

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
December 12, 2018**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, December 12, 2018.

Present were: Chair Joe Blakaitis, Vice Chair Marc Murray, Tim McKeithan, James Cofield, and Sandy Whitman.

Absent: None.

Also present were: Director of Community Development Joe Heard, Permit Coordinator Sandy Cross, and Council Liaison Jon Britt.

Absent: None.

Others Present: Ben Vorndran and Dianne Nottke.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for December 12, 2018 at 6:32 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Ordinance 18-07: Maximum House Size/Septic Capacity

Director Heard stated that at the last meeting, the Town Council voted to adopt an ordinance that was originally recommended by the Planning Board in September, which adopted maximum house size standards. He noted that it includes some tiered maximum house sizes as well as an overall cap of 7,000 square feet. He added that the adopted ordinance does not include some of the other items that the Board discussed at their previous meetings in terms of tiered standards for septic capacity and increased setbacks.

Director Heard stated that before Council voted to adopt the ordinance, they reviewed some of the items that the Board had discussed and considered in a draft ordinance that was not recommended by the Board. He stated that there are a number of features that Council felt were positive in this draft. He added that, due to the advice of Town Attorney Robert Hobbs, Council members did not feel comfortable making significant amendments to the ordinance in the public hearing, so they adopted what they had before them at that meeting. He noted that Town Council asked the Planning Board to go back and take a look at what they previously drafted. He stated that he put those ideas into ordinance form. He pointed out that there is one change as Council had discussion about adding another tier lot sizes since to help address concerns about

impacts on larger lots. The additional tier addresses lots up to 30,000 square feet in size. He stated that there is a slight adjustment to house size standards due to the additional tier.

Director Heard stated that the following standards would be different from the currently adopted ordinance:

- A new tier for 30,000 square foot or greater lots, which would bump the 25,000-29,999 tiers down to a 6,500 square foot cap.
- Adding a 7,500 square foot maximum for lots that were 30,000 square feet or greater as the standard.
- The maximum house size beginning with 15,000-19,999 square foot lots would increase to 6,000 square feet; lots of 20,000-24,999 square feet would increase to 7,000 square feet; lots of 25,000-29,999 square feet would increase to 8,000 square feet; and lots of 30,000 square feet or greater would increase to 9,000 square feet.

Director Heard stated that the ordinance would also add a column for the maximum septic capacity in each tier. He noted that the Board had previous conversation about the issue and ultimately recommended purely septic capacity standards. He stated that he does not feel comfortable recommending septic capacity greater than the 1,080 gallon cap previously recommended by the Planning Board, which was the equivalent of a nine-bedroom/18 occupant home. He added that the Board can consider adding it the ordinance if they wish.

Director Heard stated that the ordinance proposes increases in minimum setbacks related for larger house sizes, which evolved from conversations with Fire Chief Donna Black. He pointed out that there is an alternative for a sprinkler system, rather than increased setbacks, if an owner chooses to go that route.

Director Heard stated that he recently found a conflict in the wording in the accessory dwelling unit ordinance as it tied to the adopted and draft ordinances. He stated that the wording relating to occupancy has to be tweaked to house size and septic capacity to be consistent with the adopted ordinance.

Council Liaison Britt thought Director Heard did the right thing regarding septic capacity in not continuing to increase it. He believed the Council meeting came down to a need to do something and thought if Town Attorney Hobbs had allowed Attachment C (similar to the currently proposed ordinance) to be presented at the Council meeting, it would have passed. He added that it could not be presented because Town Attorney Hobbs thought the changes were too substantial and it needed to come back to the Planning Board for a recommendation.

Member Whitman asked if Council passed a 7,500 or 7,000 square foot cap. Director Heard stated that it is 7,000 square feet. He noted that the ordinance that Council adopted is included as Attachment B in the Board's packets.

Vice Chair Murray asked if it is procedurally set up that the draft ordinance in front of the Board would replace the ordinance that Council adopted. Director Heard stated he is correct. He added that Council is expecting a quick turnaround on the draft ordinance and revised their meeting date in January partially to accommodate consideration of the ordinance at what would have

been their January mid-month meeting in order to adopt some provisions that they felt would be improvements.

Council Liaison Britt stated that typically Council has an item to schedule a public hearing, but since Council has already held three public hearings on the issue, they will go right to the public hearing and making a decision on the proposal. Director Heard clarified that the ordinance would move forward without the meeting that often occurs in the middle. He noted that the additional meeting is not legally required if Council wants to move something forward quicker. Chair Blakaitis asked if Council can do that. Director Heard stated that they can. Council Liaison Britt explained that there would still be a public hearing, but there will not be a meeting to schedule the public hearing. Chair Blakaitis clarified that Town Attorney Hobbs does not have a problem with the issue. Council Liaison Britt confirmed that he does not.

Director Heard added that there will be a separate ordinance for associated changes in the accessory dwelling ordinance. Member McKeithan asked if the changes are required for the ordinance that was approved or the one that is proposed. Director Heard stated that it is for both.

Vice Chair Murray stated that the former ordinance regulated the septic capacity using an occupancy equivalent to bedrooms. He noted that density is an item that the Town is allowed to regulate under current state law and bedrooms are not. He stated that in the event the Town is litigated and the minutes are reviewed, he thought as the discussion moved forward, the Board needs to discuss the septic capacity only in relation to the number of occupants that they correspond to and try to refrain mentioning the number of bedrooms because the Town doesn't care what people are doing with the rooms. Density was what the Board is trying to deal with.

Member Cofield asked how many people the density should be related to. Vice Chair Murray stated that it would be helpful if the Board could review the septic capacity. He noted that 1,080 gallons is for 18 occupants. He asked how many occupants would be for 960 gallons. Director Heard stated that it is for 16 occupants. Vice Chair Murray asked if it would decrease by two for 840 gallons. Director Heard stated he is correct.

Member McKeithan asked Director Heard how he determined the bonus from standard to the maximum size as 1,500 square feet. Director Heard stated that some of it had to do with conversations at the Planning Board as well as the Town Council level regarding the appropriate maximum size. He stated that the maximum discussed at the Council meeting was 8,500-9,000 square foot range, which was where the proposed cap is. He explained that if the Board is looking at that as the cap on the 30,000 or greater square foot lots, then the Board can work backward into appropriate levels for the next tier down. Council Liaison Britt noted that the maximum size standards do a really good job of limiting nonconformities in Town.

Chair Blakaitis stated that there is a theme that goes with the tiered list in that when someone seeks to construct a larger residence, they are given that ability in the table. He stated that it can be allowed subject to the Town receiving quality development standards. He added that those quality development standards are larger setbacks, more substantial landscaping, and building facades. Director Heard noted that large houses also have to be on a conforming lot. Chair Blakaitis stated that he doesn't feel that those are big advantages or high-quality changes. He doesn't think a couple of feet in the setback is a big deal to a large lot. He stated that he disagrees

with the alternative for sprinklers. He didn't think that setbacks should be completely forgotten if someone decides to put a sprinkler system in their house. He strongly suggested that the alternative be dropped from the draft ordinance.

Member McKeithan agreed with Chair Blakaitis' comments. He thought the setbacks are more than just for fire prevention as it is also the aesthetics of large houses. He thought it was discussed at a previous meeting and thought the Board came to the same conclusion. Chair Blakaitis thought the Board discussed sprinklering houses among other things.

Member Cofield agreed with Chair Blakaitis and Member McKeithan's comments. He doesn't think it is a big deal to have an additional two feet in the setbacks. He agreed that setbacks are intended to accomplish more than a provision for fire protection. He thought the Board does not want to give up setback requirements, adding that the Board may want to add a sprinkler system if a home was above 7,500 or 8,000 square feet. Council Liaison Britt stated that as a firefighter, he would disagree.

Member McKeithan asked if the Board had decided at their last meeting that the Town cannot impose a restriction over a certain size with regard to the sprinkler requirement. Director Heard stated that the Board did not come to a conclusion on the issue. Chair Blakaitis noted that it was supposed to be researched by Fire Chief Black, but he didn't know the result. Director Heard stated that the Board never recommended the sprinkler option, so the issue became a moot point and he didn't follow up on it.

Member Cofield stated that it isn't problematic in other towns. He stated that the top size for a lot of 30,000 square feet or greater was 9,000 square feet for a home. He added that the 960-gallon septic capacity is for a 5,500-7,000 square foot house. Director Heard stated that it was for 16 occupants. Member Cofield stated that it would get at the density issue. He suggested eliminating the maximum house size as there still cannot be an occupancy of more than 16 people or a septic capacity of 960 gallons. He asked how the other Board members felt. He added that a homeowner would be able to build a larger house without more bedrooms and occupancy.

Vice Chair Murray thought that the occupant limit by septic capacity reflects the ordinance that is now being replaced because the Town is no longer allowed to regulate homes that way. He pointed out that previously, 16 occupants were the cap and that was also the cap that the Board recommended and Council increased it to 18 occupants because of nonconformities. Director Heard disagreed. He explained that staff put together information about all of the houses that have been built in Town since incorporation, including the number of bedrooms and occupants. He stated that what was discovered was that about a third of the houses that have been built had extra occupancy. He stated that the discussion that revolved around consideration for someone to build a five-bedroom house with 12 occupants. He added Council gave additional occupancy that at each level.

Member Cofield stated that it would be his preferred option to remove the 9,000 square foot maximum house size and make the maximum septic capacity 960 gallons rather than 1,080 gallons. He explained that by doing that, it will reduce the occupancy of a house. He stated that

he would be in favor of increasing the setback requirements as he doesn't think going from 27 to 30 feet would mean much, especially on a large lot. Council Liaison Britt agreed.

Vice Chair Murray stated that he likes the direction that Member Cofield is heading but pointed out that the largest lots are generally oceanfront, which are typically narrower. He stated that he would be in favor of larger front and rear setbacks but isn't sure how practical a setback over 20 feet would be on a lot that is 100 feet wide. He thought the Town may be pushing the development in an unattractive direction that won't be consistent with the Town's 2027 Vision.

Dianne Nottke of 126 Brandon Court was recognized to speak. Ms. Nottke stated that her parents lived on a farm in Forsyth County where it is legal to have the septic installed under a house with the drain field downhill. She wasn't sure if that is the same for Dare County and thought it is something that should be explored. Vice Chair Murray stated that there is a five-foot setback off of a foundation requirement for the septic tank and drain field. Chair Blakaitis explained that the tank needs to be five feet away from the house. Dianne Nottke thought that five feet is the normal setback for side to side in order to prevent a fire from spreading from one house to another. Chair Blakaitis thought it may be but it is also for the first septic tank. He added that parking is not allowed anywhere on the septic drain field.

Member Cofield stated that he does not have a problem with Vice Chair Murray's suggestion, but does not agree that most of the large lots in Duck are oceanfront ones. Chair Blakaitis clarified that Vice Chair Murray's comment related to what would happen with the setbacks. Vice Chair Murray stated he is correct. Chair Blakaitis stated that he understands Vice Chair Murray's point regarding the side setbacks. Vice Chair Murray stated that it is his only point of concern. Chair Blakaitis stated that if that is the only point, the Board can probably just do it with the other two setbacks and leave the side setbacks where they are. He agreed that there are some lots that it will be a problem visually.

Member Cofield suggested increasing the front and rear setbacks and bump the 27 feet to 30 feet. Chair Blakaitis pointed out that is already 30 feet. Vice Chair Murray asked what the 25 feet would become. Chair Blakaitis thought it would also be 30 feet. He asked how oceanfront lots are impacted by the rear yard setbacks. Director Heard clarified that they had to be a certain distance from the dune and the first line of stable natural vegetation. Chair Blakaitis asked if the rear yard setbacks will come into play. Director Heard stated that typically it will supersede the standard setback requirement for an oceanfront lot.

Vice Chair Murray noted that the CAMA regulations are generally more limiting than what the Town would be doing. Council Liaison Britt agreed. Member Cofield suggested increasing the maximum building setbacks for large residences for the front and rear yard to 30 feet.

Vice Chair Murray stated that a 6,000 square foot house is under the arbitrary house size of 7,000 square feet, which seems to bother people. He suggested leaving those as it is. Member Cofield suggested that front and rear yard setbacks would be 25 feet each and side setbacks would be 12 feet. He added that in the top table, for 25,000-29,999 square foot lots, the maximum tank size could be 960 gallons. He stated that it would be 960 gallons also for lots of 30,000 square feet or greater and eliminate the maximum size of 9,000 square feet. He explained that the occupancy of a house would be reduced while increasing the setbacks. He thought for

lots that are about 30,000 square feet, that there could be a requirement for a sprinkler system. He stated that while the Town will be putting burdens on the homeowners, it can also reduce the capacity being put on them.

Chair Blakaitis clarified that Member Cofield is not suggesting changing the maximum size of a house. Member Cofield stated that he is proposing a change as the cap would be eliminated. He added that they would have to put in a sprinkler system and the setback requirements would be increased.

Vice Chair Murray asked if the two 27-foot setbacks change to 30 feet in the 20,000-24,999 square foot lots. Member Cofield stated that they did. Vice Chair Murray asked if there is a change to the 30-foot front and rear setbacks on the 25,000 or greater lots. Chair Blakaitis stated that the Board decided to leave that alone. Vice Chair Murray agreed with Member Cofield in principle that there should not be a limit on house size but thought it will not work for Town Council. Council Liaison Britt and Director Heard agreed.

Council Liaison Britt thought the 1,080 gallons per day has been on every proposal from the beginning and does not need to be changed. He stated that regarding the cap on house size, while the Board members may agree about house size, the Council is at an impasse on it. He thought Council had a great discussion about it and that is why the current ordinance passed the way it is and then a motion was quickly made to bring this back to the Planning Board to fix some things. He thought the proposal will be harder to pass without a top end cap.

Member Cofield stated that with the other conditions, he is trying to make the ordinance more palatable to Council. Council Liaison Britt understood and doesn't disagree as he thought there is a big difference between size and density. He noted that the 1,080 gallons per day for septic has been in everything that has been discussed for the past six months by Council and the Planning Board.

Member Cofield stated that he recently looked at a house for sale in Elizabeth City that has a large indoor swimming pool. He noted that if someone wants to build a large house with an indoor swimming pool, it cannot be done. He thought there are legitimate reasons for building a large house, while not increasing the bedrooms or bringing more people in. Chair Blakaitis asked if Member Cofield feels that the cap should be larger than 9,000 square feet. Member Cofield stated that if a cap is needed, he would be in favor of 10,000 square feet. He added that he is still in favor of not having a cap at all.

Vice Chair Murray asked if the 9,000 square foot cap was mentioned at all. Council Liaison Britt stated that it was between 9,000 and 10,000 square feet. Director Heard stated that Council discussions were between 8,500 and 9,000 square feet.

Vice Chair Murray stated that he isn't sure of the Board's level of responsibility in following what Council wants done but felt that the format of the ordinance is fine. He stated that he is interested in how the other members feel about the format as far as allowing various house sizes that are tiered based on lot size. He thought the consensus is to strike the sprinkler requirement but increase setbacks. He thought if the Board can agree that this is the format they want to go

with, then he will be comfortable with the suggested changes to the setbacks. He noted that it would limit the gallons per day and potentially a 9,000 square foot cap.

Chair Blakaitis asked Vice Chair Murray for clarification on the setbacks. He stated that Vice Chair Murray is correct on the basic standards of what the Board is supposed to be doing. He added that the issue has been kicked around for a very long time between the Planning Board and Town Council that it is a little different than some of the other issues that have been sent back to the Board. He clarified that when Vice Chair Murray mentioned keeping everything in the ordinance as is including the setbacks, he is suggesting a change in the setbacks. Vice Chair Murray stated that he is suggesting that no one seems opposed to Member Cofield's change in the setbacks in changing the 27 feet to 30 feet. Chair Blakaitis pointed out that it was changed in conjunction with Member Cofield's other suggestions. Vice Chair Murray agreed and is pointing out that those suggestions are in the three boxes in the table. He asked the Board if there are other parts of the ordinance that they are concerned about.

Member Whitman stated that he would like to see lots of 30,000 square feet and up have a cap of 7,000 square feet instead of 7,500 square feet. Chair Blakaitis asked if Member Whitman would leave the 9,000 square foot cap for large houses. Member Whitman agreed. Chair Blakaitis asked what the point is for changing it by only 500 square feet. Member Whitman stated that the Council already adopted the 7,000 square foot standard. Chair Blakaitis wasn't sure if Council agreed on it but had passed an ordinance as a stop-gap measure. Member Whitman stated that he is still in favor of 7,000 square feet.

Member McKeithan stated that the Board is discussing being in favor of much larger houses as long as the septic capacity is enforceable. He stated that if it ever turns out that there is an issue with the septic capacity, the Town has bought in to allowing houses of 9,000 square feet to have 36 people in it. He noted that the Town of Southern Shores has a builder building a 6,000 square foot house with 12 bedrooms, allowing 24 people. He added that 9,000 square feet would allow 18 bedrooms with 36 people. He stated that if the Town is not able to enforce the septic rules, it has potentially authorized houses that can accommodate up to 36 people. He stated that he is concerned about that.

Member Cofield stated that he does not want to do that. He thought the difference in the direction the Board is going in now is that this will be a part of Duck's ordinance and the Town will not be relying on Dare County to enforce it. Director Heard stated that Member Cofield is correct, but Town Attorney Hobbs has issued an opinion that he isn't as comfortable with any approach involving septic capacity. Member Cofield thought the Board will have to go back to the drawing board. Chair Blakaitis agreed. Council Liaison Britt thought it is better than not having anything. Member McKeithan stated that he is in favor, but his point that the Town is potentially opening up the possibility of having houses with 36-40 people. He didn't think any of the Board members are in favor of that.

Chair Blakaitis thought Member McKeithan is right, but thought the Board is wasting its time because in order to do it, the other table needed to be shrunk, which will not happen. Member McKeithan thought the Board is going too far on the maximum size. Chair Blakaitis agreed with Member McKeithan but doesn't think Council will let that happen. Member McKeithan thought 9,000 square feet is larger than the Board should go.

Vice Chair Murray stated that the Board has to deliberate the ordinance before them and the result of that ordinance after litigation. He didn't think it is a practical way of doing things. He added that the Board has the intent to regulate density, which is allowed. Maybe the instrument the Board is using is too blunt to make an attorney comfortable. Chair Blakaitis agreed with Vice Chair Murray's comments.

Member McKeithan stated that he is bringing back the issue because adjoining communities are trying to restrict the size of their houses to 5,000 and 6,000 square feet and Duck will be an outlier by allowing houses to be at a maximum of 9,000 square feet. He stated that it still concerns him. Vice Chair Murray didn't think it made Duck an outlier compared to Currituck County. Member McKeithan pointed out that Duck is not in Currituck County. Member Cofield stated that other towns are really trying to restrict bedrooms by reducing the size of the houses. Member Whitman noted that Duck has a lot of homeowner associations that already restrict the size of homes. Member McKeithan concurred. Chair Blakaitis noted that the Sanderling subdivision restricts their homes to 3,800 square feet. He stated that unless Member McKeithan has a hard suggestion on what the top tier should be, the concept will not be going anywhere.

Member Cofield suggested changing a few boxes. He stated that C – Maximum Size of Residences septic capacity should be changed from 1,080 gallons per day to 960 for lot sizes of 25,000-29,999 square feet as well as 30,000 or greater lots. He suggested that maximum size for large houses be 10,000 instead of 9,000 square feet. He suggested that D – Large Residences the minimum building setbacks be changed from 27 to 30 for both front and rear yards. He suggested that for 30,000 or greater square foot lots, houses that were greater than 7,500 square feet would be required to install a sprinkler system. Council Liaison Britt stated that it could be recommended but sprinklers are part of the building code. Director Heard stated that if that is the direction the Board wants to go, it should be contingent on whether the Town can legally require sprinklers. Member Cofield reiterated that he is trying to make the ordinance more palatable for people that have a large house. Council Liaison Britt stated he is fine with it.

Vice Chair Murray pointed out that sprinklers do not preserve properties at all and are a life-safety issue. He stated that there are other life-safety concerns in residential construction that are not present in commercial construction, such as egress and windows. He stated that while sprinklers do save lives, they also cause problems for homeowners, particularly residential sprinkler systems as they are allowed to install PVC pipe. Any time a house with a sprinkler system is struck by lightning, generally it ruptures the pipes full of water and floods the house. He stated that if the Board is going to require sprinklers in residential structures, he feels it should be limited to the biggest homes.

Member Cofield asked where in Dare County that PVC sprinkler systems are allowed. Vice Chair Murray stated that they are allowed in residential structures. Vice Chair Murray thought that commercial sprinkler systems could be required, but it would be hard to do.

Chair Blakaitis understood the four recommendations. He stated that he doesn't want to ever see the ordinance again after this meeting. He stated that if the Board does at least one of those things, it may come back again. He stated that he likes the sprinkler idea but thought if the septic capacity is changed to 960 gallons, it will be an issue. He stated that if all the suggestions are

taken away, it leaves the ordinance that is currently in front of the Board, except for the setbacks. He stated that Council may like the 10,000 square foot cap but he doesn't think they will be in favor of the 960-gallon septic capacity. He added that he personally does not like the 10,000 square foot cap but understands why Member Cofield likes it.

Dianne Nottke stated that she wants to have the Board consider having lightning rods installed on new construction. She stated that her parents lived in a farmhouse that was built in 1881 and has four lightning rods that scare her when storms come through to the point that she sleeps in her car. Chair Blakaitis asked if Ms. Nottke is suggesting that lightning rods are good or bad. Ms. Nottke stated that instead of the Board considering installing sprinkler systems, they should consider lightning rods, because sprinkler systems cause allergies. Chair Blakaitis pointed out that the Board is discussing sprinkler systems inside a home. Ms. Nottke understood but thought that since houses are not struck by lightning, they won't burn. Chair Blakaitis stated that there are a lot of houses in his community that have lightning rods. Ms. Nottke inquired that they are in Duck. Chair Blakaitis stated that they are. Member Cofield stated that Bias Lane has a few houses with them. Ms. Nottke stated that she will check them out. She added that people leave their dogs on their porches all summer as barking wakes her up.

Vice Chair Murray moved to recommend approval of Ordinance 18-07 with the following changes: the largest maximum standard house size allowed on a 30,000 or greater square foot lot to be changed from 7,500 square feet to 7,000 square feet; the front yard and rear yard setbacks for lots 20,000-24,999 square feet for large residences be changed to 30 feet from 27 feet; and strike the alternative to the increased minimum building setbacks as stated. Member McKeithan seconded.

Motion carried 5-0.

Director Heard asked if the Board wishes to consider the proposed amendment for accessory dwelling units. He noted that it will be consistent with the ordinances that have been adopted and that the Board just recommended.

Vice Chair Murray moved to accept the ordinance presented to the Planning Board, Ordinance 18-08, as amended to be consistent with the Ordinance 18-07. Chair Blakaitis seconded.

Motion carried 5-0.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Minutes from the November 14, 2018, Regular Meeting

Member McKeithan moved to approve the November 14, 2018 minutes as presented. Member Cofield seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of December 5, 2018, Town Council Meeting

Director Heard updated the Board on the December 5, 2018 Council meeting.

Land Use Plan Advisory Committee

Director Heard stated that Council adopted a resolution to establish a CAMA Land Use Plan Advisory Committee. He stated that Council has not made any appointments, but they will occur over the next few months.

Chair Blakaitis asked if Council had to make a special motion to form the committee. Council Liaison Britt stated that Council did make a motion. Director Heard stated that they passed a resolution with a vote to establish the committee.

Director Heard stated that staff is in the process of preparing a Request for Qualifications to be reviewed by Town Manager Chris Layton and then the Town will start soliciting qualifications from different planning consultants in the region and ultimately select a consultant that will work with the advisory committee during the planning process.

Chair Blakaitis clarified that Council is not going to look for volunteers but would be appointing individuals. Director Heard thought there will be a solicitation process where Council will like to know who is interested in serving on the committee. Council Liaison Britt explained that there is a layout for choosing individuals with there being one member from Town Council, one member from the Planning Board, and others.

Project Updates

Director Heard updated the Board and audience about several Town projects.

BOARD COMMENTS

None.

ADJOURNMENT

Member Cofield moved to adjourn the meeting. Member McKeithan seconded. There was no vote.

The time was 7:40 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman