

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

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

Present: Chair Marc Murray, Vice-Chair Bob Wetzel, Joe Blakaitas and James Cofield.

Also present: Town Attorney Lauren Arizaga-Womble, Director of Community Development Joe Heard, Senior Planner Sandy Cross, Community Planner Jim Gould and Deputy Town Clerk Melissa Felthousen.

Not present: Brenda Chasen and Council Liaison Sandy Whitman.

Chair Murray called to order the Regular Meeting of the Planning Board for July 12, 2023 at 6:36 p.m.

PUBLIC COMMENTS

None.

NEW BUSINESS

ORD 23-09: Text Amendment to Section 156.162 of the Zoning Ordinance Authorizing the Board of Adjustment to Grant Continuances and Adopt Rules of Procedure

Director Joe Heard stated the purpose of ORD 23-09, drafted by Town Attorney Robert Hobbs, is to clarify the Board of Adjustment's ability to grant continuances and adopt its own rules of procedure.

Heard noted Member Brenda Chasen's absence and presented her submitted comments related to ORD 23-09 to the Board. Chasen's comment questioned the wording "there is insufficient membership on the board" as one of the reasons why someone could request a continuance. Heard explained the wording is exactly as needed. He stated there are times when the Board might have a quorum, but to grant a variance the Board of Adjustment would need a super-majority vote, meaning 4 votes in favor. If only 4 members are in attendance, an undue burden is placed on the applicant to get all 4 votes and a continuance can be requested.

There were no comments from the Board.

Member James Cofield moved to recommend approval of ORD 23-09 as presented. Vice-Chair Bob Wetzel seconded. Motion carried 4-0.

ORD 23-10: Text Amendment to Sections 156.040 and 15.058 of the Zoning Ordinance Clarifying Where and Under What Criteria Wireless Telecommunication Facilities are Permitted

Heard stated ORD 23-10 amendments were generated based on issues Staff had encountered during the past year. Town Council authorized the review of the text amendment and Staff developed language to clarify and resolve two issues relating to the establishment of wireless telecommunication facilities in the Town of Duck.

Heard described Part I as an amendment to the overall use table to include stealth antenna and wireless telecommunication facilities to clarify the discrepancies between this table and the table for wireless telecommunication facilities.

Heard described Part II as an amendment to clarify the allowable height for the supporting utility pole accommodating small wireless facilities on commercially and other non-residentially zoned properties. He stated that the proposed maximum height of 50 feet is consistent with State standards for utility poles within public rights-of-way.

Senior Planner Sandy Cross noted a typo in Part 2 Item B which should state “each new”, not “eight of new”. Heard concurred that this item needs correction.

Wetzel inquired about stealth antenna and small wireless facility locations in the Town. Heard stated a no proposals for stealth antennae have been submitted during his tenure. He added there is a small wireless facility located on a utility pole along Scarborough Lane. Cross additionally noted the Town has one active application for a small wireless facility. Heard added there have been inquiries by Verizon over the years but nothing formal has been submitted.

Cofield moved to recommend approval of ORD 23-10 with the correction noted by Staff. Member Joe Blakaitis seconded. Motion carried 4-0.

OLD BUSINESS

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

Heard stated that the Board’s consideration of ORD 23-07 is a continuation from past discussions. He noted changes were made to clarify an oath of office is required before service on the Board. He also noted the consensus reached at the previous meeting regarding the attendance policy under the Board’s Rules and Procedures internal policies and described the guidelines for meeting attendance as missing two (2) consecutive or three (3) regular meetings within a year (defined as 5/1 to 5/1) before a recommendation of removal from the Board is forwarded to the Town Council.

Heard submitted Chasen’s comment, which questioned if full-time residents who rent would be eligible to be Planning Board members. Heard stated full-time residents who rent would be eligible, however non-resident property owners are not.

Heard asked if any further discussion of items was necessary as it relates to the updated draft ordinances and rules and procedures.

Member Joe Blakaitis questioned if all agreed with the proposed attendance policy. He stated the new policy seemed rash and attendance had been non-problematic in the past. Murray reminded there had been discussion regarding excused verses unexcused absences which was not included in the draft ordinance. Cofield stated the intent is to encourage regular attendance.

Cross explained the attendance policy has not historically required enforcement and ultimately should a situation arise, the Planning Board would discuss the situation prior to a sending a recommendation for a member being removed to Town Council. Cofield expressed his concern with voting on the legitimacy of someone's excuse.

Murray stated the attendance topic had already been deliberated and the conclusion was to leave it in rules and procedures rather than put it in the ordinance. Attorney Womble clarified that the attendance policy is within the rules and procedures, not the ordinance.

Murray referenced Chasen's comment regarding residency and questioned if the State defines full-time resident. Heard stated he wasn't aware of any such definition.

Murray asked if a full-time resident could be defined as a registered voter. Heard explained residents could choose not to vote and suggested such wording might not be practical. Womble discouraged defining full-time residents as registered voters and suggested fine tuning such language at another time.

Heard reminded the Board members that the Rules of Procedure is an internal document and can be discussed later.

Womble pointed out because Town Council makes the appointment there is another layer of protection as it relates to eligibility.

Cross mentioned the Town is going further than other communities, as other communities state in their language "shall be residents" rather than "shall be full time residents".

Cofield moved to recommend approval of ORD 23-07 as presented. Wetzel seconded. Motion carried 4-0.

Cofield moved to adopt the Planning Board Rules of Procedure as presented. Wetzel seconded. Motion carried 4-0.

Heard stated Staff will provide the adopted Rules of Procedure to the Town Council.

ORD 23-11: Text Amendment to Applicable Sections of the Town Code Removing the Planning Board from the Approval Process for Special Use Permits

Heard summarized the proposal and recognized Womble to provide the Board with information regarding the proposed amendments in ORD 23-11, removing the Planning Board's role in the consideration of special use permit applications.

Womble commented that Town Attorney Robert Hobbs' memo covered everything in detail and the UNC School of Government article was also informative.

Cofield questioned Womble if she was aware of any prior issues regarding the Planning Board reviewing special use permits. Womble stated the purpose in reviewing and making changes to the ordinance is to head off any issues that may arise in the future and she was not aware of issues specifically for the Town. Heard added that Staff wasn't aware of any specific issues or situations that had been called into question.

Wetzel stated his opinion is that it is advantageous for applicants to have an opportunity for a trial run to go through the process and have a review before it goes to Council. He noted several applications over the years that didn't proceed directly to Town Council because of questions that came up at the Planning Board meeting.

Wetzel asked the Staff's view regarding this procedural change. Heard pointed out some of the potential advantages and disadvantages related to the amendment. He noted the value added by the Planning Board's ability to focus on development issues while Town Council handles a multitude of other Town issues. Conversely, he mentioned that the Board's involvement raises potential legal questions about the Town's quasi-judicial process.

Cofield noted the Planning Board can bring more of a technical review and input. He referenced the School of Government article, third page paragraph 3, which recommends the Planning Board to focus on the standards set out in the ordinance for special use permits and how those standards apply in the particular application.

Womble asserted the issue is not the quality of the review, or the issues that are focused on in the review, it is the impact the Planning Board's review can have on the process. When the Board is considering a quasi-judicial hearing, Planning Board recommendations do not carry any more weight than public comments. She indicated the typical procedure is to instruct the Town Council to not give more weight to the Planning Board's recommendation. Womble described the evidence received as not under oath, not competent and not to be relied upon to make the decision. She reiterated it is not the quality, rather the potential impact on the proceeding. Womble raised the question why then the Planning Board would review special use permits given the potential risk on the backside should an applicant challenge a decision. She noted the legal opening such procedures present.

Cofield stated he disagreed with the notion and again referenced guidelines in the School of Government article. He noted that the Planning Board often has some technical input that should be considered by the decision-making body.

Murray described his time on the Planning Board and stated he doesn't feel as though the Board has always kept its review focused on the substance of the ordinance and has relied on public

comments. Murray described his experience as a special use applicant in the past. He favors a shorter process as well as one that is heard by elected individuals rather than appointed, which seems fairer to him. He noted that not having a Planning Board presentation does put a lot on that one shot proposal for the applicant. Murray stated he sees the point of the Town Attorney and having the special use permit heard by one Board during the quasi-judicial process is fairest to applicant.

Wetzel agreed with Murray with respect to shortening the process for special use applications and recognized the undue hardship the longer process can have on applicants.

Womble stated a Planning Board member is not prohibited as an individual to engage with Staff, review applications and appear at the public meeting to give a comment to Council based on the member's review.

Murray questioned if familiarity with the ordinance as a Planning Board member gives standing when making a comment. Womble replied that Planning Board comments are only public comments. Murray asserted that such information speaks volume, and the Planning Board does not meet the criteria as having standing to comment.

Blaikatis motioned to approve ORD 23-11 as presented. Wetzel seconded. Motion carried 3-1, with Cofield dissenting.

APPROVAL OF MINUTES

Minutes from the June 14, 2023, Meeting

Cofield made a motion to approve the minutes from June 14, 2023 as presented. Wetzel seconded. Motion carried 4-0.

STAFF COMMENTS

Summary of July 5, 2023, Regular Town Council Meeting

Heard gave a short summary of the recent Town Council meeting.

Project Updates

Cross gave a short overview of various projects going on in the Town.

BOARD COMMENTS

None.

ADJOURNMENT

Cofield moved to adjourn the meeting. Blakaitis seconded. The meeting was adjourned by consensus of the Board Members at 7:39 p.m.

Approved: _____

/s/ Marc Murray, Chairman