

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
December 12, 2012**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, December 12, 2012.

Present were: Chair Joe Blakaitis, Vice Chair John Fricker, Ron Forlano, Tim McKeithan and Marc Murray.

Absent: None.

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

Others Present: None.

Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for December 12, 2012 at 6:31 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Vice Chair Fricker stated that in looking at the minutes from the October 10, 2012 meeting, Member Forlano raised the question as to whether the Planning Board wished to start their meetings at 7:00 p.m. instead of 6:30 p.m. He thought there was some reference that it would be discussed at the Board's October mid-month meeting, but never happened. Chair Blakaitis asked if it should be discussed. It was *consensus* of the Board to discuss the issue.

Member Forlano stated that his reason for the time change was so that the Board could have a reasonable dinner hour rather than either rushing through dinner or waiting until the meeting ends to eat. He stated that if the Board felt it wasn't that big of a deal, he was fine with keeping the meeting start time as is. Chair Blakaitis stated that he wouldn't mind changing the time to 7:00 p.m. for the same reasons Member Forlano pointed out. Member McKeithan stated that he would rather the meetings start at 7:00 p.m. Council Liaison Burdick stated that keeping the meeting at 6:30 p.m. was fine with him.

Chair Blakaitis thought that Town staff may feel differently since they would have to stay longer. Member Forlano agreed. Vice Chair Fricker stated that he was used to the meeting starting at 6:30 p.m. and had no problem keeping it as it was, but if the majority of the Board wished to

change the time to 7:00 p.m., he would be fine with that. Member Murray stated that he did not have an opinion.

Council Liaison Burdick suggested that if the Board did not have a strong opinion on the time, he thought it would be better to keep the meeting start time at 6:30 p.m. Member Forlano agreed that keeping it at 6:30 p.m. would help to accommodate Town staff.

It was *consensus* of the Board to keep the meeting start time at 6:30 p.m.

NEW BUSINESS

Discussion of Recording Requirements for Conditional Use and Special Exception Permits and Variances

Director Garman stated that the issue was a simple housekeeping item but staff felt it was something that should be addressed. He added that it was in the original work plan that the Board had discussed earlier in the year and most communities do this. He explained that when someone buys a piece of property and they do a title search, this would allow a special exception or conditional use permit to turn up in the search, which helps to guarantee that the new owners receive this information. He added that the new owners can avail themselves of the benefits of a conditional use permit or a variance as long as they do not change the conditions of the permit. He stated that it made sense and was not a very onerous requirement to have the owner go to the Register of Deeds office and record it after it is approved and signed. He stated that he wanted to get the Board's opinion as to whether it was something they would agree with the staff doing and if so, he could come back in January with a simple draft ordinance.

Chair Blakaitis clarified that a conditional use permit made a change to a property and if someone purchases that piece of property with the conditional use permit in place, they have to maintain those conditions. Director Garman stated he was correct. Council Liaison Burdick clarified that the new owner could file for a change. Director Garman stated that they could, but added that the new owner would have to go through the whole process again. Chair Blakaitis stated that his point was that if the new owner did not know the permit was in place and the person bought the property and wanted to make a change, they would be violating the permit. Director Garman stated that many times, a property has an encroachment in the setback and a variance was granted and the new owner did not know about the variance. This lack of knowledge of the variance may encumber a sale.

Member Forlano stated that he understood how conditional use permits worked for residential properties but wondered how it would work on commercial properties if the ownership changed. He thought the new owner would have to apply for a new permit. Director Garman stated that the conditional use permit would run with the property, so if the ownership transferred, the new owner could buy the property and the permit would stay in place as long as the new owner maintained the same use and adhered to the original terms of the permit.

Vice Chair Fricker asked if there was any downside to requiring the recordation of a conditional use permit with respect to a change of ownership. He didn't think there was any. Director Garman stated that there was not. Vice Chair Fricker thought it would be a foolproof means of

ensuring that the buyer was on notice of the restrictions. Director Garman stated he was correct. Vice Chair Fricker clarified that there were situations where one person could own the land while another owned the building that sat on the land. Director Garman stated that the recordation requirement would not capture every situation although it would help significantly. Vice Chair Fricker stated that if it was a good thing to record such matters, the question could be how detailed the ordinance should be. Director Garman stated that he didn't see it being that detailed and thought it could be a simple requirement.

Chair Blakaitis asked if a motion was needed. Director Garman stated that the Board could just direct him to come back with a draft at the January 9, 2013 meeting. It was *consensus* of the Board to direct Director Garman to come back with a draft ordinance.

Discussion of Lot Coverage Regulations for Permeable Pavement

Director Garman stated that this was another item on the Planning Board's work program for the year. Director Garman began by explaining that permeable pavement is currently treated as 100% lot coverage. The only pavement type the ordinance provides a lot coverage reduction towards is turfstone or interlocking grid-concrete pavers, but does not address permeable concrete or pervious asphalt. He stated that staff wanted to bring the issue up to see if the Board would like to provide a similar reduction for these types of pavement. This could provide an incentive for individuals to use permeable pavement.

Director Garman pointed out that concrete pavers currently count as 60% lot coverage while gravel does not count as coverage at all if it is installed over a sand base. He stated that in the past, staff has looked at commercial applications of gravel and in some cases, the Town may not want to completely exempt gravel in a commercial situation and may want to have a different standard for it since commercial sites are more high impact. He added that if gravel did not count in a commercial situation, the coverage is somewhat unlimited since commercial sites can have up to 60 percent lot coverage. He noted that turfstone is currently given a 60% lot coverage allowance and the Board could consider applying that to some of the other types of pavement or they could look at other standards that were included in the ordinances he provided to the Board. He went on to review ordinances from other municipalities with the Board and the audience. He noted that the Town of Kill Devil Hills' ordinance was based upon a standard that was widely accepted and thought it could be a starting point for the Planning Board with regard to their discussions.

Member Forlano stated that he had 8 years of experience with pavers and 28 years with pea gravel. He added that he had not seen any runoff from the pavers or pea gravel at his properties. He thought that the Town should definitely prohibit stone parking areas or driveways in commercial settings but felt that the Town should give the homeowner greater than 40% credit for those that use pavers. He thought they should be given greater than 60%. Director Garman asked Member Forlano if he received a lot coverage reduction for his pavers. Member Forlano stated that he received a 40% reduction. Director Garman asked Member Forlano if he could use any paver he wanted or if they had to meet a certain criteria. Member Forlano thought he could have used the block type ones but they would not have looked as attractive. Director Garman stated that the current ordinance gives homeowners a reduction for using semi-pervious pavers but did not specify any criteria. He didn't think the Town should give credit to an owner that

installs pavers that were not designed to be permeable. Director Garman thought staff was looking for something that was designed to be permeable and felt it should be considered as the Board discusses the issue. The Board could discuss language for the ordinance that states that in order to receive credit for the pavers, they would have to meet certain criteria.

Vice Chair Fricker asked if it was important in deciding whether to allow permeable asphalt and concrete. He understood that with both of those products, if sand gets in the holes, it needs to be vacuumed out. Director Garman stated that he was correct. Vice Chair Fricker asked if anyone has ever had to do that. Director Garman stated that there weren't many of those installations in Town. Vice Chair Fricker asked if they were anywhere on the Outer Banks. Director Garman thought there were; adding that part of the Duck Trail was replaced with pervious concrete near the Sound Sea Village subdivision because it was constantly ponding. He added that it has been vacuumed out. Vice Chair Fricker asked if it had been effective. Director Garman stated that it has.

Member Murray asked, as far as lot coverage with permeable pavement, what was the Town trying to accomplish. He asked if the Town was going to eventually require stormwater management plans for anyone. Director Garman didn't think the Town would ever move in the direction of stormwater management plans in residential settings. He added that for commercial, staff generally looks at stormwater through the conditional use permit process, and a stormwater plan is required. He stated that there were not specific standards or criteria in the Town ordinance that the applicant has to meet as the Town did not want to lock itself into any standard.

Member Forlano felt that the only solution for commercial properties was permeable concrete or asphalt. He thought it was the only solution that he could think of as the pavers work fine in a residential setting, but once a large truck backs up onto the pavers, there was a chance the pavers will be dislodged. He stated the Board should make it a requirement along Duck Road that any commercial establishment needs to install permeable concrete or asphalt. Director Garman clarified that Member Forlano's suggestion was so the establishment could obtain credit for a lot coverage reduction. Member Forlano felt it should be in place whether or not the establishment received credit.

Chair Blakaitis stated that he brought up the same issue regarding drainage when the Board discussed the Wee Winks project and what they were doing for permeable materials to help with stormwater. He added that the applicant stated that they felt there was too much of a slope and that they would look at it again. He stated that he was encouraged by the project in Swansboro, North Carolina, as they were similar to Duck with regards to the topography and their use of permeable pavement.

Member Forlano thought with a commercial establishment, as part of the conditional use, the Town could impose a compulsory treatment requirement associated with it. Council Liaison Burdick asked if the Town could be consistent with the State requirements. Director Garman stated that the Town could not be less strict than the State but could definitely come up with consistent standards. He added that the Town could apply some of the rules to developments that would not necessarily meet the threshold for a State permit. He stated that if the Town wanted to require a certain percentage of the pavement to be permeable, it could be a requirement.

Member Forlano stated that an argument the Town may receive from a business or homeowner was the additional cost. He added that there was an additional cost and because of that, he thought that something should be given in return to the owners. He thought the lot coverage credit should be what could be given in return.

Vice Chair Fricker asked what materials out of all of them, including gravel, were cost effective and efficient and do what they were supposed to do. He wasn't sure if the Board knew and thought Director Garman wanted to do more research on it. He asked which of those cost efficient and effective materials work well in residential versus commercial settings. He thought there should be some type of data on it. He asked in what circumstances was the use of cost efficient and effective permeable material would result in a reduction of lot coverage. He felt that the Board needed to know up front what products were effective and efficient in order to come to some conclusions regarding permeable pavement in order to be fair.

Director Garman stated that the Town of Kill Devil Hills followed the State guidelines because the State had completed research on it. He added that the State has since changed their regulations to give people a bigger break but didn't think the Town of Kill Devil Hills' ordinance reflected that. He stated that if a property is in the coastal plain with sandy soil and the owner used the porous concrete with washstone base, they would receive a 75% lot coverage reduction.

Chair Blakaitis asked if there was list of the products that Vice Chair Fricker was asking about. Director Garman stated that four basic products were listed in the State regulations – pervious concrete, pervious asphalt, interlocking concrete pavers and plastic grid reinforced pavement systems. He thought that as far as cost effectiveness, none of the products were as cost effective as regular conventional products. He thought it was cheaper to install concrete or asphalt for a parking lot than any of the permeable materials. He stated that the question was whether people were being forced to use these products or just providing an incentive for them to use the products. He added that if the Board just wanted to provide an incentive for using the products by giving them a lot coverage reduction, then it would be up to the owner whether or not they wanted to spend the money. But if they were forced to use the products, that's where the cost effectiveness came in to play.

Vice Chair Fricker asked if an ordinance was amended previously requiring concrete aprons for driveways, but the rest of the driveway had to be of a pervious material. Member Forlano stated that it was because a commercial property was using stone. Director Garman stated that it was a special exception and not an ordinance. He added that the only ordinance that requires anything specific was the parking area outside of the drive aisle in residential situations. He stated that the Town of Nags Head requires a concrete driveway while Duck gives a credit for gravel and open decks.

Council Liaison Burdick thought there were two issues before the Board – the decision on what to do with residential properties as well as commercial properties. He added that they were different issues. He stated that the advantages of the lot coverage for residential properties was only where someone has a lot and wants to expand their home but are right at 30% coverage. He felt this would be the only time it would be an incentive to spend extra money to put in

permeable materials. Director Garman noted that a lot of people do not want gravel on their properties, but want some type of lot coverage reduction.

Member Forlano asked if the Board was looking at the issue from the standpoint of controlling stormwater runoff or as a means to control the size of a home. He wondered what the Board should be looking at and if there should be another factor in place to control the size of a home instead of lot coverage. Member Murray thought lot coverage was a way to deal with stormwater. Member Forlano thought he was correct. Member Murray felt that if the ordinance was going to be amended, the Board should make it simple and something that could be inspected and be adhered to.

Chair Blakaitis thought there were two items that the Board was considering – a change to the ordinance in the allowable coverage for the permeable materials as well as identifying the materials and whether the Board should require some of this in the commercial development along Duck Road. He asked if the Board really wanted to change the requirements for pervious versus impervious materials and what the real importance was in doing so. Member Forlano thought it was to stop stormwater runoff. Chair Blakaitis thought it was a good thing, that it was going to cost more, but wondered if it was fair and if it was, then the Board should consider it. Vice Chair Fricker thought the Board could include permeable asphalt and concrete in the definition of pervious pavement.

Chair Blakaitis asked the Board what they wanted to do with regard to the reduction in coverage. He noted that Member Forlano had suggested 75% as a minimum. Council Liaison Burdick suggested that the Board stick with what the State recommends.

Vice Chair Fricker moved to table the issue until the January 9, 2013 meeting for lack of information and for a better review of information available. Member Murray seconded.

Motion carried 3-2 with Chair Blakaitis and Member Forlano dissenting.

Update on the Town of Duck Comprehensive Pedestrian Plan

Director Garman stated that the Town was getting ready to complete a pedestrian plan. He stated that the Town applied for a grant with the North Carolina Department of Transportation earlier in the year and was awarded the grant and now the process needed to be started. He stated that staff was getting ready to draft a request for proposals that would be going out in the next few weeks to hire a consultant to help staff with the plan and then a standard pedestrian plan would be developed based on the State's template. He went on to review the plan with the Board and audience.

Director Garman stated that the January Town Council meeting will likely begin the planning process at which time the Council will form a steering committee. He noted that one or two members from the Planning Board may be appointed to this committee.

Chair Blakaitis asked how many members would be on the committee. Director Garman thought it would consist of 8–10 members. Vice Chair Fricker asked what the steering committee would be doing. Director Garman stated that the committee would review all of the information that

was prepared for the plan, analyzing the data prepared by the consultant and spearheading the discussions on how it moves forward. Chair Blakaitis asked how the Planning Board would be involved after the steering committee finishes its work. Director Garman stated that the Planning Board as a whole would not have a role in the pedestrian plan. He added that it would be a 12-18 month process and the committee should expect to meet 4-5 times during this time period. He thought the kickoff meeting would be sometime in February.

Member McKeithan and Chair Blakaitis indicated that they would be willing to serve on the steering committee. Member Murray stated that his wife would be willing to serve on the committee.

APPROVAL OF MINUTES

Planning Board Meetings – October 10, 2012 and October 23, 2012

Vice Chair Fricker moved to approve the minutes from October 10, 2012 and October 23, 2012 as presented. Member McKeithan seconded.

Motion carried 5-0.

OTHER BUSINESS

Council Liaison Burdick noted that Mayor Kingston was sent a letter from the president of the Carolina Dunes subdivision regarding lifting the sandbag prohibition. He stated that Council discussed it at their December 5, 2012 meeting and decided to keep the ordinance in place as it currently existed. He noted that Mayor Kingston had communicated with the president of Carolina Dunes regarding their decision.

STAFF COMMENTS

None.

BOARD COMMENTS

None.

ADJOURNMENT

There being no further business to discuss, Chair Blakaitis adjourned the meeting. There was no vote.

The time was 8:02 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman