

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
January 9, 2013**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, January 9, 2013.

Present were: Chair Joe Blakaitis, Vic-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: Richard Bell of Across the Board Construction and Lynette Sumner of Aqua Restaurant.

Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for January 9, 2013 at 6:34 p.m.

PUBLIC COMMENTS

None.

Without any objection, Chair Blakaitis moved New Business up on the agenda.

NEW BUSINESS

Discussion/Consideration of SE-12-01, a Special Exception Application to Permit the Relocation of an Erosion Threatened Structure at 132 South Snow Geese Drive, Pursuant to Town Code Sections 156.062 and 156.145

Director Garman stated that the applicant, Richard Bell, was requesting a special exception permit on behalf of the property owner to relocate an erosion-threatened single-family home at 132 South Snow Geese Drive. He explained that Town Code Section 156.062 allowed the Planning Board and Town Council to grant exceptions to the Town's building setback and parking dimensional requirements to allow erosion threatened structures to be relocated west on the same property to the maximum extent possible. He stated that staff estimated that the property has lost up to 110 feet of its frontal dune between 1996 and 2002. He stated that the property owner had made a number of attempts in recent years to preserve the property using beach fill, beach pushes, sand fencing and dune vegetation. He stated that Hurricane Sandy resulted in an estimated 20-25 feet of dune loss and destroyed the property owner's pool and deck area. He noted that the main portion of the home was currently located within 20 feet of the

first line of stable natural vegetation and because of that, the home would be considered imminently threatened based on rules established by CAMA.

Director Garman stated that the property owner wanted to move the house approximately 40 feet to the west in order to mitigate the threat of future damage. He stated that based on the site plan submitted with the application, the home would be located just west of the current CAMA setback and in order to move the house to that area, the property owner would need an exception to the Town's front yard setback requirement. He stated that the applicant was requesting to place the home within 15 feet of the front property line and it would not be positioned parallel with the front property line. He added that the property was required to have five parking spaces since it was a five bedroom home, but due to the short length of the driveway, two parking spaces were proposed under the house with two others proposed on the north side of the house. He stated that the fifth parking space could be counted at the end of the drive aisle. He noted that the house was not considered a rental and the applicant had indicated that two spaces would not be installed immediately since they were eligible to be waived in accordance with Town Code Section 156.092(F).

Director Garman stated that staff received a letter from the Homeowner Association speaking in favor of the application as well as a letter from an adjacent property owner also speaking in favor of the application. He added that he received a telephone call from the neighbor across the street from the home inquiring about the special exception. He stated that the neighbor did not have a problem with the application. He stated that staff was suggesting some sort of screening for the parking spaces on the north side as a condition at such time as parking was installed at a future date. He noted that staff was recommending approval of the application.

Chair Blakaitis asked if the pool was not going to be replaced. Director Garman stated that it was not but that they could put one back so long as they did not impact the frontal dune. Richard Bell stated that the applicant had lost interest in the pool and would not be putting it back.

Vice Chair Fricker thought the package was well put together, the request was reasonable and consistent with what the Town was trying to do. He added that he would support the special exception request. Members McKeithan and Forlano stated that they would also support the request.

Vice Chair Fricker moved that the Planning Board recommend that Town Council approve the Special Exception application with the finding being made by this Board as set forth in staff report paragraphs 1 through 6. Member McKeithan seconded.

Member Forlano asked if the request that staff came up with would include adding some form of vegetation. Chair Blakaitis stated that it did.

Vice Chair Fricker amended his motion and moved that the Board recommend that Council adopt the application, consistent with the criteria of the findings mentioned before and the specific condition that in the event the parking spaces are used in the future that there will be a six foot high fence or vegetative screen. Member McKeithan seconded.

Motion carried 5-0.

OLD BUSINESS

Discussion/Consideration of an Ordinance to Establish a Recording Requirement for Conditional Use and Special Exception Permits and Variances

Director Garman stated that this was a housekeeping item to require the recordation of these types of permits so that future property owners could understand the conditions that apply to their property. He added that the draft ordinance was a simple one, which required the property owner to be the one to record the document once it's signed by the property owner and the mayor. He stated that within 60 days, the property owner would have to bring a recorded copy of the permit back to Town staff for the Town files.

Member Forlano asked how the Town monitors when properties convert to rentals. He asked how the parking requirement was handled. Director Garman stated that a waiver of parking spaces was a separate ordinance and that was an administrative procedure. He added that it could be done without coming before the Board or Council. He explained that the property owner would have to submit a survey that showed where the normally required parking spaces would fit on the property and then record it at the Register of Deeds office.

Chair Blakaitis asked if the ordinance was close enough to meet the requirement since it did not presently. Director Garman stated that the mayor would not sign the document until after the meeting. Member Forlano clarified that there wasn't a way to monitor the special exceptions. Director Garman stated he was correct. Council Liaison Burdick thought there was a way to monitor them if the Town kept a record by property of all of the exceptions so that when a property changes hands, it would be included in the search of the Town records. Director Garman stated that unless all the land transfer records were searched that were recorded at the County, staff would have to do that on a regular basis in order to catch it. Council Liaison Burdick stated that it would have to be done whenever a land transfer occurs. Director Garman pointed out that staff did not know when a land transfer occurs since the owner did not have to do anything with the Town in order to purchase a piece of property.

Member Murray clarified that there was no mechanism in place for enforcement. Director Garman stated that there wasn't but the Town could issue a Notice of Violation indicating that the parking was a requirement if the home was a rental. Member Murray thought something could be put on the document. Vice Chair Fricker thought the ordinance was designed for providing actual notice to buyers or homeowners for the purchase of a property and not designed for enforcement action. Director Garman stated he was correct.

Council Liaison Burdick asked if the Board was creating a moot point. Vice Chair Fricker stated that it cured a loophole or gap. He added that since the Town was not privy to the transfer of property, someone had to be put on notice about the special exceptions or conditional use permits and the only way to do it was through the draft ordinance.

Chair Blakaitis asked what the means of enforcement were without the recording requirement. Member Forlano thought it had nothing to do with enforcement. Director Garman stated he was correct and added that the recording requirement was for the benefit of the new property owner.

Member Murray stated that the difference was when enforcement steps were taken, instead of having an uninformed new property owner; there would be an informed one. Member McKeithan noted that the whole purpose of the ordinance was for the new property owner. Director Garman stated he was correct. He stated that whether it was recorded or not, should the property change hands, they will have the requirement to put in the parking due to the parking deferral and they will also have the requirement to put in the fence or the screen since it was a requirement of the conditional use permit, regardless of whether it was recorded or not.

Member Murray moved to recommend that Town Council approve Ordinance 13-02 as presented. Vice Chair Fricker seconded.

Motion carried 5-0.

Discussion of Lot Coverage Regulations for Permeable Pavement

Director Garman stated that staff has made an attempt to provide some focus to this month's discussion. He stated that the Board was again looking at lot coverage regulations as they apply to permeable pavements. He noted that in the staff report, it was suggested that it be broken down into commercial and residential. He suggested that the Board discuss the residential aspect at this meeting. He stated that staff collected some information from the State stormwater manual as well as the Town engineer, who suggested that he speak to staff at the Town of Nags Head. He stated that the Town of Nags Head had originally considered an ordinance to allow porous concrete in residential areas but voted against it. He added that they reconsidered it recently and voted to approve it, allowing a lot coverage reduction for installation of porous concrete. He stated that it was similar to what they previously had for turfstone, but then amended the ordinance to allow a reduction for porous concrete as well.

Director Garman thought the Town of Nags Head staff was initially uncomfortable with it due to the technical nature of installing porous concrete properly. He explained that there were a lot of requirements to install the concrete, such as the installer must be certified and there must be an inspection once the base is put down and then another at the completion of the installation and all inspections were to be performed by the Town engineer. He stated that the town of Nags Head Town Council adopted the ordinance without a maintenance requirement. Director Garman believed this was because the Town of Nags Head staff could not effectively track maintenance of residential installations. Nags Head adopted the ordinance without maintenance because, even though there would be a reduction in function over time, there would still be a stormwater benefit that would be comparable to the actual lot coverage increase that was being granted. Director Garman suggested including permeable concrete in the Town of Duck's coverage definition and counting it as 60% coverage like what is currently done with pavers.

Vice Chair Fricker clarified that staff was affirmatively recommending that the Board recommend approval to Council of the pervious pavement for residential construction with some coverage reduction. He asked what was motivating the recommendation. Director Garman stated that the Town already gives a reduction for porous pavement and this just gives people another option. He stated that it would allow more flexibility and provides an incentive to use permeable pavement. Vice Chair Fricker clarified that it would help with the stormwater runoff.

Director Garman stated he was correct. Member Forlano asked if reducing stormwater runoff was the ultimate goal of this issue. Director Garman stated that it was.

Member Murray thought that if that was the ultimate goal, and permeable pavement helps, the technical nature of the installation was such that there was no mechanism for making sure that the slope of the installed permeable pavement was correct and conducive to absorbing water. He added that he was not opposed to giving people credit for permeable pavement, but thought that if the Town wanted to encourage people to manage the stormwater on their property, the onus should be on the property owner to bring in an engineered stormwater management plan with the Town giving a lot coverage credit for the property owner using an engineer who would try to solve the issue. Director Garman stated that stormwater was an issue between neighbors and it seemed that a lot of it had to do with lot filling as well as the amount of coverage a property owners has. He stated that it seemed that the Town had big stormwater problems that weren't necessarily resolved by the use of permeable pavement. He added that the Town's problems were due to significant periods of rainfall which elevates the groundwater table thereby preventing infiltration of rainwater.

Chair Blakaitis clarified that Member Murray was suggesting that the Town give a credit if a homeowner hired a certified engineer to design a stormwater management plan. Member Murray stated that without the use of an engineer, there would be no guarantee that the pavement would be installed properly. For instance, the applicant could suggest using permeable concrete on a 20 percent slope which is contrary to recommended practice. He questioned how the town would prevent this from happening. Chair Blakaitis stated that it went against the technical specifications with the install as they talk very specifically about five and six degree slopes and beyond that, it doesn't do any good. Member Murray asked how the Town would know that. Chair Blakaitis stated that if it was installed by an accredited company, they were the ones that should ensure it. He didn't think it would be a problem for Town staff to make sure a few important things were covered when an application is received. Director Garman noted that Town staff looks at the site before the permit is issued.

Member Murray stated that if an ordinance was written encouraging people to use permeable pavements, it would reduce the stormwater. He stated that there was the question of enforceability as well as effectiveness. He stated that he was suggesting that there be a way to have someone that the Town does not have to pay to take care of the issue. Chair Blakaitis stated that the engineer could assess the effectiveness. Director Garman stated that the Town of Nags Head does not charge additional fees for their engineer to perform the inspections, but added that Duck could charge additional fees by adding something to the fee schedule for additional inspections.

Vice Chair Fricker asked if the Town engineer was qualified to know what to look for. Director Garman stated that there was only one person in Dare County that was a certified installer, which was the person with the concrete company. He added that the engineers were all qualified to look at the installation of permeable pavement. Chair Blakaitis stated that if the Board decided to include this, they could have it inspected by an engineer. Director Garman stated that the Town of Nags Head has several tiers of coverage with the use of different permeable features.

Member Forlano asked about the 75% permeable issue. Director Garman stated that in the State stormwater manual, when they issue a stormwater permit, it was generally for a large, commercial development and they look at built upon area. He added that the density is either low or high density and built upon area determines whether a property is low or high density. He stated that if more than 24% of the site is considered built upon area, it would be considered high density. He added that the built upon area could be reduced by putting in permeable pavement, so in order to get below the 24% built upon area, most of the pavement would need to be permeable for site with a significant amount of coverage.

Member Forlano felt that if the Town wanted the residential homeowner to be open to incentives with regard to putting in permeable pavement, the Town needed to give them something in return. He didn't think there were many homes in Duck that have permeable pavers in their driveways because of the cost. He felt that more than 30% in lot coverage reduction was needed as an incentive for putting in permeable pavement. Director Garman stated that the coverage reduction was presently 40%. He added that it would be counted as 60% impervious coverage. Member Forlano thought a homeowner should be given the 75% if they were going to spend a lot of money on the permeable pavement instead of 40%. Director Garman stated that staff looks at lot coverage based on several factors and not just the amount of water that the surface can infiltrate, but also the physical developed area of the property. He added that giving a homeowner that much of a reduction greatly increases how much they can put on their property. He stated that if the goal for residential was to keep it low density, giving a 75% reduction would not accomplish that.

Member Forlano pointed out that the Town has so many restrictions on controlling the size of the house. He noted that the lot had to be a certain size in order to allow a certain number of bedrooms; the Town has an ordinance in place for height, there are setback lines of 25 feet, 10 feet and on top of that is the septic field that controls the size of the house. He asked what the reason was for the ordinance and if it to control stormwater runoff. He stated that he has always been against concrete driveways. He stated that he was in favor of giving as much of an incentive as possible and if the incentive was 75%, that would be fine. Director Garman thought that the pervious concrete was cheaper than pavers. Member Murray pointed out that they would not work in the Tuckahoe subdivision or on Marlin Drive because the roads were too steep. Director Garman agreed.

Vice Chair Fricker clarified that Member Forlano was saying that if one spoke in favor of encouraging pervious materials, then the Town would have to be willing to give an incentive. Member Murray noted that as long as gravel was considered 0, there was no way an incentive could be given since gravel is not considered in lot coverage. Council Liaison Burdick disagreed, adding that when the slope is very steep, gravel cannot be put in as it doesn't work. Chair Blakaitis agreed with Council Liaison Burdick but wanted to explore more of what pervious concrete and asphalt does to house size. He wondered if allowing porous concrete would be an incentive to make a house bigger. He added that he was not in favor of the tiered lot coverage like the Town of Nags Head has in place. He felt that if this issue was going to allow houses to become bigger, then the issue of porous concrete and asphalt should not be addressed at this time. Director Garman thought if the Board was interested in controlling the size of development, gravel should not be exempted completely. He did not think it would do a lot to encourage more development, but thought it would give another option to get the 40% reduction

like the pavers currently do. He noted that the real incentive if a homeowner wanted to make their property bigger would be to put in gravel.

Member Forlano thought gravel should be included. Member Murray thought it should be included but added that the Board was not taking a best practice approach with the ordinance, but more of an “it can’t hurt” approach. Member Forlano disagreed. Vice Chair Fricker stated that it was not just being uncertain as to how efficient over time a permeable surface will be, it was not hard science as to the extent these surfaces will allow water to infiltrate. He felt it was soft science, which was harder to evaluate from an engineering standpoint. Member Murray thought that engineers and designers were confident that permeable pavement installed in the correct setting would work.

Council Liaison Burdick assumed that the homeowner could use pervious concrete for pool patios. Director Garman stated that the homeowner could use it for any concrete surface. Council Liaison Burdick thought it had a significant impact, especially in pool areas where lot coverage is a factor. He stated that if the Board decided they wanted to allow it, they should recognize that the bigger use for it will be around pools. Chair Blakaitis stated that he did not like that. Director Garman stated that people could use permeable pavers around pools and receive the reduction. He did not see porous concrete utilized in pool settings because of its granular characteristics. Member Murray agreed. Director Garman noted that wood decking around a pool does not count against coverage.

Chair Blakaitis stated that if the Board does include pervious concrete, he didn’t think the Board should make the allowance more than the pavers or anything else. Director Garman thought the application would be very limited. Chair Blakaitis asked the Board if pervious concrete around pools should be allowed. Member Murray stated that he was in favor of encouraging people to use it. Vice Chair Fricker stated that he was inclined to not allow it because he did not think there were enough qualified people to handle the installation and inspection. Member McKeithan stated that he liked the increased coverage if the homeowner gets an experienced engineer to design it as it may help the stormwater issue. Member Murray agreed but pointed out that it was an incentive for an owner to build bigger houses. Director Garman stated that the Town has used porous concrete in several applications with success.

Member Murray thought that encouraging pervious concrete was not bad but hoped that it could be revisited in a more comprehensive manner. He added that if it was an incremental change towards something more comprehensive, then he was in favor of it. He stated that if it was the Board’s final word regarding stormwater and permeable pavement, then he would want it to be more specific. Member Forlano agreed with Member Murray’s comments and felt it was a good first step.

Council Liaison Burdick explained that the Planning Board was free to explore runoff problems as far as residential areas were concerned and recommend any innovative ideas to Council. Vice Chair Fricker thought that the Board was to respond to charges given to them by the Council. Council Liaison Burdick disagreed, adding that the Board could not think about an issue that Council hasn’t come up with already. Director Garman stated that in the past, if an issue was brought up at the Planning Board level, the Board could ask that they be allowed to review it more thoroughly and he would bring it before Council and they would decide whether to give the

Board the authority to start looking at the issue. He stated that he was looking at it as a singular issue and not as a full rehash of the stormwater issue.

Director Garman stated that he was looking at the issue as a simple item. He added that the Town already gives people credit for permeable paving blocks and wondered if they should be given credit for porous concrete. He added that they were both porous and would be used in similar situations. He stated that the intent at this time did not involve a comprehensive review of the Town's stormwater rules. Member Murray asked if it could be done separately. Director Garman stated that the Board could, but cautioned that it may open a can of worms with regard to lot coverage rules, gravel counting and decking counting.

Member Murray thought the Board should keep the issue limited in nature. Director Garman agreed with Member Fricker's comment about the issue being considered soft science, but added that there was still strong support that there was some benefit by providing a credit.

Vice Chair Fricker stated that he was persuaded by Member Forlano and Member Murray's comments. He stated that he saw it as an incremental plan. He stated that one of the concerns he had was that it would lead to more structures, but he was no longer concerned. He stated that he would speak in favor of encouraging pervious concrete but not beyond what the Town gives for pavers. Chair Blakaitis did not know if it would be an improvement over the drainage situation that currently exists, and didn't think it was necessary for the Board to move this at all, but would go along with the Board. He stated that if the Board wished to include it, they should start it off as an incremental percentage that makes sense. He added that he was still concerned with the engineering and enforcement of it. Director Garman stated that the suggestion was to keep it consistent with the pavers.

Member McKeithan stated that the advantage was that they would not be very expensive and would encourage more homeowners to go that route instead of only having the option of pavers. Chair Blakaitis stated that he was in favor of allowing them with a 30% reduction. Vice Chair Fricker stated that he would be in favor of having the percentage the same as the pavers, which was 40%. Member Murray agreed.

Chair Blakaitis asked if any engineering conditions should be put in the regulations. Director Garman thought the Board could take some suggestions from the Town of Nags Head ordinance as well as the language with regard to installation and design. It was *consensus* of the Board to do so.

Vice Chair Fricker moved to have the Planning Board recommend to Town Council the approval of including pervious concrete and asphalt for pavement purposes with each to be counted as 60% impervious coverage. Member Murray seconded.

Motion carried 5-0.

Director Garman stated that the Board would discuss the commercial side at their February 13, 2013 meeting.

APPROVAL OF MINUTES

Planning Board Meetings – December 12, 2012

Member Forlano moved to approve the minutes from December 12, 2012 as presented. Member Murray seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

Chair Blakaitis noted that the Town Council Retreat would be held on February 27 and 28, 2013. He added that the Planning Board Members should plan to attend the Retreat regarding the planning items. Director Garman stated that the Town has been asked to look at what it would mean if the Town was declared an urban waterfront.

Council Liaison Burdick noted that the Town’s winter celebration would be held on Friday, January 25, 2013.

ADJOURNMENT

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

The time was 8:23 p.m.

Approved: _____
 /s/ Joe Blakaitis, Chairman