

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
November 2, 2016**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, November 2, 2016.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Nancy Caviness; Councilor Chuck Burdick; and Councilor Jon Britt.

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief John Cueto; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Director of Public Information Denise Walsh; Public Relations Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Fire Chief Donna Black.

Mayor Kingston called the meeting to order at 7:05 p.m. He asked Mayor Pro Tempore Monica Thibodeau to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence. He asked everyone to remember the fallen police officers of Urbandale and Des Moines, Iowa.

Mayor Kingston welcomed Dare County Vice Chairman Wally Overman to the meeting.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments. He asked that any comments regarding the public hearings be held off. There being no one wishing to speak, Mayor Kingston closed the time for public comments.

CONSENT AGENDA

Minutes from the October 5, 2016, Regular Meeting

Councilor Caviness moved to approve the Consent Agenda as presented.

Motion carried 5-0.

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

NEW BUSINESS

Discussion/Consideration of Resolution 16-09, a Resolution of the Town Council of the Town of Duck, North Carolina, Requesting Summer Traffic Control from the NC Highway Patrol

Town Manager Christopher Layton was recognized to speak. Town Manager Layton stated that last year, the police departments for the Towns of Duck, Southern Shores and Kitty Hawk, along with the Dare County Sheriff's Office, provided patrol officers to monitor the intersection of US 158 and NC 12 on weekend days during the summer. He explained that the purpose of this measure was to assist in the flow of traffic during that time. He added that recently, a request was made to the Outer Banks Tourism Bureau for funding in the amount of \$25,000 to assist in the cost of stationing patrol officers in this area, noting that the Tourism Bureau had not yet acted on the request. He stated that concurrent with the request to the Tourism Bureau, the Dare County Board of Commissioners adopted a resolution asking the State Police to position troopers at the intersection in lieu of the patrol officers. He stated that in previous meetings with the State Police, they declined to participate due to lack of staffing. He explained that, from a Duck perspective, the cost of placing Duck police officers at the intersection was minimal; however, there were issues related to staffing.

Dare County Vice Chairman Wally Overman was recognized to speak. Mr. Overman stated that the police departments from the Towns of Duck, Southern Shores and Kitty Hawk have been providing coverage for US 158 and NC 12. He understood that the NC Highway Patrol attempted on two occasions to provide officers to help at the intersection and in at least one case, had to leave due to an accident in Currituck County. He stated that Dare County was told that Currituck County wanted to get out of providing coverage due to manpower or budgetary considerations and needed their officers in Currituck County. He noted that the Tourism Bureau's request for \$25,000 was to pay for overtime of officers for the intersection. He stated that Dare County Sheriff Doug Doughtie had stated that he felt that the actual number was closer to \$16,000. He stated that the attorneys for the Tourism Bureau had pointed out that the NC Highway Patrol were responsible for the safety and enforcement of traffic issues on state roads. He stated that the plan was to ask the NC Highway Patrol to help with the summer traffic control and he had planned to present the adopted resolutions. He noted that the resolution had been passed by Dare County, the Town of Kill Devil Hills, the Town of Southern Shores and the Town of Nags Head.

Councilor Caviness moved to adopt Resolution 16-09 as presented.

Motion carried 5-0.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of SE 2016-001, a Special Exception Application to Install Concrete Parking Spaces on the Property at 152 Marlin Drive where Section 156.096 of the Duck Town Code Requires the Use of Loose Stone

Surface (Gravel), Porous Pavers, or Other Semi-permeable Materials for Residential Parking Spaces

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. He stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine and cross-examine witnesses. He asked that anyone wishing to testify come forward to be sworn in.

Town Clerk Lori Ackerman proceeded to swear in the applicants and staff for the public hearing.

The following persons were sworn to provide testimony during the hearing: Joe Heard, Ron Forlano, Jimbo Ward, Matthew Shealey, William Holden and Jo Anne Holden.

Town Attorney Hobbs opened the evidentiary portion of the hearing. He stated that Director Heard would give an overview.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the applicant was seeking a special exception permit to allow a concrete parking surface for five parking spaces associated with the construction of a new single-family residence at 152 Marlin Drive. He explained that Section 156.092(C) of the Zoning Ordinance requires that parking spaces be improved with loose stone surface such as gravel, porous pavers or other similar semi-permeable materials. He stated that if the special exception permit was approved, the applicant would be able to use the five concrete parking spaces to meet the Town's parking standards.

Director Heard explained that the contractor for Beach Realty & Construction had obtained a building permit on September 4, 2015 to demolish the existing residence and construct a new, six-bedroom single-family residence at 152 Marlin Drive. He added that in order to accommodate the maximum occupancy of 12 people on the Health Department septic permit, the project included the installation of six parking spaces. He stated that one of the parking spaces was located partially underneath the house and the other five were located to the right of the driveway leading to the house.

Director Heard stated that when the project was completed in July, 2016, staff conducted a final inspection and noted that four of the five parking spaces to the right of the driveway were constructed in concrete rather than gravel or an accepted semi-permeable parking surface. He stated that he reviewed the situation to consider if the concrete surface could be approved for topographic conditions, but found that the location of the

parking spaces was essentially flat and did not warrant administrative relief to address topographical challenges.

Director Heard stated that after he had discussed the issues with the contractor, it became apparent that the contractor had based the driveway and parking layout on the site which showed the entire area being in concrete, rather than the conditions on the building permit which specifically noted that all parking outside of the drive aisle must consist of gravel or semi-permeable material.

Director Heard stated that the applicant opted to ask the Planning Board and Town Council to consider granting a special exception before making the required correction of removing the concrete and installing gravel or another semi-permeable material. He noted that staff issued a Temporary Certificate of Occupancy on July 25, 2016 to allow the property owner full use of the residence while the special exception application was being considered. He added that a final Certificate of Occupancy could be issued following either approval of the special exception application or replacement of the concrete parking spaces with gravel or another semi-permeable material if the special exception application is denied.

Director Heard reviewed the criteria to grant a special exception with Council and the audience:

1. Granting the requested special exception will not result in increased traffic congestion or otherwise negatively impact existing traffic flow or pedestrian and vehicular traffic.
2. Granting the requested special exception will not be contrary to the objectives specified in the CAMA Land Use Plan.
3. Granting the requested special exception is necessary to permit the reasonable use of the subject property.
4. Granting the requested special exception will not adversely impact adjacent property or the surrounding area.

Director Heard stated that at its meeting on October 12, 2016, a majority of the Planning Board members agreed with staff comments and determined that this special exception application met Finding #1, but not Findings #2, #3 and #4. He added that since the request did not comply with all of the necessary findings and that the property owner did not show a hardship, the Planning Board voted 3-1 to recommend denial of the application. He added that staff was also recommending denial.

Mayor Kingston asked if there was a pitch going to the east side of the property. Director Heard stated that there was a very slight pitch and not a large change in elevation in the front yard of the property.

Mayor Pro Tempore Thibodeau clarified that the stairway from the house would end on gravel if the concrete was removed. Director Heard stated she was correct.

Councilor Britt asked if the concrete was the latter part of the project. Director Heard stated he was correct.

Town Attorney Hobbs asked the applicants to make a presentation.

Matt Shealey of Beach Realty and Construction was recognized to speak. Mr. Shealey stated that the Town was asking them to remove approximately 800 square feet of concrete, which would free up 800 square feet of lot coverage that could be used elsewhere on the site. He understood what the Town was trying to do regarding using semi-permeable materials, but allowing him to come a few feet off the driveway to build a structure or another improvement on the property would put it closer to the setback lines. He thought it was detrimental.

Town Attorney Hobbs asked if any of the sworn witnesses wished to give a presentation or comment on the application.

William Holden of 154 Marlin Drive was recognized to speak. Mr. Holden stated they have lived in their house for 39 years and have never had standing water; however, since the house at 152 Marlin Drive was built, they have had standing water on their property, especially after Hurricane Matthew. He asked Council not to grant the special exception request.

Town Attorney Hobbs asked if anyone wished to address the application. There was no one.

Town Attorney Hobbs asked Council if they had any remaining questions.

Councilor Caviness asked if there was a lot of clearing. She pointed out that it looked like there was a lot of vegetative clearing. Matt Shealey stated that there wasn't much clearing on the side property lines. He added that they cleared out some of the underbrush, but most vegetation on the east and west property lines was left intact.

Jo Anne Holden of 154 Marlin Drive was recognized to speak. Mrs. Holden stated that a great deal of vegetation was removed from 152 Marlin Drive. She added that they had asked the applicants not to touch the vegetation on their lot. She stated that the applicants removed a lot of vegetation.

Jimbo Ward of Beach Realty & Construction was recognized to speak. Mr. Ward stated that he went out of his way not to touch Mr. and Mrs. Holden's property with regard to the vegetation. He added that the vegetation was removed in the rear of the lot, but none of the major vegetation was removed on either property line in order to protect the privacy on both sides. He noted that he visited the site multiple times after storms and saw no evidence of severe runoff. He added that a member of the Planning Board had

visited the site during a rain event and did not see any runoff. He stated that his position has always been that they submitted an engineered site plan to the Town and it was approved. He added that they built what the Town approved. He stated that the Planning Board had noted in their meeting that whenever there was a discrepancy in a Town ordinance, and a discrepancy in a site plan, the applicant should be notified that there was a discrepancy. He stated that in his experience with the Town of Duck, if he does something wrong, someone would contact him. He added that no one let him know and so they moved forward with pouring the concrete. He stated that the original site plan did show an outdoor event location that was discarded due to the overall lot coverage, which was the reason for the concrete parking spaces. He stated that if he has to remove four concrete parking spaces, there was 750 square feet that he can build anything on it that he wanted to.

Ron Forlano of 1223 Duck Road was recognized to speak. Mr. Forlano stated that the Planning Board tries to speak as one voice and this special exception application was one that he was against. He stated that he looked at the site and observed a reasonably flat area with a concrete driveway. He stated that when Hurricane Matthew hit, he visited the site and there was no water on it. He added that he visited the site the day after the hurricane hit and did not notice ponding on Mr. and Mrs. Holden's property, but there were other properties on Marlin Dive that were knee deep in water that have pervious driveways.

William Holden handed out photographs of his property to Council to be included as evidence that showed the water on his property after Hurricane Matthew hit, noting that there was severe runoff during the storm. Mayor Kingston asked if the photographs were of the new parking area. Mr. Holden stated that they were.

Mayor Pro Tempore Thibodeau asked Director Heard to clarify the idea of 30% lot coverage with the parking guidelines stipulating that they are made from permeable or semi-permeable materials. Director Heard stated that the maximum lot coverage is 30% and the applicant came in under that. He explained that the Town ordinance has a rule that gravel is not counted as lot coverage so should the four parking spaces be converted to gravel, it would free up approximately 720 square feet to be used for anything else that would be allowable in Town. He stated that the other option was for the applicant to use semi-permeable materials and, while it wouldn't free up entirely 720 square feet, it would allow another 300 square feet to be used in another manner.

Councilor Burdick understood that the applicant signed off on the final certificate that noted that the parking area needed to be gravel. He asked if that was correct. Director Heard stated that it was. Councilor Burdick clarified that the applicant had in his hands the paperwork showing that he was supposed to put in gravel. Director Heard stated he was correct.

Mayor Pro Tempore Thibodeau asked if the 720 square feet could be anything other than parking. Director Heard stated she was correct as long as it met the setback requirements.

Jimbo Ward stated that he had sketches that show where the additional coverage would be placed on the lot. He went on to submit the sketches as evidence.

Councilor Caviness asked if, given the likelihood of removing the concrete and adding an amenity to the lot, there was anything that could be done to the existing concrete that could help it become more permeable. Director Heard stated that there are things that could be done, adding that the main concern was storm water runoff. He added that the applicant could put in swales, retention ponds or additional plantings.

Mayor Kingston asked if staff approved the gravel conversation pit. Director Heard stated that the applicant chose not to construct it because they felt they were getting close to the 30% lot coverage. Mayor Kingston asked if a vegetation plan was submitted. Director Heard stated that there was not a vegetative plan in this case.

There being no one else wishing to speak, Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. He reminded Council that a vote of the majority – three Council members – would be needed to approve the application. He added that if Council adopted the denial, they could choose to adopt the proposed findings and order or if they chose to proceed otherwise, they would need to include specific findings.

Mayor Kingston noted that he and Mayor Pro Tempore Thibodeau had received an email from a homeowner at 143 Mallard Drive. Town Attorney Hobbs stated that the email was considered unsworn evidence and could not be the sole basis for the decision.

Councilor Burdick stated that the Planning Board and Council spent a lot of time trying to get to a point where they were minimizing the impermeable surfaces that would be put in. He added that it gave an opportunity to the designers to use that area for other amenities. He stated that the whole idea was with the topography on the Outer Banks, Duck needed to take maximum advantage in containing runoff within the site as opposed to allowing them to spread to other sites. He stated that his problem with the application was that the applicant signed the statement accepting the conditions that he was to meet and did not meet them. He thought Council approving their request for a special exception would be setting a negative precedent.

Mayor Kingston agreed with Councilor Burdick and the majority of the Planning Board. He added that it was a violation of what the building permit said and was setting a negative precedent.

Councilor Britt stated that it was a tough situation for the applicant but agreed with the rest of Council. He added that it did not meet the definition of a special exception permit.

Mayor Pro Tempore Thibodeau stated that she felt bad about the situation, adding that the applicant made a real effort to keep within the 30% lot coverage. She thought there would be some practical issues with the stairwell ending on gravel.

Councilor Burdick moved to deny Special Exception 2016-001 including all of the proposed findings and conclusions contained in the draft.

Motion carried 5-0.

Public Hearing/Discussion/Consideration of Ordinance 16-07, an Ordinance of the Town Council of the Town of Duck, North Carolina, Amending the Town's Zoning Ordinance by Establishing Standards for the Development of Accessory Dwelling Units as a Permitted Use in all Residential Zoning Districts Subject to Proposed Conditions including Limitation on the Number, Size, Height, Setbacks, Parking and Access for Accessory Dwelling Units

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Robert Hobbs stated that the public hearing was open. He asked Director Heard to give a presentation.

Director Heard stated that at the request of Council, the Planning Board has recommended allowances and standards for the development of accessory dwelling units in Town. He added that proposed conditions included limitations on the number, size, height, setbacks, parking and access for the accessory dwelling units. He noted that at its' April 13, 2016 meeting, the Planning Board seemed amenable to considering the concept of accessory dwelling units, but not larger multi-family residential uses. He added that the Board asked staff to provide background information about the alternatives for further consideration.

Director Heard stated that after months of research and consideration, the Planning Board initially presented Council with a memorandum recommending against further consideration of accessory dwelling units. He stated that after reviewing the Planning Board's recommendation, Council asked the Planning Board to give further consideration to provisions allowing accessory dwelling units.

Director Heard stated that at its September 14, 2016 meeting, the Planning Board voted 3-1 to recommend approval of Ordinance 16-07 and staff was recommending approval as well.

Councilor Burdick stated that he had previously questioned the square footage limitation. He asked how it compared with what the other towns were allowing. He further asked what a small two-bedroom, 1 bath unit have to be in square footage to be considered reasonable.

Marc Murray of 1269 Duck Road was recognized to speak. Mr. Murray stated that the position of the Planning Board was that they wanted to keep detached accessory dwelling units smaller in order to maintain the residential feel of a neighborhood. He added that an attached accessory dwelling unit was limited to the existing size of the footprint of a

house. Councilor Burdick asked what a reasonable size would be. Mr. Murray thought it would be a percentage of the main dwelling.

Mayor Pro Tempore Thibodeau noted that someone could build a garage and put a unit above it. She asked what the footprint would be for a regular two-car garage. Marc Murray stated it was 24x32 feet, which was standard.

Councilor Burdick asked if someone could have two bedrooms in a garage. Marc Murray stated that it would be too small. Councilor Caviness clarified that it could be a studio apartment. Mr. Murray stated that it could. Councilor Caviness clarified that a 5,000+ square foot house would not have any room on the lot for an accessory dwelling unit. She asked if a homeowner wanted to have an accessory dwelling unit, the house would be a smaller scale to accommodate the accessory dwelling unit. Mr. Murray thought the area where it would be an issue would be ocean and sound front lots as they were larger and have larger houses. He added that some neighborhoods have a minimum conformity lot size of 15,000 square feet while others are smaller.

Mayor Pro Tempore Thibodeau thought an accessory dwelling unit above a two-car garage would be more of a studio apartment. Councilor Burdick noted that people would want to build something above a standard garage. He thought that 768 square feet would be squeezing things in. He added that it would make more sense to standardize something that people could build.

Mayor Kingston pointed out that a 15,000 square foot lot with a small house could accommodate a large accessory dwelling unit. Councilor Burdick stated that a two-car garage could still be constructed if the lot coverage was available. Mayor Kingston noted that the percentage could be high. Councilor Britt thought the accessory dwelling unit would be tiny inside. Councilor Burdick stated that he was looking to make sure that it was practical.

Councilor Burdick asked what the other towns were doing with regard to accessory dwelling units. Director Heard stated that Asheville has a limit of 500 square feet and increased it to 800 square feet for detached units and 1,000 square feet for attached units; Currituck County has a limit of 1,000 square feet; Huntersville has a limit of 600 square feet; Manteo has 50% of the living area of a primary residence or 600 square feet, whichever was smaller; and Wilmington has a limit of 800 square feet or 35% of the main structure, whichever was less. Councilor Burdick asked what the Town of Kitty Hawk's limit was. Director Heard stated that they were not permitted as per their ordinance.

Town Attorney Hobbs asked if members of the Planning Board wished to make a presentation.

Ron Forlano thought it was good to come up with a maximum size for accessory dwelling units, but noted that there were other controlling factors that would control the size of the detached accessory dwelling units. He added that there was lot coverage,

setbacks and number of bedrooms allowed. He thought that Council should take that into consideration and address setting maximum standards.

Town Attorney Hobbs asked if any members of the public wished to address the proposal. There were none.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston. He reminded Council that at least four votes would be needed to approve the ordinance on a first read.

Mayor Kingston thought the key issue in front of Council was the size. Councilor Burdick stated that he would like to see it at 800 square feet as it would fit a two-car garage. He added that there were some around and it would be another reason to offer potential low cost housing for people that want to live in Duck. He thought it was what Council was trying to stimulate. He thought going to 1,000 square feet would be too much, but thought 800 square feet would work. He proposed that the language be changed in the ordinance from 700 square feet to 800 square feet.

Mayor Kingston disagreed with Councilor Burdick. He pointed out that some homeowner association covenants do not allow accessory dwelling units so it may be a moot point in a lot of the subdivisions.

Mayor Pro Tempore Thibodeau and Councilor Caviness agreed with Councilor Burdick's comments to allow accessory dwelling units over a two-car garage for flexibility. Councilor Britt stated he would be fine with raising it from 750 square feet to 1,000 square feet.

Mayor Kingston moved to adopt Ordinance 16-07 as amended with the new language that detached accessory dwelling units could be no larger than 800 square feet, heated.

Motion carried 5-0.

Public Hearing/Discussion/Consideration of Ordinance 16-08, an Ordinance of the Town Council of the Town of Duck, North Carolina, Amending the Town's Zoning Ordinance by Clarifying that the Rental of Single-Family Residences on a Daily Basis is Permitted in the Town of Duck and Including Provisions Allowing a Property Owner to Rent up to Two Rooms within a Residence on a Daily Basis in Nearly all Zoning Districts, Subject to a Variety of Conditions

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Robert Hobbs stated that the public hearing was open. He asked Director Heard to give a presentation.

Director Heard stated that at its April 6, 2016 meeting, Council requested the Planning Board and staff to consider and address a list of concerns about land uses identified by

them. He added that questions and concerns were expressed by Council members about the growing number of properties being rented on a daily basis and individual rooms being rented within a residence. He stated that the Planning Board recommended text amendments with two main elements: (1) clarify that the rental of a single-family residence on a daily basis accessory is permitted in the Town and (2) allow a property owner to rent up to two rooms within a residence on a daily basis, subject to certain conditions.

Director Heard stated that Town Attorney Hobbs advised the Planning Board that the Town has the authority to regulate land uses, but not ownership or occupancy. He added that a single-family residence was still a single-family residence, whether it was being rented on an annual, monthly, weekly or daily basis. He noted that the draft ordinance proposed to remove the term “Short Term Rental Homes” from the Permitted-Prohibited Use Table and list of permitted uses in the RS-1, RS-2 and R-2 zoning districts and permit all uses as single-family residences.

Director Heard stated that Town Attorney Hobbs informed the Planning Board that they could consider the daily rental of individual rooms in a single-family residence to be a different, distinct type of land use, in the same way that many communities have adopted standards for rooming houses, boarding houses, and bed and breakfast inns. He explained that after considering alternatives that balance the interests of the broader community and individual property owners, the Planning Board prepared an ordinance that established a definition and standards for “rooming houses”.

Councilor Burdick asked if the ordinance would ensure that if someone was renting rooms, they would have the proper tax collections to cover the rentals so the occupancy taxes were paid. Director Heard stated that the Town has no direct control over occupancy tax payments. Councilor Burdick asked if the Town could ask for evidence that a homeowner has a tax certificate. Town Attorney Hobbs asked if Councilor Burdick was referencing a proof of payment. Councilor Burdick disagreed, adding that one has to register to obtain a tax number or certificate. Mayor Pro Tempore Thibodeau clarified that Councilor Burdick was referencing a tax identification that registers someone that pays taxes. Councilor Burdick stated she was correct. Mayor Pro Tempore Thibodeau stated that she was not familiar with an individual setting something like that up. She added that if an individual was setting up through Airbnb, they remit to the county. Councilor Burdick stated that Airbnb was not the problem, it was when it was owned by an individual. Town Attorney Hobbs stated that he was not familiar with the County process and thought it would be incumbent on the County instead of the Town to make sure that any requirements the County had were complied with.

Mayor Pro Tempore Thibodeau asked if Director Heard would be keeping a record as to who has these type of rentals. Director Heard stated that they would be done through an administrative permit. He explained that with an administrative permit, there may be improvements that need to be made to a house in order for someone to establish renting individual rooms. He stated that in discussions with Building Inspector Cory Tate and his review of the North Carolina Building Code, it could be as simple as inspecting the

residence to be sure that the owner has working fire alarms in each bedroom. He stated that the residence would be required to comply with the same building code as a bed and breakfast would be. He noted that it would not be totally the same requirements as a bed and breakfast has to obey, but there may be improvements that the property owner would need to make before they would be allowed to rent the rooms. He stated that part of staff's review would be to ensure that those things are done. He noted that there would be no signage in residential areas.

Director Heard stated that at its meeting on September 14, 2016, the Planning Board voted unanimously to recommend approval of the proposed text amendment clarifying that residences could be rented on a daily basis and establishing provisions for rooming houses allowing the rental of up to two rooms within a residence. He added that staff was also recommending approval.

Mayor Pro Tempore Thibodeau asked for clarification regarding individual rooms that cannot be located in an accessory dwelling unit in the draft ordinance. She asked if the concern was that people would build them specifically to rent them out as separate rooming houses. Director Heard stated she was correct.

Councilor Burdick stated that one of the issues that the Town faces in the summer was people trying to come a day early to avoid the traffic and are looking for places to stay for one night. He clarified that they could rent a house for a day but could not rent an accessory unit for a day. Mayor Pro Tempore Thibodeau explained that it would take away from the motivation of the accessory dwelling units being more long-term, although it could not be specified. She further explained that the idea of the accessory dwelling unit being more of an encouragement for residential use as opposed to a visitor.

Councilor Britt pointed out that one of the reasons for the accessory dwelling units was to increase income. He stated that he had a problem with allowing someone having a stand-alone structure and telling them how to use it. He noted that it was a different set of rules than for a rental house. Councilor Burdick agreed.

Councilor Burdick felt that the Town was trying to satisfy two objectives. Mayor Pro Tempore Thibodeau agreed. Councilor Burdick thought the accessory dwelling unit should help the Town satisfy as much of both of the objectives as possible rather than limiting it. He stated that it was a limitation that the Town didn't need.

Town Attorney Hobbs asked if members of the Planning Board wished to make a presentation.

Marc Murray stated that the condition came to the Board in the staff report for a meeting that Director Heard was unable to attend. He added that the Board was short by one member, who had sent in an email disagreeing with the ordinance. He stated that as the Board discussed it, Town Attorney Hobbs had let them know what they could and could not regulate, it seemed unfair considering the circumstances. He stated that one member had made that point via email and as the other members discussed it, they did not

interpret it that way without Director Heard present to give the interpretation. He stated that the Board changed the wording in the draft ordinance to state that someone could not rent single rooms in an accessory dwelling unit. He explained that the reason behind that was it could be rented to two separate parties in an accessory dwelling unit and the Board felt it would be problematic. He stated that the Planning Board discussed some of the same concerns Council had, but felt that by adding "single bedroom" in an accessory dwelling unit, it clarified things; however, it became clear at a subsequent meeting that the Board did not read it properly.

Ron Forlano stated that he had a problem with the occupancy tax question Council Burdick raised. He thought there was already a problem with occupancy tax collections with people that rent through VRBO. He stated that he knew that Dare County was not collecting every occupancy tax dollar that they should. He explained that whether it went through a rental agency or through an Airbnb, it was collected. He stated that occupancy taxes not being collected was his issue with the ordinance.

Councilor Britt asked if some of the rental companies attended the Planning Board meeting. Director Heard stated that four had attended. He added that six were invited, four attended, written comments were received by one and written comments were received by Advice 5 Cents Bed and Breakfast and the Sanderling Resort. Councilor Britt asked what the feeling was. Director Heard stated that there were concerns, but the general sentiment was stronger with the lodging property as they saw it as a direct conflict with what they did whereas the rental companies did not express as passionate a concern and didn't feel it had a significant impact on their business model. He stated that there were concerns that dealt with a lot of the operations in regard to health and safety.

Joe Blakaitis of 115 Sandpiper Cove was recognized to speak. Mr. Blakaitis stated that the realtors made mention of taxes and anyone that rented their property this way was not getting the advantages of the professionalism of rental companies. He felt that the Planning Board did not get a clear message from the rental companies that concerned them.

Town Attorney Hobbs asked if any members of the public wished to address the proposal. There were none.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston. He reminded Council that at least four votes would be needed to approve the ordinance on a first read.

Mayor Kingston stated that he was opposed to the ordinance and did not see any compelling reason why Council wanted to get into the daily rental of rooms in Town. He pointed out that there were hotels and bed and breakfasts and rental companies that could rent for less than a week to people. He didn't see a compelling reason as to why the Town would want to get into trying to enforce daily rental of rooms in residential areas. He thought it was unfair practice to the bed and breakfasts and hotels who have to abide by a whole different set of safety standards. He thought putting a commercial use like

rooming houses into residential areas was not what should be done in Duck. He saw no reason why the ordinance should move forward.

Councilor Britt agreed with Mayor Kingston's comments opposing the ordinance. He added that he was opposed to it because it was a commercial use in a residential zone. He stated that it would be an enforcement nightmare for the staff.

Councilor Caviness agreed with Mayor Kingston and Councilor Britt. She stated that she could not support the ordinance at any level. She stated that she knew that a lot of the discussion came up with regard to Airbnb and this ordinance did nothing to address any of the problems that have started with regard to the impact of Airbnb on short-term lodging. She thought the ordinance had a lot of problems for many reasons.

Town Attorney Hobbs noted that the ordinance addressed the rooming houses but also included additional provisions that could stand alone should the Council decide to consider them, which was the elimination of provisions for a "short term rental home" and there were certain provisions that address it and has the language in it. He stated that Council could decide to remove or not adopt the ordinance in its entirety and if they felt like it was something they wanted to do, Council would have the option to remove all of the provisions that dealt with rooming houses while retaining provisions that dealt with removal and elimination of the term "short term rental home" from the entire ordinance. He thought Director Heard had worked on the provisions that would remain should Council decide it wanted to potentially adopt a revised version of the ordinance. He stated that the alternative could be to send it back to the Planning Board to have them bring something back that would address short term rentals.

Mayor Pro Tempore Thibodeau thought there seemed to be strong opinions on the rooming house portion of the ordinance and extracting it would benefit everyone so it could be understood better. She stated that she was confused as to separating them out and thought Council would benefit with seeing a revised ordinance.

Councilor Burdick agreed that the ordinance should be sent back to the Planning Board. Councilor Britt asked if Council should give the Planning Board direction on how to address renting part of the house. Mayor Pro Tempore Thibodeau asked if Council felt that it did not think that Airbnbs were right for the Town of Duck. Mayor Kingston thought Council was saying that it did not want to rent rooms on a daily basis but that they could be rented on a weekly basis.

Councilor Caviness thought Airbnb was a presence and was constantly self-correcting. She noted that it had mechanisms in place to collect taxes and to be listed. She didn't think it was a perfect solution, but felt it provided some options. She added that it has created a lot of trouble for the lodging industry in its totality, particularly hotels and bed and breakfasts. She stated that it was more of a "buyer beware" situation and could raise health and safety issues. She didn't think Council should say that it would not allow them and thought it was a situation that was evolving. She stated that she had a problem with allowing anything in the Town of Duck, whether in a residential or commercial zone, as

it could become a rooming house with no parameters. She didn't think it was okay to make every house in any zone able to be a rooming house.

Councilor Burdick understood Councilor Caviness' concerns, but thought it was going to happen no matter what. Councilor Caviness agreed. Councilor Burdick stated that the Town needed to adapt to it as oppose to opposing it which included room rentals. He stated that the question was how Council could get its arms around it. He thought the Town would have trouble restricting rooming houses. He added that even if Council prohibits it, people would still do it. Mayor Pro Tempore Thibodeau agreed.

Councilor Britt felt that Council needed to give the Planning Board some direction if the ordinance was going to be sent back. Councilor Burdick agreed, but added that he was at the point that Duck was not going to stop the new wave of industry. He stated that Council needed to do something to get its hands around room rentals. Councilor Caviness agreed. Councilor Burdick thought Council had two choices – find a way to describe something that has some reasonable restrictions within the Town or ignore it and have no restrictions. He stated that he didn't have a problem with rooming houses because Council was trying to put some logical restrictions on them as opposed to doing nothing.

Councilor Caviness stated that there were four listings in Town presently. She added with Airbnb, it could be a room or a whole house. Councilor Britt stated that there were only four listings of individual rooms. He added that in doing some research, some of the search parameters included renting part of a house, which was his issue. Mayor Pro Tempore Thibodeau asked if the issue was the idea that people were renting a part of a house and no one is living there. Councilor Britt stated that it was.

Mayor Pro Tempore Thibodeau stated that she has seen rentals listed on Facebook where there were 10 individuals that do not know each other renting a house together. She added her company has dealt with that issue. She clarified that Councilor Britt was worried that individual rooms were being rented as opposed to one renter renting a house. Councilor Britt felt that renting a single room was considered a commercial activity and did not like it. Mayor Pro Tempore Thibodeau asked if it was because the owner may or may not be present. Councilor Britt stated that it was. Mayor Kingston agreed, adding that there was no oversight. Mayor Pro Tempore Thibodeau pointed out that there was also no oversight when someone rents a house to an entire family. Councilor Caviness noted that there were cleaners and inspectors. Mayor Pro Tempore Thibodeau understood, adding that it was the owner contracting with those services.

Town Manager Layton asked if Council could not allow rental of single rooms in a residential setting. Town Attorney Hobbs thought Council could. He thought if the issue came before a court in North Carolina, they would likely hold that the Town would not be able to regulate the duration of a stay. He didn't believe that the Town has the legal authority to say what the minimum or maximum lease term would be as it went more towards the regulation of the ownership of the property instead of the use of the property. He stated that Council's powers under the General Statutes have to do with use. He

stated that if Council was thinking about trying to work with the topic and build in some type of minimum and maximum lease term, he advised against it.

Councilor Burdick asked how many housing units were located in Duck. Councilor Britt thought it was approximately 2,500 – 2,600. Councilor Burdick asked how many were rental units. Director Heard thought it was about 90%. Councilor Burdick pointed out that 90% of the homes in Duck were open and shut for the year and 10% were the ones that would have room rentals. He added that Council was not discussing this going into every home because people would not keep a house open just to rent one room. He noted that it was cost prohibitive.

Mayor Kingston thought the bottom line was that Council wanted to send the ordinance back to the Planning Board as they were concerned that it was a commercial use in a residential area. He added that Council discussed the issues and thought the Board could work with it. Councilor Britt pointed out that Town Attorney Hobbs had said that the Town could say a room could not be rented within a house. Town Attorney Hobbs stated he was correct. Mayor Pro Tempore Thibodeau asked if an owner could not do that, then it would make Airbnb's illegal unless it was the entire house. Town Attorney Hobbs stated she was correct. Mayor Pro Tempore Thibodeau could not believe that Council would consider it.

Mayor Kingston asked if Council could make rooming houses a prohibited use in residential areas. Mayor Pro Tempore Thibodeau thought it was monumental and could not believe Council was discussing it. Councilor Britt noted that Council was not passing the ordinance at this meeting, but were discussing sending it back to the Planning Board.

Councilor Caviness stated that she could not support prohibiting Airbnbs. She added that there were a lot of rental houses in Duck that have Facebook pages with names that suggest that they are bed and breakfasts, even though they were rental homes. She didn't think the Town should get into regulating the issue. She stated that making it possible for every house in any zoning district to become a "rooming house" was not something she could support at any level.

Mayor Pro Tempore Thibodeau stated that she did not see the distinction. She added that she didn't want to impede other businesses. She reiterated that she did not get the distinction between what the Planning Board laid out regarding what a rooming house was versus an Airbnb. She stated that the whole idea of having a commercial activity in a residential neighborhood was 85-90% of what Duck was. Councilor Britt agreed, but added that he wondered if the individual room part of it was taking things too far.

Councilor Burdick pointed out that it was going to happen and was currently happening whether Council walks away from it or not. He suggested changing the short term rental portion and leaving the rest alone and accept that there would be some single room rentals in Town. He noted that it had an advantage because the Town would not be promoting it. Councilor Caviness asked what the Town would do. She further asked if the Town would call the Health Department to have them inspect a property. She didn't think

it was something Council could put on the Town. She added that if Council permits rooming houses, there was going to be a lot of administrative oversight.

Councilor Burdick suggested that Council send it back to the Planning Board to review the short term rental section and table the rest of the ordinance for a future meeting. It was *consensus* of Council to do so.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

There was no Old Business to discuss.

Mayor Kingston called for a five-minute recess. The time was 10:02 p.m.

Mayor Kingston reconvened the meeting.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated he had nothing to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Update on Departmental Activities

Police Chief John Cueto was recognized to speak. Police Chief Cueto gave a brief overview of the past month's police activities to Council and the audience.

Director Heard gave a brief overview of the past month's permit activities to Council and the audience.

Director of Public Information Denise Walsh was recognized to speak. Director Walsh gave a brief overview of the past month's activities to Council and the audience.

Update on the Town of Duck Beach Nourishment Project

Town Manager Layton stated that he confirmed that the agreements with the Corps site has been shipped to Savannah, Georgia. He wasn't sure how long it would remain there. He hoped it would be taken care of by January.

Update on Hurricane Matthew

Town Manager Layton stated that he attended a public assistance workshop earlier in the day with FEMA. He stated that Council needed to take action to designate him and Director Heard as representatives to work with FEMA through the public assistance program.

Councilor Burdick moved to designate Town Manager Layton and Director Heard to act as representatives for the Town of Duck.

Motion carried 5-0.

Town Manager Layton stated that all of the paperwork was in for eligibility; however, one of the significant things that have happened with FEMA was the out of pocket costs in order to apply for a grant for reimbursement. He explained that it used to be for individual categories, there was a minimum cost of \$1,000. He added that if the out of pocket expenses for a disaster were \$1,000 or more, one would be eligible to apply for a grant through FEMA for reimbursement. He stated that it has been raised to \$3,100 and the majority of what the Town had would not meet that threshold. He stated that the Town could meet the threshold with debris pickup; however, because of the type of storm Hurricane Matthew was, it put the Town in a difficult situation from a policy standpoint with regard to pumping.

Town Manager Layton stated that the more difficult piece was the debris because it was more widespread but was not as much to clean up. He stated that staff realized early that the debris could not be handled by the normal bulk waste pickup and he spoke with the other towns and went in with Dare County's contractor for the debris cleanup with TAG Grinding Services. He added that he issued a Notice to Proceed with TAG as well as with Thompson Consulting Services for monitoring services. He stated that he was told they would begin cleanup on October 31, 2016 but it did not start in Town or any other towns except for the Town of Southern Shores and mainly Hatteras Island. He stated that when he talked with the representative from TAG Grinding to obtain a start date, he was told that they would do their best to get to Duck but the amount of debris was not worth their time.

Town Manager Layton thought this was unreasonable to have the debris on the streets much longer as it needed to be picked up. He stated that he contacted Waste Management to ask if they would be able to complete a more involved pickup. He added that Waste Management responded that they would send two trucks and crews out for \$175.00/hour for the trucks and the tipping fee of \$83.00. He noted that they were able to start November 3, 2016 and he told them to move forward. He stated that the estimated cost was \$3,000 for the pickup. He pointed out that it was likely that the Town would not be reimbursed through FEMA, but felt it was better to get the debris cleaned up.

Financial Statement for October FY 2017

Town Manager Layton reviewed the financial statement, beach activities and beach nourishment reports with Council and the audience.

MAYOR'S AGENDA

Mayor Kingston stated that he would be attending the Duck Police Department conference on November 18, 2016. He stated that the US Army Corps of Engineers will be holding a meeting on the remediation of the Duck Target Facility on November 9, 2016 that he and Mayor Pro Tempore Thibodeau would be attending. He stated that he and Town Manager Layton would be attending the North Carolina Beach Inlet and Waterways annual conference on November 14-15, 2016. He stated that the mayors meeting has not been set for November. He reminded Council to send in their input to Mayor Pro Tempore Thibodeau by November 9, 2016 for Town Manager Layton's evaluation and to review the 2027 Vision material in anticipation of the Mid-Month meeting.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau had nothing to report.

Councilor Burdick thanked Town staff on their work during Hurricane Matthew.

Councilor Caviness had nothing to report.

Councilor Britt wished Mayor Pro Tempore Thibodeau luck in the upcoming election.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments. There being no one wishing to speak, he closed the time for public comments.

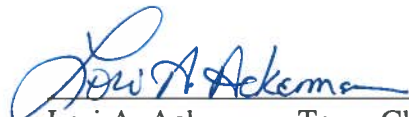
Mayor Kingston noted that the next meeting will be the Mid-Month Meeting on Wednesday, November 16, 2016 at 1:00 p.m.

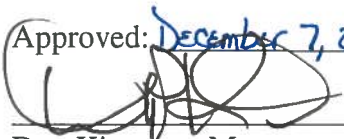
ADJOURNMENT

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 10:54 p.m.


Lori A. Ackerman, Town Clerk

Approved: December 7, 2016

Don Kingston, Mayor

