



## **Agenda**

### **Town of Duck Planning Board – Regular Meeting**

Paul F. Keller Meeting Hall

Wednesday, May 10, 2023 – 6:30 p.m.

1. Call to Order
2. Public Comments
3. Welcome & Introduction of New Planning Board Members
4. Election of Officers
  - a. *Chair*
  - b. *Vice-Chair*
5. New Business
  - a. *ORD 23-07: Text Amendment to Sections 30.35 through 30.40 of the Town Code Providing a Description and Duties of the Planning Board*
  - b. *Review/Discussion of Planning Board Rules of Procedure*
  - c. *Discussion of Potential Updates to Commercial Standards/Guidelines*
6. Approval of Minutes
  - a. *Minutes from April 12, 2023 Meeting*
7. Staff Comments
  - a. *Summary of Recent Town Council Meeting*
  - b. *Project Updates*
8. Board Comments
9. Adjournment



**TO:** Chairman Cofield and Members of the Town of Duck Planning Board  
**FROM:** Joe Heard, AICP, Director of Community Development  
**DATE:** May 10, 2023  
**RE:** Review of Text Amendment Ordinance 23-07: *Planning Board & Planning Board Rules of Procedure*

### **Proposals**

The attached draft Ordinance 23-07 proposes to update and amend Town Code Sections 30-35 through 30-40 in the following ways:

- Add the general purposes of the Planning Board.
- Update the list of officers.
- Establish duties for each of the Board's officers.
- Generally outline meeting schedules, cancellation, and notice requirements.
- Update duties and expectations for the Board members.

Most of these amendments are simply items moved from the former by-laws to the Town Code. The proposed amendments are intended to serve a significant public purpose by providing a more comprehensive description of the Planning Board and its duties in the Town Code (rather than the Board by-laws), making this knowledge more publicly accessible to potential Planning Board applicants, persons submitting development applications, and the general public.

The attached draft Rules of Procedure are intended to streamline the former by-laws to an outline concerning how the Board conducts its internal decision-making procedures.

### **Town Council Discussion**

At its public meeting on April 5, 2023, the Duck Town Council heard presentations from candidates and selected/appointed two new members to the Duck Planning Board. During the Council members' considerations, the contents of the Planning Board by-laws were discussed. As the Planning Board's by-laws were adopted in 2004 and have not been updated subsequently, Community Development staff were asked to review the by-laws and develop recommended amendments.

### **Staff Comments & Recommendations**

After reviewing the current by-laws, staff determined that many contents of the by-laws should actually be located in the Town Code outlining the appointment, description, and duties of the Planning Board. So, draft Ordinance 23-07 adds those standards to the Town Code. The staff



focused on reorganizing the existing standards and limited any substantive changes to removal of duties not under the Board's purview.

Conversely, the by-laws have been streamlined to the draft Rules of Procedure. Although the original by-laws were adopted by the Town Council, Town Attorney Robert Hobbs advised staff that the Rules of Procedure are only guidelines and should be adopted by the Planning Board members themselves.

As the two documents update and clarify the Town's standards relating to the Planning Board's duties and procedures, staff recommends APPROVAL of the proposed text amendments in Ordinance 23-07 and amendments to the Planning Board's Rules of Procedure.

### **Planning Board Review**

As the applicable sections of the Town Code do not relate to the development standards of the Town, the Planning Board does not have a specific role in the consideration or adoption of the amendments to Sections 30-35 through 30-40 (not even as a recommending body). So, no formal action is necessary for the Board relating to draft Ordinance 23-07.

However, recognizing that the Board members likely have (and justifiably should have) an interest in these amendments to their description and duties, staff is presenting these draft amendments for your review and comments as they move forward to the Town Council.

The Planning Board is responsible for establishing and adopting its own Rules of Procedure. So, the Board members are requested to review the draft Rules of Procedure and decide if they meet the current needs of the Board or whether additional amendments are desired.

### **ATTACHMENTS**

- A. Draft Ordinance 23-07, Planning Board
- B. Planning Board Ordinance Revisions
- C. Draft Planning Board Rules of Procedure

**AN ORDINANCE AMENDING THE PLANNING BOARD DESCRIPTION AND DUTIES FOR THE TOWN OF DUCK, NORTH CAROLINA**

**Ordinance 23-07**

**WHEREAS**, during their recent appointment of new Planning Board members, the Duck Town Council recognized the need to update the existing by-laws of the Planning Board; and

**WHEREAS**, following the Council's direction, staff reviewed the existing Planning Board by-laws and Sections 30.35 through 30.40 of the Duck Town Code, *Planning Board*, and prepared the following amendments; and

**WHEREAS**, these amendments update and move many of the Planning Board's organizing principles from the by-laws to the Town Code, leaving primarily procedural matters in a Rules of Procedure document for the Board members; and

**WHEREAS**, these amendments serve a significant public purpose by providing a more comprehensive description of the Planning Board and its duties in the Town Code, making this knowledge more publicly accessible to potential Planning Board applicants, persons submitting development applications and the general public.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the Duck Town Council of the Town of Duck, North Carolina, as follows:

**PART 1.** Sections 30.35 through 30.40 of the Duck Code of Ordinances are hereby amended and restated in their entirety as follows:

***PLANNING BOARD***

**30.35 ESTABLISHED; JURISDICTION.**

There is hereby established a board known as the Duck Planning Board, hereinafter referred to as the Planning Board, whose jurisdiction shall include the area within the corporate limits of the town.

**30.36 PURPOSE.**

The Planning Board shall serve primarily in an advisory capacity to the Town Council in order to assist in matters of public health, safety, convenience and welfare of the citizens. To this end, the Planning Board will advise the Town Council on plans for the future development of the town so that residential areas may be provided with healthy surroundings, so that the needs and rights of businesses and individual property owners may be recognized, and so that transportation systems, recreational facilities and land use in the town may develop in an efficient manner for the benefit of all.

**30.37 COMPOSITION; TERMS; VACANCIES; ATTENDANCE OF MEMBERS.**

(A) The Planning Board shall be composed of 5 members, who shall be real property owners of the town.

(B) The members shall be appointed by the Town Council for terms of 3 years staggered per the initial appointment of the board.

(C) Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. Faithful attendance at the meetings of the Planning Board is considered a prerequisite for the maintenance of membership on the Planning Board.

(D) The members may be compensated at a rate approved by the Town Council.

**30.38 OFFICERS; RULES; RECORDS;-QUORUM.**

(A) Officers. The Planning Board shall elect a Chair and Vice-Chair who shall fulfill the duties described below. The Director of Community Development or his/her designee shall serve as the Secretary.

(B) Election of Officers. Nominations of officers (Chair and Vice-Chair) shall be made annually from the floor by Planning Board members and elections shall follow immediately thereafter. Members receiving the majority vote of the Board for the above offices shall serve one (1) year or until their successors take office. A vacancy in either office shall be filled immediately by regular election procedures for the unexpired term of the office vacated. Officers shall be eligible for reelection.

(C) Duties of the Chair. The Chair shall preside at all meetings of the Planning Board and shall have the duties normally conferred by parliamentary procedures of such officers. To fulfill these duties, the Chair shall take whatever action is necessary to provide a full opportunity for public comments; focus comments and discussion on issues directly related to the item being considered; ensure polite and orderly proceedings; and otherwise promote the efficient and effective disposition of matters before the Board. Such actions may include limiting the time allotted to speakers, interrupting personal attacks or digressions into immaterial issues, and ordering an end to disorderly conduct. The Chair shall decide all points of order and procedure subject to Roberts Rules of Order.

(D) Duties of the Vice Chair. The Vice Chair shall perform the duties of the Chair in the absence or incapacity of the Chair. When serving in that capacity, the Vice Chair shall have the same powers and duties as the Chair.

(E) Absence of Chair and Vice Chair. Should both the Chair and the Vice Chair be absent at any meeting, the Chair shall appoint a temporary chair to serve at that meeting.

(F) Duties of the Secretary. The Secretary shall keep the minutes and records of the Planning Board for regular and special meetings; conduct all correspondence of the Board and act as custodian of all Board records; arrange for all public notices required to be given; notify Board

members and interested parties of pending meetings and their agenda; and supervise the clerical work of the Board.

(G) The Planning Board shall adopt rules for transaction of its resolutions, discussions, findings and recommendations.

(H) Meetings. The Planning Board shall ~~hold~~ schedule at least 1 meeting monthly, and all of its meetings shall be open to the public.

(I) Quorum. There shall be a quorum of at least 3 members for the purpose of taking any official action required by this subchapter.

(J) Keep the Council and the general public informed and advised as to these matters.

### **30.39 MEETINGS.**

(A) The Planning Board shall schedule at least 1 meeting monthly, and all of its meetings shall be open to the public. Additional meetings may be scheduled, on an as-needed basis, and such meetings shall be Special meetings of the Board.

(B) Meeting Cancellation. The Chair may cancel or reschedule a scheduled regular meeting on determining that there will be no business for the Board to consider at the meeting, or that so many members have indicated their probable absence at the meeting that a quorum will not be present.

(C) The Secretary shall ensure that each member of the Board is provided a written notice prior to each meeting. Such notice shall include the meeting agenda and all pertinent staff reports. If the Board recesses a regular or special meeting for which proper notice was given, after the Chair has announced in open session the time and place at which the meeting will be continued, no further notice need be given for the continued meeting.

### **30.40 POWERS AND DUTIES.**

At the direction of the Town Council, the Planning Board is authorized to:

(A) Prepare plans and to coordinate the plans of the town with plans of others so as to bring about the orderly and harmonious development of the area.

(B) From time to time, review and recommend revisions to a land use plan as required by the North Carolina Coastal Area Management Act.

(C) Determine whether specific development proposals conform to the principles and requirements of the town code and comprehensive plan for the area and to make recommendations concerning them.

(D) Review and make recommendations to the Town Council on requests for rezoning; conformance with the Land Use Plan; and amendments to the zoning, subdivision regulations, and other land use regulations.

(E) Prepare and recommend ordinances promoting orderly development of the area or amendment of the zoning, subdivision, and other land development regulations based upon its studies and consistency with the comprehensive plan.

(F) Conduct special studies or perform any other duties which may lawfully be assigned to it by the Town Council.

(G) Acquire whatever information and knowledge is necessary to make fully informed and legally sound decisions and recommendations in the interest of the Town. To that end, members are encouraged to expand their knowledge and understanding of planning issues through training opportunities.

(H) Appoint subcommittees as needed to research or review issues requiring more detailed analysis.

(I) Keep the Town Council and the general public informed and advised as to matters considered by the Board.

(J) Motions and Voting. The privilege of making motions, substitute motions, amendments to motions and voting on all official acts of the Board shall reside in the members only. A voice vote shall be recorded on all official acts of the Board.

**PART 2.** This ordinance shall be effective upon its adoption.

\_\_\_\_\_  
Don Kingston, Mayor

ATTEST:

\_\_\_\_\_  
Lori Ackerman, Town Clerk

Date adopted: \_\_\_\_\_

Motion to adopt by: \_\_\_\_\_

Vote: \_\_\_\_\_AYES \_\_\_\_\_NAYS

**PROPOSED REVISIONS (5/10/23)*****PLANNING BOARD*****30.35 ESTABLISHED; JURISDICTION.**

There is hereby established a board known as the Duck Planning Board, hereinafter referred to as the Planning Board, whose jurisdiction shall include the area within the corporate limits of the town.

**30.36 PURPOSE.**

The Planning Board shall serve primarily in an advisory capacity to the Town Council in order to assist in matters of public health, safety, convenience and welfare of the citizens. To this end, the Planning Board will advise the Town Council on plans for the future development of the town so that residential areas may be provided with healthy surroundings, so that the needs and rights of businesses and individual property owners may be recognized, and so that transportation systems, recreational facilities and land use in the town may develop in an efficient manner for the benefit of all.

**30.3637 COMPOSITION; TERMS; VACANCIES; ATTENDANCE OF MEMBERS.**

(A) The Planning Board shall be composed of 5 members, who shall be real property owners of the town ~~and shall be appointed by the Council.~~

(B) ~~The members may be compensated at a rate approved by the Town Council.~~ The members shall be appointed by the Town Council for a terms of 3 years staggered per the initial appointment of the board. ~~; provided that for the initial appointment of members, 2 shall be appointed for a term of 3 years, 2 shall be appointed for a term of 2 years and 1 shall be appointed for a term of 1 year.~~

(C) Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. Faithful attendance at the meetings of the Planning Board is considered a prerequisite for the maintenance of membership on the Planning Board.

(D) The members may be compensated at a rate approved by the Town Council.

**30.3738 CHAIRPERSON; OFFICERS; RULES; RECORDS; MEETINGS; QUORUM.**

(A) Officers. The Planning Board shall elect a Chairperson and ~~create and fill offices as it may determine~~ Vice-Chair who shall fulfill the duties described below. ~~The term of the Chairperson and other officers shall be 1 year, with eligibility for reelection.~~ The Director of Community Development or his/her designee shall serve as the Secretary.

(B) Election of Officers. Nominations of officers (Chair and Vice-Chair) shall be made annually from the floor by Planning Board members and elections shall follow immediately thereafter. Members receiving the majority vote of the Board for the above offices shall serve one (1) year or until their successors take office. A vacancy in either office shall be filled immediately by regular election procedures for the unexpired term of the office vacated. Officers shall be eligible for reelection.



(C) **Duties of the Chair.** The Chair shall preside at all meetings of the Planning Board and shall have the duties normally conferred by parliamentary procedures of such officers. To fulfill these duties, the Chair shall take whatever action is necessary to provide a full opportunity for public comments; focus comments and discussion on issues directly related to the item being considered; ensure polite and orderly proceedings; and otherwise promote the efficient and effective disposition of matters before the Board. Such actions may include limiting the time allotted to speakers, interrupting personal attacks or digressions into immaterial issues, and ordering an end to disorderly conduct. The Chair shall decide all points of order and procedure subject to Roberts Rules of Order.

(D) **Duties of the Vice Chair.** The Vice Chair shall perform the duties of the Chair in the absence or incapacity of the Chair. When serving in that capacity, the Vice Chair shall have the same powers and duties as the Chair.

(E) **Absence of Chair and Vice Chair.** Should both the Chair and the Vice Chair be absent at any meeting, the Chair shall appoint a temporary chair to serve at that meeting.

(F) **Duties of the Secretary.** The Secretary shall keep the minutes and records of the Planning Board for regular and special meetings; conduct all correspondence of the Board and act as custodian of all Board records; arrange for all public notices required to be given; notify Board members and interested parties of pending meetings and their agenda; and supervise the clerical work of the Board.

(G) **The Planning Board shall adopt rules for transaction of its resolutions, discussions, findings and recommendations, ~~which record shall be a public record.~~**

(H) **Meetings.** The Planning Board shall ~~hold~~ **schedule** at least 1 meeting monthly, and all of its meetings shall be open to the public.

(I) **Quorum.** There shall be a quorum of **at least** 3 members for the purpose of taking any official action required by this subchapter.

(J) **Keep the Council and the general public informed and advised as to these matters.**

### **30.39 MEETINGS.**

(A) The Planning Board shall ~~hold~~ **schedule** at least 1 meeting monthly, and all of its meetings shall be open to the public. **Additional meetings may be scheduled, on an as-needed basis, and such meetings shall be Special meetings of the Board.**

(B) **Meeting Cancellation.** The Chair may cancel or reschedule a scheduled regular meeting on determining that there will be no business for the Board to consider at the meeting, or that so many members have indicated their probable absence at the meeting that a quorum will not be present.

(C) **The Secretary shall ensure that each member of the Board is provided a written notice**

prior to each meeting. Such notice shall include the meeting agenda and all pertinent staff reports. If the Board recesses a regular or special meeting for which proper notice was given, after the Chair has announced in open session the time and place at which the meeting will be continued, no further notice need be given for the continued meeting.

### **30.3840 POWERS AND DUTIES.**

At the direction of the Town Council, the Planning Board is authorized to:

(A) ~~It shall be the duty of the Planning Board to~~ prepare plans and to coordinate the plans of the town ~~and those with plans~~ of others so as to bring about ~~a coordinated~~ the orderly and harmonious development of the area.

(B) From time to time, review and recommend revisions to a land use plan as required by the North Carolina Coastal Area Management Act.

(C) Determine whether specific development proposals conform to the principles and requirements of the town code and comprehensive plan for the area and to make recommendations concerning them.

(D) Review and make recommendations to the Town Council on requests for rezoning; conformance with the Land Use Plan; and amendments to the zoning, subdivision regulations, and other land use regulations.

(E) Prepare and recommend ordinances promoting orderly development of the area ~~along the lines indicated in the comprehensive plan including a zoning ordinance and subdivision regulations. The Planning Board may initiate, from time to time, or amendment of the Zoning, Chapter and of subdivision, and other land development regulations based upon its studies and consistency with the comprehensive plan. In addition, it shall review and make recommendations to the Council concerning all proposed amendments to the Zoning Chapter and subdivision regulations.~~

(F) Conduct special studies or ~~P~~perform any other duties which may lawfully be assigned to it by the Town Council.

(G) Acquire whatever information and knowledge is necessary to make fully informed and legally sound decisions and recommendations in the interest of the Town. To that end, members are encouraged to expand their knowledge and understanding of planning issues through training opportunities.

(H) ~~The Planning Board is authorized to a~~Appoint subcommittees as needed to research or review issues requiring more detailed analysis. ~~and to authorize expenditures as it may see fit, subject to limitation of funds provided for the Planning Board by the Council in the town's annual budget.~~

(I) Keep the Town Council and the general public informed and advised as to ~~these~~ matters considered by the Board.

(J) Motions and Voting. The privilege of making motions, substitute motions, amendments to motions and voting on all official acts of the Board shall reside in the members only. A voice vote shall be recorded on all official acts of the Board.

~~—(C) In addition, the Planning Board is empowered to:~~

~~—(1) Acquire and maintain in current form basic information and materials as are necessary to an understanding of past trends, present conditions and forces at work to cause changes in these conditions;~~

~~—(2) (a) Prepare and, from time to time, amend and revise a comprehensive and coordinated plan for the physical development of the area.~~

~~—(b) The comprehensive plan shall be the Planning Board's recommendations to the Town Council for the development of the town including, among other things, the general location, character and extent of streets, bridges, parkways, playgrounds, parks and other public ways, grounds and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes; the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, buildings, grounds, open spaces, property, utilities or terminals; and the most desirable pattern of land use within the area;~~

~~—(3) (a) Establish principles and policies for guiding action in the development of the area.~~

~~—(b) The Planning Board may prepare a capital improvements program and report its recommendations to the Council upon the extent, location and design of all public structures and facilities, on the acquisition and disposal of public properties and on the establishment of building lines, mapped street lines and proposals to change existing street lines in order to ensure that the goals of the comprehensive plan are furthered by a coordinated and efficient expenditure of public funds;~~

~~—(4) Prepare and recommend ordinances promoting orderly development of the area along the lines indicated in the comprehensive plan including a zoning ordinance and subdivision regulations. The Planning Board may initiate, from time to time, proposals for amendment of the Zoning Chapter and of subdivision, based upon its studies and comprehensive plan. In addition, it shall review and make recommendations to the Council concerning all proposed amendments to the Zoning Chapter and subdivision regulations;~~

~~—(5) Determine whether specific proposed developments referred to it by governmental or private agencies in the area conform to the principles and requirements of the comprehensive plan for the area and to make recommendations concerning them;~~

~~—(6) Keep the Council and the general public informed and advised as to these matters;~~

~~—(7) Make any other recommendations which it sees fit for improving the development of the area; and~~

~~—(8) Perform any other duties which may lawfully be assigned to it.~~

~~—(D) The Planning Board is authorized to appoint subcommittees and to authorize expenditures as it may see fit, subject to limitation of funds provided for the Planning Board by the Council in the town's annual budget.~~

~~—(E) The Planning Board may set up special committees to assist it in the study of specific questions and problems.~~

DRAFT

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**TOWN OF DUCK PLANNING BOARD  
RULES OF PROCEDURE**

**DRAFT REVISIONS (5/10/23)**

**Article I – Purpose.**

Subject to the parameters outlined in Town Code Sections 30.35 through 30.40, the Planning Board is appointed to serve primarily in an advisory capacity to the Town Council on plans for the future development of the town so that residential areas may be provided with healthy surroundings, so that the needs and rights of businesses and individual property owners may be recognized, and so that transportation systems, recreational facilities and land use in the town may develop in an efficient manner for the benefit of all.

**Article II – Meeting Conduct & Voting Procedures.**

Section 1 – Conduct of Meetings – The Chair shall preside over all Board meetings and shall take whatever action is necessary to enforce compliance with these bylaws, provide a full opportunity for public comments, focus comments, and discussion on issues directly related to the item being considered, ensure polite and orderly proceedings, and otherwise promote the efficient and effective disposition of matters before the Board. Such actions may include limiting the time allotted to speakers, interrupting personal attacks or digressions into immaterial issues, and ordering an end to disorderly conduct.

Section 2 – Consideration of Agenda Items – The Chair shall begin the Board’s consideration of each agenda item by announcing the title of the item, identifying the nature of the decision involved, and briefly explaining the steps in Board consideration of the item. In doing so, the Chair shall note the opportunity for public comments. The Chair shall then ask Town staff to present findings and recommendations for Board action. Following the staff report, Board members may ask staff members for more information about the item and request clarification or explanation of the reasons for the staff’s findings and recommendation. The Chair shall provide the applicant an opportunity to make a presentation and respond to staff findings and recommendations. The applicant is not, however, required to make a presentation. Board members may ask the applicant for more information about the proposal or request the applicant’s response to staff recommendations, and may ask the staff to clarify their recommendations in light of the applicant’s comments. The Chair shall then solicit comments on the item from persons attending the meeting, asking them to first state their name and address.

Section 3 – Questions from Non-Board Members – Persons other than Board members who have questions related to previous presentations and comments shall direct them to the Chair, who may then redirect them to the appropriate persons. The Chair may choose not to redirect questions that are immaterial, rhetorical, or that constitute a personal attack.

Section 4 – Board Discussion – If the item involves a request for specific Board action, the Chair shall invite Board members to formally discuss the item and recommended action, without the need for a prior motion. Otherwise, the Chair shall state that a motion is in order, and Board members may discuss the item only in response to a motion for specific Board action. The Chair shall determine the order in which Board members are recognized to comment and shall ordinarily give each member present an opportunity to comment before allowing one member to comment a second time. Only Board members may participate in the Board’s discussion of an item. If, however, the discussion raises requests for more information or questions about the previously heard presentations and comments, the Chair may relay those requests and questions to the appropriate persons and invite their response in the context of the Board discussion.

Section 5 – Board Action – Generally, a Board action is adopted by vote after a Board member makes a proper motion for action; another Board member seconds the motion; the Chair restates the motion (including making any clarifications); all Board members have an opportunity to discuss the motion; the Chair restates the motion again and asks for a vote; the requisite proportion of Board members present vote in favor of the motion; and the Chair announces the result of the vote.

Section 6 – Approval of Minutes – After the Board has disposed of routine business matters on the agenda, the Chair shall ask Board members if they wish to make any corrections and revisions to the draft minutes of previous Board meetings, as noted on the agenda. The Board may adopt or revise minutes by voting on a proper motion for action or by unanimous consent.

Section 7 – Reports – After the Board has disposed of all other business on the agenda, the Chair shall invite the Director of Community Development to report any information they believe is likely to be of interest to the full Board, e.g. information about the disposition or status of matters previously considered by the Board, notification about matters likely to demand Board consideration in the near future, information about the status of ongoing staff projects, etc. The Chair may then report any additional information to the Board. Reports should be limited to the presentation of information only, and should not involve requests for Board action unless for the purposes of referring the matter to the staff or scheduling it for consideration at a later meeting.

### **Article III – Conduct of Board Members.**

Section 1 – Conflicts of Interest – To preserve public confidence in the integrity of the Planning Board and the Town’s governmental process, each Board member shall have the duty to avoid even the appearance of a conflict of interest.

Section 2 – Meeting Attendance – Each Board member is responsible for faithfully attending all regular Board meetings. Any Board member who expects to be absent at an upcoming meeting shall so notify the Chair or Secretary as soon as possible. If any member is absent from any three (3) consecutive regular meetings or from six (6) or more regular meetings held within a twelve-month period, the Chair shall forward that member’s name and attendance record to the Town Council along with a recommendation that the Council request the member’s resignation and appoint a new member as a replacement.



**TO:** Chairman Cofield and Members of the Town of Duck Planning Board  
**FROM:** Joe Heard, AICP, Director of Community Development  
**DATE:** May 10, 2023  
**RE:** Discussion Concerning Upcoming Review of Standards for Businesses

**Town Council Discussion**

At its public meeting on April 5, 2023, the Duck Town Council authorized staff to work with local businesses making reasonable efforts to come into compliance with expired Town allowances for the use of tents, outdoor seating, and related provisions during State limitations due to COVID-19. Several businesses will likely be submitting revised applications for special use permits in the coming months as a result of these efforts.

At the same meeting, the Council members asked Community Development staff to evaluate the Town's development standards as they relate to business operations. Two specific standards discussed at the meeting were allowances for outdoor waiting areas and minimum parking requirements.

**Staff Comments**

As staff evaluates the Town's current development standards and determines whether amendments should be considered, the following steps are planned:

- Read articles/literature on current trends and related development standards
- Review standards in other communities (particularly on the Outer Banks)
- Conduct a survey of local businesses to determine current needs/issues
- Conduct a survey of business patrons to identify needs/concerns

**Planning Board Review**

At this point in time, staff is asking for the Planning Board's assistance in identifying any particular issues that you would like to see addressed, any information that would be valuable to you, or any questions that you want asked of local businesses and patrons during the upcoming review.

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
April 12, 2023**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, April 12, 2023.

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

Also present: Council Liaison Sandy Whitman, Senior Planner Sandy Cross, Director of Community Development Joe Heard, Community Planner Jim Gould and Deputy Town Clerk Melissa Felthousen.

Others Present: David Stormont

Chair Cofield called to order the Regular Meeting of the Planning Board for April 12, 2023 at 6:30 p.m.

**PUBLIC COMMENTS**

No public comments.

**NEW BUSINESS**

*SUP 23-004: Application by David Stormont for a special use permit for the following allowances for the driveways and parking areas at 110-B Sound Sea Avenue: (1) to allow parking spaces to be located within 2.8 feet of the front property line where a 5' setback is required in Section 156.092(D); (2) to allow a reduction in the minimum separation between multiple drive aisles to 10' rather than the 25' required in Section 156.092(E); and (3) to allow a combined aggregate drive aisle width of 28' where a maximum of 24' is permitted in Section 156.092(E), PIN 995006486364*

Director of Community Development Joe Heard provided background information on the subject property. He described the subject property as recently developed with a single-family residence with accompanying driveways and parking improvements. He stated when the property owner provided an as-built survey at the completion of the project, it showed several inconsistencies with Town standards relating to parking and driveways. Heard added that per staff discussion, a variety of alternatives for compliance were available to the property owner. He stated the owner decided to submit this SUP application with the intent of bringing the existing, nonconforming driveway/parking layout into compliance. Heard stated a Temporary Certificate of Occupancy (TCO) was issued for the residence on December 13, 2022 with the conditions that parking be brought into compliance and a revised as-built survey provided to verify compliance.



Heard outline the Special Use Permit Criteria and staff's opinion on same.

1. The use meets all required conditions and specifications of the ordinance.
  - The subject property complies with all development standards other than the standards involved with this special use permit application.
2. The use does not materially endanger the public health or safety.
  - The proposed allowances for reduced standards do not involve any site improvements that would change the function or intensity of use of the site, impact adjoining properties, or endanger the public health or safety.
3. The use will not substantially injure the value of adjoining property, unless the use is a public necessity.
  - As the subject property is developed with a single-family residence, similar to the surrounding properties, it is unlikely that it would have any significant impact on the value of adjoining properties. The allowances being requested would not appear to impact the value of properties in the surrounding neighborhood.
4. The use will be in harmony with the area in which it is located and be in general conformity with the Comprehensive & CAMA Land Use Plan.
  - The Town's adopted Comprehensive & CAMA Land Use Plan designates the subject property in the Cottage Residential Character Area. The single-family residential use and development of the site are consistent with the type of uses allowed and encouraged in the Cottage Residential Character Area.
  - The proposed relief from the minimum setback and distance between driveways is intended to preserve several existing, mature live oak trees. Tree preservation is consistent with the policy recommendations of the CLUP.
  - However, the requested relief from the aggregate driveway width standard does not promote the preservation of trees and appears to be inconsistent with the policy recommendations of the CLUP. In addition to these criteria, Section 156.096 of the Town Code contains the following additional criteria for special use permits requesting modification of parking or loading requirements:
5. Will not result in increased traffic congestion or otherwise negatively impact existing traffic flow or pedestrian and vehicular safety.
  - As the requested driveway dimensions and location do not result in additional traffic or alter off-site traffic flow, granting the special use permit would not negatively impact existing traffic in the neighborhood.
6. Will not be contrary to the objectives specified in the CAMA Comprehensive & Land Use Plan.
  - See #4 above.

7. Is necessary to permit the reasonable use of the subject property.
  - While it is difficult to say that the requested setback and distance allowances are “necessary” to permit reasonable use of the subject property, these allowances are necessary to allow reasonable use of the property while maintaining an important goal of the Town to preserve mature trees on the property. However, this same rationale does not hold true for the request relating to the overall width of the driveways.
8. Will not adversely impact adjacent property or the surrounding area.
  - As the requested driveway dimensions and location do not result in additional traffic or interfere with activities on surrounding properties, granting the special use permit would not adversely impact the surrounding area.

Heard outlined in the proposal description three different allowances being requested as part of this special use permit application:

- (1) parking space setback
- (2) minimum separation between drive aisles
- (3) aggregate drive aisle width.

Heard stated staff finds that granting the first two allowances is consistent with elements of the Town’s adopted CLUP as they help to preserve existing, mature trees and do not appear to negatively impact the surrounding neighborhood. He added that staff does not find the same justification for the requested allowance for wider driveways, which are not consistent with the CLUP. He stated staff recommends APPROVAL of SUP 23-004 for the requested allowances to the minimum parking setback from the front property line and minimum distance between driveways but recommends DENIAL of the requested allowance for wider driveways in aggregate.

Chair Cofield questioned if the Planning Board had acted on any SUP for single family dwellings previously.

Senior Planner Cross and Heard mentioned other properties, residential and commercial, which had applied for SUP in the past.

Cross stated the applicant, David Stormont, is the subject property association’s president and his application included two non-objectional letters from adjacent property owners. She added only one inquiry phone call regarding the subject matter had been received pertaining to SUP 23-004.

Subject property owner David Stormont, of 6036 Currituck Road, Kitty Hawk NC, commended staff for their attentiveness and help preparing the SUP packet. Stormont gave a brief history and description of Sound Sea Village neighborhood. He stated the Sound Sea Village roads in the subdivision are private, unpaved and are constructed of gravel. He added an HOA was formed so that the deeded roads could be received from the original developer, Walter Perry. Stormont stated the bylaws in the HOA only give authority to maintain the streets and no architectural review boards exist. He explained the community has other homes, built prior to

the Town of Duck's incorporation, that do not meet current ordinances as it relates to parking and driveways. He described the time and work it took to create a site plan for the small cottage to be built for his son and family that would preserve the existing oaks and comply with health department and town standards. Stormont stated the reason for requesting an exception was to preserve the many mature oaks on the property. He indicated that he did not think it was practical to follow recommendations by Town staff to reduce the driveway by two feet on each side of the driveway as the width is needed for access to the parking spaces.

Cofield questioned Stormont regarding setbacks and removing concrete at the expansion joint.

Member Murray discussed the specifics of the site plan with Cofield.

Cofield retracted his objection based on the clarification by Murray. Cofield noted the objection raised by the staff for item three seemed reasonable and questioned Stormont as to why it was not reasonable.

Stormont stated he found the staff's suggestion would create functional difficulties with keeping vehicles on the driveway when backing out.

Cofield questioned if flooding is a problem near subject property.

Stormont commented that major rain events do not effect the subject property and it has never flooded.

Murray stated he can see staff's and applicant's points and questioned how far the driveway notch would have to go.

Heard suggested that a taper could reduce the width of the requested allowance and would show a good faith attempt by the applicant to comply.

Blakaitas motioned to approve SUP 23-004 consistent with Town staff's recommendation, approving allowances one and two and denying allowance three.

Cofield seconded the motion.

Murray asked the other members to consider approval of a reduced aggregate driveway width.

Cofield responded that he was uncomfortable redesigning the site during the meeting and didn't see that as being an appropriate task for the Planning Board.

Motion carried 2-1 (Cofield and Blakaitis in favor, Murray opposed).

## **APPROVAL OF MINUTES**

### **Minutes from the March 8, 2023 Meeting**

Murray motioned to approve the minutes from the March 8, 2023 meeting as presented.

Cofield seconded.

Motion carried 3-0.

### **STAFF COMMENTS**

Heard summarized recent town council meeting items. He stated Town Council approved SUP 23-003 at Scarborough Lane Shoppes and the applicant accepted all conditions proposed by the Planning Board. He noted the Town Council approved ordinances 23-01 and 23-02 per the recommendation of the Board.

Cross explained the Town Council's desire to enforce conditional use permits and ordinances. She stated COVID allowances have been removed as of December 31, 2022. She explained staff's effort to work with businesses in the post COVID environment based on Council's recommendation. Cross mentioned the lack of clarity with regard to restaurants and waiting areas versus seating areas. She forecasted staff will be bringing back zoning text language for the Board to address.

Cross provided a project update for the Duck Trail improvements between Blue Heron Lane and Waxwing Lane are underway with an anticipated completion date of late April. She mentioned beach nourishment is underway as the dredge Magdalene arrived Monday and started pumping sand with an approximated completion time line of 39 days. Cross noted the two phases of Resilient Coastal Communities Program is finishing up with a second look at phase two. She stated the phase two portion has now increased from 5 priority projects to 15.

### **BOARD COMMENTS**

Cofield stated at the next Planning Board meeting two new board members will be welcomed. He mentioned the required annual report from the Planning Board to the Town Council will be provided in June.

### **ADJOURNMENT**

Blaikatis motioned to adjourn.

Murray seconded the motion to adjourn.

Chair Cofield adjourned the meeting.

The time was 7:36 p.m.

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