



Agenda

Town of Duck Planning Board – Regular Meeting

Paul F. Keller Meeting Hall

Wednesday, January 10, 2024 – 6:30 p.m.

1. Call to Order
2. Public Comments
3. Discussion
 - a. *Redevelopment Standards – define redevelopment and when/which standards apply*
4. Planning Board Schedule/Meeting Times
5. Approval of Minutes
 - a. *Minutes from December 13, 2023 Meeting*
6. Staff Comments
 - a. *Summary of January 3, 2023 Town Council Meeting*
 - b. *Project Updates*
7. Board Comments
8. Adjournment



TO: Chairman Murray and Members of the Duck Planning Board
FROM: Joe Heard, AICP, Director of Community Development
DATE: January 10, 2024
RE: Discussion Concerning a Definition for *Redevelopment* & When to Apply Certain Development Standards

Background Information

The concerns that led to this review were raised during consideration of the redevelopment of the property formerly occupied by Resort Realty on the northern edge of Duck Village. Questions were raised about when a proposal should be considered “redevelopment” or treated as a new development altogether. In particular, these issues were brought up in relation to the existing driveways and parking areas, which are nonconforming but were not proposed to change.

It was noted that the Town does not currently define, or for that matter use, the term *Redevelopment* in its Zoning Ordinance. Additionally, it became apparent that the Town needs to consider if further clarification is needed as to when and which development standards are required to be brought into compliance when a nonconforming commercial property is considered for redevelopment.

The dictionary definition of *Redevelopment* is the act or process of developing something again or differently.

Staff Comments

The Town of Duck has consistently permitted the redevelopment of commercial properties over the years. Traditionally, the Town required nonconforming components of a development to be brought into compliance if they were being removed/replaced, while encouraging full compliance with current development standards.

For example, the complete removal of the building and parking area at NC Coast required full compliance with building setback, parking, and other standards (although some relief from the parking standards was granted through the CUP process). In comparison, the addition of an outdoor seating/entertainment area at Duck Deli did not necessitate full compliance of the parking layout as the existing, nonconforming building setbacks and parking were maintained.

Applicable Ordinance Sections

The most relevant portions of these sections are highlighted.



NON-CONFORMITIES

156.070 INTENT OF SUBCHAPTER.

(A) Within the districts established by this chapter or amendments that may later be adopted, there exist lots, structures, uses of land and structures and characteristics of use which were lawful before July 3, 2002, or before the date of adoption of any applicable amendment, but which would be prohibited, regulated or restricted under the terms of this chapter or future amendments.

(B) It is the intent of this subchapter to permit these non-conformities to continue until they are removed but not to encourage their survival. It is further the intent of this subchapter that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

156.073 NON-CONFORMING STRUCTURES.

Where a lawful structure exists on July 3, 2002, on the effective date of any applicable amendment of this chapter, that could not be built under the terms of this chapter by reason of restrictions on area, number of bedrooms, lot coverage, height, yards, its location on the lot or other requirements concerning the structure, the structure may be continued so long as it remains lawful, subject to the following provisions.

(A) No like non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.

(B) Should the non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed, except in conformity with the provisions of this chapter.

(C) Should a structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

While most of the standards addressing nonconformities are applicable only to residential structures, it appears that the highlighted 50% rule could be applied more broadly to commercial properties as well.

OFF-STREET PARKING AND LOADING

156.090 OFF-STREET PARKING REQUIRED.

At the time of erection of any building or structure, or at the time any building or structure is enlarged or increased in capacity by adding dwelling units, bedrooms, guest rooms, seats or floor area, or before conversion from one zoning use or occupancy to another, permanent off-street parking space shall be provided according to the amounts and specifications provided in this subchapter.

156.093 PARKING LOT REQUIREMENTS FOR ALL USES OTHER THAN SINGLE-FAMILY AND 2-FAMILY (DUPLEX) DWELLING UNITS.

Permanent off-street parking spaces shall be provided in accordance with the following requirements prior to the completion of construction of any building or structure, or at the time



any building or structure is enlarged or increased in capacity by adding dwelling units or before conversion from one zoning use or occupancy to another.

Parking standards include the size, layout, and number of parking spaces.

COMMERCIAL DEVELOPMENT AND DESIGN STANDARDS

156.110 PURPOSE AND APPLICABILITY.

In order to ensure that new development, renovations, and reconstructions are designed, sized, and sited to complement the area in which they are located and the character of the town in general; and to minimize traffic hazards and situations which endanger public safety; and to protect existing development and property values through the promotion of high standards of design and compatibility; and to provide for a high quality of life for our citizens, the following standards and site plan requirements shall apply to all development in the VC, C-1, and C-2 Zoning Districts unless otherwise noted.

Commercial design standards include design standards for buildings, access, parking, landscaping, and lighting.

Town of Kitty Hawk Standards

The Town of Kitty Hawk development standards are similarly worded to Duck's. However, the Town also specifically adopted the following provision for nonconforming parking areas:

"Where a lawfully established parking lot exists that could not be built under the current standards of this chapter by reason of restrictions on drive aisle widths or other dimensional requirements, such parking lot may continue to be used in its present configuration, subject to the following provision: No such nonconforming parking lot may be enlarged or altered in a way which increases its nonconformity, but any parking lot or portion thereof may be altered to decrease its nonconformity".

Town of Nags Head Standards

The Town of Nags Head dealt with similar concerns about redevelopment approximately a decade ago. At the time, the Town adopted stricter standards that required all redevelopment to comply with current standards. However, the Town quickly found that approach to be unsuccessful as it prevented the reasonable reuse of several vacant commercial properties. The Town subsequently adopted the following allowance that relates to the redevelopment of commercial properties:

"Exemptions. These regulations shall not apply to any land or structure for which, prior to the effective date hereof, there is a properly approved site specific plan as required by the requirements previously adopted or previously approved vested rights in accordance with NCGS 160D-108."



Town of Manteo Standards

The Town of Manteo permits many nonconformities to remain per the following allowances. It is interesting to note that the Town has singled out certain development standards for full compliance (outdoor lighting) and compliance where practicable (landscaping, buffers, lighting, signage, and curb cuts).

“It is the intent of this ordinance to "grandfather" non-conformities that existed on the date of the adoption of this ordinance September 14, 2005. Within the districts established by this ordinance or amendments that may later be adopted, there exist densities, structures, premises, and parking lots which were lawful before this ordinance was adopted or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments. It is the intent of this ordinance to permit these densities, structures, premises, and parking lots:

- (1) To continue unless or until they are voluntarily removed;
- (2) To be enlarged upon, expanded, or extended, in compliance with the regulations of the district in which it is located; and that
- (3) Such nonconformities may not be used as grounds for replicating elsewhere in the town.”

“It is the intent that where practicable, landscaping, buffers, lighting, signage, and curb cuts be brought into compliance.”

“Unless otherwise provided in this chapter, nonconforming situations that were otherwise lawful on the effective date of this ordinance may be continued, except outdoor lighting.”

Key Questions

- Is a definition of the term *Redevelopment* necessary?
- If so, does it need to include more than the dictionary definition?
- Under what circumstances should existing nonconformities be allowed to continue?
- Are there particular development standards that are more important to bring into compliance?



**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING SCHEDULE
2024**

January 10

February 14

March 13

April 10

May 8

June 12

July 10

August 14

September 11

October 9

November 13

December 11

** All meetings are held at 6:30 p.m. in the Keller Meeting Hall at 1200 Duck Road.

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
December 13, 2023**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, December 13, 2023.

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

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

Chair Murray called to order the Regular Meeting of the Planning Board for December 13, 2023 at 6:30 p.m.

PUBLIC COMMENTS

Miriam Rollin, owner of 149 Plover Drive in Duck, was recognized to speak. She expressed the urgency and importance of the upcoming placement of small cell towers, called small cell facilities, across Duck. She pointed out the readily available media coverage regarding the quick expansion of 5G (fifth generation) cellular phone coverage across the United States, due to concerted efforts by Verizon and other cell service providers in recent years. Rollin commented that although 5G has its benefits, the higher frequency signal doesn't travel as far as the 4G signal, therefore requiring more towers per square mile. She explained that in most locations, 5G facilities can utilize existing utility poles, which can be as high as 40-50 feet, to support the required equipment. Rollin noted that most of Duck's existing utilities are underground, which could mean a bunch of new towers 40-50 feet in height popping up all over Duck. She stated that she found out about the pending utility pole in her neighborhood when folks on Plover Drive noticed painted lettering with a big arrow pointing to a beach walkover cul-de-sac. She expressed the horror the Plover Drive residents and other owners felt when learning there could be a big ugly pole sticking up right at the beach access and that nobody had contacted any of the property owners to discuss the visual impacts to their ocean access. Rollin stated that she contacted Duck staff and was told that there is not a process that involves the property owners for such facilities within state rights-of-way. Her findings revealed that the steps necessary to install a small wireless facility require obtaining an encroachment permit from NCDOT for using the state right of way, of which had already been issued for Plover Drive, and an obtaining an electrical permit from the Town of Duck which must be issued if electrical code is compliant. Rollin noted her research also revealed that due to the proximity to the oceanfront dune, a CAMA minor permit might be required as well. She added that she had completed additional research into federal, state and local codes, which she is willing to share. Rollin urged the Planning Board and Town Council to establish a meaningful process for locating such facilities in a way that could achieve desired cell coverage without destroying the beauty of Duck. Chairman Murray thanked Rollin for her presentation to the Board.

DISCUSSION

Sand Relocation Policy/Standards

Senior Planner Sandy Cross acknowledged Board Member Cofield's request for the Planning Board to discuss the sand relocation policy that Nags Head recently implemented. She stated that staff had reached out to Nags Head planners to obtain information regarding the Town's policy. She referenced the documents received from Nags Head, which were included in the Planning Board packet. She explained that the first document contains information regarding the Nags Head Sand Relocation Program, which originated in 2014 from the Nags Head CAMA Major Permit Modification 45-10. Cross noted that this information was included because the sand relocation primarily applies to property in the beach nourishment area. She also included email correspondence with Nags Head Director of Community Planning and Development, Kelly Wyatt and an article related to Nags Head Sand Relocation Program. Cross presented a video developed by the Town of Nags Head which provides explanations and photos of sand relocation in their community.

After presenting the video, Cross expressed her concerns with applying Nags Head's sand relocation practices in Duck and outlined Duck's method of handling sand after the 2017 beach nourishment project. She explained that the Town immediately installed sand fencing and planted beach grass all winter using volunteers and paid contractors. She noted that additional rows of sand fencing were also added. Cross commented that the Town of Duck did not have issues with sand overtaking pools nor foundations of structures. She referenced an area in Sanderling that has experienced some sand accretion, has a huge wide dune and is outside the nourishment area. Cross reiterated that the Nags Head method would not apply to the Town. She noted that the Town's policy since 2006 states that property owners can maintain the dune walkway by removing sand up to 18 inches or to the middle rail, whichever is higher. She stated that walkways cannot cut into the dune, and one must build over the dune should sand accretion take over. Cross added that if the Board does not agree, then the Board will need to look at more than just policy and must examine dune and CAMA regulations. She noted Nags Head's policy is in place because of beach nourishment. Cross stated that from 2011 to present, 91 permits were issued for dune walks south of the nourishment area, 64 were issued north of the area (of which 20 were issued before the 2017 nourishment) and 150 permits issued in the nourishment area. She added that the 150 permits in the nourishment area were mostly likely from storm damage because walkways are not allowed there anymore.

Member Cofield described a friend's oceanfront home in Nags Head that has been approved for a permit to remove sand and the friend thinks it's a godsend for his location. Cross questioned what was being saved at his location. Cofield responded that the walkway needed sand removal. Cross inquired about the method used to accomplish this task. Cofield was unsure of the details. He added that he knew of property owners in Sanderling and on Buffell Head Road that had a similar, never-ending sand accumulation problem. He added that he was surprised that Nags Head pays property owners to remove the sand and thought that since some property owners in Duck experience the same problem, it was an opportunity to review the Town's policy to determine if Duck needs to do something differently.

Member Wetzel questioned the reason for walkover permits issued in Sanderling. Cross stated that most permits north of the nourishment area were the result of sand accretion. She described two permits with work description to raise dune walkovers covered by sand. Wetzel questioned if homeowners outside the nourishment area have experienced similar issues to Nags Head. Cross stated that Duck does not have the same extent of problems as Nags Head. Cross asserted that sand accretion will occur everywhere and that there will be pockets and locations that can't always be explained. Wetzel commented that it seems ironic that Nags Head has spent millions of dollars to build up the dunes through nourishment and now is potentially spending \$335,000 to move sand back to the beach. Cross stated that in Nags Head's defense, they were the first community to complete nourishment on the Outer Banks and were not prepared for all the ramifications. She noted that Nags Head provided an example and that's why the Town of Duck has implemented a fencing and planting program and has stuck with it. She added that the most important part of nourishment is to keep sand on the beach.

Cofield questioned where money comes from to relocate the sand in Nags Head. Chair Murray stated the video presentation indicated it was the Town of Nags Head's money that funds the projects.

Cofield questioned if areas that need some relief in Duck would be helped or if it would defeat what otherwise is being done in Duck. Cross asked for an example. Cofield was unsure and stated that his impression was that Duck had taken a different approach than Nags Head. Cross reiterated that the Town plants the entire beach every fall, plants sea oats and bitter panicum grass in the spring, implements a sand fencing program in the nourishment area, and is working to get a second and third row of fencing. Cofield questioned again if the Town did what Nags Head is doing in the areas that need some relief, if that would enhance or defeat the program presently operated. Cross questioned if the areas Cofield is referencing are in or outside the nourishment area. Cofield responded that it is inside the nourishment area. Cross added that the Town grades accesses every year in the nourishment area and stated that beach access structures are not allowed in the nourishment area.

Cofield questioned if the walkover rule is the Town's standard. Cross replied that it is the Town's rule and that there is a 14-million-dollar beach that the Town wants to preserve. She noted that Nags Head and Duck's situations are different and cannot be compared. She pointed out that there are no public beach accesses, therefore preventing machinery to access properties. Murray added that in his experience, sand must be dug out manually.

Member Blakaitis mentioned that Duck doesn't fit the rule of doing the same thing as Nags Head and he was unsure where Duck has the worst problems. Murray added that he has not experienced a project that could not be dealt with based on the existing regulations. He questioned if the consensus of the Board was to revisit the topic.

Wetzel asked if there had been public push back regarding the Town's policy in the nourishment area. Cross replied that one community has been forthcoming with issues.

Director of Community Development Joe Heard outlined the Board's options for how to handle this topic.

Murray suggested the Board revisit the sand relocation issue should a compelling public interest arise between the Planning Board meeting and the subsequent Town Council meeting. All Board members concurred.

VIDEO

Takeaways from the 2022 Sea Level Rise Technical Report

Heard explained the intent of the video “Takeaways from the 2022 Sea Level Rise Technical Report” was to provide educational material as it relates to sea level rise which is an area of concern for our community. He stated the video is a summary of a seminal study that was completed by all major environmental organizations whose findings are now widely accepted. The Board member watched the video.

APPROVAL OF MINUTES

Minutes from the October 18, 2023, Meeting

Cofield motioned to approve the minutes from October 18, 2023 as presented. Wetzel seconded. Motion carried 4-0.

STAFF COMMENTS

Heard gave a summary of the November 1 and December 6, 2023 Town Council meetings.

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

BOARD COMMENTS

Wetzel questioned if the regular Planning Board meeting will still be held the Wednesday following the Town Council meeting at 6:30 p.m. in 2024. Heard stated yes. Murray questioned if it was the staff's preference to meet during the day. Cross noted that the scheduled time for Planning Board meetings will remain at 6:30 p.m.

ADJOURNMENT

Wetzel moved to adjourn the meeting.

The meeting was adjourned by consensus of the Board Members at 7:53 p.m.

Approved: _____

Marc Murray, Chairman