



APPROVED

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
June 14, 2023**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, June 14, 2023.

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

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

Chair Murray called to order the Regular Meeting of the Planning Board for June 14, 2023 at 6:30 p.m.

PUBLIC COMMENTS

None.

NEW BUSINESS

SUP 23-005: Application by Un Yong Karl & Eva Chin for a special use permit for the following fill and grading activities at 1156 Duck Road: (1) to allow bulkheads or retaining walls to support and contain fill, which is not permitted under Subsection 156.128(A)(6); (2) to allow up to four feet (4') of fill behind the upper retaining wall where a maximum of three feet (3') is permitted in Subsection 156.128(A)(12)(a); and (3) to allow up to five feet (5') of fill behind the lower bulkhead where a maximum of three feet (3') is permitted in Subsection 156.128(A)(12)(a)

Director of Community Development Joe Heard stated the subject property features a tall bluff adjoining the Currituck Sound that has been subject to erosion over the years. He described the erosion that now threatens the stability of the swimming pool and its surrounding concrete patio located at the top of the bluff. Heard displayed photographs showing the impacts of erosion and existing situation. He explained the reason for the applicant's special use permit is to protect these existing improvements by stabilizing the bluff by constructing a sound front bulkhead and separate retaining wall higher up the bluff. Heard stated the proposed project involves the addition of fill and grading to accommodate the construction of a sound front bulkhead and retaining wall along the rear of the property to support the existing swimming pool and pool decks.

Heard described the proposed improvements as including construction of a vinyl sheet bulkhead approximately five feet (5') in height at the base of the bluff adjoining the Currituck Sound with fill approximately five feet (5') in depth behind to support the retaining wall and construction of a vinyl sheet retaining wall approximately four feet (4') in height along the middle of the bluff with

fill approximately four feet (4') in depth behind to support the retaining wall. He noted that the bulkhead and retaining wall are proposed to extend across the entire property from north to south.

Heard outlined the special use permit criteria for consideration during the Planning Board's review. He detailed the staff findings, noting that staff found the proposal met Findings 1, 2, 3, and 5. Heard expressed concerns about Finding 4, as the bulkhead could potentially have a negative impact by deflecting erosive wave energy toward the unprotected shoreline to the south. He also noted that the applicant had not submitted a distinct stormwater drainage plan prepared by an N.C. licensed engineer and the Planning Board will need to determine if the submitted information is sufficient and the application meets Finding 6.

Heard explained if the Planning Board members determine that all required findings have been met, then the Board should recommend approval of this special use permit application. Heard stated if recommending approval, staff asks the Board members to consider the following conditions:

1. The applicant must submit required application materials and obtain necessary land disturbance and building permits prior to commencing work.
2. All areas of land disturbance must be stabilized prior to issuance of a Certificate of Completion for the project.

Applicant representative, Eli Barrett, of 139 Walnut Island, described the erosion occurring at 1156 Duck Road and stated that Four Seasons was in favor of the special permit approval. Barrett added that a stormwater management plan would be submitted if required.

Member James Cofield motioned to approve SUP 23-005 with the condition an acceptable stormwater management plan is prepared by an engineer or other qualified design professional. Member Brenda Chasen seconded the motion. Motion carried 5-0.

Heard clarified with the applicant that the stormwater management plan needs to be provided at least one week prior to the Town Council meeting.

Barrett stated he would work to obtain a stormwater management plan, including an evaluation of the potential impacts to the adjacent property's rip rap to the south. He acknowledged that this plan would need to be made available a week prior to the Town Council meeting.

SUP 23-006: Application by Rosemary Gordon for a special use permit for the following fill and grading activities at 103 Amy Lane: (1) to allow the lower and middle retaining walls up to eight feet (8') in height where a maximum of six feet (6') in height is permitted in Subsection 156.050; (2) to allow the retaining walls to support and contain fill, which is not permitted under Subsection 156.128(A)(6); (3) to allow up to six feet (6') of fill behind the middle retaining wall where a maximum of three feet (3') is permitted in Subsection 156.128(A)(12)(a); and (4) to allow up to eight feet (8') of fill behind the lower retaining wall where a maximum of three feet (3') is permitted in Subsection 156.128(A)(12)(a)

Director of Community Development Joe Heard stated the subject property at 103 Amy Lane includes a swimming pool, surrounding concrete patio, and wooden deck located to the rear of the residence and that the improvements on the property appear to be compliant with Town standards. He described the improvements sited on a bluff that sits at an elevation of approximately 30 feet above mean sea level with an existing bulkhead protecting the western edge of the property located along the Currituck Sound at an elevation of approximately six feet (6') above mean sea level. He described the erosion to the bluff that now threatens the stability of the swimming pool and pool deck located at the top and the applicant's desire to protect these existing improvements by stabilizing the bluff through a three-tiered system of retaining walls.

Heard outlined the proposed project which involves the addition of fill and grading to accommodate the construction of three, tiered retaining walls along the Currituck Sound at the rear of the property to support the existing swimming pool and pool decks. He stated the proposed improvements would include construction of a wooden retaining wall approximately eight feet (8') in height at the base of the bluff along Currituck Sound with fill approximately eight feet (8') in depth behind to support the retaining wall; a retaining wall approximately eight feet (8') in height along the middle of the bluff with fill approximately six feet (6') in depth behind to support the retaining wall; and construction of a retaining wall approximately four feet (4') in height cut into the existing slope along the top of the bluff. Heard noted that this last element of the project does not involve fill or require special use permit approval.

Heard stated that the proposed retaining walls stretch approximately 60 feet in length across the middle of the property, located only in the area below the pool and not extending to neighboring properties. He also noted that the existing bulkhead directly adjoining the Currituck Sound will remain and not be impacted by the proposed construction activities.

Heard outlined the special use permit criteria for consideration during the Planning Board's review. He detailed the staff findings, noting that staff found the proposal met Findings 1, 2, 3, 4, and 5. Heard explained that the applicant had not submitted a distinct stormwater drainage plan prepared by an N.C. licensed engineer and the Planning Board will need to determine if the submitted information is sufficient and the application meets Finding 6.

Heard explained if the Planning Board members determine that all required findings have been met, then the Board should recommend approval of this special use permit application. Heard stated if recommending approval, staff asks the Board members to consider the following conditions:

1. The proposed retaining walls must be certified by a N.C. licensed engineer.
2. The applicant must obtain a CAMA minor permit from the N.C. Division of Coastal Management prior to issuance of a land disturbance permit for the fill/grading or building permit for the retaining wall.
3. The applicant must submit required application materials and obtain necessary land disturbance and building permits prior to commencing work.
4. All areas of land disturbance must be stabilized prior to issuance of a Certificate of Completion for the project.

Kevin Lineberger, representative for the applicant Rosemary Gordon introduced himself.

Applicant, Rosemary Gordon, of 103 Amy Lane described the methods for capturing rainwater she currently uses at her property as well as the importance of trees for helping mitigate stormwater. She displayed photos of and described the ongoing erosion issue that threatens the stability of her property.

Chasen questioned Gordon if the fig trees would be disrupted as a result of this project. Gordon stated her plan is to save the fig trees.

Cofield inquired about Gordon's rainwater practices. Gordon described her use of gutters and rain barrels for capturing rainwater.

Cofield questioned Gordon if fill was going to be used from her property. Gordon stated the project would take fill from the front of property to be used in the back.

Murray questioned if the applicant would be willing to submit a stormwater management plan. Lineberger requested the stormwater management plan be waived due to his opinion that the bulkhead would improve its current situation, there is no impact on the adjacent properties and would be an undue expense for Gordon. Heard stated the Board does not have the authority to waive ordinance requirements. Murray stated for reasons of consistency with the ordinance his recommendation is to move forward with the requirement. Heard explained the plan does not have to be completed by a licensed engineer and that other design professionals may offer less expensive options.

Chasen motioned to approve SUP 23-006 with the condition that a stormwater management plan completed by a design professional be submitted, as well as the applicant adhere to staff recommended conditions. Cofield seconded the motion. Motion carried 5-0.

OLD BUSINESS

ORD 23-08: Text Amendment Adding a Definition for Drug Paraphernalia Sales

Heard explained that businesses primarily engaged in drug paraphernalia sales are not permitted in any zoning district in the Town of Duck. He explained during the past year, staff was contacted by two different businesses about selling items that would be considered drug paraphernalia, which includes equipment, products and materials designed or intended to introduce controlled substances into the human body. He noted among many items, examples of drug paraphernalia include pipes, bongs, rolling paper, small spoons, and roach clips. He described the challenges for staff to interpret and define what type and how many of these items would constitute a drug paraphernalia business.

Heard stated staff asked the Town Attorney Robert Hobbs to develop a proposed definition for *Drug Paraphernalia Sales* to provide guidance to staff when making these types of interpretations in the future. He stated as drafted by the Town Attorney, Ordinance 23-08 proposes to add a

definition for *Drug Paraphernalia Sales* in Section 156.002 of the Zoning Ordinance. Heard explained the proposed definition ties back to the State's definition in the General Statutes and provides guidance for interpretation of whether a business is primarily engaged in the sale of drug paraphernalia. He noted that staff recommends approval of the proposed text amendment in Ordinance 23-08.

Chasen questioned the evaluation of potential businesses seeking approval from the Town and how the ratio for drug paraphernalia is determined, as well as if the Town requires product lists for new business.

Heard stated the Zoning Ordinance needs to define a use in order to exclude it. He stated staff will still have to interpret its findings under the proposed text amendment, but adding a definition gives more substance to this interpretation. He described how the businesses that recently considered were asked to provide a product list and some items were required to be excluded.

Senior Planner Sandy Cross stated most businesses contact the Town to ask if there is anything needed. She explained if the list of products is questionable, more information is requested by staff from the potential new business to help clarify.

Murray questioned the phrase "evidence of ratio" yet no defined ratio is provided. Cofield also questioned the lack of a defined ratio. Heard stated there is no case law that says a given percentage is too much and the proposed change will still require some interpretation on the Town's part. Given this fact, he added that the Town Attorney is not comfortable with quantifying a specific ratio. Cross stated that by having this general criteria in the ordinance, it gives staff the ability to say there is a ratio, and then an internal policy can be used as a standard.

Member Wetzel question the use of the word "primarily engaged in drug paraphernalia in the staff report and whether any paraphernalia is allowed. Heard responded that the sale of drug paraphernalia may be okay in small quantities, but not primarily. He stated that the Town is not trying to change the state definition of drug paraphernalia because the State supersedes the Town in that regard.

Chasen stated that in her opinion primarily is defined as 51%. Heard reiterated the Town Attorney is not comfortable with defining an exact ratio or percentage. He explained it would be difficult to define a percentage because of the standard to which to measure could be any number of items such as square footage or the number of products.

Murray agreed with Chasen that primarily implies 51% and stated that if staff feels as though it will be useful to them, he is certain that Town Council will review the Planning Board minutes and address any issues with the Town Attorney.

Member Blakaitis moved to recommend approval of proposed text amendment in Ordinance 23-08 as presented. Wetzel seconded the motion. Motion carried 5-0.

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 at their public meeting on May 10, 2023, the Planning Board members voted to recommend the following changes to the draft ordinance and Rules of Procedure:

Ordinance:

30.37(A) – Require full-time residency for Board member eligibility.

30-37(B) – Specify Board member eligibility for reappointment for additional terms.

Rules of Procedure:

Correct a mistaken reference from “bylaws” to “rules of procedure”.

Heard mentioned there was discussion about the Chair’s ability to make motions and meeting attendance policies, but decisions were not made on these matters.

Heard stated Staff has provided copies of Planning Board ordinances and Rules of Procedure from other communities on the Outer Banks and has also provided an article from the UNC School of Government concerning board attendance policies.

Heard advised that the Town Attorney is recommending the Planning Board no longer have any role in the review of Special Use Permits. He stated more details regarding this recommendation will be forthcoming in July and the Town Attorney has been invited to attend the July 12th Planning Board Meeting to answer questions about his proposal.

Cofield questioned the rationale for striking the reference to Capital Improvement plans. Heard stated the Planning Board traditionally has not had any role in those decisions as they are part of the annual budget process with the Town Council. Cofield questioned if this proposition should be put before the Town Council. Heard stated the Town Council will make the decision to grant or not grant that authority and Staff is proposing it be removed.

Cofield stated the Town Council should give the removal of the bylaws thought, rather than just adopting the ordinance. Cross stated that such is standard procedure.

Cofield opined that Planning Board attendance policy absences should not exceed more than two consecutive absences and three total in a year. Heard noted that if wording regarding attendance is placed in the Board’s rules of procedure, then the Planning Board would have to vote on removal, whereas attendance requirements in the ordinance would be binding on the Town Council.

Cofield stated the oath of office is not written anywhere and feels it should be a formal procedure. Heard stated the Town Clerk swears in members after appointment. Cross stated that she will check into code as it relates to swearing in members.

Chasen agreed with the attendance policy that absences should not exceed more than two consecutive absences and three total in a year. Wetzel stated he supports some tightening of the attendance policy. He mentioned the ambiguity of excused verses unexcused and suggested those details would have to be worked out. Murray suggested the faithful attendance language be in the ordinance but the enumerated number of absences be in the rules and procedures. Cross suggested including faithful attendance as defined in the Board’s rules and procedures similar to Nags Head. Chasen agreed with Murray and Cross.

Cofield stated he would like to see something more concrete and attendance rules that can be applied to everyone. Murray agreed with Cross' suggestion to mimic Nags Head's language. He stated he isn't opposed to putting standards in, but at times as a Board, vague things must be dealt with. Cross reiterated having the language in the rules and procedures rather than the ordinance allows for flexibility. Heard explained the Board would have to discuss and make a recommendation before the Town Council would consider removing a member.

Wetzel questioned if faithful attendance must be physical and in person. Heard stated virtual attendance is no longer an option per State guidelines. He noted members not in attendance can submit comments ahead of time but cannot vote.

Murray stated the Board is going to revisit attendance in the future. He questioned the Board if they would like for staff to create a draft based on any of the existing town policies. Cofield mentioned that a draft from Staff would be helpful.

Chasen asked for clarification about wording that defines a year. Murray stated that wording should be from May to May as the year.

Cross suggested staff could create a spreadsheet for the Board to review regarding attendance policies and standards from other communities. Murray agreed with Cross' suggestion. He asked Staff to also investigate oath of office code.

Wetzel mentioned the discussion surrounding the chair being permitted to make motion or not. Cofield recommended it be minimized but not outlawed.

APPROVAL OF MINUTES

Minutes from the May 10, 2023, Meeting

Wetzel motioned to approve the minutes from May 10, 2023, as presented. Chasen seconded. Motion carried 5-0.

STAFF COMMENTS

Summary of June 7, 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

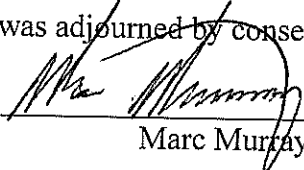
None.

ADJOURNMENT

Blakaitis moved to adjourn the meeting.

The meeting was adjourned by consensus of the Board Members at 8:29 p.m.

Approved:



Marc Murray, Chairman