

**TOWN OF DUCK  
PLANNING BOARD  
MID-MONTH MEETING  
January 22, 2020**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, January 22, 2020.

Present were: Chair Joe Blakaitis, Vice Chair James Cofield, Marc Murray, Tim McKeithan, and Randy Morton.

Absent: None.

Also present were: Director of Community Development Joe Heard, Council Liaison Sandy Whitman, and Permit Coordinator Sandy Cross.

Absent: None.

Others Present: Philip Ruckle, Savannah Newbern, Jay Blose, Karen Blose, and Olin Finch.

Chair Blakaitis called to order the Mid-Month Meeting of the Planning Board for January 22, 2020 at 6:41 p.m.

Director Heard introduced Town Intern Savannah Newbern to the Planning Board and audience.

**OLD BUSINESS**

**Review of Dare County Flood Maps & Flood Damage Prevention Ordinance**

Chair Blakaitis welcomed the newest Planning Board Member Randy Morton adding that it is nice to have him on the Board.

Director Heard stated that this project has been one that has been worked on for a long time and is finally to the point where FEMA has completed their review and now the Town needs to take action. He pointed out that there are two items, with one being the new Dare County flood maps. He explained that these are the maps that FEMA has studied, modeled and came up with, addressed comments and appeals that were submitted by property owners and other interest groups and made warranted changes after their staff reviewed them. He stated that they gave the Town staff a final set of maps and if the Town is to remain in the National Flood Insurance Program, the maps will need to be adopted. He noted that they are not perfect maps and are actually far from it for the Outer Banks. He pointed out that Currituck County is one of the most recent counties to adopt their maps and they faced some similar issues because of the predictive models that were used.

Director Heard stated that the Town presently has 397 properties within the high velocity V zones that are located along the oceanfront and in close proximity to the ocean. He pointed out that is being reduced to 255 or a 36% reduction in the number of properties. He added that

because the zone narrowed, there are some instances where the new V-zone does not include the actual oceanfront structure, which is unusual. This situation is typically found on several larger lots or lots with significant depth. He stated that the vast majority of oceanfront residences are within the V-zone, but the quirk is that the flood zone applies to the structure. He added that if a V zone is on the property but does not include the house, then the homeowner is not subject to it.

Director Heard stated that the A flood zone presently applies to many more properties in Town. This zone is proposed to decrease from 882 to 187 properties, which is a 79% reduction. He pointed out that in those cases, they are shifting from an A-zone to an X-zone, where there are no elevation requirements in that someone can construct improvements right on the ground. He stated that in an A-zone, there is an elevation requirement and living areas have to be above a certain elevation with fill or pilings.

Member McKeithan asked if the homes that went from a V-zone to an A-zone were already added into the 882 total or if the 882 was in addition to the other homes. Director Heard stated that 882 is the current total and does not include the additional homes. Member McKeithan pointed out that the percentage is even worse when factoring in the additional homes. Director Heard clarified that they are included in the 187 A zone properties, but not in the original 882.

Vice Chair Cofield asked about flood insurance requirements. Director Heard stated that there are different requirements. He explained that anyone that has a mortgage, the financial institution that holds the mortgage requires the homeowner to maintain flood insurance if they are in a V or A zone. He added that there may be instances where it is needed for a homeowner in an X zone, but according to FEMA it would not be required. He noted that it is one of the main concerns driving the proposal for the flood damage prevention ordinance.

Chair Blakaitis asked if the Board should review the changes that the Town made. Director Heard stated that it can be done first. He stated that it would cover why FEMA, the State Department of Emergency Management, Dare County and the towns are recommending the types of changes in the ordinance. He noted that there are many properties in the new X zones for which the Town has documented flooding with two to three feet of standing water after storms. He added that there are hundreds of them and there is a concern that several things could occur. He explained that someone in an X zone could potentially build at grade and be within their rights to do that if the ordinance standards remain the same. He noted that many of the areas are ones that have flooded while there are others that may be prone to flooding.

Director Heard stated that the concerns are that a property owner will be doing something that will cause damage or become unsafe. He stated that another concern is dealing with insurance as the people in X zones will see savings in their flood insurance rates. He stated that the challenge is if someone who is not as familiar with how things work can buy a property and may opt to not carry flood insurance at all in an X zone. He reminded the Board that the homeowner is not typically required to carry it. He added that insurance in X zones cost less than \$500 per year for flood insurance, which is not a substantial amount.

Member Murray thought the insurance rates are much higher in the V zones. Director Heard noted that he is only discussing X zones. Member Murray noted that the Town has statistics of structures that are coming in and out of flood zones and Director Heard had noticed flooding in a

certain number of properties. He asked if there is any documentation of properties that the Town had noticed flooding that are moving to the X zone. Director Heard stated that one of the maps in front of the Board shows homes with one to three feet of flooding in certain models. Member Murray wondered if it can be compared since the Town has documented it. Vice Chair Cofield stated that his brother's house on East Bias Lane apparently has a lower elevation and during Hurricane Matthew there was 14 inches of water in the street and in his yard. Member Murray stated that he is curious if staff had those statistics. Director Heard stated that staff does not have it mapped to include individual properties. However, staff could point out more general areas, using the west side of Sanderling as an example.

Director Heard noted that a lot of areas will not show up on the map since the flooding is due to a rain event. Vice Chair Cofield noted that the Georgetown Sands subdivision gets a lot of flooding from rain events. Member Murray agreed, adding that he wants a list of properties that flood to compare with properties that are becoming X zone properties. Director Heard explained that it would be difficult for staff to produce anything accurate as staff does not have that kind of data on flooded areas.

Vice Chair Cofield asked if there is a listing of properties that are not in a flood zone that flooded after Hurricane Matthew. Director Heard stated that staff has a general map that has been produced. He stated that it shows the extent of flooding in certain areas. He added that staff is hoping to continue it using the Town drone in the future after storms in order to better document the extent of the flooding.

Director Heard stated that another concern is if someone chooses to drop flood insurance. He stated that the problem with that is that when maps change in the future and if the homeowner tried to buy flood insurance at that point, it will be at a substantially higher cost. He noted that it is not something that most people are aware of when making that decision so if the Town can do things to educate people and prevent them from doing things that will put them in higher categories for insurance, it would be good.

Vice Chair Cofield asked, for flood insurance purposes, if flooding had a differentiation between ocean surge flooding and rainwater flooding. Director Heard stated that he is not aware of any difference in terms of policy coverage.

Director Heard stated that the final impact is community wide as far as the Town's participation in the Community Rating System program. He stated that the Town has taken a lot of good steps in recent years to try to do everything possible to increase the score in the CRS program which in turn, reduces insurance rates not just for homeowners in the A and B flood zones, but for everyone. He stated that if there are a lot of homes in Duck that are flooding, it would negatively impact the Town's rating.

Director Heard stated that there have been 30 months to look at the issue and all the planners on the Outer Banks took the lead on it and have done an admirable job in bringing in other perspectives and interests into the conversation over time. He stated that they discussed different things that can be done to mitigate some of the challenges, adding that the Outer Banks Homebuilders Association, the Outer Banks Association of Realtors, surveyors and engineers were all included in the discussion. He noted that at the Board's next meeting, there will most

likely be representatives from some of those organizations to participate in the discussion. He added that the insurance industry and financial industry were included as well in order to obtain a complete picture of the impacts and show them the concerns that are out there. He stated that staff expected a more confrontational conversation, but found it interesting how everyone seems to understand the issues and has been on board with a lot of the concepts that will be discussed.

Director Heard stated that he is proposing a variety of changes with a draft ordinance in the Board's packet for their review. He noted that staff tried to simplify things by narrowing down the changes to blue, which are the model ordinance revisions and red, which are the Town of Duck revisions. He explained that the blue changes are things that came from FEMA and the State Department of Public Safety, who operates the flood program. He added that they developed the model ordinance that includes a lot of changes; some of which the Town has to make and some that are optional.

Chair Blakaitis understood that the model ordinance in blue was submitted by FEMA and cannot be changed. He asked why there are some options in there. Director Heard stated that FEMA had said that they are the options. He added that if the Board chooses the more restrictive options in this case, more points can be earned for the Town's CRS rating. He noted that there are costs and impacts to the decisions made.

Director Heard explained that unless it is noted as optional, the Town is required to make those changes in blue. He noted that there are things in the ordinance that are not relevant to the Outer Banks and the Town of Duck such as riverine districts. He stated that the Outer Banks does not have those, but Duck is required to keep it in the model ordinance.

Vice Chair Cofield stated that he read through the model ordinance. He asked if Director Heard can give the Board a summary of what the Board's objectives are in making the changes as well as by category. Director Heard stated that he will. He explained that the items in red are changes proposed by Town staff and Dare County, which are changes that most of the communities are making.

Member McKeithan noted that in blue it stated that the overall recommendations or directives are coming from FEMA. He clarified that the items in blue is a combination of FEMA and the North Carolina Department of Public Safety. He asked if it is FEMA at the State level. Director Heard stated that they work hand in hand, but technically it is the State. He added that a lot of the information came from FEMA as far as changes. He noted that there are representatives from both of the organizations involved and staff has worked more closely with the State representatives, but FEMA representatives have also attended the meetings and talked with staff.

Chair Blakaitis asked if the main goal of the Board is to review all of the red print in the model ordinance. Director Heard stated that the Board needs to review anything in red print as well as anything that is marked optional. Director Heard and the Planning Board members went on to review the draft ordinance together. Director Heard explained that the objective for the ordinance with the main concept is that certain standards are not just being applied in the A, E and V zones, but expanding to include any areas that are under a certain established elevation, even in X zones.

Chair Blakaitis asked what is optional with regard to the Area of Future-Conditions Flood Hazard. He asked if it meant striking it. Director Heard stated that it is a different type of zone. Member Murray didn't think it is needed. Chair Blakaitis asked if it could be something that is stricken from the model ordinance. Member Murray asked if it is kept in the ordinance, the Town will receive the points. Director Heard didn't think it would. Chair Blakaitis asked if it should be stricken from the ordinance. Director Heard stated that it can.

Chair Blakaitis understood that the Board is reviewing everything in red. He asked the Board to make sure they are happy with things as he doesn't think the Board wants to go back and discuss it a second time. He stated that if a Board member has a problem with anything in red, it should be discussed now in order to correct the issue. Member Morton thought the Board will only go back if something further down reflects back on something in another section of the ordinance. Chair Blakaitis agreed. Director Heard thought there may also be instances where more information will be needed.

Vice Chair Cofield asked if the Board is at this meeting to understand everything with regard to the model flood ordinance or if they are also making decisions. Director Heard stated that he would like to get out of the meeting developing a draft ordinance that will be brought back to the Board at their February meeting for consideration to forward to Town Council.

Member McKeithan asked if "Development Activity" should be in red. Director Heard stated that it is not as the definition differs from elsewhere in the Town Code. He stated that for the purposes of this ordinance and how it was applied, it is in blue as the definition is what FEMA gave the Town.

Member Murray clarified that "coastal high hazard area" is interchangeable with the Ocean Erodible Area language. Permit Coordinator Cross stated that it encompasses both the V zone and the area to the extent of the ocean erodible area. Member Murray thought Ocean Erodible Area can be put in parentheses after coastal high hazard area for clarity. Director Heard stated that coastal high hazard area is defined as including the ocean erodible area. He thought references to the V zone can be stricken from the ordinance to simplify things.

Chair Blakaitis asked when the Board discusses raising and lowering houses and abiding in the new zones, it will affect the Town's building height or how it is measured. Director Heard stated that it will not. He explained that the Town has purposefully included in the definition of building height, provisions so that homeowners are not be penalized for being required to elevate their home. Chair Blakaitis clarified that if it needs to be changed, it will not be changing the height of 35 feet but changing how it is measured and where it is measured from. Director Heard stated he is correct.

Vice Chair Cofield inquired if the Board would be receptive to an owner doing that even though it was not required. He asked what would happen if a homeowner wants to build up to an extra five feet. Director Heard stated that they will be allowed two feet and if they chose to go higher, it would be on them. He added that the Town will give them the difference to the height that is required and anything above that counts toward the building height. Vice Chair Cofield asked about a homeowner going above the 35 feet but raising the house four feet for protection. He asked if that would be allowed. Director Heard stated that it would be allowed but only have 33

feet in height remaining for the rest of the house. Vice Chair Cofield noted that he is referencing an existing house. Chair Blakaitis stated that it could not be done for an existing house. Director Heard stated that the homeowner may have to seek a special exception.

Member Murray asked if the implications should be held until each section where it is mentioned were discussed. Chair Blakaitis wasn't sure. Member McKeithan thought it should be discussed now. Chair Blakaitis suggested holding off until the Board gets to the sections.

Member Murray asked if in all cases where the Town is now considering the coastal high hazard area with the same consideration that had been considered with the V zone in the current ordinance, there is no area on the new map where an elevation is not given or where the V zone totally is removed. Director Heard didn't think there is any oceanfront area where the V zone is totally removed. Member Murray clarified that that is where they got the FIRM plus 2, which is from the portion of the property listed on the flood map. Director Heard stated he is correct, adding that the V zones still have elevation requirements and the A zones have reduced elevation requirements. Member Murray clarified that staff will be good with making the freeboard above that. Director Heard stated that staff is.

Member Murray noted that the ordinance referenced two feet of freeboard, but the Town also requires two feet free and clear of obstruction. He asked if there needs to be something put in the ordinance about it. Director Heard stated that if the structure is raised two feet for free of obstruction, it meets the requirement in the ordinance. Member Murray disagreed, noting that it won't if the grade starts out lower than the V zone designation. He thought the language should say "whichever is greater" as the two-foot free and clear of obstruction needed to be referenced in the ordinance. Director Heard stated it is two different things, but the ordinance is referencing an overall elevation with regard to the Regulatory Flood Protection Elevation. He added that by raising it two feet to meet the free and clear, a homeowner will still be required to go above. Member Murray stated that the reason he wants "whichever is greater" in the ordinance is because there is a building height implication but thinks it can be fixed in the zoning ordinance. Director Heard stated that the zoning ordinance will address this as well as the free and clear, but the model ordinance will require a homeowner to go up additionally to meet it. Member Murray thought it will still create a problem with the building height.

Member Murray pointed out if an existing house has an enclosure at grade in a flood zone, but is compliant, the homeowner is paying a certain rate for insurance and has an elevation certificate. He asked if the home comes out of the flood zone, they will automatically receive a reduced rate. Permit Coordinator Cross stated that the homeowner will have to talk to their insurance agent to get a reduced rate. Member Murray asked what will happen if an insurance agent tells a homeowner to obtain a revised V zone certificate, which they do, but it is not compliant with the Town's ordinance. Permit Coordinator Cross stated that the ordinance will not rate the homeowner's property, but the flood insurance rate maps will. Member Murray asked what will happen during the Town's CRS audit. He asked if policies that have not been approved will be compared to the Town's records. Permit Coordinator Cross wasn't sure. Member Murray thought the Board needs to know about that because if nonconformities are created that cannot be made to conform without raising the house, it will put a burden on the homeowner. He stated that he wants to make sure that no standard that the Town implements makes it so that people with existing conditions cannot meet the new standard.

Vice Chair Cofield stated that these instances will increase in the future and not decrease, meaning there will be more flooding problems in the future than what's happening today. He thought the Board's approach needs to be one that acknowledges that and allows for the changes. He added that people that don't have to raise their house now to be in a safe area will probably have to do so in the future. He stated that he is concerned that the Town provide that flexibility to allow that to happen. He noted that the instances of flooding will be greater two years from now than they are today.

Chair Blakaitis asked Member Murray how he will make the change to agree with his thoughts. Member Murray wasn't sure how until he receives an answer with regard to the insurance. He noted that prior to the adoption of this ordinance, elevation certificates all had the same information because the square inches of flood vents per square foot are universal state-wide, but now it is changing because the Town is adopting a different elevation standard than the flood map. He wondered what will happen with the two separate groups of elevation certificates that will be out – ones that are completed privately and ones that are completed as part of the development. He added that it seems odd to him that once FEMA starts paying out claims on the ones that are completed privately will not somehow become part of the Town's CRS review. He stated that he sees value in warning new property owners but he also wants to warn the general public that currently have enclosures at or below base flood on the Town's maps that will go into the X zone, but will not be able to be compliant with the Town's requirements in the event they suffer damage and need to complete improvements.

Chair Blakaitis didn't understand how the Town will change that. Member Murray stated that the 10 feet can be lowered to eight feet but isn't sure what the effect on the CRS rating it will have if the Town does it for new construction only. Chair Blakaitis clarified that the Board chose to use 10 feet as a standard. Member Murray stated that it had been suggested. He was curious how many people have enclosures below that. Chair Blakaitis asked why it matters. Member Murray stated that it is because they cannot comply without raising their house or removing their storage room or garage.

Member Murray stated that it can be reduced or have it so that it applies only to new construction. He noted that it is what the 50% rule is designed to do, but it is unfair. Chair Blakaitis noted that the 50% rule covers the entire Town. Member Murray agreed, adding that the Board is changing what it takes to comply. Director Heard stated that in looking at building height, the Town is trying to create an allowance to help with the issue while not penalizing the homeowner. Vice Chair Cofield stated that in looking at elevations in various communities, there are dramatic differences on each street which concerned him.

Chair Blakaitis asked if everything that is highlighted under Substantial Damage should be stricken from the ordinance. Director Heard stated that it will if the Board agrees with staff's assessment, staff would strike everything. Vice Chair Cofield asked if the highlighted section under Substantial Improvement will be stricken. Director Heard stated that it will.

Director Heard noted that the intent of the Elevation Certificate requirement is to catch something through the middle of the construction process as it will be easily correctible at that point. He stated that most commonly, the final elevation certificate is required at the end of

construction but are not always in place. Member Morton noted that the ordinance references that it has to be before framing and rough in inspections. Director Heard stated he is correct. Chair Blakaitis clarified that it is something that was not often needed. Permit Coordinator Cross stated that it will be required for a new house.

Director Heard asked the Board members if they are in agreement that the optional language under Elevation Certificates will remain in the ordinance. Member McKeithan asked about the language regarding failure to submit an under-construction elevation certificate. Director Heard stated that staff will work on tweaking the language in order to outline that it was optional.

Member Murray pointed out that the V zone construction will be changed to coastal high hazard area in the ordinance. He clarified that the form will still be the V zone certification. Permit Coordinator Cross stated he is correct. Chair Blakaitis asked why it is needed. Member Murray didn't think it was needed. Chair Blakaitis and Vice Chair Cofield agreed. It was *consensus* of the Board to strike the optional language in the ordinance.

Chair Blakaitis asked if the draft ordinance will be reviewed in its entirety at this meeting or be discussed at the Board's next meeting. Director Heard stated that he hopes the Board will finish their review at this meeting.

Director Heard noted that on Page 28 of the draft ordinance, staff is not recommending Optional language even though it would give the Town a significant number of CRS points. He explained that it would prohibit fill in the Special Flood Hazard Area. He noted that it can be limited to A zones and still obtain the points, but it seems very assertive for the Town to not allow any fill in the other zones. He added that the Health Department may require 18 inches of fill on a property. It was *consensus* of the Board to strike the optional language.

Member McKeithan suggested striking the language from the draft ordinance concerning annual inspections of enclosed areas. It was *consensus* of the Board to strike the language.

Director Heard suggested striking optional standards limiting enclosures under buildings. It was *consensus* of the Board to strike the language.

Director Heard reviewed Chapter 150.26 Standards for Areas of Shallow Flooding (Zone AO) and Chapter 150.27 Standards for Areas of Shallow Flooding (Zone AH) with the Board. It was *consensus* of the Board to review these sections more closely at their next meeting.

Director Heard noted that he will make the discussed changes and bring the ordinance back to the Board at their February 12, 2020 meeting.

### **STAFF COMMENTS**

Director Heard stated that he will be working on changes to the Town's zoning ordinance per guidance of the School of Government after June, adding that the Town has until January 31, 2021 to complete the changes and have it adopted.

### **BOARD COMMENTS**



Council Liaison Whitman asked when the Planning Board will be holding their mid-month meeting. Chair Blakaitis stated that it will be held on February 26, 2020. He added that he has a conflict on that date and hoped it could be changed to another date.

**ADJOURNMENT**

Vice Chair Cofield moved to adjourn the meeting. Member McKeithan seconded.

Motion carried 5-0.

The time was 9:28 p.m.

Approved: \_\_\_\_\_  
/s/ Joe Blakaitis, Chairman