



APPROVED

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
September 13, 2023**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, September 13, 2023.

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

Also present: Director of Community Development Joe Heard, Senior Planner Sandy Cross and Community Planner Jim Gould.

Chair Murray called to order the Regular Meeting of the Planning Board for September 13, 2023 at 6:31 p.m.

PUBLIC COMMENTS

Bruce Lindsey, 114 Tuckahoe Drive West, was recognized to speak. Mr. Lindsey stated he is the Vice President of the Tuckahoe Homeowners Association located next to Bias Shores. He requested the Planning Board to fully consider the public trust doctrine and state law when considering the request before them in order to preserve the rights of North Carolina citizens with respect to the enjoyment and access of sound fronts and beaches. Mr. Lindsey described the Sound as an estuary, a partially enclosed coastal water body where freshwater from rivers and streams mixes with salt water from the ocean. He noted that the Albemarle Sound is an estuarine body of water with estuarine beaches. Mr. Lindsey explained that North Carolina state courts have defined the public beaches to extend from water's edge to the mean high-water mark, a line that fluctuates with the tide amplitude and erosion that is known as wet sand beach. He noted that although the state of North Carolina does not own the dry sand beach, defined as the area between the mean high-water mark and the base of the first line sand dunes, state courts have consistently held that it does not give the property owners and absolute right to privacy or to restrict access to that portion of their property.

DISCUSSION

Building Height Definition/Standards in Coastal High Hazard Areas

Director of Community Development Joe Heard pointed out an error in the building height definition as it relates to standards in Coastal High Hazard Areas (CHHA). He stated that, as a result of Planning Board discussion, a change to building height measurement had been made in May 2020 to the section dealing with properties in the AE, AO and X flood zones but should also have been made in the CHHA section. He noted the need for discussion on how best to address the issue of dealing with building height in different flood zones. Heard suggested the Board consider supporting a similar change in the CHHA zone that limits the top of the lowest floor to not exceed two feet above the regulatory flood protection elevation. He explained that right now

there is technically no height limit in that oceanfront district and expressed the need to close that loophole.

Member Cofield questioned if a specific situation had triggered this change. Heard explained that the Town has not been challenged on the height issue. He added that it was something staff had noticed and wanted to close the loophole to prevent future issues. Senior Planner Sandy Cross noted two instances where staff was working on height in an oceanfront situation. In each case, staff understood the intent and limited the height measurement to two feet above RFPE, but such wording is not actually in the ordinance.

Murray stated that in the Coastal High Hazard Area, there is a regulatory flood protection elevation as well as the requirement for the free and clear of obstruction. He questioned if two feet above the highest pre-disturbance grade would be the RFPE for that lot. Cross replied that is not necessarily the case. She described an example whereby a property is at an elevation 14 feet, the RFPE would have already been met. However, in an oceanfront Coastal High Hazard Area, you also need to have two-foot free and clear distance above the highest adjacent grade, which would trump the 14 feet.

Murray noted the need to discuss wording to ensure that the Town's requirement of two-foot free and clear is not penalizing. He also questioned if when the grade is higher than the regulatory flood protection elevation, but the two feet is still required, is staff looking to go two feet minimum or two feet maximum exactly. Murray asserted the Town's stance in the past had been a minimum of two feet and if higher was desired, it was allowable. Cross instructed that going higher than two feet was permitted, however one would be penalized by the height. Murray stated that had not been the case in the past. Cross disagreed with Murray's statement.

Heard explained that the specific details of the amendment are not part of the agenda at this time. He requested guidance from the Board as to whether the Board recommends this potential amendment to be taken to Council for authorization to review the matter further.

Murray noted the difficulty in comprehending the confusing language, even as someone who deals with it daily. He expressed his desire to ensure that the terms flood elevation and free and clear of obstruction, which are two separate yet related terms, are covered in the draft text amendment.

Vice-Chair Bob Wetzel pointed out that pictures, drawings and/or photos would be helpful in future discussions. Cross noted Wetzel's suggestion and stated staff would provide an illustration in the future to further aid in understanding the proposed ordinance wording.

It was the consensus of the Board members that the proposed change be taken to Council and the Board could have future discussions regarding the language.

Murray described the Town of Southern Shores remedy to alleviate confusion surrounding the building height regulation for all zones is to require a separate lot disturbance permit. He noted that Duck does not have a separate permit for this, but same could be added as a permit condition. He described Southern Shores' procedure as gathering pre-disturbance information to calculate height, a height above sea level is given and that is the maximum allowable ridge height for that

project. He pointed out that this process would be something that would be helpful because it would be pre-litigated and would be a condition the contractor would initial up front rather than once it is already built. Heard agreed with Murray's suggestion and stated that staff would inform Council the Board is interested in pursuing this text amendment.

PLANNING TOPIC

PAS Report – Activity Centers

Heard gave an overview of the article "Identifying Activity Centers: A How-To Guide" from the American Planning Association. He noted that Duck Village was likely the only activity center in the Town of Duck and described the importance of this area to the town and how it could be further enhanced in the future.

Murray stated the article was interesting to read and noted the importance of thinking about development thirty to forty years out is useful.

Chasen agreed the article was informative and added that it changed her perspective about Duck's little community and made her realize the importance of thinking now, so the town is prepared in the future.

APPROVAL OF MINUTES

Minutes from the August 9, 2023, Meeting

Cofield motioned to approve the minutes from August 9, 2023 as presented. Chasen seconded Motion carried 5-0.

OTHER BUSINESS

Heard and Cross shared that they had conflicts with the next scheduled Planning Board meeting. Due to these scheduling conflicts, the Board members agreed that the regularly scheduled Planning Board meeting on October 11, 2023 would be rescheduled to October 18, 2023.

STAFF COMMENTS

Summary of September 6, 2023 Regular Town Council Meeting

Heard gave a summary of the recent Town Council meeting.

Project Updates

Cross introduced the Town's new intern, Ashlynn Basnight. Cross provided a short overview of various projects going on in the Town.

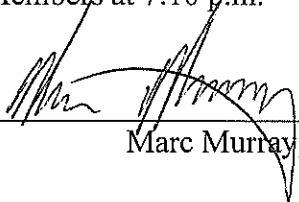
BOARD COMMENTS

Chasen applauded the BRIC grant approval.

ADJOURNMENT

Cofield moved to adjourn the meeting. Chasen seconded. The meeting was adjourned by consensus of the Board Members at 7:10 p.m.

Approved:



Marc Murray, Chairman