

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
May 14, 2014**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, May 14, 2014.

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

Absent: Tim McKeithan.

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

Others Present: Craig Readman and Paul Shaffer.

Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for May 14, 2014 at 6:38 p.m.

PUBLIC COMMENTS

None.

It was *consensus* of the Board to move New Business up on the agenda.

NEW BUSINESS

Discussion/Consideration of CUP 14-002, an Application by Craig Readman of Treehouse Coffee, for a Conditional Use Permit to Convert Units 3 and 4 in Building #3 at the Scarborough Faire Shops at 1177 Duck Road from Retail Space to an Eating Establishment as Defined in Town Code Section 156.002

Director Garman stated that this was an application for an eating establishment. He noted that the Planning Board and Town Council adopted a new ordinance approximately two years ago regarding eating establishments, which define a coffee shop as an eating establishment. He stated that a Conditional Use Permit is required for all eating establishments and the applicant is proposing a coffee shop at Scarborough Faire and was looking at occupying the two units listed in the staff report. He believed the applicant was looking to convert the former Culinary Duck store only.

Craig Readman was recognized to speak. Mr. Readman stated that Director Garman was correct. Chair Blakaitis clarified that the applicant was looking to convert only one unit instead of two. Craig Readman stated that officially, it could be considered three units the way they were drawn

up. He added that he was using the former Culinary Duck store and was not using the former Rub a Dub Duck store as that was now being used by the Corolla Wild Horse Fund.

Director Garman stated that what was highlighted in the site plan was accurate as to what was to be occupied. He stated that Mr. Readman provided a floor plan that showed the layout of the eating establishment and the calculated area of the unit was 1,191 square feet. He stated that it was an eating establishment use so it would have to comply with all the provisions of the Code for eating establishments. He stated that Mr. Readman was not proposing any indoor seating, but would be a single point service coffee shop with menu items such as pastries. He added that the Building Inspector and Fire Marshall looked at the floor plan and approved the layout as presented. He stated that staff looks at parking requirements and since this was previously a retail space, the parking requirement for retail was one space for every 200 square feet of floor area. He stated that given that this unit was 1,191 square feet, the applicant would be required to have six parking spaces for it; however, for eating establishments, the minimum requirement was five spaces. He noted that since they would not have seats, the applicant would automatically meet the parking requirement and could still provide parking for the outdoor customer service area.

Director Garman stated that he had indicated in the staff report that at any point should the applicant decide to add seats, he could add up to 12 indoor seats without requiring any additional parking. He noted that the applicant would have to go to the Health Department for approval for adding the seats. He stated that there were no modifications to the footprint of the building; all of the modifications were interior ones. He stated that staff felt it met all of the parameters of the Town Code and would recommend approval based on what was submitted.

Vice Chair Fricker asked if there was room for outdoor seating. Craig Readman stated that there wouldn't be room for outdoor seating; however, the porch could accommodate some seating. Director Garman noted that it wasn't directly adjacent to the store.

Member Forlano asked if for this and future projects that go from retail to food service, before the Board could make a decision, they would need verification from the Health Department that the septic system was able to handle a food service establishment. He thought the septic was more demanding with food service than for retail. Director Garman stated that he was correct. He added that Craig Readman was not proposing any indoor seating. He thought the Health Department treated this as a food stand. Craig Readman stated that he already obtained approval from the Health Department. Director Garman didn't think the applicant required additional septic. Mr. Readman stated that he did not need any additional septic as he was only heating and re-heating and not cooking items. Director Garman stated that if Mr. Readman wanted to come back at a later date and add seats or change the way he cooks food, he would be able to add up to 12 indoor seats without coming back to the town for an amendment. He noted that Mr. Readman would have to go to the Health Department regardless of what the Town does.

Vice Chair Fricker moved that the Board recommend to Council approval of Conditional Use Permit 14-002 as presented. Member Forlano seconded.

Motion carried 4-0.

OLD BUSINESS

Discussion of Improving the Town of Duck's Community Rating System Classification

Director Garman stated that the staff report outlined all of the items presented at the Board's last meeting, such as the options to consider in order to obtain points for the CRS. He thought the consensus at the end of the meeting was for staff to look at the low hanging fruit first. He stated that he tried to pick those items out for the Board to discuss. He stated that the two items were – "maintain the current one foot freeboard" and "require properties with wet flood-proof enclosures to record non-conversion agreements with the Dare County Register of Deeds Office". He stated that Building Inspector Cory Tate would review those items with the Board.

Building Inspector Cory Tate was recognized to speak. Building Inspector Tate stated that he would be discussing two items that may help the Town in its quest to receive more CRS credit and thereby receive a greater discount on flood insurance premiums for the citizens of Duck. He stated that an easy way to improve the CRS standing would be to increase the amount of freeboard required for new construction projects and substantial improvement projects. He stated that the minimum that the National Flood Insurance Program was that the floor of the structure had to be at or above base flood elevation. He noted that currently, Duck's Flood Damage Prevention Ordinance required a one foot freeboard; however, the Town amended the ordinance to mirror the requirements of the North Carolina Building Code. He added that it has since been rescinded for political reasons, but the Town still retains the requirement.

Building Inspector Tate stated that the Town could receive for each one foot above base flood elevation an additional 100 points. He stated that in the past, the Town could receive uniform credit because North Carolina had adopted the model building code. He added that they gave the Town a certain amount of credit for a period but now that the requirement is no longer in the building code, the Town would still get the uniform credits and will get an additional 100 points for maintaining the one foot freeboard in the Flood Damage Prevention Ordinance. He stated that if the Town desired, it could adopt a two foot freeboard and receive 200 points for maintaining the freeboard requirement. He noted that there were towns in the western part of the United States that adopted a four foot freeboard. He thought that 400 points was the most a town could receive.

Building Inspector Tate stated that the other item that he wanted to discuss would be easy to enact without creating much discomfort for property owners or building contractors. He stated that it would require properties that take advantage of flood proofing measures to record non-conversion agreements with the Dare County Registrar of Deeds office. He explained that it would be a legal document that would be attached to the deed to the property and set up so that it would be recorded with the understanding that they are below base flood elevation and will not convert those spaces to habitable space. He stated that the document would be conveyed with the deed to the property whenever ownership changes. Director Garman clarified that Building Inspector Tate was referencing a storage enclosure. Building Inspector Tate stated that it was for parking, ground floor storage and ground floor entry. He noted that the Town could receive an additional 90 points if it was required.

Building Inspector Tate stated that for new construction, if the Town required an additional foot of freeboard, it would not be too difficult but would entail additional costs. He noted that where the additional freeboard became an issue was with substantial improvements to an existing structure or building out an enclosure. He stated that it would provide a substantial benefit to the Town's CRS credit.

Member Forlano asked how a pre-existing property would be addressed that had an enclosure on the ground level and the property was sold. Building Inspector Tate stated that it was a little unclear exactly how it would work because the Federal government has made a number of modifications to the National Flood Insurance Program to make the program more self-supportive. He added that some of the measures have been recently repealed by legislation that was passed by Congress and signed by the President. He stated that under the Town's current regulations, the structure would be grandfathered and allowed. He stated that it looked like the trend with the National Flood Insurance Program was that they were going to take the grandfathering away to make it so that people who were in harm's way would have to pay more insurance. He stated that if the homeowners lose their grandfathering status, their flood insurance would automatically go up regardless of whether they make a substantial improvement or not to their home.

Chair Blakaitis asked if homeowners could elect to eliminate the enclosure on the ground level as living space. Building Inspector Tate stated that they could. He added that it was the cheapest way to get around the requirement.

Chair Blakaitis asked if the one foot freeboard requirement applied to every structure in Duck. Building Inspector Tate stated that it applied to structures in the special flood plain area. He added that if a home was in a non-flood zone, the home was considered to be above the reach of any prevalent flooding. Chair Blakaitis asked if it would apply in an X zone. Building Inspector Tate stated that it would not, but would apply in the V zones and the A zones.

Chair Blakaitis asked Building Inspector Tate to describe the basics of free and clear of obstruction. Building Inspector Tate went on to explain the basics as well as the direction and height of girders for structures to the Planning Board and the audience.

Director Garman stated that one benefit of the free and clear of obstruction was that the whole house could be moved without having to tear out the bottom floor. He added that if a homeowner builds on a wood floor system, the entire house can be moved, as opposed to building it on a slab.

Chair Blakaitis wondered if there was a way to get an estimate of what the additional insurance premiums would be for imposing V zone regulations. Building Inspector Tate stated that right now, there would not be any additional insurance premium imposed on the property owners until FEMA enacts the regulatory standards. He added that they were encouraging people to start building to the standard. He noted that new flood maps were going to be coming out and when the Town receives them, the coastal A zone would be on the map. He stated that after that, with the next set of maps, FEMA would be imposing a regulatory standard that would go along with that zone, which means that anyone that builds in that zone would automatically have to meet the

requirements. He stated that as far as the actual insurance premiums, it would not be rated as stringently as the VE-12 zones were since they take the brunt of wave action.

Director Garman clarified that if the Town were to adopt the rule that coastal A zones had to be built to V zone standards now, it would not affect any insurance premiums. Chair Blakaitis thought it would affect the owner's cost for their house. Building Inspector Tate stated that it would affect the cost of construction.

Member Murray clarified that the community flood rating reduces the rate for all homeowners. Building Inspector Tate stated that it reduces the rate for all homeowners except those that were considered a preferred risk. Member Murray thought it would be beneficial to obtain some insurance information before the Board goes any further with the issue. He stated that applying more stringent flood standards to new houses and significantly improved structures were beneficial because it reduced everyone's flood rates.

Vice Chair Fricker clarified that with no new construction and if Council were to take such steps, there would be a community-wide savings on the homeowner's insurance premium. Chair Blakaitis thought there may be. Vice Chair Fricker asked if it was true. Director Garman stated it was. Building Inspector Tate stated that it did increase what people that build new houses would have to pay, but they would benefit on the back side if they had to borrow money to build the house, as they would enjoy cheaper flood insurance rates.

Member Murray stated that he was curious from a flood insurance perspective, which discount was deeper. He stated that if he was an actuary and he had to give a discount to a community, he would give a lesser discount if he was giving them to existing homes.

Council Liaison Burdick stated that there was a set of numbers out on what the discount was depending upon what rating the Town had. Building Inspector Tate stated that it was five percent per class. Director Garman added that the Town was receiving 15%. Building Inspector Tate explained that if a community was a Class 10, there was no percentage; a Class 9, it was 5%; a Class 8 received 10%; and a Class 7 received 15%. Council Liaison Burdick believed that Council had discussed that they would like to maintain the 15% rating if possible, since it benefitted the entire Town. Chair Blakaitis asked if that was the minimum that Council would like the Town to maintain. Council Liaison Burdick believed so. Chair Blakaitis asked if Council was pushing for the Town to have a Class 6 rating. Council Liaison Burdick thought if there was a way to get to Class 6 without too much problem, it would be fine.

Chair Blakaitis asked Building Inspector Tate if it was possible for the Town to get a Class 6 rating. Building Inspector Tate stated that there were things afoot politically that could make it impossible for the Town to get the Class 6 rating. Chair Blakaitis thought the Town could stay at a Class 7 rating. Building Inspector Tate thought it would probably be the most ambitious thing that the Town could accomplish. He explained that the North Carolina Building Code Council was considering a measure that would modify the wind borne debris provisions of the code making this a requirement only if a structure is within 1,500 feet of the mean high water mark of the Atlantic Ocean. Currently, the entire town must comply with the wind borne debris provisions of the code. He added that if they do that, there would be some structures in Duck that were outside the windborne debris protection region and as a result, the Town would lose some

CRS credit. He stated that the CRS credit that was given for the adoption of the current building code meant that the Town had adopted and applied those regulations in the uniform building code to every structure in the jurisdiction. He noted that if they go back to the 1,500 feet, the Town would not be able to meet that and it would be possible that the Town would lose a class.

Building Inspector Tate stated that the state legislature has precluded the Town from keeping the current regulation. Vice Chair Fricker asked what the political climate was being driven by. Building Inspector Tate stated that it was being driven by the Homebuilders Association. Director Garman asked if the change was being considered now in the short session of the current legislation. Building Inspector Tate stated that it was not being considered in the short session for the General Assembly, but being considered by the Building Code Council. Director Garman asked if the Building Code Council adopts it, it would be final. Building Inspector Tate stated that it would be. Director Garman asked if local government had any influence. Building Inspector Tate stated that local governments would have to get involved and it would have to be more than just at the Town of Duck level since this was a statewide movement.

Building Inspector Tate stated that the position that the Building Code Council was taking has an adverse effect for those that live in coastal regions because they were against anything that would increase the cost of single family dwellings by \$10.00. He stated that it wasn't necessarily a bad thing, but was a reality and would hurt some people on the coast. Director Garman asked how soon this would play out. Building Inspector Tate thought it could be as early as June.

Council Liaison Burdick asked how many points the Town would lose. Building Inspector Tate stated that it was a requirement to be a Class 7 community and if that requirement is not met, it didn't matter how many points a community has. Director Garman noted that there were prerequisites. Building Inspector Tate stated that it was a possibility that some of the coastal communities could rally enough to influence the Building Code Council, but it wasn't likely.

Member Murray asked what the deadline was for doing this in relation to this playing out in June and the Town seeing the new flood maps. He thought if it would affect a lot fewer properties than previously thought, the Town could make the requirements more stringent to upgrade. He stated that it seemed like there were two big variables that the Town did not know about.

Director Garman asked if the Town did anything or if changes were adopted by the Building Code Council that reduced the Town's rating, how soon the rating would change. Building Inspector Tate stated that the rating would not change immediately; it would change when the Town had its next cycle visit, which was October 2015. Director Garman clarified that regardless of what the Town did or what the Building Code Council did, the Town's rating would stay the same until that date. Building Inspector Tate stated that it would until the Town gets re-evaluated by the ISO.

Chair Blakaitis asked if the Board worked on what it needed to get the Town 200 to 300 points, what it would do. Building Inspector Tate stated that it would make sure the Town retains a Class 7 rating. Director Garman noted that the Town had a lot of time to consider this. He added the Town also had time to see what happened with the maps. Building Inspector Tate noted that it would probably be towards the end of the year before the Town receives the maps. Vice Chair Fricker stated that it was noted at the Board's last meeting that the Town would have to have

everything in place by October 2015. Council Liaison Burdick agreed. Director Garman agreed and added that the Board had time.

Building Inspector Tate stated that as far as the coastal counties were concerned, he hoped that cooler and calmer heads would prevail and that they don't revert back to the rule pertaining to within 1,500 feet of the mean high water mark.

Director Garman stated that what started the CRS discussion with the town was the review of the hazard mitigation plan. He added that he attended a meeting recently and the state has gotten money to pay for a consultant to prepare a regional hazard mitigation plan. He stated that he went to the meeting and it involved 10 counties and all the municipalities within those counties, including Dare County, and Duck would be included as part of the regional hazard mitigation plan, which would supersede what the Board discussed previously regarding doing its own plan and having it a part of Dare County's plan. He stated that the Town could go over its own strategies and update those and provide it to whoever was doing the plan. He noted that they were following a specific planning process that was outlined in the CRS program and because of that, the Town would obtain more CRS points, up to 100 or more, just by participating in the regional hazard mitigation plan.

Member Forlano clarified that the current rating pertained to just the flood insurance rates and not the wind and hail. Building Inspector Tate stated he was correct.

Chair Blakaitis asked Director Garman what he proposed that the Board do with Items 1 and 3 as far as making recommendations or putting them aside until the Board goes through the rest of the list. Director Garman stated that, just like with other ordinances, the Board could discuss items, document what was done and then compile it all at the end. Chair Blakaitis clarified that the Board would not pass the first two items to Council. Director Garman stated it was up to the Board, but thought the Board could wait so they had a comprehensive set of ordinances. Chair Blakaitis thought if it looked unreasonable to go the extra route for a Class 6 rating, the Board should work on maintaining the Class 7 rating. He suggested that the Board decide what to do with the first two items quickly, put the number aside and when finished with all five items, go back and see what the Town had points-wise. He noted that the Town needed 750 points to get a Class 6 rating.

Director Garman stated that the good thing about Item 6 is that the Board could wait until the maps come out and see where they define the Coastal A zone. He added that they would not adopt regulatory standards for the coastal A zone with this new set of maps, but the next round they likely would. He stated that if the Board knew they were planning to adopt regulatory standards in the future, they could advise people about it so their structures would not become non-conforming at a later date. Building Inspector Tate stated that one good thing about the new flood maps was that some of the Stillwater flood elevations would drop due to better mapping. He added that none of the Town's Stillwater elevations were higher than the base flood elevation; all were below base flood and the Town would have to go with the most stringent rules.

Chair Blakaitis asked Director Garman if he was planning on looking at a couple of the items every month or skipping a month. Director Garman thought the Board could deal with some of

the items fairly quickly and that it would make sense to wait on others to see what would happen. Chair Blakaitis suggested moving forward on Items 1 and 3 and then possibly at the next meeting, picking Item 3 and waiting on the flood maps.

Vice Chair Fricker suggested that rather than looking at Item 3 in June, decide if Item 3 was deemed appropriate in terms of time limitations. Chair Blakaitis didn't think it made a difference. Director Garman stated that the Board discussed Items 1 and 3 at this meeting and didn't think they came to any conclusion about what was favored with regard to either one. Member Murray thought the point value would have to be discussed at the end, so the Board would have to review all of the items. Chair Blakaitis thought the intent of this meeting was to decide on what to do with Item 1 and Item 3. Building Inspector Tate noted that Items 1 and 3 were low hanging fruit. Chair Blakaitis agreed and suggested that the Board approve them and put the number aside before going to the next item. Director Garman stated that Items 2 and 5 would be ruled out of consideration fairly quickly as Item 2 was to adopt the cumulative standard for replacement costs. Building Inspector Tate noted that, politically, it would be extremely unpopular. Director Garman stated that Item 5 would be prohibiting fill at all in the flood zone. Building Inspector Tate suggested that the Board eliminate Item 5.

Vice Chair Fricker thought that the Board should deal with Items 1 and 3 at this meeting by putting it to a vote as well as having another scale that they could look at, showing what would be the most onerous and what would be the least onerous. He stated that at the end, the Board could compare what they did. Chair Blakaitis agreed. Vice Chair Fricker stated that he was trying to minimize the likelihood of having to re-discuss the items.

Chair Blakaitis asked the Board how they felt about Item 1. He stated that he favored leaving it as is for now. Vice Chair Fricker and Member Forlano agreed.

Chair Blakaitis moved to leave Item 1 as it is for now (maintaining a one foot freeboard in the town's flood damage prevention ordinance) until the Board is finished reviewing the entire procedure without changing freeboard. Vice Chair Fricker seconded.

Motion carried 4-0.

Chair Blakaitis asked the Board how they felt about Item 3. Member Murray stated that it was essentially asking someone to agree to follow the rules that were already in place. Building Inspector Tate stated that it was the least onerous.

Member Forlano asked if a pre-existing condition was considered a non-conforming property if it was enclosed. Building Inspector Tate stated that a new enclosure would be considered conforming until it was substantially damaged or improved.

Vice Chair Fricker moved to recommend Item 3 be adopted with the language modified to read: "...required properties only with newly constructed, substantially improved wet flood proof enclosures..." Chair Blakaitis seconded.

Motion carried 4-0.

Chair Blakaitis stated that the Board decided to leave Item 1 as is for now and approve Item 3. He added that at the Board's June meeting, Director Garman could bring a couple low hanging fruits to kick out and then the Board will wait for the flood maps before discussing any other items. Council Liaison Burdick thought the Council wanted the Board to arrive at a point of being able to say whether it would be refined to stay as is, but if it was to go to another level, provide recommendations. He didn't think the Board should wait until the flood maps come in. Chair Blakaitis clarified that Council Liaison Burdick was looking for an interim report. Council Liaison Burdick stated he was correct. Chair Blakaitis thought it was possible and thought there wasn't a time limit. Director Garman stated that he could give Council an update, but regardless of what the Board does in the short term, nothing would take effect until October 2015. Chair Blakaitis thought if Council wanted an update, he thought it could be done sometime in the next three months.

APPROVAL OF MINUTES

Minutes from the April 9, 2014 Regular Meeting

Member Forlano moved to approve the April 9, 2014 minutes as presented. Member Murray seconded.

Motion carried 4-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Director Garman stated that the stormwater ordinance was presented to Council at their May 7, 2014 meeting and a public hearing is scheduled for the Town Council's June 4, 2014 meeting. He stated that at the end of the meeting, Willo Kelly came up to him and asked him to present the stormwater ordinance to the Homebuilders Association, which he did and they overwhelmingly supported the ordinance.

Director Garman noted that Council reviewed the stormwater ordinance and asked the Board to look at another item with regard to stormwater requirements for streets at a future meeting.

Director Garman stated that staff received a CUP application from the Sanderling to add a third floor to the north inn building as well as convert some existing space to the main inn to rooms for a total of 24 rooms. He added that the north end building was being proposed within the 35 foot height limit.

BOARD COMMENTS

None.

ADJOURNMENT

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

The time was 8:04 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman