ORIENTAL PLANNING BOARD MINUTES

Wednesday, January 20, 2021 3:00PM
Oriental Town Hall – 507 Church Street, Oriental, NC

CALL MEETING TO ORDER AND ESTABLISH QUORUM

AT 3:05PM, Chairman Flaherty called the meeting to order, noting that no members were physically present . All members were present by ZOOM as well as the LUA and Commissioner Barrow. The meeting was properly noticed with public availability of joining the meeting as well as the option to email in comments prior to the meeting and text in comments during the meeting. No member of the public chose to attend.

Minutes: Member Willi makes a MOTION to accept the Minutes as presented from October 2020. Member Stone Seconds. There is some discussion concerning wording of the first paragraph explain expiration of USE and nonconformities. LUA Miller will clarify. Member Willi amends the motion to include clarification. Member Stone Seconds. 5-0. (roll call vote as required)

OLD BUSINESS: November 2020 meeting was cancelled. December 2020 meeting had no quorum, and was subsequently cancelled.

NEW BUSINESS

- **Compliance forms for review:** Compliance forms for review: Hardtle (driveway addition 1212 Lupton), Barnes (add porch and deck 508 North), Baldouf (LUP-short term rental in MU-1), Tench (add garage, recombined lots 402 High St), Stribley (new SFR- recombined lots 1425/1427 Seafarer), Marlin (LUP- STR in MU-1406 Broad St), Fisher (removing curb to align driveway with garage-502 S Water St), Norman (507 Mildred, new construction)
- HB 675- houses cannot be restricted by Ordinance to be of a minimum square footage, overhead utilities (existing) cannot be required to be buried as part of new construction, cannot require anything other than NC Building Code to obtain temporary CO, all stamped engineered plans must be reviewed within 2 days, all others within 5 days, minimum size for requiring architectural stamp on plans, Backflow devices to be installed as required (1st time in legislation)
- Land Use Permit for ramp replacing steps- Midyette St. Existing steps must be replaced. Requested ramp instead. Ramp, according to NC Building Code, will encroach on setback by 7 feet, (still 8 feet from ROW). ADA language: (additional information included herein)

Recognizing Conflicts Between Your Zoning Ordinance and the Americans With Disabilities Act (mikameyers.com)"A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." These "policies, practices and procedures" include local zoning ordinances. According to the *Title II Technical Assistance Manual* published by the Department of Justice includes the following commentary:

II-3.6100 General. A public entity *must reasonably modify its policies, practices, or procedures to avoid discrimination.* If the public entity can demonstrate, however, that the modifications would fundamentally alter the nature of its service, program, or activity, it is not required to make the modification.
In order to qualify for a reasonable modification of the zoning ordinance under the ADA, an applicant need not meet the requirements for a variance. Rather, the applicable test is:

- Whether the person to be accommodated has a disability.

-Whether the modification requested is reasonably necessary to accommodate that disability.

-Whether the modification would fundamentally and unreasonably alter the nature or purposes of the zoning ordinance. The burden is on the municipality to prove this would occur.

Few zoning ordinances include procedures for evaluating a request for accommodation under the ADA or FFHA. This leaves zoning administrators and zoning bodies in a quandary between following the requirements of federal law, or the provisions of their own zoning ordinance.

A simple step to cover many situations would be to amend the zoning ordinance to permit the extension of wheelchair ramps and lifts into setback areas. A more comprehensive ordinance could include a procedure for making application for an accommodation under the ADA, assignment of the decision to a zoning official or body such as the Zoning Board of Appeals, and the standards for decision. An ordinance may, in some cases, provide that the accommodation is not transferrable to a new owner, and must be removed if no longer necessary.

For example, it may be a reasonable modification to grant a variance for zoning requirements and setbacks. *In addition, city governments may consider granting exceptions to the enforcement of certain laws as a form of reasonable modification.* 28 C.F.R. §§ 35.130(b)(7) and 35.136.

LUA asks for direction from the Planning Board in making the ramp possible for the resident, noting that we do not usually receive permit apps from this neighborhood and would like to see this practice continue. Also- other ramps on the street, obviously there for some time (not permitted) are much closer, potentially IN the ROW. LUA notes this is a necessity and our inconsistency with federal law, and past precedent of allowing steps to encroach due to Building Code make this a necessary accommodation. Board members Flaherty, Allen, Rahm, Stone concurred. Member Willi abstained from voting. ALSO, the Board would like to somehow put tracking on the fact that it is required to be removed if/when there is no longer a resident that requires the accommodation. LUA will contact attorney for a process.

ADJOURN: Member Stone made a MOTION to adjourn. Vice Chair Rahm seconds. (Vote unanimous by roll call) 5-0. **Next Meeting scheduled for February 17, 2020, 3PM**

Signed:_____

Dick Flaherty, Chairman

Attest:_____

Diane H. Miller, LUA to Board