

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
January 10, 2024**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, January 10, 2024.

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

Also present: Director of Community Development Joe Heard, Senior Planner Sandy Cross, Public Information Officer Kay Nickens and Deputy Town Clerk Melissa Felthousen.

CALL TO ORDER

Chair Murray called to order the Regular Meeting of the Planning Board for January 10, 2024 at 6:30 p.m.

SWEARING IN OF PLANNING BOARD MEMBER

Deputy Town Clerk Melissa Felthousen swore in new Planning Board member, Bob Webb.

PUBLIC COMMENTS

None.

DISCUSSION

Redevelopment Standards – define redevelopment and when/which standards apply

Director of Community Development Joe Heard stated the purpose of the discussion surrounding the topic of redevelopment standards was to determine if the Planning Board finds it necessary to explore the topic further or consider any changes as a more formal text amendment for a future request to Town Council. He explained that the concerns that led to this review were raised during consideration of the redevelopment proposal of the property formerly occupied by Resort Realty on the northern edge of Duck Village. He noted that questions were raised as to when a proposal should be considered redevelopment or treated as new development altogether, as well as what specifically should fall under the review process. He stated that staff is seeking input from the Board to determine if they want to define the term “redevelopment” and at what point existing nonconforming properties should be brought into compliance. Heard questioned if it is as simple as any change of use or if it is something additional that the Board would like to see. He added that staff has identified Town ordinance sections that apply presently and standards from three different communities on the Outer Banks that deal with these types of issues differently. Heard noted the Town has traditionally taken the approach that if a development or redevelopment proposal involved changes to a certain aspect of a development, then those things would have to

be brought into compliance at that time. Heard described parking as a good example and pointed out that historically if an applicant was using an existing parking lot, the Town would not require the full parking lot to be brought into compliance, but if the applicant was replacing the existing parking with something new, then the entire parking area must comply with current standards of the ordinance.

Chair Murray asked for Board comments.

Member Cofield questioned Heard's summary of the standard used when requiring parking lot compliance to current ordinances. Heard reiterated that if an applicant is changing or removing existing parking, the Town would require the change to be brought into compliance, but if the applicant was not changing or removing existing parking, the Town has not traditionally mandated compliance. As examples, Heard compared restaurant NC Coast being required to fully comply due to its complete redevelopment of the site, while Duck Deli did not necessitate full compliance as the existing nonconforming building setbacks and parking area were maintained. Cofield stated that conflict arises with general standards for updating or repairing a property if improvements are over fifty percent and individual property owners are required to bring the property into compliance with the new standards. Heard responded that the Town has not traditionally required compliance to the new standards if reusing, and then referenced the highlighted sections of the ordinance in the agenda packet which currently reads that if the improvements are greater than fifty percent of the value the property it should be brought into compliance with current standards. Heard noted that Cofield's point was well taken. Cofield opined that such a conflict cannot be justified and one or both should be changed and bring those two sections into compliance. Heard responded that enforcement has been applied consistently but not consistent with the letter of the ordinance.

Murray asked for clarification on how the Town handles enforcement for improvements for the sake of improving property versus changing to a use or occupancy which requires more parking spaces than the prior use. Heard responded that if no change to a parking area has been proposed or necessitated by the change, then compliance is not mandated. Murray responded that there is a difference in residential because when the proposed changes do not approach fifty percent value, but a bedroom is added, additional parking is necessary. He added that it's also immaterial if it's fifty percent or not if parking revisions are proposed because compliance is mandated automatically. Heard concurred. Murray questioned if changes to the ordinance or to the policy were needed as Ordinance 156.073 is written. Heard responded that input from the Board is being sought on this topic. Heard described Nags Head's experience with the implementation of a strict policy which mandated everything be brought into compliance with a change of use. He mentioned the difficulty developers incurred in pursuing a redevelopment opportunity, adding that Nags Head subsequently became more flexible to prevent properties from sitting vacant.

Murray questioned if the Town would be locking themselves in as much as Nags Head did with the strict policy or if the Town's current ordinance as written has a relief valve. Heard responded that if the ordinance is read literally, the ordinance is very strict. He referenced 156.110, as well as the parking requirements, and noted all the design standards are very strict for any renovations, reconstruction, as well as new development. Heard requested the Board think about these

instances. He stated that the Town had been informed that Duck Deli is going to be for sale. He commented that if someone wants to do something different at this location, there are no options to comply and there is no way to revamp that property to comply. Heard requested the Board to ponder what standards may or may not be important to them.

Member Blakaitis questioned the specific problems related to the former Resort Realty. Heard responded that issues presented were related to the parking layout and access that had two different parking drive aisles that dead ended. Blakaitis recalled a time-consuming exchange regarding this property. Heard stated that consulting planner Donna Creef was assisting the department during this time and there were many comments related to the redevelopment. Senior Planner Cross recalled the issues were primarily related to the topic of redevelopment and the parking lot. Member Wetzel questioned if some distinction was made during the Resort Realty discussions as to what may or may not be allowed depending upon what was defined as development or redevelopment. Heard replied that the issue was raised by people opposed to the development who objected that the property didn't have to comply with the current standards for parking. Blakaitis questioned if there was an issue with safety as it relates to the curve in the road. Heard responded that concerns about accessing the site had nothing to do with the topic at hand.

Wetzel questioned if the Board made changes to the ordinance, if that would retroactively impact any existing businesses. Heard indicated that changes cannot be applied to existing situations as they are grandfathered and can continue. He stated that staff is seeking the Board's assistance in defining the ordinance and determining how to handle compliance as it relates to use changes and redevelopment. Wetzel questioned if someone purchased Duck Deli for the purpose of changing to retail if that would raise issues. Cofield stated it could, but that is not necessarily the case. Heard agreed.

Murray asked the Board to comment on the staff posed question, "Is a definition of the term *Redevelopment* necessary?". Member Webb opined that based on what he has heard and read it is not necessary to define redevelopment. Cofield stated there was no need to define the term because it doesn't set apart any issues in the Town Code. He stated that defining the term would elevate it to a different arena as a State statute requires the town to designate an area as a development area and to set up redevelopment commission. He suggested that defining the term would bring in a whole set of standards that the Town is not ready for and is comfortable leaving the term loose and undefined. Murray opined that it may need to be defined but may depend on answers to next questions submitted by staff and if a fifty percent policy is established. Blakaitis agreed with Cofield. Wetzel referenced the code section 156.065(A)(1) as containing the language development or redevelopment and suggested that could raise a question as to what the difference is between the two. He added that the definition of the term development in the zoning section of the manual is comprehensive and would cover both development and redevelopment. Wetzel stated that if the Board elects to define redevelopment, the definition of development would need to be reviewed as well, such that there is a distinction between the two.

Commented [M1]: I am not sure if I referenced the correct code. I listened multiple times to what he said and still not 100%

Murray asked the Board to comment on the staff posed question “If so, does it need to include more than the dictionary definition?”. Murray read the dictionary definition of redevelopment, “The act or process of developing something again or differently”. Murray opined that the definition is not particularly useful. Wetzel stated he found the following definition of the term in a commercial real estate dictionary, “The replacement rehabilitation or repurposing of existing improvements on an already developed site”. Murray replied that the commercial real estate definition was very narrow. Wetzel agreed.

Murray asked the Board to comment on the staff posed question, “Under what circumstance should existing nonconformities be allowed to continue?”. Webb stated that he has seen communities use a percentage of the property being redeveloped as a benchmark but is not saying that is the right answer. He added that Duck Deli is a good example, as it is a viable business and could be for someone else and doesn’t feel it would be best to limit that because of the existing parking layout. Cofield stated his view is to leave it loose and he doesn’t think Duck is at the point to do what many other municipalities do with redevelopment. Murray stated he is fine leaving the ordinance as is but would like to consider taking the word redevelopment out of it. He suggested when an applicant comes in and doesn’t touch something on a project, until now the policy has been that it can stay the way it is. Murray raised the question if the Board has issue with the current policy which is leaving existing items in noncompliance that the developer decides they don’t want to address. Cofield reiterated the conflict regarding the great inconsistencies bringing properties into compliance based on percentages. He added that what is important is the dichotomy of conferring a benefit to commercial properties that other properties in Town do not enjoy.

Murray noted that Council has not asked the Board to address the details surrounding the fifty percent, but staff has presented the idea of addressing whether to change the policy and enforce the existing ordinance the same in commercial and residential. Murray polled the Board to determine if the enforcement should be the same for residential and commercial or leave as is. Webb responded to leave as is. Cofield stated the Town should be consistent. Blakaitis stated to leave it as is until the Board is ready to make changes. Wetzel stated to leave as is. Murray stated he can see Cofield’s point and would not be opposed if the Council asked the Board to revisit the issue. Murray stated he was unsure which to deal with first, the fifty percent or consistency across the ordinance. He stated that it would need a deeper dive. Heard noted the ordinance as written, with no changes, would require compliance and asked if the Board would like the Town to continue to enforce as they have done historically. Murray opined it was the consensus of the Board to maintain the status quo. Murray stated a text amendment may be needed to maintain the status quo and the inconsistency does not need to be in the ordinance. He added that the ordinance cannot be practically applied to the commercial district as is and should explore a text amendment to reflect current enforcement. Cofield stated he is comfortable leaving things as is and using current policy, but if amendments are proposed, then a deeper dive is needed. Wetzel questioned if staff was aware of issues in the foreseeable future. Heard stated nothing is currently pending, but the sale of Duck Deli could present a situation. He added that Donna Creef had made a recommendation to Town Manager Drew Havens and himself after completing her review of Resort Realty that the Town may want to explore these potential issues.

Cofield reiterated the Town is not ready to look at the classic definition of development and to leave it alone. Murray stated that inconsistencies should be addressed. Blakaitis stated it should close for now but if something comes up, it will open quickly. Murray confirmed the consensus of the Board was to leave the ordinance as is.

PLANNING BOARD SCHEDULE MEETING TIMES

Heard presented the 2024 Planning Board meeting dates and opened the discussion for keeping or amending the designated meeting time. Webb had no preference for a time. Cofield stated he preferred continuing at 6:30 pm to allow for community folk to attend. Wetzel agreed with Cofield, recognized that Chair Murray's work schedule may conflict with a daytime meeting and also recognized staff may prefer a daytime meeting. Heard stated that the 6:30 pm meeting has been okay for twenty years. Town Council Liaison Whitman commented that the first 1:00 pm Town Council meeting had more people in attendance than any meeting in the last four years other than for a public hearing. Murray stated his schedule was flexible, but it may be a good option to move the meeting to earlier in the evening. Cofield suggest a 6:00 pm start time. Wetzel motioned to approve the meeting dates as presented and to move the start time from 6:30 pm to 5:30 pm. Cofield seconded. Motion carried 4-1 with Blakaitis dissenting.

APPROVAL OF MINUTES

Minutes from the December 13, 2023, Meeting

Wetzel motioned to approve the minutes from December 13, 2023 as presented. Cofield seconded. Motion carried 5-0.

STAFF COMMENTS

Heard gave a summary of the January 3, 2024 Town Council meeting.

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

During Cross's update regarding the Westside Feasibility Study, Cofield remarked that a serious look should be taken at the drainage issues located at Charles Jenkins Lane and Bias Lane and felt drainage improvements are more important than a sidewalk. Cross responded that sidewalks can be designed and engineered to incorporate stormwater management improvements and handle excess water. Cofield reminded that more remediation is needed. Cross agreed. Heard reminded the Board that the Westside Feasibility Study is preliminary study and not a final design.

BOARD COMMENTS

None.

ADJOURNMENT

Blakaitis moved to adjourn the meeting. Wetzel seconded.

The meeting was adjourned by consensus of the Board Members at 7:43 p.m.

Approved: _____
 /s/ Marc Murray, Chairman