. Member Fricker suggested that the meeting be recessed until November 16, 2010 at 2:00 p.m.

Member Fricker moved that the Planning Board recess the meeting after approval of the October 13, 2010 minutes and reconvene on Tuesday, November 16, 2010 at 2:00 p.m. for the purpose of considering a proposed ordinance with respect to sandbags. Vice Chair Blakaitis seconded.

Motion carried 4-0.

APPROVAL OF MINUTES

Planning Board Meeting October 13, 2010

Chairman Britt directed the Board to review the minutes from the October 13, 2010 meeting.

A motion was made and seconded to approve the minutes as presented.

Motion carried 4-0.

The time was 8:23 p.m.

Approved: _____
/s/ Joe Blakaitis, Vice-Chairman