

**AN ORDINANCE TO REMOVE THE TOWN OF DUCK PLANNING BOARD FROM
THE PROCESS FOR APPROVAL OF SPECIAL USE PERMITS**

Ordinance 23-11

WHEREAS, as set forth in the Town Code, the current process for the consideration of an application for a special use permit requires a review of the special use permit application by the Planning Board and a recommendation by the Planning Board to the Town Council on such application; and

WHEREAS, the involvement of both the Planning Board and the Town Council in the special use permit application review process, including the requirement that the Town Council hold a quasi-judicial hearing as part of its consideration of an application for a special use permit, has the potential for producing conflicting results and other issues; and

WHEREAS, the Town desires to remove the Planning Board's role in the consideration of an application for a special use permit.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Duck Town Council of the Town of Duck, North Carolina, as follows:

PART 1. Section 30.40 of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

30.40 POWERS AND DUTIES.

At the direction of the Town Council, the Planning Board is authorized to:

(A) Prepare plans and to coordinate the plans of the town with plans of others so as to bring about the orderly and harmonious development of the area.

(B) From time to time, review and recommend revisions to a land use plan as required by the North Carolina Coastal Area Management Act.

~~(C) Determine whether specific development proposals conform to the principles and requirements of the town code and comprehensive plan for the area and to make recommendations concerning them.~~

(D) Review and make recommendations to the Town Council on requests for rezoning; conformance with the Land Use Plan; and amendments to the zoning, subdivision regulations, and other land use regulations.

(E) Prepare and recommend ordinances promoting orderly development of the area or amendment of the zoning, subdivision, and other land development regulations based upon its studies and consistency with the comprehensive plan.

(F) Conduct special studies or perform any other duties which may lawfully be assigned to it by the Town Council.

(G) Acquire whatever information and knowledge is necessary to make fully informed and legally sound decisions and recommendations in the interest of the Town. To that end, members are encouraged to expand their knowledge and understanding of planning issues through training opportunities.

(H) Appoint subcommittees as needed to research or review issues requiring more detailed analysis.

(I) Keep the Town Council and the general public informed and advised as to matters considered by the Board.

(J) Motions and Voting. The privilege of making motions, substitute motions, amendments to motions and voting on all official acts of the Board shall reside in the members only. A voice vote shall be recorded on all official acts of the Board.

PART 2. Section 156.117(B)(2) of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§ 156.117 SITE PLAN AND PLAN OF DEVELOPMENT REQUIREMENTS.

(B) *Site plan and plan of development review.*

(2) Site plans for all projects that are subject to rezonings; and subdivision actions, ~~and special-use permit review~~ shall be considered in draft by the Planning Board and Town Council as part of the review process and approved administratively in final provided that they are in substantial conformance with the draft site plan submitted, revised and approved during the review and approval process. Site plans for all projects that require a special use permit pursuant to Section 156.155 of the Code of Ordinances shall be considered in draft by the Town Council as part of the special use permit application process and approved administratively in final provided that they are in substantial conformance with the draft site plan submitted, revised and approved during the special use permit application and approval process.

PART 3. Section 156.093(P) of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

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

(P) Where off-street parking is provided between the building line and the street right-of-way line for any business use, a buffer strip of at least 10 feet in width shall be provided adjacent to the street right-of-way line. Curb cuts through the buffer strips shall be located no closer than 30 feet, unless otherwise approved ~~by the Planning Board or the Zoning Administrator, as applicable,~~ during the site plan approval process.

PART 4. Section 156.155 of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§ 156.155 SPECIAL USE PERMITS.

(A) The Town Council may approve, ~~after review and recommendation by the Planning Board,~~ permits for special uses in the zoning districts where those special uses are specified by this chapter. The Town Council may also approve, ~~after review and recommendation by the Planning Board,~~ special use permits, subject to making the appropriate findings necessary to grant such permits as specified in each of the sections referenced herein. The Town Council may impose reasonable and appropriate conditions and safeguards upon these special use permits as to ensure that the spirit and intent of this chapter is preserved and that the use or activity will not adversely affect the public interest.

(B) Application procedures.

(1) Written application for a special use permit, along with the appropriate fees, shall be submitted to the Zoning Administrator no later than 30 days before the next regular monthly meeting of the Planning Board.

(2) Written application shall indicate the section of this chapter under which a permit is being sought and shall contain the information required by the appropriate section and other information as may be required by the Zoning Administrator to ensure compliance with this chapter.

(3) The applicant shall be the owner of the property in question or an authorized agent of the property owner. If the application is filed by an agent of the property owner, an affidavit shall be submitted that is signed by all property owners giving the applicant the permission to pursue the permit and to bind the property to the proposal and to conditions which the Town Council might impose.

(4) The Zoning Administrator shall review the application to ensure completeness and shall return any incomplete applications to the applicant.

(5) The Zoning Administrator shall advise the applicant of the correct number of copies that must be submitted to allow for review by ~~the Planning Board and~~ Town Council.

(6) If applicable, for applications concerning residential properties located in neighborhoods with homeowners' association architectural review processes, the applicant shall submit evidence of approval by the applicable homeowners' association of the proposed use contemplated by the applicant's request for a special use. For properties without homeowners' association architectural

review processes, the applicant shall submit a notarized affidavit stating that such a process does not exist in the subject community.

(7) The applicant is strongly encouraged to work closely with staff and neighboring property owners before and during the application and review process to minimize delays and address concerns which may arise.

(8) The applicant has the burden of producing competent material and substantial evidence in support of the application.

~~—(C) The Planning Board shall review the application for a special use permit for consistency with the town's adopted Comprehensive & Land Use Plan and other adopted policies and procedures.~~

(C) Reserved.

(D) The Town Council shall hold an evidentiary public hearing to consider the requested special use permit. Notice of the public hearing shall be given at least 10 days but not more than 25 days in advance of the public hearing. In addition, the town shall post the property with a sign advertising the hearing no later than 15 days prior to the hearing. The town shall further notify by mail the owner of the property for which the permit is sought, or his or her agent. The town shall also mail a notice of the public hearing to owners of property located adjacent to the subject property including those immediately across any public or private right-of-way. The town shall mail a notice of the public hearing to the most recent owner of the subject property listed in the tax listing abstract as filed in the office of the county tax supervisor. For special use permits for small childcare homes, the town shall mail a notice of the public hearing to all owners of property located within a radius of 200 feet of the proposed site. Any party may appear at the public hearing, in person, by agent or by attorney.

(E) The Town Council shall make a finding that it is empowered under the section of this chapter described in the application to grant the special use permit and that the granting of the special use permit will not adversely affect the public interest. Additionally, to grant a special use permit, the Town Council shall find that the applicant has produced substantial evidence that:

(1) The use meets all required conditions and specifications of the ordinance;

(2) The use does not materially endanger the public health or safety; and

(3) The use will not substantially injure the value of adjoining property, unless the use is a public necessity; and

(4) The use will be in harmony with the area in which it is located and be in general conformity with the comprehensive plan (CAMA Comprehensive & Land Use Plan).

(F) In granting any special use permit, the Town Council may prescribe appropriate conditions and safeguards to the location, nature and extent of the proposed use and its relation to surrounding property, for purposes of (1) ensuring that the conditions of permit approval will be complied with, and (2) minimizing any potentially injurious effect of the proposed use on adjoining properties, the character of the neighborhood, or the health, safety and general welfare of the community. Violation of the conditions and safeguards, when made a part of the terms under which the special

use permit is granted, may subject the special use permit to revocation as noted in division (K) below and shall be deemed a violation of this chapter and punishable under § 156.999 below. The Town Council shall prescribe a time limit within which the action for which the special use permit is required shall be begun or completed, or both. Failure to begin or complete, or both, the action within the time set shall void the special use permit. At minimum, the special use permit shall be valid for 12 months.

(G) Subsequent to approval, all special use permits shall be recorded by property owner in the office of the Dare County Register of Deeds. A copy of the recorded special use permit document shall be provided to the Zoning Administrator within 60 days of the approval date by the Town Council.

(H) When deciding special use permits, the Town Council shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the Town Council to issue special use permits. For the purposes of this section, vacant positions on the Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Council" for calculation of the requisite majority. Every decision of the Town Council shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. § 160D-1402.

(I) Per G.S. § 160D-109, a Town Council member shall not vote on any special use permit in a manner that would violate the affected members constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(J) Amendment to an approved special use or special use permit.

(1) Any change to a use of property approved by a special use permit shall require an amendment to the special use permit by the Town Council.

(2) The owner of property which is subject to an approved special use permit may petition for an amendment of the special use permit and accompanying conditions by following the procedures applicable to initiation of new special use permits.

(3) Evidence presented at the public hearing on the proposed amendment will be limited to the effect of the proposal on the original permit, any plans or conditions which were a part of the original permit, and the present standards and requirements contained in this chapter.

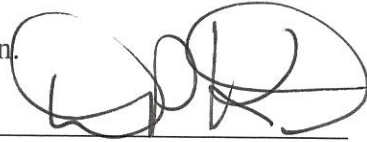
(K) A special use permit may be revoked at any time by the Town Council upon notice to the holder of the permit that the conditions of the permit have not been met or that failure to comply with any town regulation poses a nuisance to the surrounding properties. Revocation shall not occur until the holder of the permit and/or the owner of the property has been notified in writing by the Zoning Administrator advising them of the violations of the permits. The town shall mail a letter by certified first class mail to the address on record with the town, advising the permit holder and/or property owner of the date and time of an evidentiary public hearing to be held before the Town Council on the consideration of revocation of the permit. After the Town Council holds a

public hearing on the matter, the Council may, based on evidence provided and the nature of the violations, revoke the special use permit.

PART 5. Comprehensive & Land Use Plan Consistency Statement. In enacting this Ordinance, the Town Council is aware of and considered the Planning Board's recommendations and any relevant portions of the Town's adopted Comprehensive & Land Use Plan. The Town Council finds that this Ordinance is consistent with the Town's adopted Comprehensive & Land Use Plan.

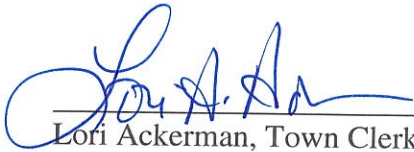
PART 6. It is the intention of the Duck Town Council and it is hereby ordained that the provisions of these Ordinances shall become and be made a part of the Code of Ordinances for the Town of Duck and to accomplish such intention, sections of these Ordinances may be renumbered, captions added, sections retitled, section references corrected and repealed provisions deleted.

PART 7. This ordinance shall be effective upon its adoption.



Don Kingston, Mayor

ATTEST:


Lofi Ackerman, Town Clerk

Date adopted: September 6, 2023

Motion to adopt by: Don Kingston

Vote: 3 AYES 2 NAYS

