

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
March 11, 2020**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, March 11, 2020.

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

Absent: None.

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

Absent: None.

Others Present: Gail Healy, Jennifer Tolson, Suzanne Proctor, James Blose, Karen Blose, David Stormont, Patricia Kurth, Anthony Parisi, and Jay Overton.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for March 11, 2020 at 6:34 p.m.

PUBLIC COMMENTS

Patricia Kurth of 114 Rene Court was recognized to speak. Ms. Kurth stated that since the beach nourishment project, the stairs to the beach in her subdivision are gone due to them being buried in the sand. She stated that they have the beach mats, but it is hard for elderly or handicapped people to get on or off the beach. She was wondering if they can put in some sort of safety rail. She noted that she isn't asking for any money, just permission to install a safety rail. Chair Blakaitis suggested that Ms. Kurth discuss the issue further with Director Heard.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that staff has received some correspondence regarding dune walkovers in the area of the nourishment project. He reminded the Board members that immediately following the project, staff was asked to evaluate dune walkovers as there was some concern over areas prone to erosion. He stated that after a lot of discussion, the Town allowed hardened structures on the west side of the dune, but only matting on the east side. He added that railings are not presently permitted by the Town's ordinance. He stated that staff will be raising this issue at the April 1, 2020 Town Council meeting to determine if the Council wants the Planning Board to consider it further.

Chair Blakaitis clarified that it was not something that would be discussed at this meeting. Director Heard stated he is correct.

OLD BUSINESS

None.

NEW BUSINESS

Special Exception 20-003: Special Exception at 113 Bayberry Drive to Allow as Much as Five Feet of Fill in Certain Areas of the Property, Which Exceeds the Maximum of Three Feet Permitted by the Town's Land Disturbance Standards

Director Heard stated that Subsection 156.128(A)(12)(a) requires approval of a special exception permit for fill in excess of three feet in height. He stated that the applicant is seeking a special exception to add a significant amount of off-site fill material to raise the elevation of the property by nearly five feet in certain areas of the property. He explained that, as per the engineered site plan/cross section for the fill and 3D plan view in the Board's packets, the applicant intends to fill lower sections of the property to create a level building area with an elevation of approximately 28 feet above the mean sea level in the center of the parcel. He noted that areas toward the west and rear of the property will be raised to an elevation lower than the adjoining properties to the east and south. A higher area near the front of the property will be lowered to meet the 28 foot msl elevation. He pointed out that a portion of the area will remain higher to accommodate a driveway at the elevation of the adjoining road and, consistent with Town standards, the proposed fill will taper down toward the edges of the property at a 3:1 slope. He added that a significant number of trees would be removed to accommodate the proposed fill, but enough trees will remain in order to comply with Town canopy coverage standards.

Director Heard stated that Section 156.128 of the Town Code establishes standards for filling and grading activities. He noted that the standard applicable to the proposed fill in this special exception application was as follows:

156.128(A)(12)(a): No ground elevation anywhere on the lot, including beneath the final house footprint location, may be increased by more than three feet or 36 inches above the pre-disturbance ground elevations.

Director Heard stated that Subsection 156.128(C) of the Duck Town Code establishes special exception review criteria for applications involving fill and grading activities. He pointed out that the following standards must be considered as part of the Planning Board's review:

1. The site for the proposed fill is otherwise adequate in size, shape and other characteristics to accommodate the proposed project.
2. The applicant has demonstrated that the requirements of this chapter are unreasonable or impractical due to the necessity for the fill, lot shape, topographical features, location of mature vegetation, or location and characteristics of existing improvements on the lot.
3. The amount of fill proposed is the minimum necessary to accommodate the proposed project, especially for soundfront properties.

4. The proposed fill will not negatively impact adjacent properties or the surrounding area, especially for soundfront properties.
5. The special exception will be consistent with any applicable goals, policies and objectives specified in the Town's adopted CAMA Land Use Plan and Vision Statement. This review includes the Town of Duck's evaluation of the proposal's consistency with its adopted CAMA Land Use Plan, which may be more flexible or more stringent than interpretations by others.
6. The applicant has submitted a drainage plan consistent with the requirements described in Subsection 156.128(A)(4)(c).

Director Heard stated that as several of the required findings were met in staff's opinion, staff was recommending approval of the special exception application. He added that if the Planning Board decides to recommend approval of the request, staff is asking that the Board consider a condition that the applicant must submit required application materials and obtain a land disturbance and/or building permit prior to commencing work.

Gail Healy of 113 Bayberry Drive was recognized to speak. Ms. Healy stated that she is looking to improve the lot so it can potentially be built on. She stated that her parents bought the lot in 1977 and at that time they could see the ocean and the sound but that is no longer the case. She stated that she wishes to level the lot so it can be used.

Vice Chair Cofield stated that he did not see a problem with the application specifically because the adjoining property owner is supportive of the project. He thought if there was no support from the adjacent property owner, it would be problematic. He asked with requirement of the 3:1 slope, if it would be problematic. He added that if the owner to the west comes in to ask for a similar special exception, it could create a gully and it would seem better not to have the 3:1 slope on the west side. Director Heard stated that recent development of two adjoining lots in the Bias Shores subdivision has a gully, so the water ends up there instead of on the building pads. He added that it would be giving the water somewhere to go instead of sitting on the building pads.

Vice Chair Cofield thought it would be better to have level ground rather than two properties having a gully between them. He added that if the owner does not have a problem, he is fine with it. Director Heard stated that if both lots were coming in at the same time, it could be a concept worth discussing. He stated that the discussion can happen if and when the second lot comes in for a permit with regard to tying it into the grade of the subject property. Chair Blakaitis understood Vice Chair Cofield's point, but until the other lot comes forward, the Board will have to wait on that point.

Member Murray stated that he has no problem with the proposal. He asked if the Board moves forward with it, they are approving the elevation of 28 feet or approving more than three feet. He wondered what Director Heard can do administratively if the plan changes slightly. Director Heard stated that he has a very specific grading plan, so the Board would be approving a project that is consistent with that plan as shown.

Chair Blakaitis stated that he had no problem with the application.

Vice Chair Cofield moved to recommend approval, noting that the adjacent property owner to the west supported the application, and that it is consistent with the findings and proposed conditions. Chair Blakaitis seconded.

Motion carried 5-0.

Director Heard stated that the application would proceed to the public hearing with Town Council at their April 1, 2020 meeting.

Text Amendment: Building Height Standards

Director Heard stated that during recent consideration of a comprehensive amendment to the Town's flood damage prevention ordinance on February 12, 2020, the Planning Board discussed the impacts of the proposed amendments on how Duck defines and measures building height. He stated that after discussing several concerns, the Board members decided that it would be in the Town's interest to evaluate the current definition of building height to ensure that the intent and standards in the definition are maintained.

Director Heard pointed out that the current definition of building height in Section 156.002 of the Zoning ordinance reads as follows:

“Building Height

1. The vertical distance measured from the tallest roofline of a building (not counting chimneys and similar features subject to exception) to the top of the slab at the approximate center of the structure or to the average finished grade where no slab is present. Finished grade below the slab shall be established in accordance with the Town's land disturbing regulations.
2. Special flood zone regulations. In any A or V special flood hazard area, height will be measured as follows:
 - (a) In cases where the regulatory flood protection elevation is higher than the average finished grade in an A flood zone, the height measurement shall begin at the top of the slab at grade with non-habitable space, or from the regulatory flood protection elevation when no portion of the structure is located at grade, whichever is applicable.
 - (b) In cases where the regulatory flood protection elevation is lower than the average finished grade an A flood zone, the height measurement shall begin at the top of the slab at the approximate center of the structure or to the average finished grade where no slab is present.
 - (c) In a V flood zone, the height measurement shall begin at the bottom of the lowest horizontal member consistent with the Town's standards for free and clear of obstruction, as defined in Chapter 150, Flood Damage Prevention.”

Director Heard stated that during the review of the flood damage prevention ordinance, the Planning Board was provided with several potential changes to the definition of building height necessary for clarification as a result of amendments proposed to the flood damage prevention ordinance:

1. Change the reference from “non-habitable space” to “enclosures”.
2. Change the reference from V zones to “Coastal High Hazard Area” for properties on the oceanfront.
3. Add references to definitions in Chapter 15, Flood Damage Prevention.

Director Heard noted that the amendments were still proposed for consistency with the flood damage prevention ordinance.

Director Heard stated that at the Board’s February 12, 2020 meeting, an additional issue was raised regarding the application of building height standards for residences required to be raised to the regulatory flood protection elevation. He pointed out that the issue involves a proposed amendment to the definition of Reference Level in Chapter 150, Flood Damage Prevention. He added that the term defines where the measurement of the height is taken. He stated that under the proposed definition, the change will result in beginning the measurement of height approximately one foot lower, which would result in the loss of one foot in the height of structures required to elevate in order to meet the regulatory flood protection elevation.

Director Heard stated the Planning Board asked staff to review the options for amendments to the definition of building height to maintain the ordinance’s intent that property owners are not penalized by reducing building height for having to raise a structure to meet flood elevation standards.

Director Heard stated that after reviewing several options, staff found the following option was the simplest way to recapture the height lost due to the change in where the reference level was measured. He added that the definition of building height would be amended to read as follows:

“In cases where the regulatory flood protection elevation (as defined in Chapter 150) is higher than the average finished grade in AE, AO, or X flood zones, the height measurement shall begin at the top of the slab at grade with non-habitable space for enclosures, or from the top of the lowest floor above the regulatory flood protection elevation when no portion of the structure is located at grade, whichever is applicable.”

Director Heard noted that the solution allowed the proposed definitions for reference level and regulatory flood protection elevation to remain unchanged in the Flood Damage Prevention ordinance and would be consistent with other communities on the Outer Banks. He added that the definition of building height in the Zoning ordinance would be changed to be consistent with current standards.

Chair Blakaitis asked if what was highlighted in yellow in the staff report was what Director Heard was recommending. Director Heard stated that the first section is the current standard and the second is the proposed wording.

Member Murray stated that he understands Director Heard's point. He asked if it is not in the coastal high hazard area, the girders will be allowed below the regulatory flood protection elevation that is supporting a floor system that is above the regulatory flood protection elevation. Director Heard stated that was how he understands it will be applied. Member Murray stated that he is trying to determine if 12 inches is a good number because the girder can either be flush or dropped and 2" x 12"s instead of 2" x 10"s. He stated it will be hard to capture every permutation of what product may be used. He guessed there won't be a limitation needed with regard to how high above the regulatory flood protection elevation they can be. Director Heard stated that one foot was his suggestion. Member Murray asked if it can be put in the ordinance as language that a homeowner could not go any higher. Director Heard stated that it is already in the zoning ordinance. Member Murray thought that instead of using a dimension to do the job, language could be added that stated the following: "...top of the lowest floor above the regulatory flood protection elevation when no portion of the structure is located at grade, whichever is applicable, up to two feet above the regulatory flood protection elevation..." He added that after that, the homeowner will not receive any more credit. Director Heard stated that he is not suggesting two feet.

Member Murray noted that Director Heard is suggesting 12 inches as the thickness of the floor system. He stated that it could vary to as much as two feet. Director Heard added that it may be necessary if the floor system is more substantial and is worth discussing with the Board. Chair Blakaitis asked if it would be a good safety. Director Heard stated that if someone wants to build up to 12 inches, it can still be elevated two feet under it.

Jay Overton was recognized to speak. Mr. Overton thought two feet will be more of the industry standard and that it is a good number. He agreed that putting an overall limit on it is a good thing.

Chair Blakaitis asked Member Murray if it agreed. Member Murray stated that he did. He said that he is trying to think of reasons why it won't work but thought it will catch most applications.

Member Morton asked if the two feet is put there, it means that all construction can be up to two feet. Member Murray stated that it will have to be subject to the regulatory flood protection elevation. Director Heard stated that it is only for properties where the grade is below the height of the elevation requirement and they would have to elevate it as part of their permit. Member Morton clarified that if the homeowner does not have to build the floor at two feet, then they could take two feet. Director Heard stated he is correct.

Vice Chair Cofield suggested wording that if the floor system is two feet, the relief can be up to two feet. He added that if the floor system is only one foot, the homeowner cannot get an extra foot. Member Murray stated that the ductwork is not considered but could be added.

Chair Blakaitis asked where the language would be added in the ordinance. Director Heard stated that it can be incorporated in a few places in the ordinance. He thought it may be best to create an additional sentence at the end that will address it. Member Murray agreed.

Member Murray stated that calling out anything could be avoided by having the following wording: "...provided that the top of the lowest floor is within 24 inches of the regulatory flood

protection elevation...” He noted that it does not have to specify if it is ductwork or flooring, the homeowner would have the two feet worked in. He said this solution seems clear and easy. Director Heard thought it addressed things in terms of only giving a maximum of 24 inches.

Vice Chair Cofield pointed out that Member Murray had stated that the homeowner would get 24 inches whether it is used or not. Member Murray thought the homeowner has the option as they will either use it for the floor or elevating the house more. He added that with houses within 24 inches of the 10 feet, depending on the surrounding topography, the Town won’t want to create a situation where people are lifting homes far up into the air, but the Town also does not want to penalize a homeowner that has a lot of adjacent properties that are higher and sees it as being improved by taking advantage of the full 24 inches and build a 12 inch floor system so they have more free and clear area under their house.

Vice Chair Cofield stated that he is in favor of giving homeowners an extra 24 inches if it is needed, but if it is not needed for the floor systems and ductwork, then he isn’t in favor of it. He added that, theoretically, it will give homeowners in Duck the ability to obtain an extra foot over someone that is limited to 35 feet. Member Murray thought that giving them the option to build a two-foot floor system or add one foot to their flood avoidance strategy by elevating the house were equal. He added that he doesn’t see, when the homeowner is that close to the 10-foot elevation, they are not affecting the view scape because they are so low in the first place. So, he wants to give that option to the homeowner.

Director Heard pointed out that the Board had not discussed it from Member Murray’s perspective in that if the homeowner is not using the additional height for the floor system, it will be just an additional foot of elevation above the flood area for the buildings that are built in areas required to elevate. He added that it would be just having a little more freeboard. Member Murray noted that the Town wants to encourage that, but not excessively. Chair Blakaitis asked Member Murray if he expects it to become excessive. Member Murray stated that he hasn’t built anything under the new ordinance to date, but it seems that if there is a property that is six to eight feet above sea level, and there are mainland properties that are much higher, the person in the lower area may want more elevation. He doesn’t see it as a significant problem. Chair Blakaitis thought it is a good solution.

Member Murray noted that, for reasons of consistency, people are allowed to fill even in an X-zone, three feet, which would affect their building height up to three feet. He added that, for reasons of consistency, the ordinance should state three feet, because then people in the flood zone are given the same allowance as someone that would be bringing in fill.

Director Heard explained that the proposed wording at the end of the statement could read as follows: “...provided the top of the lowest floor does not exceed two feet above the regulatory flood protection elevation...”

Member Murray moved to approve Ordinance 20-02 with that change to the wording. Chair Blakaitis seconded.

Motion carried 5-0.

APPROVAL OF MINUTES

Minutes from February 12, 2020, Regular Meeting

Member Murray had a correction to Page 1 of the minutes.

Vice Chair Cofield moved to approve the February 12, 2020 minutes as amended. Member McKeithan seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of March 4, 2020 Town Council Meeting

Director Heard gave a short overview of the March 4, 2020 Council meeting.

Project Updates

Director Heard gave a short overview on various projects going on in Town.

BOARD COMMENTS

None.

ADJOURNMENT

Member Murray moved to adjourn the meeting. Member Morton seconded.

There was no vote.

The time was 7:43p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman