

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
June 8, 2022**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, June 8, 2022.

Present were: Chair Joe Blakaitis, Vice-Chair James Cofield, Marc Murray, Randy Morton, and Tim McKeithan.

Absent: None.

Also present were: Planning Consultant Donna Creef, Senior Planner Sandy Cross and Deputy Town Clerk Kay Nickens.

Others Present: Andrew Meredith, Marty Barnette of BILD Surveying, and Attorney Robert Hornik of The Brough Law Firm, PLLC

Chair Blakaitis called to order the Regular Meeting of the Planning Board for June 8, 2022 at 6:30 p.m.

**PUBLIC COMMENTS**

None.

**ELECTION OF OFFICERS**

Chair Blakaitis stated that the Board would postpone this item after New Business.

**NEW BUSINESS**

***Text Amendment: C-1 Neighborhood Commercial Conventional District Permitted Uses***

Planning Consultant Donna Creef stated that this application was submitted by Andrew Meredith and clarified that the difference between a text amendment and zoning map amendment. She reminded the Board that any decision made for a text amendment will be applied Town wide to any site that is in a C-1 zoning district.

Planning Consultant Creef explained that the zoning text amendment was submitted to add residential duplex structures to the C-1 zoning district as a permitted use. She added that a definition of duplex should be added to the Zoning Ordinance since there is not one in the ordinance. Planning Consultant Creef stated that Mr. Meredith owns a watersports rental business at 1448 Duck Road and if the requested use is added to the C-1 zoning regulations, then it will apply to all properties zoned C-1 in Duck, and not just Mr. Meredith's property. The

permitted/prohibited use table of Section 156.040 will also need to be amended if the request is approved.

Planning Consultant Creef explained that in 2014, the Town approved an amendment to the special use permit for Mr. Meredith's watersports business to add a structure to be used with 1,200 square feet of commercial space on the first floor and a 600 square foot accessory apartment on the second floor; both uses are permitted in the C-1 zoning district. Recently, it was discovered by the Planning staff that the first-floor commercial use was being used for residential purposes. The watersports activities still continue on the site as well. In 2004, the Town amended the V-C, C-1 and C-2 zoning districts to remove single family residential structures from those districts and upon reviewing the 2004 meeting minutes from Planning Board and Town Council, the intent was to have the commercial districts be developed for commercial purposes only. In recognition of the residential uses that existed in 2004 at the time of the amendments, the non-conforming regulations in the zoning ordinance were amended to include language allowing for the expansion and reconstruction of residential structures in the VC, C-1 and C-2 districts.

Planning Consultant Creef stated that in her research for the application, she found it appropriate to review whether other local governments allow residential uses in their commercial zoning districts. Duck is the only town that does not allow residential uses in commercial districts. She added that she also reviewed the Land Use Plan as this is required by Chapter 160D and reminded the Board that they are required to make a finding of consistency/inconsistency with the land use plan and to make a finding of reasonableness on the request. Any recommendation from the Planning Board should include such findings. Planning Consultant Creef stated that there are no specific policies in the Land Use Plan that deal with residential structures in commercial zoning districts. She added that General Development Policy 4.2 applies which reads:

*Ensure that development of land minimizes negative direct and secondary environmental impacts, avoids risks to public health, safety, and welfare and is consistent with the carrying capacity of the land.*

Planning Consultant Creef explained that there are also two policies pertaining to commercial development that read:

*4.3: Enhance the character and success of Duck Village and commercial areas. (P)  
4.3.1: Support the development of small, specialty-type shops and the vitality of existing, local businesses.*

Planning Consultant Creef stated that there is nothing in the text amendment application that is inconsistent with the Land Use Plan and that by allowing duplexes with a dimensional standard of 25,000 square feet, which is the same of R-2 zoning districts, she does not foresee an influx of duplex development. She reminded the Board that this application and amendment is specifically for duplex structures and the requested changes will not undermine the intent that was present in 2004 when the Town made changes to the zoning text. Planning Consultant Creef stated that there are only three small areas that are zoned as C-1 districts and that the Dare County tax records verify that these properties already have existing structures. She concluded by stating that Mr.

Meredith felt that the highest and best use of his property was a residential structure versus the commercial space that existed previously.

Robert Hornik of The Brough Law Firm Chapel Hill pointed out that there would be a limited effect on the C-1 district as the lot sizes in this district are already small and don't lend themselves to significant development. He reminded the Board that Mr. Meredith operates the watersports business on site and already has a residential use on the second floor of the existing structure; Mr. Meredith is seeking approval for residential use on the first floor. Attorney Hornik stated the applicant has experienced trouble renting or leasing the commercial space to tenants resulting in no return on investment. He added that after considering all available options, and working with town staff, it was decided that applying for a text amendment to allow duplexes in the C-1 zoning district with a 25,000 square foot lot standard was the appropriate request to make to the Town.

Chair Blakaitis questioned the size of the property. Attorney Hornik stated that it is about an acre and Planning Director Creef specified that the property is over 25,000 square feet. She also clarified that if the amendment is approved by Town Council, then the applicant would need to come back and have the existing Special Use Permit amended to include the first floor as a residential structure.

Chair Blakaitis asked the history of the prior commercial use of the space and Mr. Meredith explained that the ice cream shop had difficulties obtaining Environmental Health Approval because they could not get a grease trap. Mr. Meredith stated that he then rented the commercial space to a painter, but the rent was insufficient to cover the expenses of the building.

Member Morton asked if there was going to be a coffee shop at one point to which Mr. Meredith clarified that the ice cream shop would have also been the coffee shop.

Vice Chair Cofield requested that the applicant and attorney provide their address as they did not upon speaking to the Board. Mr. Meredith and Attorney Hornik provided their respective addresses.

Member Morton question who is living in the downstairs unit at this time. Mr. Meredith stated that the upstairs and downstairs units are both vacation rentals.

Chair Blakaitis addressed the parking on site and if parking has been any issue. Mr. Meredith stated that the parking on site is incorporated into the commercial parking requirements and clarified that there is less of a parking requirement for residential uses than commercial uses.

Senior Planner Cross added that the parking requirement would be addressed when the Special Use Permit comes back for amendment if the current requested amendment is approved.

Member McKeithan asked if Mr. Meredith was aware that he needed permission to change the first floor unit to a residential space. Mr. Meredith explained that he was under the impression that a commercial space could be used as a residential space and that a residential space could not be used as a commercial space. Senior Planner Cross stated that Mr. Meredith was prompt in resolving the matter as soon as it was brought to his attention and has been compliant with the Town.

Member Murray stated that the language in the amendment says that the residential use is permitted by right but Mr. Meredith would have to come back to the Board in the future because he has an existing Special Use Permit. He asked that if in the future, at a different location, Staff could administratively approve any application to build a duplex. Planning Consultant Creef explained that if a vacant piece of property was 25,000 square feet and someone wanted to build a duplex, then Staff could administratively approve the permit. Member Murray asked if the Board was able to make that a Special Use, the Board could change the table to reflect it as such. Planning Consultant Creef stated that this was correct.

Member Murray pointed out the C-1 zoning district north of The Village Table and Tavern as there are condominiums in that district and questioned if this text amendment would apply to that district even though condominiums are defined differently than duplexes or if the condominiums are grandfathered because they existed prior to the text amendment made in 2004. Planning Consultant Creef stated that it is under the assumption that those units are grandfathered because in 2004 when the amendment was made. Member Murray clarified that this was a question because one-third of the C-1 zoning district allows for multifamily housing which isn't by right but grandfathered. Senior Planner Cross stated that was correct although condominiums can no longer be built in Duck. Member Murray added that it is a multifamily use that would be approved in the same district. Planning Consultant Creef stated that a duplex is a one or two- single family structure handled under the residential building code and if multifamily was added to the zoning ordinance while the applicant does not have a multifamily use, it would not be clear. She added that Planning Director Joe Heard, Senior Planner Cross, and Mr. Meredith were all in agreement about that analysis.

Member Morton stated that it would be assumed that the same non-conformity clause for residential uses in C-1 zoning districts would also be applicable to the townhomes in Portside. Senior Planner Cross stated that this is correct.

Vice Chair Cofield stated that the definition of duplex is not clear. Senior Planner Cross explained that the definition for duplex was identified in the existing Town Code and used for this application. Vice Chair Cofield pointed out that in other jurisdictions, duplexes are clearly defined as two single-family properties that are joined together as opposed to building two separate single-family units that could qualify as a duplex per the definition. Planning Consultant Creef reminded the Board that they can modify the definition to include specific language.

Vice Chair Cofield questioned if any consideration was given to the parking regulations for duplexes as well as any consideration to the square footage of the duplex to the commercial use on the same site. Planning Consultant Creef stated that the text amendment is not site specific and if the amendment is approved, site specifics such as parking would be reviewed when the Special Use Permit is amended. She added that there is existing language in the ordinance addressing parking requirements so additional language would not be needed. Planning Consultant Creef reminded the Board that there should not be issues with parking because commercial parking requirements have higher standards than those of residential parking requirements.

Vice Chair Cofield asked about the size of the duplex in relationship to the size of the commercial use on the site. Planning Consultant Creef stated that there was no consideration in this regarding because this application is for a C-1 zoning district amendment to include duplexes, not what is occurring on site specifically. She explained that the zoning ordinance has standards for group developments, and she does not foresee an increase in duplexes being developed since 25,000 square feet is a large requirement for a duplex and that some existing commercial sites might not even be 25,000 square feet.

Senior Planner Cross added that some adjacent sites and other properties in the C-1 zoning district are smaller than 25,000 square feet. She explained that these are also all sound-side properties so there would be additional CAMA requirements that would limit the capabilities of development. Planning Consultant Creef stated that flood rules would apply as well and would be a prohibitor for someone who has a single- family structure that would want to enclose their bottom floor.

Member McKeithan pointed out that the 156.04 Permitted Use table is incorrect because duplexes are permitted in the R-2 district per the zoning ordinance but the table shows otherwise. Senior Planner Cross and Planning Consultant Creef verified that the table in the agenda packet is incorrect and it should show that duplexes are permitted uses.

Member McKeithan emphasized that he was uneasy about changing the residential authorization in C-1 zoning districts when it was specifically removed in 2004. He added that he was not comfortable making the recommendation for the amendment if the Board was not sure what businesses in the C-1 zoning district would feel about this proposed change.

Planning Consultant Creef reminded the board that before the amendment is adopted, there would be a public hearing which would be advertised. Senior Planner Cross added that this amendment would not negatively impact businesses or commercial properties; it just gives them an opportunity if they choose to add a residential use to their property.

Member McKeithan explained that the decision in 2004 seemed to remove residential uses but then seemed to add that use back in. Planning Consultant Creef stated that the change was made in context of other changes that were occurring at that time and non-conforming language was added after consideration by Planning Board and Town Council. She added that while Planning Board made the recommendation for approval and the amendment went before Council, there were some Planning Board members who owned commercial properties that ultimately decided differently on the matter.

Member Morton stated that he interpreted the minutes similarly in that two members on Planning Board came back and tried to keep the amendment from being voted on by Council. He explained that the members realized the way the amendment was written would prevent them from rebuilding their properties if those properties were over 50% damaged. Additionally, they might want to expand their property and the verbiage prevented them from doing so.

Vice Chair Cofield asked if community input was solicited and explained that Council sought community input on the text amendment regarding indoor entertainment facilities when it was not obtained prior to being presented to the Planning Board. Planning Consultant Creef stated that

there will be a public hearing in which public opinion would be solicited. Vice Chair Cofield clarified that he is asking about community input aside from a public hearing because the input received on the recent text amendment was very different from the Staff and the recommendation and influenced everyone's decision going forward.

Senior Planner Cross stated that there are two main distinctions between the text amendment for indoor entertainment facilities and this text amendment because the indoor entertainment text amendment would be applied to the much larger V-C zoning district. She added that no community input was sought for the application being presented and this matter was advertised as will the Council meeting.

Member Murray stated that what Council did with the text amendment for indoor entertainment facilities is not part of the procedure that is outlined in the ordinance. He stated that it was irresponsible on their part because the sample received was not representative of the entire town and that generally, when you ask for public comment, negative comments outweigh the positive comments. Member Murray pointed out that stakeholders who are not property owners in Duck were asked to submit comments, making the total number of comments received seem significant when in actuality, the number of comments received from Duck resident property owners was less than 100. He stated that if the town government was set up to make decisions by popular vote, then the process Council followed would make sense but since there are procedures in the ordinance that do not outline that, stakeholders have no expectation that their requests are going to be tried in the court of public opinion. He concluded by stating that the comments were not a representative sample, and he was disappointed to see that move by Council.

Planning Consultant Creef stated that it is good practice to follow what is in the ordinance because not doing so could set that expectation and that people will have plenty of opportunity to give input. She emphasized that following the ordinance is the law: you advertise the meeting and she feels confident that there will be community knowledge and involvement on the matter.

Member Morton added that when the amendment was written in 2004, there was no foresight to a pandemic occurring. He noted that many Planning Boards across the nation are having to address situations where commercial buildings are no longer being used and being converted to residential units which is ultimately advantageous to the community because it brings in revenue and boosts business. Planning Consultant Creef stated that scenarios such as that are the reason for procedures for amending an ordinance since there has been such a change in circumstance.

Senior Planner Cross pointed out that in 2004 in Kill Devil Hills, commercial properties were being demolished and large homes were being built in their place. There was a fear that individuals would come to Duck and purchase commercial properties with the intent of making them residential units which has not occurred.

Member McKeithan questioned the staff analysis that was done in looking at other localities and what is permitted. He noted Duck already allows for residential units in commercial districts because we have accessory apartments. Planning Consultant Creef explained that most localities allow accessory dwelling units of some kind but she specifically reviewed single-family and duplex uses. She added that there is a shift in local politics in which all towns have made

amendments to allow accessory dwelling units. The fact that accessory apartments are already allowed in C-1 zoning districts supports this text amendment because a residential use already exists.

Member Morton also pointed out that there are major and minor home occupations that exist in residential uses.

Chair Blakaitis called for any additional discussion or questions. Member Murray made a motion to approve the text amendment as drafted with the noted correction to the table on Page 4 and Attachment C as pointed out by Member McKeithan. Member Morton seconded the vote.

Member Morton pointed out the layout of the intent statement. Senior Planner Cross advised that the layout of the statement was consistent with that of the R-2 district in the ordinance. Planning Consultant Creef added that most intent statements start off by defining the maximum density but the Board can modify the statement. Chair Blakaitis suggested making no edits to the statement. Senior Planner Cross suggested modifying the statement to list the intent as the first item and the maximum density as the second item. Member Morton and Member Murray consented to the revision.

Member Murray made a motion to approve the text amendment as written with the corrections previously mentioned on Page 4 and Attachment C under section RS-2 along with the additional changes noted to the intent statement. Member Morton seconded the motion.

Chair Blakaitis called for other comments and discussion. Hearing none, Chair Blakaitis called for a vote. All members voted in favor of recommending approval.

Motion carried 5-0.

### **ELECTION OF OFFICERS**

Chair Blakaitis stated that he's been chairman for ten years and it is time for someone else to take over as Chair.

Member Murray nominated Member Morton as Chair. Member Morton seconded the motion.

Member McKeithan nominated Vice Chair Cofield. Chair Blakaitis stated that there was a nomination on the floor that had to be addressed. The Board discussed the nomination and voting procedure with Member Murray noting that it is not specified in the bylaws. Vice Chair Cofield added that Council entertains motions and then conducts the vote. With all members in agreeance of protocol, Member McKeithan nominated Vice Chair Cofield. Vice Chair Cofield seconded the motion.

Member McKeithan motioned to close the nominations. The motion was seconded by Chair Blakaitis.

Member Morton stated reasons why he felt he was qualified for the position of Chair. Member Murray expressed reasons why he nominated Mr. Morton.

Chair Blakaitis called for a vote for Member Morton as Chair. Member Murray and Member Morton voted in favor of Member Morton. Chair Blakaitis called for a vote for Vice Chair Cofield as Chair. Member McKeithan, Chair Blakaitis, and Vice Chair Cofield voted in favor of Vice Chair Cofield.

Vice Chair Cofield was elected as the Planning Board Chairman.

Chair Cofield congratulated Joe Blakaitis on his service to the Board. Chair Cofield then nominated for Member Blakaitis to be Vice Chair of the Planning Board. Member McKeithan seconds motion. Hearing no questions or discussion, Chair Cofield called for a vote. All members voted in favor; motion carried 5-0. Member Blakaitis was elected as Vice Chairman.

All members were sworn into office by Deputy Town Clerk Kay Nickens.

## **APPROVAL OF MINUTES**

### **Minutes from the April 13, 2022, Regular Meeting**

Member Morton made a motion to approve the minutes as written. Member Murray seconded the motion.

Motion carried 5-0.

## **STAFF COMMENTS**

### **Summary of May 2, 2022 and June 1, 2022 Regular Town Council Meeting**

Senior Planner Cross gave a short summary of the recent May and June Town Council meetings.

### **Project Updates**

Senior Planner Cross gave a short overview on various projects going on in Town.

## **BOARD COMMENTS**

Chair Cofield thanked the Board for their confidence in his leadership. He also stated that fairness is his guide post in life and that can be expected from him as Chairman.

Vice Chair Blakaitis thanked the Board for serving with him over his tenure and stated that he looks forward to working with the Board more in the future.

## **ADJOURNMENT**



Vice Chair Blakaitis moved to adjourn the meeting. Member Morton seconded.

The meeting was adjourned by consensus of the Board members.

The time was 7:44 p.m.

Approved: \_\_\_\_\_  
/s/ James Cofield, Chairman