

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
July 13, 2022**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, July 13, 2022.

Present: Chair James Cofield, Vice-Chair Blakaitis, Marc Murray, and Tim McKeithan.

Absent: Randy Morton

Also present: Town Engineer Michael Robinson, Council Liaison Sandy Whitman, Senior Planner Sandy Cross and Deputy Town Clerk Kay Nickens.

Others Present: None.

Chair Cofield called to order the Regular Meeting of the Planning Board for July 13, 2022 at 6:35 p.m. and stated that Vice-Chair Blakaitis was en route to the meeting and was delayed in his arrival. Chair Cofield stated that he would reverse some agenda items to allow for Vice-Chair Blakaitis's arrival.

PUBLIC COMMENTS

None.

STAFF COMMENTS

Summary of July 6, 2022 Regular Town Council Meeting

Senior Planner Cross gave a short summary of the recent Town Council meeting.

Project Updates

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

Chair Cofield thanked Senior Planner Cross and added that Member Morton was not present at the meeting as he was sick due to COVID however Member Morton did provide comments for the agenda items in which case Chair Cofield would present at the time in which those matters are being discussed.

BOARD COMMENTS

None.

APPROVAL OF MINUTES

Minutes from the June 8 2022, Regular Meeting

Chair Cofield called for any discussion regarding these minutes; there were none. Hearing no discussion from the members present, Chair Cofield called for a motion. Member McKeithan motioned to approve the minutes as presented. Chair Cofield seconded the motion. A roll call vote was taken, and all present members, Chair Cofield, Member McKeithan and Member Murray, voted in favor. Member Blakaitis and Member Morton were included as affirmative votes.

Motion carried 5-0.

NEW BUSINESS

Text Amendment Ordinance 22-07: 35% Residential Lot Coverage Allowance

Chair Cofield read Member Morton's comments submitted to the Board prior to the meeting:

First of all I would like to apologize to fellow Board Members and Staff for missing tonight's meeting due to health reasons. Chairman Cofield and I thought it best for me not to be present.

My comments regarding the two (2) proposed text amendments.

I encourage and applaud staff for proposing clarity to ordinances in that it makes them more understandable for folks performing the work, reduces ambiguity and provides an accurate measurement for how the work is to be performed, and makes it less burdensome to staff. In my eyes both proposed text changes are in line and consistent with Duck's adopted CAMA Land Use Plans as outlined in the staff report.

I do have questions and recommendations for the 35% Lot Coverage Allowance for Installation of Stormwater Management Improvements.

Question: Attachment A

6 (d) The bottoms of stormwater swales and basins should maintain twelve inches (12") above the seasonal high-water table to avoid long periods of standing water due to elevated water tables. The seasonal high water table elevation must be verified by a soil inspection by a licensed soil scientist or may be verified by a Dare County Health Department Wastewater Site Evaluation.

- 1. Is a Dare County Health Department Wastewater Site Evaluation performed and available for each property? If not what are the circumstances that one is performed and what is the cost?*
- 2. What are the circumstances when a soil inspection by a licensed soil scientist is required and what is the cost?*

Perhaps adding verbiage explaining other situations where these types of evaluations/inspections are required would provide additional clarity.

Recommendation: Attachment A

*6 (g) The stormwater management plan must clearly delineate water sheds or drainage areas within the subject property. This should include a roof plan depicting roof runoff and the method to collect or direct the volume from each portion of the roof area towards the stormwater management system. **In some situations, the plan may require a detailed topographic survey and a detailed grading plan.***

*Can ambiguities be reduced by identifying examples of situations where a topographic survey would be required. These examples could be prefaced by adding verbiage stating **Some examples include, but are not limited to followed by examples.***

Senior Planner Cross stated that this proposed text amendment is intended to clarify and enhance the standards under which residential properties can be granted an allowance of up to 35% maximum lot coverage. She added that presently, the standard maximum lot coverage for all residential zoning districts (RS-1, RS-2, and R-2) is 30%. However, the Duck Town Code offers residential property owners an allowance of up to 35% maximum lot coverage if a stormwater management system is designed and installed according to certain conditions. Subsections 156.030(D)(6), 156.031(D)(6), and 156.032(D)(6) of the Town Code currently state: “(6) Maximum allowable lot coverage by principal use and all accessory structures: 30%. Lot coverage may be increased to 35% provided that stormwater improvements meeting the following criteria are provided on the development site: (a) Stormwater runoff from the built-upon area of the site must be directed into an approved stormwater management system designed to accommodate the volume of runoff generated by a 1.5" design storm. (b) The stormwater management system shall be designed in accordance with the standards, methodology, and procedures prescribed in the state Stormwater Best Management Practices Manual (NCDENR BMP Manual). (c) Project designs shall utilize low-impact development principles and best management practices as the primary method for the treatment of stormwater. (d) Stormwater plans shall be prepared by a state licensed professional engineer. Prior to the issuance of a certificate of completion for the project, a state licensed professional engineer shall certify that the proposed improvements have been constructed in accordance with the project design.”

Senior Planner Cross explained that while the above-referenced standards generally outline positive solutions for stormwater management, the ordinance does not provide details about the nature of the stormwater calculations or design/layout of the system which has led to inconsistent submittals by local engineers over the years. For example, in their stormwater plans, certain engineers used interstitial storage (voids between grains of sand in the soil) to claim that little or no stormwater management improvements were needed on-site to accommodate a 1.5” design storm. This type of conclusion would mean that 35% maximum lot coverage could become the default standard, which is clearly not the intent of the Town’s standards. Community Development staff has upheld what we consider to be the intent of the ordinance. However, staff has been challenged on this point on several occasions. To provide a clear, consistent standard for engineers

and maintain the intent of the 35% maximum allowance, staff is proposing to clarify the ordinance by adding standards concerning how stormwater management requirements are calculated and additional siting criteria.

Vice Chair Blakaitis arrived at 6:48 p.m. Chair Cofield advised Vice Chair Blakaitis of the items that have already been addressed on the agenda.

Senior Planner Cross stated that the Town Engineering Consultant Mike Robinson reviewed the ordinance and provided suggestions to provide clarification for staff. She added that Mr. Robinson has worked closely with the Town of Nags Head who has an extensive stormwater management plan. Senior Planner Cross pointed out that the Community Development Director Joe Heard prepared the proposed ordinance based on Mr. Robinson's recommendations.

Chair Cofield requested for clarification for stormwater management in the other towns. Mr. Robinson stated that every town is different: the Town of Kill Devil Hills stormwater requirements depends on the size of the house; the Town of Nags Head has requirements that depend on whether the additional lot coverage exception is being used; the Town of Kitty Hawk does not have a stormwater ordinance. He stated that the proposed ordinance offers a reasonable stormwater management requirement. Senior Planner Cross reminded the board that these requirements are only for instances in which lot coverage goes above 30%.

Member McKeithan questioned the provision in the Town of Nags Head that requires 30% plus 300 feet or 33%, whichever is greater. Mr. Robinson explained for some smaller lots, for example, a 7500 square foot lot, you might be able to get more coverage for 30% plus 300 feet and either option could be pursued depending on what is more beneficial.

Member Murray asked if interstitial storage has been used in applications to the town alongside a soil scientist because Currituck County allows for interstitial storage, but it must be certified by a soil scientist. Senior Planner Cross recalled one instance in which interstitial storage was applied however no soil scientist was required. She added that she was unclear if Director Heard approved that or not, but that unclarity is one of the reasons that this matter is being presented to the Board.

Mr. Robinson explained that Currituck County will allow interstitial storage for design calculations, and they will allow developers to take the interstitial storage for the entirety of the undeveloped portion of the lot and calculate a volume for that portion. He explained that in theory, this works, but it could cause an instance where a home is overloading the soil and draining down towards a neighbor. Senior Planner Cross added that those types of scenarios are typically seen when someone is looking for 35% coverage, maxing out lot coverage.

Chair Cofield questioned the intent of these text amendments: if they are designed to address loopholes or if they are looking to tighten up the 35% requirement. Senior Planner Cross explained that the intent is to have guidance for staff when interpreting this section of the ordinance. She added that if tightening up the 35% requirement is an issue to the Board, that can be presented to Council however that is not what is being presented to the Planning Board presently. She pointed out that it is a valid question considering significant rain events, sea level rise, coastal resiliency, etc.

Chair Cofield asked if there were any instances in which a 35% lot coverage was approved but would not pass based on the proposed changes? Senior Planner Cross advised that there have not been many, but she would have to review them to make that determination. There have been several instances where a plan has been presented with 35% lot coverage, but the applicant has returned with changes to their plans so they did not have to do the swales and the basins. They typically accomplish the 30% coverage with modifications such as gravel driveways to reduce the impacts, thus reducing the lot coverage.

Member Murray pointed out that some applications are received that show the calculations whereas others do not. He asked if certain language should be added to require calculations because it is not included as part of the text amendment and if there was standard language for the type of calculation that is being submitted on plans.

Mr. Robinson clarified that stormwater is a volumetric calculation when not considered with interstitial storage and that it is the volume of the open basin. Member Murray asked if language needed to be added to require volumetric calculations. Mr. Robinson stated that this is a good suggestion if the Board is looking to tighten up the ordinance and make it consistent.

Chair Cofield pointed out that the guidelines that are to be followed are not mentioned in the text amendment. Senior Planner Cross suggested that the ordinance should include language that states that stormwater plans must be prepared by a state licensed professional engineer to include volumetric calculations. Mr. Robinson added that surveyors are also licensed to do stormwater in the state of North Carolina and in fact, some surveyors are better than engineers that deal with stormwater, so it would be wise to include surveyors in the language as well. Senior Planner Cross clarified the language to read that stormwater plans must be prepared by a state licensed professional engineer or surveyor to include volumetric calculations.

Vice Chair Blakaitis asked if all surveyors are licensed. Mr. Robinson pointed out that part of a surveyor's license is the ability to do minor drainage associated with sites they are working on as well as culvert sizing and runoff calculations. He added that part of the surveyor exam is a rational method runoff calculation.

Member McKeithan stated he was looking for clarification to item 6H that states a stormwater plan prepared by a state licensed professional engineer must be certified prior to the issuance of the certificate of occupancy. He asked if the town provides someone to certify the improvements. Senior Planner Cross advised that the Town does not have anyone to certify plans and that this is a similar scenario with proposed elevation certificates at the beginning of construction and finished- construction elevation certificates. She explained that a proposal is given and then certification is given at the end of construction to certify that the work has been completed as proposed. Senior Planner Cross pointed out that the language would be changed to say that a state licensed professional engineer or surveyor shall certify that the proposed improvements have been constructed in accordance with the project design.

Member McKeithan stated that the same company who prepares the proposal would also be the same company to certify the completion. Senior Planner Cross advised that they are certified to do

the proposal and certification. She added that occasionally, she does run plans by Mr. Robinson to make sure it is done properly, and it is certainly something that could be added in the ordinance, but that would yield additional cost to the Town. Senior Planner Cross stated that the company does do the certification, and their license information is provided on the form.

Member Murray explained that this is not atypical and reminded the Board that the engineer is not the installer. The engineer is the prescriber of what must happen: they perform a site visit and certify that what they advised the applicant to do, was in fact done. Mr. Robinson added that other towns require that stormwater management be shown on surveys including spot grades to illustrate the required elevations, so it is easy to identify changes and verify if the survey is consistent with the original plan.

Chair Cofield asked if this is something that should be required to be shown on the as-built survey. Senior Planner Cross advised that is correct. Mr. Robinson added that to have a stormwater plan verified, one would have to obtain a survey because there are elevations and volumetric calculations on swales. Senior Planner Cross added that most of these situations require an as-built survey so it is easy to add a requirement to have the stormwater plan certified by the engineer that designed it on the survey. She also added that certification can be shown on the as-built survey or in a separate document.

Member Murray reminded the board that neither the engineer nor surveyor have a stake in someone receiving their certificate of occupancy; they only have a stake in seeing that their instruction was followed and completed. He stated to not think of the engineer as an ally to the developer; the engineer is just a secondary gatekeeper with more expertise in this area than anyone who works for the Town.

Chair Cofield called for additional comments. There were none. He then called for a motion on the matter.

Member Murray states that this proposed ordinance is consistent with the Land Use Plan and motions to recommend approval of the text amendment with the change in Section H to specify a state licensed professional engineer or surveyor, and to include volumetric calculations. Member McKeithan seconded the motion. Chair Cofield, Vice Chair Blakaitis, Member Murray and Member McKeithan voted in favor. Member Morton was included as an affirmative vote.

Motion carried 5-0.

Text Amendment Ordinance 22-08: Elevation of Dune Walkover Structures

Senior Planner Cross stated that this particular issue has come up as there are inconsistencies in the ordinance as it relates to dune- walkover structures. She explained that Subsection 156.051 speaks to dune walkover structures and noted that the Town has different standards for different types of walkway structures in different sections of the Zoning Ordinance.

Senior Planner Cross explained that the proposed text amendments are intended to establish clear, consistent standards for the appropriate elevation for dune walkover structures and

circumstances under which minimum setback requirements apply to walkway structures. She noted that as the Town has standards for different types of walkway structures in different sections of the Zoning Ordinance; which standard applies to dune walkover structures has been called into question in certain circumstances.

Senior Planner Cross stated that Subsections 156.051(D) and (E) of the Town Code are proposed to be amended by the addition of the following statement: “Dune walkover structures subject to this exemption must still comply with all applicable standards found in Subsection 156.124(C)(1) of the Town Code.” Additionally, the following sentence is proposed to be inserted into Subsection 156.051(F) of the Town Code: “Dune walkover structures and sound access walkways are not exempt from minimum yard requirements unless in compliance with the standards of Subsection 156.051(E).”

Senior Planner Cross commented that Staff is working to clarify this information, so it is clear what criteria applies when considering walkway exemptions within the primary and frontal dunes.

Chair Cofield stated that this matter has been brought to his attention by several citizens because there are six miles of beach in Duck and significant differences between oceanfront properties in the North and South. Chair Cofield explained that it would be ideal for the Town to tighten up the standards as noted but additionally allow flexibility since the dunes are different from one place to another. He stated that he is drawn to the 18-inch requirement and provided photos of 122 Martin Lane where he pointed out that the walkover and dune shared by four homes in that area look marginally different compared to the dune at his property on the southern end of town. Chair Cofield pointed out that the dune walkway, platform and stairs at 122 Martin Lane are completely covered by sand. Senior Planner Cross noted that this is why there is an 18-inch elevation requirement. Chair Cofield stated that some properties need this requirement whereas others do not. He noted that the property owner of 122 Martin Lane states that the reason the walkway is covered is because of the existing structure which will continue to be buried and cause the sand to build up even more. Chair Cofield added that the property owner was advised that nothing can be done in regard to the dune building up. Member Murray questioned why nothing can be done.

Senior Planner Cross explained that as the CAMA LPO, she allows a walkway to be maintained up to 18-inches. She explained that if a walkway is filled up with sand to 18-inches at the middle rail, the sand can be cleared but any more than that, it would be considered excavating the dune and she would require that the property owner considering building a walkway that goes up and over the dune. Member Murray commented that this is a good practice and what the Town wants because in his experience, beach stairs are only being rebuilt because they are either being taken away or buried and the burial of these structures is ideal in the long term. Senior Planner Cross reminded the Board that if these structures are being buried, they are not being taken away.

Senior Planner Cross stated that during Hurricane Isabel and Hurricane Sandy, there were walkway structures way out on the beach because of all the sand being washed away during the storms which is one reason why Chapter 94 and Subsection 156.124 of the ordinance was adopted as it required dune walkways to be constructed tight to the dune, no more than 30 inches above grade. Additionally, there is a requirement that dune walkover structures shall be constructed so that the

staircase turns parallel to the dune if there is more than a 12-foot-vertical rise in the staircase required to provide access to the surface of the beach which keeps the structure close to the dune and causes these structures to be buried before they get torn out. She explained that when these structures are left exposed, they become a liability issue and are hazardous structures. Senior Planner Cross noted that any oceanfront property or community should be considering a maintenance regimen or contingency plan for elevating dune walkways as they become covered by sand or look at alternatives for not having any walkway structures. She stated that there is a 1.6 mile stretch of beach that does not allow for any walkway access structures and that there are other alternatives, however the present goal is to add clarification on one section of the ordinance that is inconsistent with another section.

Chair Cofield stated that he wanted to know if more flexibility can be given to required standards in the six mile stretch of beach. Senior Planner Cross stated that she was open to suggestions and questioned what Chair Cofield had in mind.

Member Murray questioned Chair Cofield on his intent for the walkway owner in question. Chair Cofield stated that presently, what is a common dune structure in the northernmost area is not the case for the southernmost area. He explained that beach nourishment does not extend south of the pier because it is not needed, and we should put standards in place that capture what is happening north of the pier because it is different than what is happening in the southern beaches. Chair Cofield stated that in his opinion, 18-inches is too high and not needed in the southern beaches. Senior Planner Cross noted that it is rarely a full 18-inches elevation over dunes when the walkways are reconstructed. She added that she discussed the ordinance with Director Heard and the 18-inch requirement is a minimal standard in comparison to other areas. Senior Planner Cross reminded the Board that if the 18-inch requirement is what is being considered, then we are looking at a different part of the ordinance to revise. She added that her concern is being consistent and if there is no requirement for elevation, then property owners are going to want to dig out their walkways which will lead to further issues.

Member Murray questioned if Senior Planner Cross and Director Heard felt that the 18-inch requirement language is not in conflict with the 12-inch requirement that is specified in the ordinance. Senior Planner Cross clarified the difference between the elevation requirements for sound side and oceanfront properties. Member Murray stated that he sees the point that Chair Cofield is making, but these requirements are to keep walkways from being too elevated.

Chair Cofield asked if the language specifying the requirements can be tied into the dune structure. Member Murray clarified that the 30-inch height standard sets that standard.

Chair Cofield explained that in his area, there has not been a dune problem and described the walkway at the top of the dune which lies right on top of the sand. Senior Planner Cross reminded Chair Cofield that beach nourishment is also about to occur right next to his area. Chair Cofield questioned if he were to rebuild his walkway, he would be required to bring it up 18-inches whereas now it is sitting directly on the dune. Senior Planner Cross advised that if the walkway was being repaired, then the existing elevation would not change. Member Murray clarified that the 18-inch provision is required when the structure is being torn out and the total cost of the replacement is more than 50% of the value of the structure. Senior Planner Cross confirmed that to be correct.

She further added that the 18-inches is required, but very rarely happens because most walkway repairs are only repairs of small sections of the walkway, not entire walkway replacements. She noted that typically, 18-inch walkway structures are seen with new homes.

Chair Cofield clarified that any repair can be done to an existing walkway and not be bound by the 18-inch requirement. Senior Planner Cross affirmed the statement and added that every walkway project is different, and she performs site visits for each walkway expansion because the dynamic varies for each one. She reminded the Board of the original intent of the proposed text amendment which is to clarify the inconsistencies with elevations when exceptions to the setback are being defined and explained that the request for flexibility lies with site visits.

Chair Cofield noted that trying to tie in a walkover structure to one standard helps some areas and penalizes other areas. Senior Planner Cross stated that the 18-inch standard is not a new requirement and has been in the ordinance for quite some time. She added that if the Board wants to review the dune walkway elevation for further discussion, it can be discussed but she is not sure how one standard can be set for one area while setting a different standard in a different area. Senior Planner Cross emphasized that there will always be flexibility in oceanfront development because it is always changing.

Chair Cofield stated that the beach nourishment area warrants being categorized on its own because that area is so different. Senior Planner Cross added that beach nourishment areas cannot have beach access.

Member Murray reminded the Board that the section of ordinance which requires the 18 to 30-inch requirement is not included in the proposed text amendment. Senior Planner Cross stated that the area from the Army Corp of Engineers property to Skimmer Way is allowed to have walkways, stairs and rails on the west side of dune but cannot have walkways or beach stairs on the east side of the dune from the static vegetation line to the berm. They can only have post and rail or post and rope.

Chair Cofield pointed out that this is an instance where a difference is being recognized and having different standards applied. He added that this is what he is looking to do for the other different areas- recognizing them and applying different standards. Senior Planner Cross stated that the nourishment area has a designated area as noted on a map with specified coordinates. Chair Cofield asked if that can be done for other areas as well. Senior Planner Cross explained that this could be done, but it would not be relevant because there cannot be any structures in the nourishment area.

Member Murray stated that while it is possible to delineate the northern and southern areas, the text amendment that the Board is being asked to review deals with walkways in setbacks. He explained that the Board can revisit the 18 to 30-inch standard, but the Board does not have the language to do so. Member Murray added that the Board is amending 156.051 and the language for the 18 to 30-inch requirement is in Subsection 156.124, which would require its own text amendment. He stated that in addition to a text amendment, it seems that the Board wants to ask Council to have them review Subsection 156.124 as well.

Senior Planner Cross clarified what Subsection 156.124 defines and added that it does have a separate section for nourishment area structures. Chair Cofield stated that he thinks that this amendment needs more work and would like to visit different areas of the beach with Senior Planner Cross.

Senior Planner Cross reminded the Board of the intent of the text amendment discussion in that it is to clarify when building features that are exempt from setbacks in minimum side yard requirements can be allowed and what their building standards must be in primary and frontal dune situations. Chair Cofield asked Senior Planner Cross why an 8 to 12-inch standard was not considered. Senior Planner Cross explained that this would require changing two other sections of the ordinance which would then be inconsistent with CAMA regulations, it would reduce the ability for dune grasses to grow beneath the structure, and it would increase the likelihood of building a walkway up and over a dune sooner rather than later.

Vice Chair Cofield stated that he would conclude the discussion exactly the way Senior Planner Cross is describing it and added that the idea of grass growing beneath the structure is good because it will prevent additional sand from accumulating.

Chair Cofield stated that this has not been the case on Buffell Head Road because there is so much sand on the landward side of the dune and there is still a drop-off. Senior Planner Cross reminded Chair Cofield that that situation will be changing in a couple of months. Chair Cofield pointed out that in three years, it will be back again because five years ago, beach nourishment addressed that issue and the sand on the landward side of the dune is new, but it still drops off on the eastward side the same way it did back then. Vice Chair Blakaitis asked Chair Cofield what could change that. Chair Cofield stated that this text amendment warrants further discussion and noted that he wants to marry Subsections 156.051 and 156.124 or remove the conflict between the two subsections.

Member Murray explained that one subsection does not exclude the other and stated that the adoption of this text amendment has nothing to do with the 18 to 30-inch standard. He reminded the Board that this text amendment offers clarity for people tying into beach accesses west of the dune and that the section that Chair Cofield is concerned about is in a different subsection, so any amendment to that subsection would require a text amendment unique to that subsection.

Senior Planner Cross stated that the present text amendment would require any structure on a primary frontal dune to meet the standards noted in Subsection 156.124. Chair Cofield stated that he would not like to vote on the matter and study it with Senior Planner Cross. Vice Chair Blakaitis questioned the timing of postponing the vote and Senior Planner Cross stated that if site visits were to occur with the Board, it would need to be scheduled with the Board as a whole.

Member Murray added that any future amendments to Subsection 156.124 would not require another amendment to the subsection that is being amended tonight. Senior Planner Cross stated that if Planning Board chose to recommend approval of the Zoning Ordinance to Council, it would then be presented to Council to request authorization for a public hearing, and language could be included in the transmittal letter that Chair Cofield would like to review Chapter 94 and Subsection 156.124 specific to the elevation of dune walkways being required to be 18-inches above the dune.

Member Murray motioned to approve the proposed text amendment. Vice Chair Blakaitis seconded the motion. Chair Cofield called for any discussion. Member Murray asked if the Board should vote on the motion and then add language for the transmittal. Chair Cofield stated that this should be added into the motion for the vote. Member Murray amended the motion to recommend approval as it is consistent with the Land Use Plan and communicate to Council along with the recommendation of approval that Chapter 94 and Subsection 156.124 are revisited with members of the Planning Board and Staff. Member McKeithan seconded the motion. Chair Cofield, Vice Chair Blakaitis, Member Murray and Member McKeithan voted in favor. Member Morton was included as an affirmative vote.

Motion carried 5-0.

ADJOURNMENT

Member McKeithan moved to adjourn the meeting. Member Murray seconded.

The meeting was adjourned by consensus of the Board members.

The time was 7:44 p.m.

Approved: _____
/s/ James Cofield, Chairman