

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
April 13, 2011**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices on Wednesday, April 13, 2011.

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: Danny and Lisa Newbern of Dockside 'N Duck Seafood Market.

Absent: Council Liaison Chuck Burdick.

Chairman Britt called to order the Regular Meeting of the Planning Board for April 13, 2011 at 6:31 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Continuation of Beach Policy/Ordinance Discussion

Director Garman stated that he was bringing back a draft ordinance that dealt with beach erosion and houses that would eventually become located on the beach. He noted that the draft ordinance reflected the concepts that the Board discussed previously. He stated that he and Permit Coordinator Cady went out and tested the ordinance to see what the impacts would be. He went on to review the draft ordinance with the Board and audience.

Member Fricker asked if the stated purpose of the draft ordinance was to minimize the encroachment of structures into the publicly used portion of the beach; would the Town allow any type of encroachment. Director Garman stated that staff was trying to come up with something that wasn't too restrictive on a property owner. He noted that the area within ten feet of the toe of the slope was where sand fencing was typically placed and not a useable area for recreation. Member Fricker stated that the problem he had was why the Town would allow any portion of a structure to remain beyond the escarpment. Member Gilbreath thought the Town needed to give a homeowner the opportunity to rectify the situation. Member Gilbreath pointed out that people will abandon their homes before they spend the money to tear them down or

move them. Director Garman and the Planning Board discussed threatened houses in Kitty Hawk and what the Town of Kitty Hawk was doing with regard to them.

Member Fricker stated that he noted a cynicism from Member Gilbreath that may be realistic in that people will not want to move their threatened homes. He wondered at what point the Town would step in. He stated that he had not thought of it cynically and thought what the Board did a few months ago with dealing with setback requirements and parking was intended to create the carrot approach, i.e. the incentive for people to move their homes before it was too late. Member Gilbreath stated that the bigger structures that were built in the last five years would be the ones that would tend to be in trouble. Director Garman thought that the Town of Nags Head was having problems with people speculating that a nourishment project would occur and their home values would increase (there was nowhere to move them and no incentive to do so).

Chairman Britt added that the Board needed to make things as easy as possible (to move houses), but with some teeth so the problems won't continue (so there would be a requirement to do so). Director Garman stated that the draft ordinance clearly stated the Town's desire to maintain the condition of the beach. He added that there would be some legal issues no matter what type of ordinance is adopted. Chairman Britt thought there should be a consistent approach. He asked the Board if they were comfortable with the 10 feet (allowing principal structures to remain until they are 10 feet seaward of the toe of the slope of the dune) in the definitions. Vice Chair Blakaitis suggested waiting until the Board reviewed that portion of the ordinance. Member Gilbreath thought the dry sand needed to be tied to it. Director Garman and the Board discussed the 10 foot rule, sand fencing and the dry sand beach area.

Member Fricker thought as a matter of public policy, the Board may want to recommend a balancing act to the Town Council. He stated that he keeps coming back to the cynicism that some people will work with the Town while others won't. Chairman Britt thought reducing the 10 foot rule would not penalize an owner that works with the Town. Director Garman stated that the Board had discussed a house that wasn't parallel with the first line of stable natural vegetation and had just a corner of their deck beyond the escarpment. In this case a property owner might just corner off a small portion of the deck to meet the requirements but no real purpose is served. The idea (with the 10 foot rule) would be to give enough distance beyond the escarpment or dune line where a relatively substantial portion of the structure would be encroaching on the beach. Chairman Britt felt that the 10 foot rule was too far. Vice Chair Blakaitis stated that he was ok with less than 10 feet, but wasn't hearing another suggestion that made sense and wondered if it should be changed to five feet. Chairman Britt thought it should be five feet. He suggested that the Board move on and then come back to the 10 foot rule.

Director Garman and the Board discussed the dune walkover section of the draft ordinance. Chairman Britt clarified that the intent of the section of the ordinance was to have some language for property owners and not to become over-restrictive with regard to the walkovers. He stated that he was ok with the language. He noted that the language applied to six foot wide walkovers and not dune gazebos or big structures. Director Garman agreed. Member Forlano asked if the Council adopted the ordinance, how the public would be notified. Chairman Britt thought there would be a lot of communication with the public based on the language in the ordinance. Member Forlano stated that he was referring to damaged walkovers. He asked if the homeowner of a walkover would be notified of the ordinance requirements. Permit Coordinator Cady stated

that staff typically notified homeowners when they have damage to their property. Member Fricker suggested that the option be struck under 156.063(D)(4) of the ordinance. Director Garman and the Board discussed the beach scraping and fill section of the draft ordinance.

Director Garman summarized the ordinance with the Board and the notification procedures that had been drafted. He stated that annual notices would be sent out to property owners with structures threatened by erosion after preliminary notifications were received.

Chairman Britt noted that the Town had two bad erosion seasons – Spring and Fall. He asked if the Town should consider sending notices out every six months to remind the homeowners. Director Garman stated that he could make that change to the ordinance.

Director Garman reviewed the enforcement section of the draft ordinance with the Board. He noted that Section G would give Council the authority to temporarily waive ordinance requirements due to a severe storm event. Chairman Britt thought there should be something in the draft ordinance to address structures that were already in violation and a severe storm event occurs.

Chairman Britt stated that he was maintaining his position that 10 feet was too far. Member Gilbreath noted that at 10 feet, the Town would still be the most restrictive out of the all of the towns. Member Fricker stated that he was persuaded that the distance presented in the draft ordinance was reasonable. Chairman Britt agreed and stated that he was fine with the 10 feet.

Member Fricker suggested the following language to 156.063(B)(2) read as follows: “...limit nuisance conditions in any publicly used portion of the beach...” for consistency. He further suggested the following language to Section C – Wet Sand Beach – to read as follows: “...area of the ocean beach between the normal high tide and the normal low tide...”

Member Fricker moved to recommend that the Town Council adopt the amended ordinance in the form submitted subject to the changes made. Director Garman stated that he had not assigned an ordinance number to the draft ordinance. Chairman Britt suggested that Director Garman make the changes and come back at the next meeting. Member Fricker withdrew his motion.

Discussion/Consideration of Town Ordinances Related to Segway Tours

Director Garman stated that the Board went full circle regarding the issue at their last meeting. At first the Board discussed not allowing the tours or rentals at all and then decided to request that staff draft an ordinance that would allow them under specific conditions. He thought the Board decided that they wanted to create some safety standards and limit their use in certain areas but not allow the Segway tours in the areas that were already prohibited through other ordinances. He stated that the draft ordinance defined what a tour operator would be and that they could base their operations with a Conditional Use Permit in only the C-1 and C-2 districts. The new ordinance and also cross references the existing Town Segway ordinance with some modifications. He went on to review the draft ordinance with the Board.

Member Fricker stated that he did not understand why the entire discussion of Segways had to do with tour operators. He asked if it was because of the charge that Council gave the Board. He thought the Board was missing the whole point of the issue, which were safety concerns. He thought it was ridiculous to allow Segway tours to operate on Duck Road. Vice Chair Blakaitis noted that Segway tours were not allowed to operate on Duck Road as per the ordinance. Director Garman added that they were not allowed to operate anywhere on Duck Road. Member Fricker clarified that Council could not legislate with regard to their operation on privately owned side streets. Director Garman stated that they could be operated on the side streets. Vice Chair Blakaitis noted that it was brought up at the last meeting that the General Statutes said that the Town could not outright ban Segways, but could only restrict them. Member Fricker asked why tour guides needed to be addressed at all. He suggested the following language in the draft ordinance: "The use of Segways are only permitted on the multi-use trail, not in the Village Commercial District and publicly owned side roads." Chairman Britt stated that the same question came up at the last meeting.

Member Gilbreath thought Town Attorney Hobbs had stated at the last meeting that the Town could ban Segway tours. Member Fricker stated that the draft ordinance could be argued as more of a draconian effort to absolutely preclude tours than if there wasn't any rule at all. Member Gilbreath thought by bringing up the issue, it would put an idea in a lot of people's heads. Chairman Britt noted that the rules would not stop Segway tours. Director Garman stated that the reason the issue was brought up was due to tour operators coming into Town and parking at an existing business's parking lot and having patrons parking in these lots while they are on the Tours. He added that it wasn't just the safety aspect of operating in Town, but also that they were operating without site or zoning approval and were using parking dedicated to other business uses.

Member Fricker thought the overriding concern was safety. Vice Chair Blakaitis asked what the harm was in restricting the tours to the C-1 and C-2 districts. Chairman Britt stated that he didn't have a problem with allowing the tours in the C-1 and C-2 districts. He didn't think the rules were restrictive or over-restrictive for parking. Member Fricker thought that Chairman Britt and Member Forlano felt that the rules were draconian at the last meeting. He felt they were and wasn't sure why the Board had to go on record about it. Chairman Britt noted that the last discussion was a very long one and didn't think the new draft ordinance was bad as it gave some level of control. Director Garman added that it also gave guidance to businesses who wish to rent Segways.

Member Forlano asked if the safety issue with regard to Segways was a reality or a perception. Member Gilbreath thought a child riding their bicycle on Duck Road was more dangerous than an adult riding a Segway. Vice Chair Blakaitis thought the argument was that Segways were more dangerous as they were harder to control. Member Gilbreath stated that he liked the draft ordinance the way it was written. Chairman Britt stated that if there had to be an ordinance, the draft one was fine, but wondered if an ordinance was needed. Member Forlano stated that he was hung up on having an ordinance for Segways as he didn't think they were a problem.

Vice Chair Blakaitis suggested recommending to Council that the Board address the issue with the previous ordinance that was passed. Member Fricker clarified that the ordinance that was passed addressed that Segways could not be operated on any road in Town with a speed limit in

excess of 25 mph. Chairman Britt stated he was correct. Member Fricker agreed with Chairman Britt as to why the ordinance was not needed. Vice Chair Blakaitis agreed with Member Forlano's comments and wasn't sure the Board was getting anything other than more language. Member Forlano stated that he could not get behind the draft ordinance. Chairman Britt thought that it could be explained to Council that the Board felt that the problems that were referred to at the Retreat were addressed with the ordinance that was passed recently.

Member Fricker moved that the Planning Board take no action with respect to further regulation of Segways based upon consensus of the Board that the ordinance already in effect with respect to the Village Commercial District sufficiently addresses the issue. Member Gilbreath seconded.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of Town Ordinances Related to Take Out Restaurants/Food Stands

Director Garman stated that historically Duck has allowed as a permitted use traditional restaurant uses, i.e., sit down restaurants. He stated that staff was seeing more and more people trying to do different types of eateries (take out, food stands, etc.). He added that a food stand was basically a place that served everything to go in disposable packaging with no indoor seating. He noted that there were less wastewater and kitchen requirements for food stands. He stated that it made for an easy start up, but then they come to Duck wanting to operate as a restaurant even though the Health Department permitted them as a food stand. He stated that some of the businesses are operating as food stands and then establishing outdoor seating areas to be used by their patrons. He explained that there was a restaurant in Town that has a Conditional Use Permit – which the Town requires for all restaurants – with this business approved to have three seats and three parking spaces, but the way they have the outdoor seating arranged (which is technically available to anyone who uses the shopping center) the use has evolved into something that is much more intensive than originally approved. He noted that on any given day, there are 20-40 people sitting down and eating just outside of this restaurant which was approved with only three seats. He stated that the idea with the draft ordinance was to have a parking standard that would account for these situations and reflect the actual parking demand that is generated by the use.

Chairman Britt asked if there has been a problem with parking with the business in question. Director Garman stated that it was hard to discern since it the business is operated in a group development. He added that staff has seen an increase in the length of time people circulate to look for a place to park as well as an increase in trash. He stated that staff wanted to look at the issue and come up with something that would deal with it in a proactive way.

Member Fricker stated that he wasn't sure what was driving the discussion. He asked if there was concern about parking and further asked who owned the benches and tables at the Waterfront Shops. Director Garman stated that they were put there by the business and not by the owner of the development. Member Fricker asked if the concern was inadequate parking, congestion or one business in a large group monopolizing one end of the development. Director

Garman stated that parking was the biggest problem as there was a parking standard for all of the different uses in Town. He added that other restaurants have provided parking for all of the seats they have. Chairman Britt noted that any existing restaurant could expand their take-out capabilities, which would use up more parking.

Director Garman stated that there are many different use classifications available for the various types of restaurant uses that exist in other ordinances. Take-out restaurants are treated differently than sit-down restaurants in most other ordinances. He stated that they were usually required to provide a minimum number, but added that the Town's ordinance does not even establish a minimum parking standard for a take-out only restaurant. Member Gilbreath noted that any type of business could attract more business than others and thought it was the same issue. Director Garman stated that retail business parking standards were different from take-out restaurant standards.

Member Fricker stated that he did not perceive the situation to be a problem and if it was, he wasn't sure it was something that the Board could fix. He agreed with Chairman Britt's comments and thought there would be more people dining al fresco when the southern end of the boardwalk was built. He noted that because of the expansion of the sound side boardwalk, there would be a lot more foot traffic coming to the Waterfront Shops and would be hard to associate that with the business in question. He stated that the Town holds summer concerts at the park and staff tells people to park wherever they can find a spot.

Vice Chair Blakaitis agreed with Member Fricker's comments but wondered, if staff approached the business to let them know they needed more parking spaces, how that would be effective. He asked if the owner of the Waterfront Shops would be told there was a problem. Director Garman stated that he had a discussion with the business owner and advised him that the Town was trying to establish a reasonable standard for parking. He added that the owner was ok with it. He noted that the Town had parking standards but at some point, standards needed to be decided. Vice Chair Blakaitis agreed, but didn't want to see the standard become a burden on any business owner. Director Garman stated that the Town wanted businesses to succeed and staff's idea was to come up with a standard or use classification for take-out restaurants, outdoor seating areas, and other newer types of uses that are emerging in Town. These standards could be dealt with however the Board desires; however, the standards are necessary to associate some level of parking demand with the use and apply the standard consistently throughout town.

Danny Newbern was recognized to speak. He thought that the Town should make sure the playing field was level when it came to parking standards. He noted that the parking lot at the Waterfront Shops was a problem in the summer. He stated that everyone needs to do business in Duck, but when the rules aren't consistent, it impacts other businesses. He agreed with Director Garman that there needed to be some standards set that were uniform.

Director Garman thought the new boardwalk could potentially make parking less onerous for all of the uses. He noted that the Town had not taken a comprehensive look at the parking regulations for quite some time.

Chairman Britt thought the Board should look at the whole picture and not just take-out restaurants. He thought it should be more of a comprehensive look as well. Director Garman

stated that his intent was to get the issue addressed now so he could provide existing restaurant owners with a clear answer.

Chairman Britt clarified that Director Garman was looking at tying the common space into the standards. Director Garman stated he was correct. Chairman Britt noted that every situation would be different. Director Garman agreed and thought there should be a standard for a true carry-out restaurant.

Member Fricker thought there was a rational basis for having a less stringent parking standard in group developments because of the notion that a shopper will park in one development and shop at multiple shops. He thought it should be considered.

Member Forlano noted that as Duck becomes more and more popular, this issue will affect all of the shopping centers. He added that parking was not a problem 27 years ago, but as the years progressed, the parking has gotten worse. He thought it was a good problem to have but wasn't sure if it was really a problem that needed to be addressed. Member Fricker added that Duck was not built for heavy traffic. Member Forlano agreed. Member Gilbreath wondered if the parking issue got better as the weeks go on as people would be more likely to walk or ride their bicycles to the shops. Director Garman noted that Duck is becoming a destination and is attracting people from other towns. Member Forlano thought there needed to be parking standards but felt the Town should look the other way when it gets too congested on Friday evenings.

Chairman Britt thought there was a "spot" problem and there was pressure for it to be dealt with, but thought addressing the spot problem was not the way to go. He thought it may be time to look at the overall parking standard. Member Forlano noted that there were trash issues with the take-out restaurant. Member Fricker wondered what the solution was. Director Garman stated that staff had spoken to the owner of the take-out restaurant and noted that they were operating more as a restaurant based on other standards such as the Building Code. He added they would be required to have men's and women's restrooms based on Building Code requirements. He stated that Building Inspector Tate has spoken to them about it and thought the owner would try to deal with it. He stated that now they want to add another counter and more seating. He stated that without any standards, he didn't know how he should deal with it.

Chairman Britt thought the problem was bigger than just parking spaces. Director Garman stated that the owner has a Conditional Use Permit and if it was felt that the limits are being pushed, they would have to come back and amend the Conditional Use Permit, causing the Board to determine what an appropriate parking standard would be and whether or not they wanted to allow an additional customer service area. Director Garman thought to be fair to the Town and to the take-out restaurant owner; the rules need to be clear.

Member Fricker asked if the formula for determining the required number of parking spaces associated with the Blue Point Restaurant was the same formula that was applied for parking at the Aqua-S Restaurant. Director Garman stated that it was. Member Fricker thought it was a mistake in that Aqua-S was a stand-alone restaurant while Blue Point was in a group development. He felt the standards should be cut in half. Chairman Britt thought it went back to the commercial parking standards that the Board should look at. Director Garman thought it

would be hard to argue cutting the parking standards in half for the Waterfront Shops. Chairman Britt stated that there weren't any businesses that would be adding a significant number of parking spaces or the uses were going to significantly change. Director Garman thought the question was how the outdoor seating areas should be addressed for existing restaurants.

Chairman Britt thought one could argue that the picnic benches at the Waterfront Shops were for common use and not just for the take-out restaurant. Vice Chair Blakaitis thought the Board needed to come up with something and large areas such as the Waterfront Shops would be more difficult for the Town. Chairman Britt wondered how one could base a standard for a place that was doing take-out when each area had a different sized common area. Director Garman stated that it could be stated that the restaurant would have to designate what they plan to use. He added that a lot of places apply the standard based on the customer service area and not the seating. He stated that he liked that better since customer service areas were fixed. Chairman Britt agreed. Director Garman stated that he would come back to the next meeting with more details and some ideas.

APPROVAL OF MINUTES

Planning Board Meeting March 9, 2011

Chairman Britt directed the Board to review the minutes from the March 9, 2011 meeting.

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

Motion carried 3-0.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

None.

ADJOURNMENT

There was no motion, second or vote to adjourn.

The time was 9:37 p.m.

Approved: _____
/s/ Jon Britt, Chairman