

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
August 10, 2022**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, August 10, 2022.

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

Absent: None.

Also present: Town Engineer Michael Robinson, Council Liaison Sandy Whitman, Senior Planner Sandy Cross, Planning Consultant Donna Creef, Town Attorney John Leidy and Deputy Town Clerk Kay Nickens.

Others Present: David Klebitz of Bissell Professional Group, Crouse Gray of Gray and Lloyd PC, Tom Steward of Resort Realty, Mark Casten of OBX Architects, and Paul Henriques of PCI Construction.

Chair Cofield called to order the Regular Meeting of the Planning Board for August 10, 2022 at 6:30 p.m.

PUBLIC COMMENTS

Chair Cofield opened the floor for public comments and advised that if any member of the public wishes to speak, they must approach the podium and state their full name and address prior to making their comments. Chair Cofield asked that speakers limit their comments to no more than three minutes and to not approach staff or other speakers while they are speaking at the podium. He also pointed out that comments will be permitted during the meeting, but when making comments, do not make the same comments that have already been stated.

William Gray of 107 Speckle Trout Dr stated that he has been a member of the community for 15 years and holds a background in commercial and residential real estate development. He stated that he would be offering some perspective that he has seen from being involved in the last two years regarding matters concerning the Route 12 shoreline improvement project as well as the application that is being presented to the Planning Board. Mr. Gray encouraged the Planning Board and Town Council to embark on a comprehensive review of the zoning ordinance as there are several vague items that are left up to interpretation which leads to debate. He provided the example of The Promenade being referred to as a “redevelopment”, however “redevelopment” is not in the ordinance and if “redevelopment” is to be used and referenced in any application, it needs to be included in the ordinance to prevent future debate. Mr. Gray pointed out another item that led to debate referenced the dead ends on a drive aisle and the number of parking spaces. He noted that dead ends nor turnarounds are also not defined in the ordinance and is left for staff to interpret. Mr. Gray reemphasized the importance of reviewing the ordinance for clarity. Mr. Gray

went on to address enforcement as what is reviewed by the Planning Board, Town Staff, and the Town Engineer is not what is being constructed. He provided the example of NC Coast as that was a Special Use Permit that featured a ramp that connected the Town boardwalk to the deck on the back of the restaurant. He noted that the as-built survey does not show a ramp and does not know why however currently, there is a tent with tables for seating 24 to 40 people. Mr. Gray stated that the entire site plan for the restaurant showing a total of 38 seats and there are currently 48 total. Additionally, there was a kayak storage area indicated on the site plan but that is not there either. Mr. Gray stated that the current table count exceeds what was approved but there are no provisions or procedures in place for the Town to enforce, and that in the parking calculations for NC Coast, six employees were included in the parking calculations, meaning one parking space for every three employees. He counted ten employees working one evening and asked if having ten employees in the restaurant is a violation of the Special Use Application.

Dick Allebach of 100 Dune Road stated that he has owned his property since 1988 and he has been here since before Duck was incorporated. He stated that he is concerned with some things that have taken place in the Town that are not written in the zoning ordinance and that while there are some cases where exceptions can be made, the Town is making too many exceptions. Mr. Allebach stated that if the Town needs to review the zoning ordinances, that should be done, and suggested that exceptions shouldn't be made for every instance. Mr. Allebach pointed out that his property is cattycornered to Resort Realty and he is amenable to having part of the right-of-way taken to widen Route 12. He stated that he spoke to David Ott from NCDOT and he advised that the Town has the responsibility to do something about Route 12 in that area, not the state. Mr. Allebach said that there should be some discussion about widening the road at least out to and past where it is now, not including the property that belongs to Resort Realty. He noted that he understood that it is possible and might involve taking some property from Resort Realty but it can be done so if it is necessary, it should be done. He pointed out that the road in that area is not the safest and the road should be widened to three lanes so there can be some remediation for the traffic situation and that as a fallback, at the minimum, there should be three lanes that extend to the first parking lot that Resort Realty has asked for in the redevelopment which, he noted, is not a good choice but it is better than the way it is currently.

Dennis Wojcik of 103 Dune Rd stated that he reviewed the submittal and found several issues that needed to be addressed. He stated that the proposal notes that the existing office building will be demolished and added that everything on the site is being demolished and that both the structure and parking areas will be new constructions. Mr. Wojcik pointed out that the proposal indicates that parking will be on the side of the building but 70% of the parking is in the front of the building. He explained that there is a proposal to connect the project to the existing boardwalk and sidewalk but there are no proposed construction plans indicated on the site plan and the plan is considered pedestrian and bicycle friendly however this is not the case as there are no connections proposed for construction to existing pedestrian and cycling walkways. Mr. Wojcik pointed out that there are multiple ingress and egress locations that are proposed which would cause safety hazards for pedestrians and cyclists. He pointed out that an application for a driveway permit has been submitted to NCDOT and is anticipated to be approved as shown however the plan that is submitted violates NCDOT for the location of driveways; if NCDOT approved this plan, NCDOT would be violating their own policy. Mr. Wojcik also noted that the plan proposed to keep the existing parking layout and provide improvements to keep with Town parking standards however

the entire parking lot is revised, and the Northern parking lot is dramatically different. He pointed out that the proposed parking does not conform to Sections 156.112 D(4) and 156.112 B(2). Mr. Wojcik stated that there are handicapped accessible spaces with dedicated routes to the access ramp however that is not the case because to reach the access ramp, one must cross the loading zone. He explained that the loading zone is to provide an open area for safer pedestrian and ADA access but is not true when the loading zone is being utilized. He pointed out that there are two other instances in which the plan references connections to boardwalks and sidewalks, but he does not see this indicated on the site plan. Mr. Wojcik began to comment on the installation of the wastewater system when Chair Cofield advised Mr. Wojcik that his three minutes were up, and he would have an opportunity to comment on this project during the presentation of the proposal.

Maryanne Beard of 114 Dune Road stated that she has been at her residence since 1986 before most all commercial and residential buildings had been constructed. She explained that one the most important things to her is the natural view of the sound as Dune Road has one of the last remaining natural sound views. She is also concerned that the existing building will be demolished and will not be using the existing septic system. Ms. Beard noted that it seems like this is a brand-new build, not a redevelopment, and it should be considered a new build. She pointed out that perhaps a variance is needed for the difference between her adding a back deck to her house or completely redoing what is there in the existing footprint. She also explained that traffic in that area is atrocious; in the afternoon or evening, it is difficult to get out of the street and she often has to travel North to make a U-turn to travel South. Ms. Beard said that a turn lane should be considered and reemphasized that this project is a new build, not a redevelopment, and that there are certain Town and State building codes that are being overlooked.

Chair Cofield called for additional public comments and there were none.

NEW BUSINESS

SUP-22-002 Application by Bissell Professional Group, on behalf of property owner The Promenade at Duck, LLC for a special use permit to redevelop the existing property in the Village Commercial (V-C) district at 1248 Duck Road, PIN 985911761927, as a group development to include a 49-seat restaurant with two (2), two story buildings. Building A will include 1,082 sf of 1st floor retail space and a 2-bedroom accessory dwelling unit on the 2nd floor. Building B will include 998 sf of 1st floor retail space and a 2-bedroom accessory dwelling unit on the 2nd floor. Application of the Village Commercial Development option is requested to reduce the required rear setback requirements.

Planning Consultant Creef stated that this is a Special Use Permit that has been submitted for 1248 Duck Road, also known as The Promenade where the former Resort Realty office is located. She noted that this property is zoned in the Village- Commercial district and it was reviewed under the section of ordinance that pertains to group developments since there is more than one principal-use structure proposed for the site. Additionally, a restaurant is proposed as part of the development, so it is subject to Section 156.128 for eating establishments. Planning Consultant Creef pointed out that Community Development Standards apply, as do the Village Commercial

Development Options apply as the applicant is seeking a reduction in setback which is an option offered under that section of the zoning ordinance.

Planning Consultant Creef advised that this is a Special Use Permit because it is a restaurant and because of that, it triggers certain requirements, but it also makes this project a group development. She stated that the existing structure will be demolished, and three new structures will be going back on the site. She also noted that the site plan that was previously reviewed was not approved by Council however the developer has since made modifications to the site plan to reflect many of the concerns primarily focusing on parking. Planning Consultant Creef explained that at that time, the property owner was seeking a reduction in the parking requirements which is no longer a feature of the new proposal and is an important distinction from the prior plan. She noted that the previous plan had two (2) three-story structures and that has been reduced to a two (2) two-story structures and the three-bedrooms units have been reduced to two-bedroom units; this reduction in the number of bedrooms reduces the number of parking spaces associated with those units. Additionally, the retail space has been decreased in size whereas the restaurant seating count has not changed. She noted that the restaurant is allowed a seasonal increase in seating which is consistent with the zoning ordinance.

Planning Consultant Creef pointed out that the site plan has been submitted to NCDOT and stated that NCDOT is responsible for approving the driveway permit before there is a construction permit. She reminded the Board that if the Special Use Permit and site plan is approved by Council, there will be subsequent review for construction plans regarding specifics of the building.

Planning Consultant Creef also noted that the project has been reviewed by the Town engineer, the fire department, the police department, the water department, and the environmental health department, and has also been approved by CAMA. She stated that the lot coverage is consistent with the standards that are allowed in the V-C zoning district which allows 60% lot coverage; this project proposes 47.3% lot coverage. She stated that they are seeking a rear yard setback reduction which is allowed under the Village Commercial Development Option which establishes a 20-foot rear yard setback. She stated that the applicant is seeking a reduction of ten feet in the rear yard setback which is consistent with the reduction of up to 50% that is allowed in the Village Commercial Development Option. Planning Consultant Creef reiterated that the parking requirement is now 30 parking spaces and there are 30 spaces indicated on the site plan.

Planning Consultant Creef explained that in order to be granted approval for a Special Use Permit under the Village Commercial Development Option has to meet five criteria:

1. The development proposal is consistent with the adopted vision and comprehensive plan for Duck Village;

Staff Response: A detailed analysis of the Land Use Plan and vision is included as Attachment J. It is staff's opinion that the proposal is consistent with the vision statement and the land use plan.

2. The development proposal is consistent with the desired scale, character, and function of Duck Village;

Staff Response: The scale of the proposed buildings are consistent with the gross floor area limitations, the proposed uses are consistent with other uses permitted in the VC district and the development plan is reflects similar characteristics of other commercial group developments along the Currituck Sound on the adjoining site and elsewhere in the VC district.

3. *The property and development proposal contain many of the characteristics established in the 156.065 (E) guidelines;*

Staff Response: The proposed three structures will feature building designs, lighting improvements, and landscaping that will be consistent with the VC zoning regulations for commercial development. The architectural plans have been designed to reflect the Town's commercial building guidelines. The new structures will meet the building height. The retail shops and eating establishment will contribute to the Duck Village vibrancy and ambience.

4. *The requested modifications are the least necessary to accommodate the proposed development and meet the intent of the Village Commercial Development Option;*

Staff response: The requested reductions in the rear yard setback meet the parameters established in 156.065 VCDO.

5. *The requested modifications will not negatively impact adjacent properties or the surrounding area.*

Staff response: The proposal will not introduce any negative impacts on the surrounding properties and provide for future connectivity along the soundfront boardwalk.

Planning Consultant Creef pointed out the comments regarding traffic impacts. There have been lots of comments about traffic impacts. She stated that there may be room for improvement, but she is not sure if that is within the purview of the Town to require those improvements. She stated that there is a pending grant that may help with road improvements and that Senior Planner Cross could better advise on that grant. Planning Consultant Cross stated that it is important to note that NCDOT has reviewed the site plan so NCDOT will have to approve a driveway permit before the final construction permits are issued and the comments from NCDOT are included in staff packets.

Planning Consultant Creef reminded the Board that the developer has revised the project based on concerns expressed by the Planning Board and Council; they reduced retail size, decreased residential apartments, and the number of stories in the structure and no parking reduction is requested. She advised that it is her opinion that this is consistent with the Land Use Plan and there are thirteen draft conditions that Staff has identified.

Chair Cofield pointed out that the Staff Report notes that Town Council rejected the proposal previously, but he wanted to clarify that Planning Board also voted against the proposal. Chair

Cofield also indicated that page three of the Staff Report details the use of pervious pavement used in parking areas, which is not consistent with the site-plan and it should be changed to reflect that the pervious material will be used for parking spaces, not the parking area that would include the driveway. He asked if Staff has met with NCDOT to discuss this proposal specifically. Planning Consultant Creef stated that she had not had direct conversation with David Ott but Senior Planner Cross has included her on email conversations. Senior Planner Cross clarified that there has not been an in-person meeting with NCDOT but they have completed the preliminary review and NCDOT is reluctant to issue a permit in advance of official plans. She stated that their engineers and traffic engineers have reviewed the proposal and she understands that Mr. Klebitz has submitted the application to NCDOT. Senior Planner Cross stated that NCDOT is waiting for final plans and if there are revisions that are requested by Council or with the stormwater review, that is what NCDOT wants to see.

Chair Cofield pointed out the extensive discussion for the lack of and need for a turning lane; he asked if this has been discussed with NCDOT. Senior Planner Cross said that they have not directly inquired with NCDOT but they have consulted with the Town Engineers. She stated that it is possible that the Town can extend the turning lane, but that would be a Town and Council decision accompanied by an associated cost and added that they just received a preliminary cost estimate just for the redesign to make that happen. Senior Planner Cross advised that VHB has also reached out to NCDOT and discussed shifting the crosswalks south to take advantage of the turn- lane taper as a refuge space but they did not recommend that because currently, the proposed crosswalk location has better spacing distance from the next crosswalk to the south at Cook Drive. She explained that the currently proposed location is closer to the Dune Road intersection is a more expected location that would help minimize driver and pedestrian confusion.

Senior Planner Cross stated that there are many factors that go into making decisions regarding the addition of turn lanes. She stated that she talked to the engineers prior to the Planning Board meeting in April about this as it was a concern brought up by Mr. Wojcik. The engineers advised that it is possible to add a turn lane, but it would cost money do so in which case the applicant would not be responsible for since it is in the right-of-way. Senior Planner Cross reiterated that it is possible, but Council would be the deciding factor on whether or not they chose to move forward with the process.

Chair Cofield asked that even though Duck Road is a state road, the Town has the ability to make a turning lane. Senior Planner Cross advised that the Town would have to get approval from NCDOT and reminded the Board that they are already in the process of elevating the road from Resort Realty to Sunset Grille; there is a permit in the works with NCDOT and the Division of Coastal Management. Chair Cofield asked if FEMA was aware that Staff is recommending a project that is so close to the beginning of the BRC project. Senior Planner Cross advised that she did not know if that had any overall bearing on the project, so FEMA is probably not aware.

Chair Cofield pointed out the comments regarding safety and noted that the comments from the Police Chief mentioned that the project does not have any issues from a fire perspective. Chair Cofield asked about the comment made by the Police Chief referring to fire. Senior Planner Cross advised that that was a copy and paste error in the packet and that both Chief Ackerman and Deputy

Chief Batschelet did not have any further comments as this proposal is a reduction from the previous proposal.

Member Morton asked if widening the road would require land to be acquired or is it already wide enough to have it take place? Senior Planner Cross read an email from Chris DeWitt at VHB:

We've taken a look at the existing right-of-way width along with the width required for the proposed improvements, and it appears there is room to shift the sidewalks and other improvements to extend the left turn lane north as we discussed to allow access to the proposed southern entrance to the redeveloped Resort Realty site. It will be a tight fit (likely within inches) but it appears to be workable. Temporary construction easements would need to be adjusted/expanded, and at this stage we can't rule out the potential that additional permanent easements would be required, but that does not appear to be the case on initial review. Most of the "shift" and additional width would need to occur on the east side of the road, where there is more right-of-way width outside of the currently-proposed sidewalk alignment.

Senior Planner Cross advised that they have to shift east to get additional space to expand the turn lane.

Chair Cofield clarified that the preliminary discussion of extending the turn lane was only to the first driveway, not the second. Senior Planner Cross stated that this was correct, and she does not know if there is room for the second driveway. She added that she did not recall that this was not a cause for concern when they met with Mr. Wojcik, and that they did bring up the possibility of relocating the crosswalk but they did not think that was a good idea.

Chair Cofield called for other questions or comments. Vice Chair Blakaitis pointed out that the applicant wrote a summary on the consistency with the Land Use Plan and Town of Duck Vision. He stated that the summary mentions the boardwalk and sidewalk but he was not clear where the boardwalk is mentioned in the Vision Statement. Planning Consultant Creef explained that the Vision Statement refers to pedestrian access, but the applicant would need to specify what he intended by the use of those words. Vice Chair Blakaitis reiterated that the project summary mentioned the boardwalk being consistent with this principle, but he did not know where it is consistent because they made the principle. He asked why the boardwalk is included in the project summary and asked if the applicant would be putting the boardwalk in. Planning Consultant Creef advised that there are conditions for easements for future expansions of the boardwalk but the intent of those easements is not because the applicant will be installing the boardwalk. She advised that the Town has not planned to do construction at this point.

Senior Planner Cross addressed the Duck Vision and pointed out that one of the six criteria is enhanced movability. She read from the statement that Duck is a pedestrian first community that is safe and easy to navigate by walking and cycling. The multi-use trail, sidewalks, soundside boardwalk, and beach provide a variety of ways to explore and discover Duck. Collaboration with various organizations enables us to optimize our traffic flow in our unique seasonal environment. Senior Planner Cross stated that the boardwalk is important in this regard and the easement that

Staff has conditioned in this proposed conditional use permit is for a future connection between where the boardwalk terminates at the Waterfront Shops to Resort Realty and then again from the north side of Resort Realty connecting back to the sidewalks that will be constructed when the road is raised. She explained that this is all intertwined in an effort to make the community and the Village much more walkable and to connect Aqua all the way to Sunset Grille; someone should be able to walk whether its via the sidewalk along NC 12 or the boardwalk as a means to get off the roadway.

Planning Consultant Creef also read from the Vision Statement: “Surrounded by our residential neighborhoods, Duck Village is the heart of Duck. Our collection of small shops, restaurants, offices, parks and boardwalks combine to shape the Duck experience.” She suggested that perhaps this is where Mr. Klebitz got the word “boardwalk” and she would let the applicant speak to those specifics.

Vice Chair Blakaitis clarified that the boardwalk is a future plan. Senior Planner Cross advised that it is a future plan but the Town has to have money to add boardwalk sections. She explained that these are often coordinated with grant money and currently, the Town is in the process of obtaining a grant opportunity for raising the road and for the living shoreline at the Town park. She added that by raising the road and adding a sidewalk to the west side of Duck Road, it makes sense to have that connectivity along the soundside.

Member Murray sought clarification for the Staff condition in which regardless of the Board’s approval, NCDOT will do a full review of the final plan and make their decision based on that review. Planning Consultant Creef stated that was correct and explained that state agencies are hesitant to approve a site plan before the local government approves it and project engineers are hesitant to have the state approve a project before the local government approves it because changes can occur at the state level. She added that NCDOT receives numerous applications that never obtain local approval so NCDOT is trying to make their process more efficient.

Member McKiethan reiterated that Section 156.065 gives up to a 50% reduction in the rear yard setback but the roof eaves project out almost 2.8 feet. He pointed out that Section 156.051 allows roof eaves and overhangs to project out only 12 inches and that if a 12 inch reduction is given on this plan, the applicant still needs an extra 1.5 feet, so they would need over a ten- foot reduction in the rear yard setback and they would be looking at an 11 or 11.5 foot reduction. Planning Consultant Creef stated that she would let Mr. Klebitz speak to this but if this is the case, the building would need to be redesigned. She also pointed out that the existing building is only five feet from the rear property line, so there is an existing setback issue.

James called for any other questions or comments regarding the staff report. He called for the applicant to make their presentation and reminded speakers to state their name and address prior to speaking.

David Klebitz, civil engineer for Bissell Professional Group at 3512 North Croatan Highway in Kitty Hawk stated that the applicants listened to the concerns from the Planning Board, Council, and public and made changes to the proposal. He stated that the three-story structures have been reduced to two-stories, which is a 33% reduction in the number of stories of those two buildings.

Mr. Klebitz added that the total number of bedrooms has been reduced from six to four bedrooms which is a 33% reduction in the number of bedrooms. They have also reduced the residential floor area from 3,360 square feet to 2,336 square feet, which is a 30% reduction and they have reduced the retail floor area from 2,450 square feet to 2,080 square feet which is a 15% reduction in retail space that was previously proposed. Mr. Klebitz pointed out that the residential and retail reductions bring the required parking requirement down to thirty parking spaces which is reflected on the plan and that the previous request for the parking exception is no longer needed. He stated that a dedicated turnaround space has been added to the northern parking area which alleviates the need for vehicles having to back out onto NC- 12 from the northern parking area. Mr. Klebitz explained that the amount of pervious pavement on the proposed site plan has increased from 1,867 square feet to 4,356 square feet which is a 130% increase from the previous plan and more than two times the minimum requirement of the ordinance. He stated that a note has been added giving the public boardwalk extension from the waterfront shops the option to connect near the southwest corner of the proposed restaurant which offers a possible alternative to having to come in over the sound as previously proposed. Mr. Klebitz advised that this is still on the plan, but they have added an additional option for the future boardwalk connection per recommendation from the Town. He noted that the recycling bin previously proposed in the northern parking area has been relocated adjacent to the refuse area dumpster in the southern parking area and a set of roll out trash bins have been added adjacent to the northern building for use by the residential occupant.

Mr. Klebitz stated that the rear setback reduction is still being requested and is allowed by the Village Commercial Development Option and is also within 50% limit prescribed. He stated that during the previous plan review, three members of Town Council specifically stated that they had no issue with the requested setback reduction and no members of Council nor Planning Board expressed concern with the setback reduction.

Mr. Klebitz stated that the greatest concern was the parking reduction which has since been addressed by making changes to the development plan as a whole. The plan requires thirty parking spaces, and thirty spaces are provided so no parking reduction is being requested. Mr. Klebitz added that the second concern pertained to vehicles having to back out onto Duck Road from the northern parking area and in effort to address this concern, the plan has been revised to add a dedicated vehicular turnaround in the northern parking area. He added that the third concern was that the development plan was too dense for the site. Mr. Klebitz stated that in an effort to address this concern, the scale and use of the residential and retail buildings have been reduced by between 15% to 33%. He pointed out that the proposed lot coverage is 47.3% which is considerably less than the 56% lot coverage that currently exists on that site and significantly lower than the 60% lot coverage that is allowed in the Town's ordinance.

Mr. Klebitz stated that this latest plan is consistent with the Town's ordinance with one exception being the rear setback and that the request setback reduction is allowable under the Village Commercial Development Option, and this is also within the 50% prescribed limit. He noted that the reduction was supported by Council and there was no opposition expressed. The plan is consistent with the Town's adopted Land Use Plan as well as the Town of Duck 2027 Vision. He stated that the plan is consistent with other applicable state and county rules as confirmed through

correspondence with related agencies including NC Division of Coastal Management, CAMA, NCDOT, and the Dare County Department of Public Health.

Mr. Klebitz addressed the setback issue and said that his understanding is that historically, the setback is measured to the outer walls of the building. He also stated that he understands that there are allowances for eaves as well and noted that this is a conceptual development plan intended to get an overall approval for the project. He reminded the Board that the plans being presented are not the final plans and the final building plans have to be reviewed by Town Staff and the Building Inspector so if there is an issue with the eaves, it would be addressed at that time. Mr. Klebitz also noted that it was not the intent of the plans to show that the roof eaves are non-compliant; the intent was to illustrate that the building walls and setbacks to those building walls do meet the requested setback reduction. He also clarified that the building setbacks are normally measured to the wall and then there is an exception to the eaves. Senior Planner Cross confirmed that and stated that there would be an exception that measures to the building, and you can have up to a 12- inch eave into the setback. She explained that if you have an eave greater than 12- inches, then the additional eave would be counted as part of the required setback.

Mr. Klebitz stated that the client and architect would not have any issue reducing the eaves to meet the 12- inch provision of the ordinance. He reiterated that the dimensions provided on the plan were to the outside walls and the plans are purely conceptual.

Member Murray clarified that the boardwalk that is labeled “Elevated Public Boardwalk” is the boardwalk and decking that is being proposed as part of this current project; Mr. Klebitz confirmed that is correct. Member Murray pointed out the language used for the easement and extension areas and also noted that the eight-foot easement on north side of the property shows an alternate access way by the developer. He asked if the developer would be open to installing that and if the road project would need to happen prior to any connection in that area. Mr. Klebitz stated that this was correct and the discussion between the applicant and Town Staff has included the premise that the Town would extend the boardwalks to each end of what is being proposed on the current plan. He explained that the reason the plans indicated “or by the developer” is so that if for some reason the Town is not able to extend the boardwalk, then the property owner can do so.

Chair Cofield called for any other questions and comments. Chair Cofield pointed out page two of the proposal that details the Village Commercial Development Option Criteria and the consistency with the Land Use Plan and adopted Vision. He stated that there were several concerns regarding safety and asked how the safety concerns in the proposal are consistent with Land Use Plan and the Town’s adopted Vision. Mr. Klebitz explained that the safety issues he recalled surrounded the northern parking area and vehicles having to possibly back out onto Duck Road. He stated that this issue has been resolved by providing a designated turnaround space.

Chair Cofield asked how the lack of a turning lane fits into the concept of a safe egress. Mr. Klebitz stated that he is not able to speak to that and that is an issue for traffic engineers, NCDOT, and maybe engineers already hired by the Town of Duck. Chair Cofield stated that based on that, Mr. Klebitz could not state with certainty that the safety concern has been met by the proposal. Mr. Klebitz requested that Chair Cofield presented the specific statement in the Land Use Plan that

talks to safety and how the proposal is not compliant; Chair Cofield stated that he will do that later in the discussion.

Chair Cofield pointed out page three of the proposal that states the proposal is consistent with the desired scale, character, and function of Duck Village and asked how many apartments exist above retail establishments in Duck Village. Mr. Klebitz stated that he did not know the number, but he was aware that there are apartments. Chair Cofield asked about the number of bedrooms in each unit. Senior Planner Cross stated that Staff conducted this research following the last meeting and can provide that information and noted that there are some three-bedroom apartments.

Chair Cofield pointed out the requested modification being the least necessary to accommodate the proposed development and meet the intent of the Commercial Development Option. He asked Mr. Klebitz if he thought that by reducing the number of apartments that the proposal would meet the intent of the Village Commercial Development Option. Mr. Klebitz stated that they are efficiently utilizing the site as a whole to meet the developers needs and stay within the Village Commercial Development Option.

Chair Cofield pointed out that the requested modification will not negatively impact adjacent properties or the surrounding area but there have been numerous comments made in regard to the negative impact on surrounding properties. He asked if Mr. Klebitz was certain that this proposal would not negatively impact adjacent properties. Mr. Klebitz stated that this was correct.

Chair Cofield pointed out the setback reduction and the facts to be considered including the sound front nature of the development and the consistency with existing developments within the Town Commercial Boardwalk District. He asked if that was a key aspect, why hasn't the developer proposed paying for the boardwalk extension. Mr. Klebitz stated that this was discussed in the beginning of the project that this would be an agreement between the developer and the Town. Chair Cofield clarified that this is being presented for the recommendation of approval by the Planning Board and asked that if the boardwalk is a key aspect, why hasn't the developer committed to extending the boardwalk. Mr. Klebitz stated that the developer has committed to the extension, thus the provided easements. He added that the developer is committed to making the boardwalk happen through the provision of the easements that are being provided. Chair Cofield noted that he has not seen it in this proposal and he does not see that indicated on the plan.

Chair Cofield called for any other comments from the proposal team.

Crouse Gray, attorney for the applicant of Gray and Lloyd at 3120 N Croatan Hwy spoke regarding the roof overhang encroachment. He said that this was not intended, and the architect has stated that they will meet the ten-foot requirement with no more than 12- inches of overhang. Attorney Gray pointed out that the plan clearly shows that the developer is proposing to construct the boardwalk to the west of the site and the boardwalk that is to the north will be discussed with the Town at a later date, but an easement will be dedicated, and the plan shows that there will be an easement, however the exact location and configuration has to be determined by the Town. Attorney Gray pointed out how the connection to the boardwalk that is in front of the Waterfront Shops ends before the applicant's property line. He emphasized that if and when there is some agreement that would allow the boardwalk to extend, the applicant is willing to grant and will grant

easements either along the edge of the right-of-way, the sound, or other mechanisms to get to it. He stated that the applicant has committed to the boardwalk, and it is indicated on the plan. Attorney Gray stated that they have no issue if that agreement is included in the approval, but he cannot draft an easement until he has specific information.

Attorney Gray stated that the Town has submitted a proposed temporary easement so that the construction can occur to raise the road and he had requested a copy of the plat showing where the easement is located. Attorney Gray noted that he has prepared a revised draft of the proposed easement and provided it to the Town attorneys for review. He said that this shows that the applicant is willing to grant the Town what it needs for the shoreline project and will do so with dedicating easements for the boardwalk. Attorney Gray explained that the granting of the easements is a good thing for the applicant because he has a retail space and a restaurant, so the applicants want people to be able to walk around.

Chair Cofield questioned why doesn't the applicant commit to building the boardwalk? Attorney Gray stated that the applicant has committed to building the boardwalk that is on the west side. Chair Cofield sought clarification on whether or not the applicant is committing to build the boardwalk extension. Attorney Gray stated that they are not committing at this time to build a boardwalk from where their boardwalk will end to where the one presently ends in front of the Waterfront Shops because that is someone else's property and more importantly, they do not know how the boardwalk is going to be designed.

Chair Cofield pointed out Member McKeithan's question and what would be changed in order to make the accommodation for the easements and setback requirements. Attorney Gray stated that the building setbacks would not change but they could change the roof overhang and also pointed out that the architect is present to answer any questions. Chair Cofield pointed out that the applicant is requesting something that is not allowed in the setback and if a change is being made, that change is not being looked at by the Board.

Senior Planner Cross stated that this change is a minor revision that could easily be agreed upon and revised prior to going to Council. She added that this is a two-foot overhang versus a 12-inch overhang which is permissible in the ordinance. Senior Planner Cross noted that the applicants have expressed that they would be able to make that revision without any hesitation.

Attorney Gray stated that he understood the question being asked by Chair Cofield and requested that the architect respond to the question. Chair Cofield stated that this is Attorney Gray's proposal. Member Murray asked if Member McKeithan would like for the architect to answer his question. Member McKeithan stated that he did not; he understands that if the proposal is approved, a modification to reduce the 2.8 foot overhang eave will occur.

Attorney Gray expressed that they do not have any problem adding that condition and approval that specifies the overhang may not exceed what is contained within the ordinance and they must present a plan showing this correction. Member McKeithan stated that this was an acceptable solution.

Chair Cofield called for any other questions or comments. Hearing none, he opened the floor for public comments.

William Gray of 107 Speckle Trout stated that he was speaking as the President of the Duck Ridge Shores Civic League. He provided a letter prepared by the Board of Directors and approved by the Homeowners Association outlining the reasons that they oppose the proposed application. Mr. Gray stated that they are happy with the revisions made to the project and they want to see the site be developed, but it needs to be a smart development. He pointed out that the applicants are asking the Board to approve a plan that NCDOT Engineer David Ott has said the driveway entrance to the north does not meet the North Carolina regulations as it interferes with the functional area of an intersection; this also violates Section 156.112 of the Town Ordinance by being within 80 feet of the intersection with Dune Road. Mr. Gray said that they are asking the Board to not approve the application or at least ask the applicant to remove the northern driveway. He noted that the Zoning Ordinance also states that all parking areas on commercial lots shall be connected unless the Town determines that topography of other natural features prevents it. Mr. Gray pointed out that he visited the site and reviewed the site plan and there are no natural features that prevent the two parking lots being connected; this is a violation of the ordinance. He stated that the large drain field and drain field reserve are keeping the parking lot from being connected which is being requested for the special use of the restaurant. Mr. Gray reminded the Board that in addition to the setback request, there is also a special use request for a group-development. Mr. Gray pointed out that the applicant is asking for two driveway entrances whereas the ordinance states to minimize the number of driveways accessing Route 12. He states that the Board should require the applicants to revisit the engineering and only have one driveway entrance at the south. Mr. Gray requested the addition of the turn lane as this will be the only development in this stretch of town that does not have a center turn lane which will lead to traffic congestion and explained that the Town has the ability to impose conditions as such on Special Use Permits. Mr. Gray stated that their concern with the boardwalk extension that is being proposed to the west side will not be built, similar to what happened with the ramp that was proposed but not built at NC Coast. He noted that it is important that with the widening of the road and the sidewalks being constructed on the west side of Route 12, that pedestrians coming from the north can come and use that boardwalk to connect back to the shops otherwise those pedestrians will be walking through the parking lot. Mr. Gray stated that he does not think the Town should be building the boardwalk for the benefit of the developer. He addressed the fencing and screening to keep people from trespassing onto the Duck Ridge property which is immediately to the north and he encouraged that this be a condition built at the time in which development is occurring.

Chair Cofield called for any other comments.

Dick Allebach of 100 Dune Road stated that the area immediately adjacent to Resort Realty was once used for jet skis. He stated that he is concerned with the use of the property because once you allow two retail spaces, the Town will allow what they allow to have in those spaces. He stated that there needs to be a screen between the site property and their area at because he sees people accessing that area from the parking lot on the north part of the Resort Realty property. Mr. Allebach expressed that if something is not done, once that property is developed, and the Town

works on the Shoreline Project, people will know that the area is accessible. He pointed out that the Town is doing a good job as far as proposing what they are going to be putting in as far as screening is concerned but once people see that property with a kayak rack, they are going to be using it. He stated that he has seen people pull catamarans out of the sound at that location so in his opinion, there are going to be people who try to access the sound from that area. Mr. Allebach noted that he is asking to have something put in place to discourage people from accessing that property. He is not aware of any parking concern and noted that the Town and property owner can discuss signage and enforcement, but people are going to be made aware of this property and use it to access the sound. Mr. Allebach requested that conditions be included into the project prior to approval.

Chair Cofield called for any other comments.

Dennis Wojcik of 103 Dune Road clarified that when he met with Senior Planner Cross and Community Planner Gould, they reviewed his concerns to go through the plan. He clarified that he reviewed the plans and looked at the plans that have been put together for the Town project along Duck Road and it was his opinion that a left- turn lane could fit at the southern entrance and that it would be too problematic to fit it into the northern lot. He specified that his analysis of the plans led him to believe that it was not possible to add the turn lane and expressed the importance of having the turn lane at the southern entrance. Mr. Wojcik pointed out the situation being created throughout Town regarding driveways and backups and the Town Ordinance states that parking lots should be connected to provide circulation within a site to prevent backups. He stated that he rides his bike throughout Town and notices many instances where cars are stopped and blocking the bike lane because they cannot get in and have nowhere to go. Mr. Wojcik expressed that the layout was poorly done, and he agrees with everything as stated by Mr. Gray.

Chari Cofield called for any other comments.

Scott Dayton of 110 Dune Road stated that he supported everything as said by Mr. Gray. Mr. Dayton pointed out that some of the questions and comments made during the presentation leads him to believe that this project has not fully been thought through with the words “smart” and “safe” in mind. He requested that the applicant go back to address the issues relative to safety that have been brought up during the meeting.

Chair Cofield called for any other comments.

Dennis Wojcik of 103 Dune Road stated that David Ott from NCDOT has indicated that the driveway is in the functional area as confirmed to him by David Ott in a telephone conversation. Mr. Wojcik noted that David Ott confirmed that the northern driveway is in the functional area and their policy states that measures should be taken to keep a driveway from being in the functional area. He stated that when asked why tentative approval was given by NCDOT, David Ott explained that approval is not that significant, and a more detailed review would be completed in the future.

MaryAnn Beard of 114 Dune Road pointed out the setback variance for this proposal and if it is consistent with what was done with the other shops along the waterfront and what is the specific

reason for the requested variance. She is concerned with sound-front erosion in relation to the setback since storm events cause trees, bushes, and land to be washed away resulting in less land.

Crouse Gray, applicant Attorney from 102 Victoria Court Point Harbor, NC, reiterated that this proposal is a redevelopment and while that word is not defined in the ordinance, he sought definitions from four different dictionaries. Attorney Gray stated that the term “redeveloped” means the action or process of developing something again or differently with the point being that if it is a redevelopment, then the standards of what has to be done are slightly different. Attorney Gray stated that the client will agree to add a fence to the northern property line as part of the approval conditions and reiterated the fact that the configuration of the parking spaces are the only things changing. He reminded the Board that the project cannot get approval from NCDOT until they receive approval from the Town.

Chair Cofield stated that this project is not a redevelopment and pointed out that delivery trucks utilize turning lanes to make deliveries to Duck businesses. He asked where deliveries for the proposed development would park given the lack of the turning lane and pointed out the safety concern of not having a turning lane.

Attorney Gray stated that trucks will have to use the parking lot entrance. Mr. Klebitz pointed out the comprehensive traffic and pedestrian study conducted by VHB and explained that the study determined that center turn lanes are problematic with pedestrian safety.

Chair Cofield pointed out that Sunset Grille has two means of ingress and egress which allows for trucks to enter and exit the lot. He reiterated that large trucks are parked in turning lanes throughout Duck Village because they are unable to enter parking lots via the driveways. He asked how deliveries from large trucks can occur if they cannot use the turn lane.

Member Murray asked Chair Cofield if those locations in which deliveries are being made by trucks using the center turn lane have compliant loading zones. Chair Cofield stated that he did not know. Member Murray clarified that if a property has a compliant loading zone, trucks will not have to park in the center of the road.

Mr. Klebitz stated that he had two conversations with NCDOT engineer David Ott in which David Ott stated that there were no concerns from him nor the Division Traffic Engineer with both the prior project proposal as well as the new project proposal. Mr. Klebitz stated that he has emails documenting what David Ott stated to the Town.

Chair Cofield called for other comments.

Rick Fagerston of 101 Dune Road stated that the original parking lots constructed in 1986 had a connector between the two lots.

Ron Forlano of 1221 Duck Road stated that he is in favor of the project but not as it is currently being proposed. He expressed that he has faith in staff and the Planning Board and commended the Board on the changes that have occurred within the town over the last 20 years. He commented that traffic comes along with the growth of the Town, and it only occurs 90 days out of the year and afterwards, Duck Road is empty. Mr. Forlano stated that all concerns with the proposal are

valid except for that of the traffic and that something needs to be done with the eyesore which would ultimately benefit the Town with sales tax and building permit revenue.

Chair Cofield called for other comments. Hearing none, public comments were closed.

Member Murray stated that he was relatively satisfied with the changes made and that a condition should be added to the approval for the proposed fence on the northern property line. He noted that it makes sense to have the walkway being constructed on their property tie into the eventual raised-road and that the easements are sufficient for the areas off of the applicant's property. Member Murray stated that he had no issues with any of the proposed staff conditions, especially the eighth condition which covers the extent to which the Board can address the safety issue of the northern driveway. Member Murray also stated that this proposal is consistent with the Land Use Plan.

Member McKeithan noted that he agrees with Member Murray. He explained that his biggest concern has been the traffic and expressed his understanding of not being able to obtain NCDOT approval prior to Board approval. Member McKeithan reiterated that the Town of Duck and NCDOT will reach an agreement before the project is finally approved and if that is the case, then he approves the project as it stands.

Vice Chair Blakaitis stated that he agrees with Mr. Forlano's comments and agrees with members of the Board but he does not agree with approving the proposal as there are too many things that need to be addressed. He pointed out that he felt that this proposal would not be approved by Council as there are things that they will need to address. Vice Chair Blakaitis noted that NCDOT is a problem, but it can be addressed. He stated that he does not like the uncertainties with the walkway plans. He stated that the proposal is not consistent with the Land Use Plan and expressed that he would like to see the project finish but as it is proposed currently, it is too large for the Town and he cannot support the proposal.

Member Morton reminded the Board that this is a conceptual proposal to move forward and not the final product. He stated that he agrees with the conditions laid out by Staff as well as Member Murray's comments regarding the fence condition. Member Morton pointed out that in order to access the boardwalk at the Waterfront Shops, people have to start in a parking lot and noted that trucks making deliveries to Tommy's Market will back in to the lot and then pull out to leave and the proposal has a designated area for trucks to use for deliveries on site. He explained that building in Duck is tight and parking is tight, and as long as there is ongoing development in Corolla, there will be cars that pass through Duck and the Board should not keep Duck from growing since Corolla is growing. He emphasized that the project would be a benefit to the Town and he is in favor of it moving forward.

Chair Cofield stated that he has concerns with the fact that the proposal does not meet the Land Use Plan. He pointed out the section of the Land Use Plan that discusses Land Use Accountability and stated that this project does not do that as it does not look at public safety risks. Chair Cofield stated that Duck Road is a real problem for the project and the solution is not there whether it is a NCDOT problem or a Town problem. Chair Cofield pointed out the section regarding Infrastructure Carrying Capacity and stated that this proposal increases impacts instead of minimizing them. Chair Cofield pointed out the section of the Land Use Plan that details

minimizing environmental impacts and noted that this does not minimize environmental impacts as it increases the risk of public health, safety, and welfare making it not consistent with the carrying capacity of the land. Chair Cofield noted the section that speaks to supporting legislation that provides the local government with tools to protect and enhance the scale and character of Development in Duck and stated that this proposal is not of the scale that protects development in Duck. Chair Cofield pointed out that the Land Use Plan details an efficient transportation system along NC-12 as a two-lane facility with turn lanes as needed. He noted that in the Board discussion, it was the consensus that a turn lane is needed and therefore the proposed development is not consistent with the Land Use Plan. Chair Cofield stated that the Land Use Plan details the implementation of best practices in public safety, beach safety, and risk management and noted that this project does not lead to the implementation of best practices for public safety. Chair Cofield read the section pertaining to the interpretation of transportation maps and noted that transportation in Duck is congested due to through traffic on NC-12 which is heaviest during tourist season and that this proposal will increase traffic congestion due to the ingress and egress issues as well as not having a turn lane. He stated that this does not meet the Land Use Plan. Chair Cofield pointed out the section of the Land Use Plan detailing balancing the needs of the community and explained that the nearest homeowners association and residents have voiced their concerns over the proposal. He pointed out the section speaking to threats for the Town and noted that traffic congestion is listed as a threat to the Town. He added that this proposed development increases the threat of traffic congestion. Chair Cofield pointed out that one of the challenges for Duck is traffic congestion and lack of planning could complicate the future. He noted that in addition to the various questions he asked about the proposal he wanted to be very specific in detailing how this proposal does not address the needs and issues for the Town that are clearly defined in the Land Use Plan and stated that this project is not consistent with the Land Use Plan.

Chair Cofield called for any other questions or comments.

Member Murray agreed that traffic is a serious issue and agreed that they do not want to create traffic policy and traffic decisions that exacerbate the issue, but the Board cannot hold each applicant for a new project this is extremely consistent with the Land Use Plan with the responsibility for solving the Town's ongoing traffic problems. He added that to say that the proposal is inconsistent with the Land Use Plan because of the traffic issue would require data, decisions, or recommendations from VHB. Member Murray stated that the Board is dealing with that issue by conditioning that they require NCDOT and for each inconsistency pointed out, Staff and the applicant have provided a thorough analysis providing a logical perspective. Member Murray reiterated that the proposal is consistent with the Land Use Plan.

Member Morton stated that there is already a traffic problem in Duck; this proposal does not create a problem. He noted that three lanes will not solve the traffic problem and it is going to exist as long as Corolla is developing. Member Morton stated that what the applicant has put together is an enhancement for the Town.

Member McKeithan reiterated that this is a good proposal, and the applicant has made changes that were requested at the prior hearing. He added that most concerns are with traffic, but the Board cannot penalize the applicant because of the existing traffic problem in Duck. Member McKeithan

stated that the applicant is willing to work with the Town and they have complied with everything that was requested. He stated that he is not happy with the traffic, but the proposal is sound and will contribute positively to life in Duck.

Chair Cofield requested a motion after hearing discussion.

Mr. Allebach questioned the voting procedure and if the motion would include conditions. Chair Cofield stated that Member Murray would make the appropriate motion.

Vice Chair Blakaitis pointed out that he agrees with Chair Cofield and stated that traffic was not the only concern discussed by Chair Cofield. He added that there are too many items left for Council to resolve and it would be a mistake to send it to Council.

Member Murray made a motion to approve the Special Use Permit as proposed with the following conditions: Staff conditions 1-13 and the additional conditions:

1. A fence to be constructed as proposed on the site plan on the Northern border of the property adjacent to the Duck Ridge Village Shores Civic League Property.
2. The applicant agrees to fund and build the proposed walkway on the north and west end of property currently labeled as “Proposed 8-foot wide access easement for public boardwalk extension by Town of Duck or alternate access way by developer”.
3. The roof overhangs be limited per the Town of Duck Ordinance Section 156.051.
4. The two easements noted for the possible future extension to connect to the boardwalk at the Waterfront Shops as labeled in the wetland area and labeled at the southwest corner of the property be included in the proposal.

Vice Chair Blakaitis asked Member Murray to clarify if he wanted the applicant to build the boardwalk in an area where they do not want to build it. Member Murray stated that the conditions are very clear and reiterated that they will build the boardwalk on their property and easements will be conditioned. Chair Blakaitis clarified that the boardwalk will not connect to Blue Point; Member Murray stated that this was correct.

Member Morton seconded the motion.

Chair Cofield stated that the motion has been made and properly seconded and called for questions on the motion. Hearing none, Chair Cofield called for a vote. Member Murray, Member Morton, and Member McKeithan voted in favor. Chair Cofield and Vice Chair Blakaitis voted against the motion.

Motion carried 3-2.

Discussion/consideration of a Special Planning Board meeting to tour the beach in preparation for zoning text amendment discussions related to Chapter 94 and Section 156.124 concerning dune walkover regulations.

Senior Planner Cross stated that Council did take into consideration the Planning Board Transmittal Letter and it was sent back to the Planning Board. She stated that she would like to

schedule a Special Meeting with the Board to tour the beach to look at revisiting the regulatory standards. Senior Planner Cross stated that she would like to have the Staff Report for the September 14th meeting. The Board agreed to meet at the Public Safety building on August 19 at 7:30 a.m. Town Attorney John Leidy reminded the board that this will be a Special Meeting and pointed out that while there is a quorum, no action can be taken as this is an informational gathering.

APPROVAL OF MINUTES

Minutes from the July 13, 2022, Regular Meeting

Member Murray moved to approve the minutes as presented. Vice Chair Cofield seconded.

Motion carried 5-0.

STAFF COMMENTS

Summary of August 3, 2022 Regular Town Council Meeting

Senior Planner Cross gave a short summary of the recent Town Council meeting.

BOARD COMMENTS

None.

ADJOURNMENT

Chair Cofield declared the meeting adjourned.

The time was 9:06 p.m.

Approved: _____
/s/ James Cofield, Chairman