



APPROVED



**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
October 18, 2023**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, October 18, 2023.

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

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

Others present: Attorney Robert E. Hornick, Jr. and Great Escapes Real Estate owner Leslie Gilmore

Chair Murray called to order the Regular Meeting of the Planning Board for October 18, 2023 at 6:30 p.m.

PUBLIC COMMENTS

None.

NEW BUSINESS

ZMA 23-001: Application for a Zoning Map Amendment by Attorney Robert Hornik representing the Ships Watch Association, Inc., property owners, to rezone the property at 1251 Duck Road, from Single-Family Residential (RS-1) to Village Commercial (V-C).

Community Development Director Joe Heard gave an overview of the proposal to rezone 1251 Duck Road from Single-Family Residential (RS-1) to Village Commercial (V-C). He explained the owners desire to change the zoning to accommodate a real estate rental/management marketing office that will serve both Ships Watch Community and properties in other neighborhoods. Heard noted that under the current standards, the location can be used to serve the Ships Watch community only. He outlined the details of the current location and described the adjacent properties surrounding 1251 Duck Road. Heard pointed out that the Future Land Use Map designates the subject property as "Cottage Residential Area" and therefore, the request is inconsistent with the recommendation of the Future Land Use Map in the CAMA Land Use Plan. He added that the property abuts a large parcel with V-C zoning and the subject property could provide a logical extension of this zoning district with a boundary at the Ship Watch Drive intersection. Heard also noted the property is sufficient in size and layout that is functional as a V-C property. He asked the board to consider that although the applicant is requesting rezoning for their particular use, the subject property could be redeveloped in the future with any use and in any manner permitted in the V-C district. Heard stated that staff is recommending denial of the

proposed zoning map amendment consistent with the Future Land Use Map and guidance in the adopted Comprehensive and CAMA Land Use Plan for the Town of Duck.

Chair Murray disclosed that the law firm representing the applicant also represents a client of Mr. Murray's in an unrelated action, that is related to something with the Town. He stated the attorney involved is not Attorney Hornick and it has no bearing on this application.

Attorney Robert E. Hornick, Jr, of the Brough Lawn Firm, PLLC in Chapel Hill, NC was recognized to speak. He introduced himself and noted his representation of the Ships Watch Association. Hornick acknowledged Leslie Gilmore, owner of real estate company Great Escapes, who conducts business on the subject property. He noted the company's ongoing real estate services for Ships Watch Association that have occurred at the subject property over the last five years. He described the applicant's request for rezoning of the property as the result of the Town's denial of a sign permit application submitted by Great Escapes Real Estate. Hornick pointed out the desire of the applicant is to take advantage of a co-marketing opportunity with a sign for Great Escapes located on the property, in addition to the Ships Watch sign. Hornick asserted there are no plans to change the use of this one-acre lot. He asserted that the Future Land Use Map is not a static document and that it can be amended. Hornick added that if zoning of the property is changed, the Land Use Map might be amended at the same time.

Mr. Hornick stated that Ms. Gilmore informed him that Great Escapes has been performing real estate services in the subject property since 2018 and occasional phone calls and emails regarding business outside of Ships Watch have been handled. He insisted that everything is intended to remain the same, except the additional signage. Hornick reminded the Board members that the prompt for zone change is to allow signage to let the public know Great Escapes' location. Hornick described the adjacent V-C properties and noted the subject property would not be an isolated island of V-C amidst residential zoning. He agreed with Heard and noted one must consider the suitability of the property for the full range of use that would be permitted in the V-C district. Hornick pointed out that the subject property is part of the Ships Watch development and is subject to the covenants that restrict uses in Ships Watch Community to residential. He explained that Ships Watch allows marketing and this kind of use as well as amenities such as the tennis courts on the subject property. He explained that it would not be a simple matter for Ships Watch, Great Escapes or anybody to change the use of this property without getting the Ships Watch covenants amended. Hornick stated that typically it would take 75% of all members of the Association to amend covenants, which would be no simple task. Rezoning the property would be less of a threat because of those restrictions.

Member Brenda Chasen questioned if all property owners in the association had been notified of this potential change. Hornick responded that his understanding was that they had been notified. He stated that the Ships Watch Board of Directors have had several meetings about the potential rezoning over the last couple of months with the first discussions in August. Hornick deferred to Leslie Gilmore to give more detailed answers related to same question. He stated per his conversations with the Ships Watch President and Board Members, that all are aware of the potential rezoning of the subject property. Chasen questioned if the 413 Ships Watch property owners were aware as well. Mr. Hornick stated that based on his knowledge, the President and

Board Members have had conversations but cannot guarantee that every one of the 400 plus owners received notice of this request.

Member James Cofield inquired about the absence of Ships Watch Board Members and President. Hornick stated there had been a death in the family and therefore the President was unable to attend the meeting. Cofield questioned if the activity from Great Escapes occurring presently is unrelated to Ships Watch. Hornick replied that an occasional email and call is handled at the current location. Cofield questioned if the Board and property owners in Ships Watch were aware of the outside work. Hornick stated yes. Cofield described commercial activity in V-C zoning immediately south of the property and stated the CAMA and Land Use Plan does not lock the Planning Board or Town Council into a decision, but the purpose is to look into the future. Hornick indicated that this property, due to location and historical use, is never going to be used for residential purposes and has been used as reception area. Hornick affirmably requested rezoning of the property.

Murray questioned if the intent was to continue business as usual and not feel guilty about fielding outside calls or emails. He asked if there was any other way to meet that goal considering that use is going on without such a massive change to zoning. Heard stated the staff's understanding is that Real Escapes would like to provide more services and function like any other real estate office, not just servicing the Ships Watch community. He added the desire to use it for a broader purpose requires commercial zoning, which is the breaking point. Hornick explained that Real Escapes would like to proceed with their business without feeling like they are sneaking around.

Murray stated the concern he was hearing from the Board members is not the intended use for the property, but the rezoning of the property potentially opening the possibility of a restaurant or any other commercial use at this location. He added that the covenants may limit such use but that is not enough.

Member Blakaitis stated he was confused and questioned what prompted this application and why. Hornick replied that the purpose is for the existing business to market itself better and install a sign for Great Escapes.

Member Wetzel questioned if all property owners had been notified and if any negative comments had been received. Hornick stated he was not aware of any. Great Escapes owner Leslie Gilmore was recognized to speak and introduced herself. She added that no one has come in with complaints. She described her business and expressed the desire to have a business front and sign on Duck Road. Gilmore added that there would be minimal check-in traffic as most rentals are now keyless entries. She noted her lack of awareness of the space not being zoned commercial. Gilmore concluded that she values keeping Duck the same and her desire is to put a sign on the road. Wetzel asked Gilmore if Great Escapes has other locations. Gilmore replied that their former location was in Corolla, however when the lease was negotiated with Ships Watch in 2018, their sole location is now at the subject property.

Murray asked Gilmore how many properties outside of Ships Watch are managed by Great Escapes. Gilmore stated 11 properties.

Wetzel inquired if there would be a practical way for Great Escapes to continue operation without being in violation if rezoning was not approved. Gilmore responded that she is willing to explore options as she cares about the Ships Watch community and that it is imperative to have business outside of Ships Watch. She described the importance of having a storefront, her desire to grow as a business and to be honest and compliant in her business's operations.

Chasen raised concern as to the possible lack of awareness the property owners may have as it relates to the rezoning. She stated her research had indicated that the property owners would prefer the private community to stay the same and continue to have limited traffic. Chasen questioned if the property across the street would be a suitable location. Heard responded that the suggested property is not zoned commercially.

Murray inquired about Ships Watch prior management company. Gilmore commented that she was not certain as to specific details related to the prior management. She reiterated the goal is to provide value and credibility with a roadside sign and storefront. She described the minimal traffic that would be generated should the property be rezoned. Murray asked for clarification regarding Ships Watch's need for a realtor and if outside business was needed for Great Escapes business model to work. Gilmore stated that to have a viable business, outside business is necessary.

Wetzel inquired about the amount of traffic that is generated on a weekly basis. Gilmore responded that most of the foot traffic is for Ships Watch related business. She asserted that people feel comfortable having a brick-and-mortar location, but real estate is mostly a virtual business.

Wetzel questioned staff as to what would be required from a Town standpoint that may cause issues for Real Escapes to operate in the current space other than rezoning. Heard responded that there is not a proposal to change the layout of the site or business. As the property is already developed, there is nothing else necessary except rezoning. Heard explained the conflict as the applicant wishes to operate their business on a broader scale to perform sales and rentals unrelated to the Ships Watch community.

Murray questioned staff if parking would need modifications because of rezoning. Heard stated parking on site is sufficient.

Cofield moved that the ZMA 23-001 application for a Zoning Map Amendment to rezone the property at 1251 Duck Road from Single-Family Residential (RS-1) to Village Commercial (V-C) be denied. Chasen seconded. Motion carried 4-1 with Wetzel dissenting.

ORD 23-14: Text Amendment to the Definition of Building Height in Section 156.002 of the Zoning Ordinance Outlining Standards for Measuring Building Height in Coastal High Hazard Areas

Heard reminded the Board of the prior discussions related to the amendments proposed in Ordinance 23-14. He noted the amended copy of Ordinance 23-14 that addresses how to measure building height and setting a standard for where that begins in Coastal High Hazard areas which would close the loophole as it relates to building height. The amended section of the definition would read, "In a Coastal High Hazard Area (as defined in Chapter 150), 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). Such measurement shall be no higher than two feet (2') above the highest adjacent grade."

Murray suggested two clarifications be made in the language as it relates to the wording of the ordinance. He recommended using the language "highest finished adjacent grade" or "highest pre-disturbance adjacent grade". Murray also recommended consistency across the ordinance giving up to four feet (4') above the highest adjacent grade rather than two feet (2').

Cofield asked Murray if graded, existing dirt or imported dirt would increase the pre-disturbed finished grade. Murray questioned staff regarding policies related to imported fill. Cross explained the Town's limitations and guidelines related to fill. She stated it is not typical to import fill. She added that the pre-disturbance elevation will be different than the finished grade after lot clearing. Cross added that more complicated wording could be added that would address pre-disturbance elevation and finished elevations. Heard commented that he felt there was no benefit to adding pre-disturbance in the wording. He opined that Murray's second point is more valid as far as consistency with the other flood zones.

Cofield questioned Murray if he noticed enough differences in pre-disturbance or post in his practice. Murray stated he establishes grade and building height with his applications prior to building so that issues don't arise when the house is complete. He added that even though it's not written in the ordinance, during the application process there are permit conditions and the height certificate must match. Murray noted he has used pre-disturbance information in the past to prove material was not imported. Cross stated "highest finished adjacent grade" is sufficient wording.

At Chasen's request, Murray pointed out the difference between the required two feet (2') of free-and-clear and the additional two feet (2') of height allowance he is suggesting. Chasen questioned if adding said wording would close the loopholes. Cross responded that the wording would eliminate the potential for discrepancies.

Murray asked the Board to consider amending the wording to four feet (4') free and clear. Heard referenced the section of the ordinance, "provided that the top of the lowest floor does not exceed two feet (2') above the regulatory flood protection elevation" to explain Murray's proposal. He noted the purpose would be to create consistency in all zones. Murray noted the reduction in flood insurance premiums as a practical reason to increase the clearance. To be consistent with standards for other flood zones, Heard suggested that the measurement could be to the top of the lowest floor and not to the girder below.

Cross suggested a compromise of three feet (3') in the V Zones. Murray pointed out the issue is the requirement to have two feet (2') and that sand moves, therefore making it finished grade helps. He added that it seems unreasonable for the regulation to be exactly two feet (2') and a range makes more sense, so he also sees the point in establishing an allowance of three feet (3'). Heard suggested it best to be consistent with other flood zones.

Murray noted that there has not been widespread abuse of the current rules and added that his interest is simply providing the same type of allowance for building height as presently found in other flood zones. He offered an example of how a property could be developed with additional fill, elevating the house to meet the two-foot (2') free-and-clear requirement, then having an allowance for the floor system similar to other flood zones. Heard pointed out the need to amend the wording to accommodate both these factors. Cross stated that the floor system was already accommodated by a building height allowance elsewhere in the ordinance.

Cross added that from a floodplain perspective, a greater free-and-clear allowance of three feet (3') to accommodate wave action makes sense. Heard raised concerns that the Board is getting outside of the parameters of what the Council authorized the Board to review. He added that the purpose is to align the standards in the CHHA with other flood zones, not to redefine the term and standards for free-and-clear. Heard stated that if the Board would like to see a change in the definition of free-and-clear, staff could take that to Council.

Blakaitis questioned if three feet (3') really makes such a change. Murray responded that three feet (3') is better than two. Chasen added that a little more space would be beneficial.

Blakaitis moved to recommend to Council that ORD 23-14 be approved with the modification "by adding a maximum allowance of three feet (3') above the highest, finished adjacent grade below the structure". Chasen seconded. Motion carried 5-0.

APPROVAL OF MINUTES

Minutes from the September 13, 2023, Meeting

Chasen motioned to approve the minutes from September 13, 2023 as presented. Cofield seconded. Motion carried 5-0.

STAFF COMMENTS

Heard gave a summary of the October 4, 2023 Town Council meeting.

Cross provided a short overview of various projects going on in the Town.

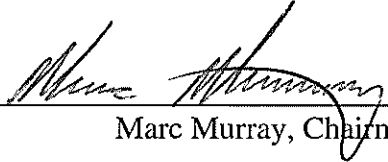
BOARD COMMENTS

Chasen noted her approval of safety occurring with new BRIC project.

ADJOURNMENT

Wetzel moved to adjourn the meeting. Blakaitis seconded. Motion carried 5-0.

The meeting was adjourned by consensus of the Board Members at 8:02 p.m.

Approved:  _____
Marc Murray, Chairman