



APPROVED

**PLANNING BOARD  
REGULAR MEETING  
July 10, 2024**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, July 10, 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 Christy Drumheller.

**CALL TO ORDER**

Chair Murray called to order the Regular Meeting of the Planning Board for July 10, 2024 at 5:30 p.m.

**PUBLIC COMMENTS**

None.

**TEXT AMENDMENT**

***Lot Coverage Calculations for Pervious/Permeable Parking***

Director of Community Development, Joe Heard, stated that based on the last meeting of the Board, staff put together an ordinance regarding standards for the use of pervious and permeable surface materials. He was hoping to reach a consensus on the contents ordinance but noted that this is the first draft.

Heard outlined that the standards are broken down into two different categories: (1) driveways and parking areas; and (2) impervious materials used elsewhere on the property for other reasons.

Heard stated that the state legislature adopted a change that would limit the Town's ability to regulate artificial turf and that has been added into the draft ordinance as well. This legislation would also exempt pool water from counting as lot coverage. This measure will be considered in the future draft, since the pool is lined and stormwater cannot travel through the material the Town presently considers it as lot coverage. Director Heard opened the conversation to the Board members for discussion and questions.

Chair Marc Murray clarified that the exclusion of artificial turf is due to the Senate Bill and added that the pool ordinance needs to be updated so that the Town follows state law. Heard agreed that it should be updated in the final draft. Senior Planner Sandy Cross pointed out that upon speaking

with Mike Robinson, he informed her that this is for built upon area for stormwater management not necessarily lot coverage and there is a distinction between the two.

Murray guided the discussion to separate the new information just received and the information from the draft text amendment to discuss first.

Member Bob Webb would like to know how the Town plans to enforce the maintenance of the pavers. Heard responded by stating that the Town would be proactive, ensuring the homeowner has a document stating they would maintain the pavers based on the manufacturer's requirements. It's not a perfect solution but it's currently the most efficient. Webb stated that pavers are a better solution in comparison to concrete, but not a wise solution when taking away from the vegetation. Webb questioned if a neighbor calls the Town and says the neighbor placed in pavers and isn't maintaining them and now there is a stormwater issue running on their property. Heard replied that the Town would respond to the complaint, conduct a site visit, inform the homeowner of the agreement that was signed on maintaining the pavers, and work with the homeowner on finding a solution. If the homeowner refused to take care of the maintenance, then the Town could issue a zoning notice of violation which could result in a civil penalty. Webb asked if someone wants to tear out their current driveway and then expand the driveway, are they allowed to do this as long as it doesn't go into any setback or easement. Heard responded that property owners are allowed to do this. Webb then asked if once they convert their driveway into pavers does that change the lot coverage in which they could add a shed or another building onto the property. Cross and Heard both informed Webb that they can and it may be a reason why people choose to have pavers. Webb thinks that the Town needs to be very careful about this as the Town has gone into increasing lot coverage over the years based on different standards and believes that there needs to be a percentage cap on how much permeable coverage one can have. Converting a 12-foot wide concrete driveway into a 20-foot permeable driveway will still affect the stormwater issue.

Member James Cofield has reservations about the enforcement ability of the Town as enforcement generally tends to be complaint driven. He recognized that when complaints are filed in the Town, the Town is very responsive in addressing these issues with the homeowners. However, Cofield feels it will be very tough to enforce and that this is not working in the interest of the community or the neighbors by going down this route.

Murray questioned that in the draft of Town Code Section 156.002 #7 says "Other permeable surfaces used for parking or elsewhere" Is it supposed to say "*not* used for parking?" Heard responded that it is not. Rather, it is intended to address other groundcover alternatives that are not 100% permeable but are used for parking purposes, like turfstone, as mentioned by Cross. Murray added, in previous discussion that porous concrete, which is in #6, would be in #7 and not advertised as 100% permeable product. Heard and Cross agreed with the proposed change. Murray continued with consensus from June meeting that gravel would not count as lot coverage and that consideration should be taken to limit the total area where permeable pavers and "other applications" could be used outside of the parking area. Murray and Webb noted that perhaps permeable materials not adjoining the parking area may be counted as 60% coverage. Murray noted that gravel does not count as lot coverage and there needs to be a limited number of

permeable materials that may be used with the 60% consideration. Heard agreed that breaking it up into two sentences may read more clearly.

Murray asked where the wording was requiring recordation requirements. Cross said there was a clear language already in the ordinance. Heard stated that the existing ordinance wording found in another section could be added to this ordinance to add clarity. Murray thinks that it needs to be added in the code section to reinforce the standards of the homeowners. Adding the recordation in #6 would allow owners to stay in compliance. Cross mentioned that when properties transfer ownership, recordation will help future owners to understand “anything going on with that property” similar to recordation associated with a special use permit. Heard said that staff can add requirement for recordation wording in sections 6 and 7 for clarity to homeowners.

Member Blakaitis asked about the NC Senate Bill 166 been included in the provision yet, Heard let him know that at this point it has not because the Governor has currently vetoed the bill and at this time it will go back to the full legislature. At this time, it is not a law yet. He added that this 79-page bill deals with a variety of building codes and different issues. Staff will continue to get clarity on the wording that it needs to create a draft. Cross stated that the purpose of implementing state or local government for stormwater programs, not built upon areas, the Town can still potentially have these items as coverage. Cofield asked when the next time the legislature would be getting back together and Heard let him know that he would get additional dates but they would be getting back together in August.

Vice Chair, Bob Wetzel, asked how recorded Town documents are shared with new owners during the sale of a home. Cross let him know that there is a title search done when buying a house and anything that has been recorded would show up during the search. Webb asked how the Town enforces the required permeable driveway maintenance. Cross noted that it would be complaint driven. Murray added that the required recordation document gets manually recorded with the Dare County Register of Deeds and brought back to the Town for their records and then goes forward with any title search in the future.

Wetzel asked about wording clean up in #6 there at the end when it talks about alternative materials that are entirely permeable. Then, three lines later it says certified 100% pervious is entirely permeable the same as 100% pervious. Couldn't you use the same language in both places. Heard responded that with the discussion earlier about the different terms that it would probably be best to use the same wording and agreed it should be fixed. Wetzel clarified that permeable, pervious, and porous are synonymous terms for the purpose of the discussion. Heard informed Wetzel that pervious and permeable are relatively synonymous, but the difference is with different products. He explains that pervious pavers are permeable. Porous is different compared to the other two. Murray clarified that permeable things are porous but porous things may not be permeable. Community Planner, Jim Gould, stepped in to add clarity with a permeable paver, the paver itself doesn't allow water to go through, it's the spaces around the paver is where the water seeps through so the water hits the paver and goes through the spaces next to it. Pervious would be the water going through the paver. Permeable drains around and pervious drains through. Cross commented that porous is like porous concrete where the water passes through but there are parts that hold the water. Wetzel asked if there was a difference between porous concrete and permeable concrete.

Cross agreed with moving porous to #7 and removing that as permeable or pervious. Wetzel questioned number 6 where it states as either-or statement “you either have to have an engineer or the homeowner has to prove that everything has been done by the manufacturer” since it’s an option should we have a similar option in #7. Heard said it wouldn’t hurt to add it to #7 as well.

Cofield asked Sandy Cross what the Town Hall Administrative Building parking lot would be considered. Cross responded that it is probably between porous and permeable. It has a gravel base underneath. However, you can tell the way water sits on it now that it has lost some of its permeability from compaction through the years. Cofield asked if it works well. Cross said that considering it’s 13 years old it has worked well. Cofield asked how to fix the water sitting on it. Cross and Heard said that at some point it will need to be taken up and cleaned up and replaced and put fresh gravel to give it more space for stormwater. Webb asked what the parking surface life expectancy was. Murray asked if the town has gotten any complaints from stormwater runoff from their driveway that is not functioning at 100%. Cross said that because the Town does not slope toward Duck Road so it’s hard to monitor that issue, but if you don’t maintain that concrete section by vacuuming, it will not work well. Murray pointed out that the lifespan of a pervious parking area is not as limited by the performance of the product but by its usage by the vehicles. Webb also said that traditional concrete or asphalt as well would have needed to be replaced. Cross pointed out that while she agreed that traditional asphalt has a life span of 20 years and concrete has a lifespan of up to 50 years, gravel will always need to be supplemented. Murray asked if the Town has seen deterioration of pervious concrete over time. Cross pointed out that a few areas in the Waterfront Shops have seen cracking and breaking down. Webb asked about the Lowes parking lot. Cross answered that it is pervious concrete and because of how large their parking lot is they probably have something in their contract that requires annual or bi-annual maintenance. Cofield pointed out how there is a stretch near Snow Geese South where you can see the porous concrete and how it has to be vacuumed. Cross pointed out that they have used pervious concrete in certain areas along Duck Trail for stormwater purposes because it is ADA accessible.

Cofield commented that enforcement in Duck tends to be complaint driven and does not believe that violations being only complaint driven is a good enough solution. Murray disagreed and indicated he believes that property owners in the Town of Duck are very engaged when it comes to things that they don’t like. Murray believes it is an effective way and it’s been working with other ordinances in the past. Murray says that if it is a consensus of the Board that complaint driven enforcement is a problem then that is outside the scope of this text amendment. Blakaitis questioned how you know if your neighbor has a problem. Heard let him know that the Town will likely get a call about run off, regardless of complainant knowing about any recorded document, and the Town will take a deeper look into the issue with recorded documents in mind. Cross gave examples of complaints that have been received at the Town recently and how the Town resolves these complaints quickly. Cross stated that the Town provides a variety of ways for people to reach appropriate parties and allows folks to make complaints anonymously. Murray believes community members rely on their resources and are quick to communicate their issues regardless of knowing if it is a violation. Webb mentioned how people don’t read the fine print when buying property and that this will cause an issue. Cross agreed and noted the frequent change in ownership also causes issues as previous owners may change things. Murray agreed and explained how

people buying expensive houses want them to be the way they want. Murray has not had any instances where someone has allowed an innovative system of any sort to fail and cause their neighbor a problem to the point that Murray has had to go rectify it. He has almost daily experience working with staff to ensure systems are installed to manufacturer's instructions and hasn't seen any fail, noting their performance is far better than gravel, which we allow as 100% permeable. Webb is not saying we shouldn't do it because people won't realize they are responsible for it, rather the Town needs to realize that owners aren't aware of this responsibility they have. Murray said that if the Board doesn't think the current enforcement is sufficient, then they can put it to a vote if needed. Blakaitis agreed that you can only go so far with the language on how to enforce it. Wetzel is content with the current enforcement policies as well. Murray believes the consensus is still represented in the proposed draft ordinance changes reviewed in this evening's meeting. Murray asked if the Board would like to keep open the discussion open or move on to other suggestions.

Webb believed that there should be a cap on how much of a lot can be covered by things that are considered to be permeable. Murray mentioned that, though it is not contained in this ordinance, two ways lot coverage is capped are a total built upon area percentage and relying on the 15% requirement of vegetative canopy to help mitigate total development of entire lot coverage. He said it's not unreasonable to revisit these standards and look at setbacks adjustment of permeable surfaces because the staff is likely going to incorporate changes associated with the NC General Statutes. Recognizing that the permeability of the product itself will not last forever, Cofield questioned what percentage, 60%, 70%, or 100%, is acceptable. Murray explained that he understands that both Webb and Cofield feel that the biggest issue is reducing the percentage reduction. Wetzel says that he is not sure what the solution to the problem is because we as a Town have not seen it yet. He hypothesized that if his neighbor wants to cut down on maintenance cost would like to lay down turf, yet the Town is potentially saying no you can't do that because you might exceed the percentage of coverage. But from an aesthetic it would look better in the back yard instead of just ignoring it and letting the yard be overgrown. Wetzel said that we should proceed with caution until you have someone coming forward whom is at their 30% and currently has the 15% vegetative coverage, then the state law would allow them to use the other 55% to cover with turf according to the possibility of the law passing. Wetzel is comfortable leaving it at 100%. Murray questioned if Wetzel and Blakaitis were comfortable leaving the 100% allowance. Both members agreed and Murray also agreed that he is comfortable with it being 100% as he has seen it perform better than bare sand at instillation and in 10 years if it is performing better than he doesn't see the concern in it. Murray said that reducing the percentage doesn't go directly to the problem which is limiting the total amount of development or storm water risk if there is deterioration of the product.

Murray asked if the staff has enough of a consensus to move forward with the editing. Cross summarized what she had so far, consensus for putting a cap on the amount of permeable surface is 3:2 against; adding recordation requirements for #6 & #7; #6 cleaning up wording for consistency in terminology. Cross mentioned that it may be best to define permeable, porous, and pervious in the ordinance at some point as well. Murray asked what section she would add those definitions into. Cross informed him that she would seek Heard's advice on the location as if you

put it in the back people probably won't look for it. Heard added that they would get with Mike Robinson again for the appropriateness of the definitions. Heard said they could probably get rid of one of the terms entirely and that adding the definition in the #6 would help with the intended idea of things. Cross added the either/or reference in #6 to do similarly in #7.

Cross questioned that they haven't touched on Town Engineer Mike Robinson's comment about certifying to a certain design storm level. Murray mentioned a concern in the email that a permeable system may be 100% permeable for a 1.5 inch rainfall but may not be 100% permeable for a 6-inch rainfall. He suggested adding certification for a 10 year 2 hour storm event by a NC licensed engineer or by manufacturer specifications. Wetzel commented that he was unsure what a 10-year 2-hour storm event means. Murray believed that it means that you would get 6 inches of rainfall in 2 hours. He noted that currently the Town standard is 1.5 inches of rainfall, the first flush that carries the highest pollutant load. Murray is comfortable going to 6 inches depending on what Mike indicates if its reasonable based on the speck of the pavers when they are newly installed. Board members all agreed that they are unsure what is the best standard. Webb advised that it may be best to see what Robinson recommends. Heard commented that the staff would speak with Robinson on the matter.

Cross questioned if anyone would get an engineer to do it or just follow through with the manufacturer's specifications. Cofield commented that a manufacturer's specification is not as strong as an engineer's certification. Heard agreed that getting an engineer certification is a step up, the counterpoint is that it is expensive and may take months. Heard commented that when people are coming to an end of a project and the town is holding the CO waiting for an engineer may cause a difficult balancing act. Heard mentioned that this may be why the wording choice is the way it is, but noted there are other communities require an engineer's certification and it is certainly something Duck could do. The Board members discussed the pros and cons of allowing manufacturer's specifications in #6 and/or #7. Murray mentioned that engineers certify things at a higher level than the manufacturers specification because they are certifying the assembly of the product. Cofield noted that there are many manufacturers out there and they all don't have or require the same specifications. Cross explained that staff would ensure that the Town has specifications for the pavers and that they meet the installation requirements. Murray added that manufacturers can not advertise false specifications or "approved by engineers" if it is not properly done. Webb agreed that it would be beneficial for homeowners to know that the Town is serious about the issue of proper maintenance. Consensus was to remove homeowner certification from #6. Wetzel said that it would be beneficial to state that the engineer has certified that it is 100% pervious material and installed properly. Murray then questioned whether engineer certification is sufficient. Cross added that they could state "such materials must be designed and certified 100% pervious by a NC license engineer with a maintenance plan." Murray questioned if the language needed to be in the ordinance because if there's ever a dispute between the town and the engineer the engineer would win because he is licensed professional. Heard agreed that would be the case. Webb asked how often issues come up with engineers on projects. Cross mentioned that it's a rare factor and Heard agreed that unless it would come up that the engineer did not address something they were supposed to. The Town only verifies that certain specs were checked. Cross stated that new wording will be added to #6 and updates will be available for the next meeting.

## **TRAINING/EDUCATION**

### *Trend Report for Planners: Housing challenges and solutions*

Heard presented the packet that was given to the Board with housing challenges throughout not only the country but also with the Town of Duck. The packet it highlighted issues in communities with housing shortages, pricing, and cost increase of construction and rising interest rates. Heard talked about properties being purchased by investors, which drives up the housing market. Once rented, the housing seems to be a better investment compared to stocks. Developers have learned that better profit can be made on building a large house compared to small house. There are few developers building low-income housing for communities, often non-profits take part in this development. Low-income housing is not often provided in our area. Another issue is the aging housing stock, which can lead to homes being torn down or requiring major renovations. Local governments try to help by providing low interest rates or designating areas to be used for low to medium income housing. Zoning amendments could also encourage increased density or allow “tiny homes.” Other ideas include allowing for accessory dwelling units to be automatically approved based on an approved design. Communities could also assist in investing in water and sewer infrastructure which could allow for higher density. Finally, communities could establish land banks, usually a non-profit is involved, and a developer develops the houses that are less expensive to build.

Murray asked what the percentage of new construction is for ADUs. Heard and Cross said it was less than 10% since the ordinance was adopted. Murray said that they could maybe revisit that ordinance for couple reasons one being that when it was developed the fear of them becoming Airbnb, and the issue of not being able to regulate what type of rental with in them. Murray has seen locally a “cooling” of Airbnb’s in the area and that it may be interesting to incentivize the option of long-term rental over short term. Heard said it was worth running by the town attorney and seeing if there a way was to regulate it. Murray asked if you could use a special use permit. Heard informed him that the Town could not do that.

## **APPROVAL OF MINUTES**

### **Minutes from the June 12, 2024, Meeting**

Cofield motioned to approve the minutes from June 12, 2024 as presented. Blakatis seconded. Motion carried 5-0.

## **STAFF COMMENTS**

Heard mentioned that last Town Council meeting included a presentation from VHB with the results and studies for the west side trail. VHB is putting the final touches on the study document and the staff hopes to present to the Planning Board and open a discussion on it and investigate the recommendations from it. Heard said they will wait until they have the full study before presenting it. Heard added the only project currently is the retaining wall north of Tuckahoe.

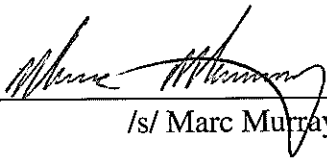
**BOARD COMMENTS**

None.

**ADJOURNMENT**

Murray moved to adjourn the meeting.

The meeting was adjourned by consensus of the Board members at 6:59 p.m.

Approved:  \_\_\_\_\_  
/s/ Marc Murray, Chairman