



APPROVED

**PLANNING BOARD
REGULAR MEETING
May 8, 2024**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, May 8, 2024.

Present: Chair Marc Murray, Vice Chair Bob Wetzel, Joe Blakaitis, James Cofield, Bob Webb, and Council Liaison Sandy Whitman.

Absent: None

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

CALL TO ORDER

Chair Murray called to order the Regular Meeting of the Planning Board for May 8, 2024 at 5:30 p.m.

PUBLIC COMMENTS

None.

ELECTION OF OFFICERS

Member Blakaitis nominated James Cofield for election as Chair. Vice Chair Wetzel nominated Marc Murray for reelection as Chair. Marc Murray was reelected Planning Board Chair 3-2.

Member Cofield nominated Joe Blakaitis for election as Vice-Chair. Chair Murray nominated Bob Wetzel for reelection as Vice-Chair. Bob Wetzel was reelected Planning Board Vice Chair 3-2.

Both Murray and Wetzel resumed their respective roles immediately.

DISCUSSION

Lot Coverage Calculations for Pervious/Permeable Parking

Director of Community Development Joe Heard stated that Town engineering consultant Mike Robinson was not in attendance at the meeting due to a conflict but advised that if the Board had questions for Mr. Robinson, they would be relayed. Heard referenced ORD 23-01 which was adopted on April 5, 2023, that amended the definition of *Lot Coverage* by allowing completely pervious groundcover materials to be entirely exempt from lot coverage calculations. He added that in the last year Staff had worked with the amended provisions and noted several instances where the amendment was unclear, leaving Staff to seek guidance from the Planning Board to help

clarify when each allowance should apply to permeable/semi-permeable surfaces in the future. Heard instructed that number 5 and 6 of Section 156.002 of the Town Code listed the items Staff was asking the Board to review. He asked several key questions:

1. Is there a benefit to having two separate standards for lot coverage allowances?
2. What needs to be clarified to make any distinctions clearer to the general public?
3. Are any allowances broad enough to accommodate new groundcover products in the future?

Chair Murray asked the Board for comments. Member Webb stated that he finds it difficult that material that must be cleaned or maintained in some way should count as 100% pervious or permeable. Cross asked Webb for clarification that if a product requires maintenance, that it should be counted at some percentage of lot coverage. Webb responded that products should not be 100% exempt from the coverage calculation if the product requires maintenance. He added that such materials must be monitored by someone, and he cannot envision the surfaces being maintained properly. He inquired about the Town's current permeable parking lot surfaces and how they compare. Cross responded that some Town improvements had not been maintained initially, and therefore did not work as effectively as areas as more recently maintained. She stated that there is a clause in the stormwater management section that requires property owners to sign a statement of certification that the product had been installed and will be maintained per manufacturer specifications. She added that this certification must be recorded at the Register of Deeds. Cross noted that locating the specifications for maintenance for products can be difficult. Web added that the more one investigates online, the less one knows.

Member Cofield opined that if surfaces must be maintained over time, then those surfaces should not have the same type of stature as those systems that do not have to be maintained. Member Blakaitis mentioned the difficulty with enforcement for products that require maintenance. Member Wetzel questioned if the terms *permeable*, *pervious* and *porous* are synonymous. He added that if the monitoring protocol poses a challenge to the Town, then he would be hesitant to grant a 100% credit to anything that has to be maintained. He questioned the origin of the 60% number. Cross replied that it originated years ago, during review of low-impact development standards. She added that things have evolved, products have changed and there are much better permeable products available to date, which makes the distinction between products complex. Cross identified the action(s) to certify and record alternative ground cover agreements under section 5 and 6 of the Town Code. She highlighted the difficulty in enforcing products that require maintenance and noted the lack of Staff to monitor and assist with same.

Murray opined that it may be sensible to strike number 5 or limit specific products such as permeable concrete, turf stone or the equivalent and expressed that the code may need more teeth to manage the maintenance portion. He asserted that putting a deed agreement on a property is significant and not something that other municipalities require. Murray mentioned that the Register of Deeds views it as the Town pawning off enforcement responsibility. Murray noted that permeable products are vastly more expensive than conventional ones. Cross replied that although products are vastly more expensive, they are improved over what was available 10-15 years ago. Murray mentioned that Currituck County provides courtesy inspections during installation and it

might be useful to add that type of requirement explicitly to the Town's ordinance. Cross responded that the Town completes courtesy inspections as well.

Blakaitis questioned if the allowances pertain only to new houses. Cross replied that it can be for new single-family dwellings, additions, significant renovations, or site improvements.

Murray questioned if it would make sense to limit number 5 as for porous concrete getting 100%. Cross replied that porous concrete is infrequently used because it is expensive, noisy, and maintenance intensive.

Murray questioned the impact on Staff if number 5 was eliminated. Cross expressed her concern that by opening another 60% of coverage on a property that may already be maxed out will impact things from a density perspective. She recalled Mike Robinson examining coverage from a density perspective by limiting or allowing coverage. Heard emphasized that individuals will come to the realization that they can use the provisions under number 6. Cross added that Staff did not envision number 6 applying to parking areas. Murray questioned if there was a benefit to having two separate standards. Heard reminded that it's the Board's decision. Murray stated that initially he felt like number 5 was ancillary and questioned Staff if the goal was to clean up both standards. Cross responded yes.

Webb questioned what would stop someone from covering their entire property. He opined that no matter what product is used, it needs to count some way toward lot coverage. Murray replied that he felt full lot coverage would be very unlikely. Blakaitis proposed a hypothetical situation. Cross responded that each development would be analyzed on a case-by-case basis.

Murray questioned how long number 6 had been in place. Heard responded one year. Planner Jim Gould explained that two properties have utilized the 100% provision since the ordinance was amended in April 2024. Cross stated that amending the ordinance would not create a large number of non-conformities because the amendment is so recent.

Murray asked for clarification as to the Board's role as it relates to Staff needs. Heard stated that Staff hopes to develop a proposal based on the Board's input. Murray asked the Board for clarification on wording revisions. Webb reiterated that 100% was not favorable. He opined that it may be easiest to have all count as 60% coverage. Cross replied that prior to the recent ordinance amendment, turf was being used frequently and there was no standard in place. Webb questioned how much area was covered using the 100% allowance based on the example provided by Staff in the agenda packet. Gould responded that one area given the 100% credit was for a bocce ball court, which was approximately 30 feet by 80 feet. Murray opined that such installations add stormwater storage and are more high performing than sand with grass. He noted that the incentive the ordinance provides is helpful and cost precludes abuse. Webb stated that products in the packet are not providing that level of drainage. Murray noted that each product has a published percolation rate and putting same in the ordinance makes sense. Murray suggested Staff confer with Mike Robinson for more information, clarification, and review of common high-performing products. He suggested that such information could help define a clearer target for developers. Heard stated the Board has an option to put overall cap on what percentage is allowed if documentation of specifications and proper installation are provided, which may alleviate Webb's concern regarding

products not being properly maintained and losing permeability over time. He added that input from Mike Robinson's would be sought, and his presence would be requested for the next Board meeting.

Wetzel asked for clarification if the suggestion was to establish standards for permeability such that products that meet a technical specification and are properly installed, the manufacturer percentage would be given. Murray clarified that the manufactured specified percent is viable if the infiltration rate specified in the ordinance is met. Webb opined that this change might be simple. Cross noted that number 6 also states that an engineer can certify the product as an alternative. Murray stated that if engineering certification made sense to the Staff and Board it could be added as another layer of enforcement. Cross added that if having a minimum technical standard requirement and an engineer certification, the likelihood of failure would be the result of the product and not because of maintenance. Cofield favored the idea of establishing standards related to filtration rate or permeability regardless of the product. He added that it would be an easy standard to specify and measure. He asserted that he did not like any product where it only stays at that standard with maintenance on day one. Cofield noted the lack of Staff to enforce maintenance and his preference for a flat standard that was not conditioned on maintenance for both the 60% and 100%. Heard instructed that there are no products that require zero maintenance and even the best products become less permeable over time. Cofield replied that establishing a standard with that in mind would be preferable.

Webb voiced his concern was people will use an item to expand parking with high occupancy of homes and minimal parking spaces. He noted that products could be installed and not intended for parking, but visitors will use it for same. Webb reiterated that he does not think that any product should completely bypass lot coverage.

Murray questioned if the Board should enumerate the products or make them a class. Webb replied that he does not think the Town can go with the percentage the manufacturer provides. Murray questioned if the goal was to come back with a draft ordinance or continued conversation. Heard replied that either suggestion would suffice.

Murray opined that he felt hamstrung for not having the infiltration rates for some example products to guide the development of a draft ordinance. He reflected that Wetzel and Cofield would like to see limitations based on maintenance requirement, therefore he proposed that Staff provide example maintenance specifications for products and infiltration rates in comparison to native soil to provide the detail desired by the Board.

Heard stated that Mike Robinson could provide the requested information and attend a future meeting. Cofield suggested establishing a standard regardless of material. Chair Murray requested Staff to confer with Mike Robinson regarding the differences between interstitial storage and filter cloth and gravel or gator base products compared with subsurface stormwater systems, whether the capillary effect of fill raises the water table, and the review of some common high performing products as they relate to native soils and their infiltration rates.

Stormwater Management on Single-Family Residential Properties

Heard stated that during a recent public hearing, the Duck Town Council received a public comment concerning stormwater management during consideration of a special use permit application for a residential property. He stated that a member of the public commented that raising a nearby lot 3 feet with fill had the potential to negatively impact her property by potentially increasing the stormwater flow of water into low points on the property. Heard noted that Council approved the special use permit but the general concept of requiring stormwater management on single-family residential properties was raised. He explained that Council wanted the Planning Board and Staff to review issues related to stormwater management in general as a basic standard for single-family residential properties unrelated to applicants seeking special provisions. He added that most communities throughout the State of North Carolina do not have stormwater management requirements for the development of individual single-family residential properties, but that the Town of Southern Shores and another coastal community, Town of Ocean Isle Beach, have standards that he included in the staff report. Heard raised the issue that 95% of residential properties in the Town of Duck are already developed without any requirements for stormwater management. He opined that it may be unfair to burden remaining properties with standards. However, the converse argument is that it would provide some improvement. He outlined several key questions:

1. Should the Town of Duck require stormwater management for the standard development of single-family residential properties?
2. Should these standards only apply to new construction or also include other types of redevelopment activities or other improvements?
3. What are the most important elements to include in the stormwater management standards?
4. What criteria should the stormwater management improvements meet?

Cofield questioned if engineering certifications had been previously required. Cross responded that if properties want greater than 30% lot coverage, then stormwater certifications are required. She stated that ideally one retains their own stormwater onsite, but that is not always the case. Cross added that the citizen was concerned about the new development shedding stormwater onto her property even though the development was below 30% lot coverage. She indicated that this scenario led Council to begin discussion as to whether stormwater plans should be required for all development. She asked if a stormwater management plan should be required for all new development regardless of coverage allowance, and if so, should it be for new single-family dwellings, additions, and/or have a criterion of 50% like floodplain requirements. Murray pointed out that Currituck County does not require everyone to have a stormwater management plan, but properties located in the beach area and some planned developments on the mainland require a stormwater management plan if the developer is importing fill. He suggested same could be added to the discussion. Cross referenced the scenario which brought this topic to the Board which was a situation where the property was at an elevation of 7.5 feet and filled to get to the 10-foot elevation, which changed the topography.

Murray suggested the Board discuss the Town's limit of 3 feet of fill. He opined that developers should be allowed to fill enough to meet the regulatory flood protection elevation if slope requirements and setbacks could be met despite same shrinking the building pad. Cross questioned if this was allowed, where do you stop that limit. Murray opined that the flood plain regulation of

10-foot is arbitrary and could be modified or allow people to fill to the RFPE as it is higher than other communities' regulations. Heard replied that the 10-foot limit was not chosen arbitrarily, and a lot of thought was put into it that standard. Murray stated that if the elevation requirement stays the same, the Town should allow people to fill to the RFPE, especially since the existing ordinance is then shrinking the property's building pad.

Murray proposed the key question, should the Town of Duck require stormwater management for the standard development of single-family residential properties? Webb, Cofield, Murray and Blakaitis stated no. Wetzel responded that it is a known fact that the water table is rising, and some neighborhoods are more prone to flooding than they were 10-30 years ago. He added that while the Town may be 95% developed currently, tear downs are becoming more prevalent. He stated that the situation is different today and the argument could be made that there should be stormwater management system in place for houses. Wetzel referenced a vacant lot in his neighborhood at the top of a dune and stated that higher lots might not need a plan. Cross recalled the neighborhood stormwater study's determination that flooding situations typically start at higher elevations and mitigation should start upstream. She noted that flooding typically occurs at the bottom. Murray questioned if the study specified whether it was groundwater or stormwater flooding. Cross replied that it was not groundwater, but groundwater will play a part. Murray raised the concern that even with retention ponds at higher elevations, flooding is only being delayed by 24-48 hours since water percolates through the soil and goes to the groundwater. Cross replied that 24-48 hours may allow the lower end to perk and as per the engineer, solutions must start upstream. Murray opined that groundwater has no solution except to move or fill. Wetzel decided against the Town requiring stormwater management for the standard development of single-family residential properties in response to the key question.

Murray posed the question should the Town require stormwater management for development that includes fill for single-family development? Webb stated that all building effects stormwater, and a new requirement may unfairly burden the remaining 5% and hold them to another standard. He added that part of their stormwater issue is going to be related to stormwater coming off their neighbor's property. Murray clarified that it would not be the Town's standard and that the requirement for the stormwater management plan would be calculated by an engineer. He noted that the stormwater runoff plan would be for the individual's roof and driveway and stored on site, therefore not adding to the problem. Murray noted it interesting that Currituck County beach area and some development on the mainland requires elevations and stormwater management plans evaluating impacts 35 feet into the neighboring property. Cofield stated he does not have a strong view on this issue. Wetzel explained that there are allegations of draining issues impacting properties that change as a result from adding fill in his own neighborhood. Murray stated he does not feel that a stormwater plan should be required if fill is imported. He remarked that the Town already limits fill and does not think the Town should limit fill it in any way. He stated that fill provides one of the only opportunities property owners have in a coastal town with a low elevation to pay for what eventually will be a gigantic problem for the Town. He added that the Town cannot afford to fix it, therefore allowing property owners to fill seems to be the only reasonable solution. Murray noted that the Town cannot manage its way out of a rising water table.

Council Liaison Sandy Whitman mentioned that the special use permit would not have been needed if the new construction had been built in the correct location originally.

Murray asked the Board if they were inclined to discuss allowing fill to the regulatory flood protection elevation. Cofield opined that while allowing fill works toward the long-range problem, it also creates short term problems for neighbors.

Heard stated that Staff would draft a report of the Board's discussion and decision not to take action for Council to review.

Murray requested Staff to ask Mike Robinson for information regarding the capillary effect and rising water table for surrounding lots. He stated that his guess is that the mass of sand would need to be significantly more than a residential project but would like Mike's input.

TRAINING/EDUCATION

Trend Report for Planners: The Futures of the (Home) Office

Heard noted the purpose of this section of the Trend Report for Planners was to educate the Board and generate discussion regarding the increased use of home offices and people working from home. He outlined the Town's current provisions for home occupations.

APPROVAL OF MINUTES

Minutes from the March 13, 2024, Meeting

Blakaitis motioned to approve the minutes from March 13, 2024 as presented. Cofield seconded. Motion carried 5-0.

STAFF COMMENTS

Heard gave a summary of the May 1, 2024 Town Council meeting.

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

BOARD COMMENTS

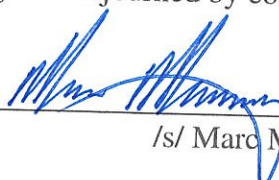
None.

ADJOURNMENT

Wetzel moved to adjourn the meeting.

The meeting was adjourned by consensus of the Board members at 7:15 p.m.

Approved: _____


/s/ Marc Murray, Chairman