

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

The Planning Board for the Town of Duck convened at the Duck Municipal Offices on Wednesday, December 8, 2010.

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

Absent: Chairman Jon Britt.

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

Others Present: None.

Vice Chair Blakaitis called to order the Regular Meeting of the Planning Board for December 8, 2010 at 6:33 p.m.

**PUBLIC COMMENTS**

None.

**OLD BUSINESS**

Vice Chair Blakaitis stated that he would like to move the sandbag issue up on the agenda. It was *consensus* of the Board to move the item up in the agenda for discussion.

**Update on Town Council Review of Request for Public Hearing regarding Sandbags**

Director Garman stated that the Town Council reviewed the proposed ordinance at their December 1, 2010 meeting and the entire Council was in agreement with the premise of the ordinance itself. He stated that they wanted to provide information to the public to avoid any perception of impropriety. He added that the Council wanted staff to develop a fact sheet of what was being considered, why it was being considered and why it was being considered at this time. He stated that Council wanted the fact sheet distributed in a variety of ways, such as the oceanfront property owner's database, the Town website and the Town's email broadcast. He noted that the idea was to get the information out well before the January 5, 2011 public hearing on the issue. He reiterated that Council was in agreement with the ordinance and wanted to pass it but if there was a huge public outcry over it, they wanted to be able to deal with it.

Vice Chair Blakaitis noted that there was a lot of discussion at the Council meeting on whether the issue was being rushed through and that was why they wanted the stakeholders to have this information before the public hearing. He thought they were convinced that the public hearing could be held and the ordinance could be changed later on if need be. He thought Council favored what the Planning Board wanted to do. Council Liaison Burdick agreed. He added that

this was just one part of a larger plan. He thought the primary concern was that people were properly educated prior to the public hearing.

Vice Chair Blakaitis asked if Council would pass the ordinance if there wasn't much of an outcry at the public hearing. Director Garman stated that he did not want to speculate on it. Council Liaison Burdick thought it would depend on the public comments. He added that he didn't think there would be a problem.

Member Fricker thought Vice Chair Blakaitis' question was intriguing but irrelevant to what the Board's job was. He added that it was the Board's job to educate, present, advise and let the Town Council decide what it will do. He thought it would be a mistake if Council were to delay passing the ordinance.

Vice Chair Blakaitis asked how the information would be disseminated. Director Garman stated that it would be a one page fact sheet along with a link on the Town's website to the ordinance. Vice Chair Blakaitis asked if the fact sheet would be mailed to the oceanfront property owners. Director Garman stated that it would be both mailed and emailed to them and would be brief.

### **Discussion of Draft Ordinances related to the Relocation of Erosion Threatened Oceanfront Structures**

Director Garman stated that the draft ordinance was discussed at the Board's November 10, 2010 meeting. He noted that the ordinance had two sections with the first one dealing with height, allowing for those that raise a house to meet the flood requirements. He added that the second section dealt with the special exception procedure and spelled out specific special exception procedures that would apply when someone relocates an oceanfront home on the same lot.

Member Forlano asked if there was a way to define "structure" better so that it would explain that the intent was that the living part of the development was the reason for granting variances rather than the pool being in jeopardy. He asked if the pool was considered a structure. Director Garman stated that it was. Member Forlano stated that he wanted it clear that variances and exceptions could be obtained, but not for cases where the pools were in jeopardy. Member Gilbreath noted that it would diminish the value of a home if the pool was taken away. Member Forlano stated that the ordinance was to save the house and not the pool. Member Gilbreath agreed but had a difference of opinion. Member Forlano understood and asked if the Town would go through the process of granting exceptions for pools. Vice Chair Blakaitis thought it would if the pool was to be moved from the back to the front yard of a home. Director Garman and the Board went on to discuss moving pools.

Member Fricker thought the purpose of the draft ordinance was to facilitate movement of the principal dwelling. Member Forlano agreed. Member Fricker thought the word "structure" should be tied to the ordinance. Member Forlano realized that there was an economic hardship with losing a pool, but felt there was a greater hardship if the house was lost. Member Fricker agreed. Member Gilbreath felt that the pools should be allowed to be relocated with the house due to the rental income that they produce. Council Liaison Burdick noted that pools had a distinct value when it came to rental income. He added that Council would be leery of making things so rigid that nothing could be done when it came to an existing house and pool. Vice

Chair Blakaitis didn't think the Board was discussing that. He added that it would not be a problem if the house and pool could be moved, but if the house and pool must be moved and the pool created a problem after the house was moved, it would be an issue. He thought there would be a few cases on the oceanfront where the pool would have to be removed.

Member Fricker didn't think the Board was blind to the economics of running the Town. He further did not think that the economic argument should trump the other side of the coin in terms of preserving a beach, dune, aesthetics or values. He thought the Board could do everything possible to accommodate the rules, but at some point if it was not possible, the Board should not have to bend over backwards to try to do something that was not reasonable.

Council Liaison Burdick suggested that the Board stay consistent with the Town's Land Use Plan. Vice Chair Blakaitis noted that the Land Use Plan stated the following: "...to preserve, protect and enhance the Atlantic Ocean shoreline and ensure future generations are able to enjoy its beauty and bounty and can continue to use the beach and water for active and passive recreation and leisure activities..." He clarified that it was the key part of the CAMA Land Use Plan that the Town was trying to preserve. Director Garman stated he was correct, but noted that one of the key items was not to increase density or intensity of development. He added that the Town was allowing homeowners to push the envelope a bit to meet another objective, which was to keep the pools off the beach.

Member Fricker thought the problem stemmed from Dare County and Duck's infancy in allowing pools in the CAMA setbacks. He thought it was a mistake and it has proven time and again to be one. He stated that he would be advocating at some point prohibiting pools in the CAMA setbacks and limiting beach pushes.

Vice Chair Blakaitis noted that there seemed to be a disagreement on whether the pools could be brought in. He added that the way the ordinance was written, Item 4 stated that the structure itself was the primary one. He stated that the ordinance was focusing primarily on structures and Item 4 further clarified it as it was not one that would facilitate the construction of accessory structures. Member Fricker thought the language was too broad. Vice Chair Blakaitis understood, but added that the Board needed to make some decisions now regarding accessory structures. He thought the Board could solve some of the problems without eliminating accessory structures. Director Garman and the Board went on to discuss accessory structures and setbacks.

Director Garman clarified that the ordinance would not allow the Planning Board or Town Council to reduce the number of parking spaces, but would allow a reduction of the size and the setbacks. He stated that the ordinance could specify more stacking with regard to parking to further deal with the parking requirements. Vice Chair Blakaitis thought it should be put in the ordinance. It was *consensus* of the Board to add the parking stacking provision to the ordinance.

Vice Chair Blakaitis noted that language was needed in the ordinance to allow a house and pool to be moved forward if they were threatened by erosion. Member Forlano thought that if the house and pool were moved, the pool could not be put in the CAMA setback. Director Garman stated that he was correct with the way the ordinance was presently written. Member Fricker thought the language should read: "...any request for a special exception provision must result

in no structure being in the CAMA setback area.” Director Garman noted that CAMA will let a homeowner move a house and that they would not have to meet the CAMA setbacks. Member Fricker suggested that with regard to new construction nothing is to be placed in the CAMA setback. Director Garman clarified that in the case of relocation of existing structures; all structures shall be moved to the extent possible out of the CAMA setback.

Member Fricker asked what the rationale was for the CAMA setback in not allowing the principal residence in the setback. Director Garman stated that the reason that the calculation was the erosion rate times thirty for residences was because it was the typical amortization for a residential lot. He noted that thirty years was the lifespan and accounted for the entire life of the property. Member Fricker clarified that it was to preserve the house for the anticipated amortized life. Director Garman stated that he was correct. Member Fricker asked why the rationale was not applicable to swimming pools. Director Garman stated that CAMA treated swimming pools as expendable structures.

Member Fricker suggested striking the word “clearly” under Section 2b. It was *consensus* of the Board to strike the word from the ordinance.

Member Forlano asked if the ordinance stated that requested modifications were for all structures under Item 1. Member Fricker suggested striking the word “principal” from the language. Member Forlano clarified that the modifications would be allowed for all structures. Director Garman didn’t think the Board wanted to do that. Member Gilbreath thought that structures would be allowed to move back as far west as possible. Director Garman stated that it could not be independent of the house. Member Gilbreath agreed.

Vice Chair Blakaitis stated that Item 1 had to be changed to encompass the idea of moving both. Director Garman stated that moving an accessory structure was fine but the Town was not allowing someone a modification to the ordinance just for an accessory structure. Members Fricker and Forlano thought the Board had agreed with the point that a pool was just as valuable as a house. Member Gilbreath thought the whole intent of the ordinance was to move a house as far west as possible. It was *consensus* of the Board to leave Item 1 as it was currently written.

Vice Chair Blakaitis asked if the ordinance should be edited and presented at the Board’s January meeting or if a motion should be made to forward the ordinance to Town Council. Member Gilbreath thought it should be sent to Town Council. Director Garman noted that a public hearing would have to be scheduled for the ordinance. Vice Chair Blakaitis stated that if the ordinance was ready to be sent to Council, it should be voted on. He added that if it wasn’t ready, it should be looked at on the January 12, 2011 meeting.

Member Fricker asked if there were any more items to be drafted. Director Garman stated that there were more topics to address, such as siting new oceanfront construction, beach pushing and filling policies and how to deal with structures in the public trust. Member Fricker asked if a town could condemn a property. Director Garman stated that a town’s building inspector can condemn a house that’s inhabitable for a variety of reasons. Member Fricker asked if a house is condemned, it affects the homeowner’s ability to collect insurance. Director Garman stated that it did not. Vice Chair Blakaitis thought that the Board should wrap up the ordinance if they felt it could stand on its own.

Member Fricker moved that the Board forward the proposed ordinance as amended to Council with the recommendation for approval after a public hearing. Member Gilbreath seconded.

Motion carried 4-0.

### **NEW BUSINESS**

None.

### **APPROVAL OF MINUTES**

#### **Planning Board Meeting November 10, 2010**

Vice Chair Blakaitis directed the Board to review the minutes from the November 10, 2010 meeting.

Member Fricker had a change to Page 6 of the minutes.

Member Fricker moved to approve the minutes as amended. Member Gilbreath seconded.

Motion carried 4-0.

#### **Planning Board Meeting November 16, 2010**

Vice Chair Blakaitis directed the Board to review the minutes from the November 16, 2010 meeting.

Vice Chair Blakaitis had a change to Page 4 of the minutes.

Member Fricker moved to approve the minutes as amended. Member Forlano seconded.

Motion carried 4-0.

### **OTHER BUSINESS**

Town Clerk Kopec wishes to thank the Board for properly voting, seconding and adjourning the meeting. Your sarcasm has been noted. ☺

### **STAFF COMMENTS**

None.

### **BOARD COMMENTS**

None.

**ADJOURNMENT**

Vice Chair Blakaitis moved to adjourn the meeting. Member Fricker seconded.

Motion carried 4-0.

The time was 9:03 p.m.

Approved: \_\_\_\_\_  
/s/ Joe Blakaitis, Vice Chair