

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
September 14, 2022**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, September 14, 2022.

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

Absent: Marc Murray.

Also present: Council Liaison Sandy Whitman, Senior Planner Sandy Cross, Director of Community Development Joe Heard, Community Planner Jim Gould, and Deputy Town Clerk Kay Nickens.

Others Present: Bob Hornick of the Brough Law Firm, Andrew Meredith, Marty Barnette

Chair Cofield called to order the Regular Meeting of the Planning Board for September 14, 2022 at 6:30 p.m.

PUBLIC COMMENTS

None.

NEW BUSINESS

SUP-22-003 Application by Barnette Integrated Land Development, on behalf of property owner Andrew Meredith, for a special use permit to establish a duplex in the Neighborhood Commercial (C-1) district at 1448 Duck Road. The proposal would involve changing the use of the first-floor unit from retail to residential use. No changes to the existing site or building exterior are proposed.

Chair Cofield clarified that Member Murray is not present as he is sick and unable to attend.

Director Heard informed the Board that the applicant is looking for a change of use and that a recent text amendment was approved by Council to allow duplexes in the Commercial- Residential District. He reminded the Board that the application being reviewed by the Board is to amend the Conditional Use Permit that was granted in 2014. Director Heard explained the history of the structure, noting the current structure replaced several older buildings that were part of the water sports business as a two- story building, with retail on the first floor and an apartment on the second floor. He added that the applicant is looking to change the retail space to a three- bedroom unit and explained that when the site was redeveloped, it was done so to be in compliance with current Town standards so there are no physical changes proposed nor required by the Town, nor is there any need for additional parking since the space has more parking than what is required. Director

Heard noted that the applicant was in the process of obtaining approval from Dare County Environmental Health and this permit would be required as a condition prior to any development.

Director Heard stated that the use meets the following criteria:

1. The use meets all required conditions and specifications of the ordinance.

- *The subject property is 34,613 square feet in size, greater than the minimum of 25,000 square feet necessary to establish a duplex on the property.*
- *The removal of several prior buildings and construction of the two-story, mixed-use building received conditional use permit approval in 2014 (CUP 14-001). An as-built survey completed in 2016 shows the property in compliance with the approved site plan and conditions of CUP 14-001.*
- *As the proposed change of use does not require any site improvements, the existing, compliant site improvements are sufficient to accommodate the proposed duplex.*
- *Staff finds that the application complies with Finding 1.*

2. The use does not materially endanger the public health or safety.

- *The proposed change of use would not create any issues or involve any site improvements that would change the function of the site or endanger the public health or safety.*
- *The Dare County Environmental Health Department must grant approval of the change of use and note that the current septic system is sufficient to accommodate the proposed three bedroom apartment.*
- *The conversion of the first-floor unit to residential use is expected to lower the amount of vehicular traffic entering and exiting the site. This reduction will create a safer situation for those traveling past the property.*
- *Staff finds that the application complies with Finding 2.*

3. The use will not substantially injure the value of adjoining property, unless the use is a public necessity.

- *As the proposed change is relatively minor in nature, it is unlikely that it would have any significant impact on the value of adjoining properties, either positive or negative.*
- *As mentioned in the previous section, the conversion of the first-floor unit to residential use is expected to lower the amount of vehicular traffic entering and exiting the site. This change would seem to be positive, particularly for the residential properties in close proximity to the subject property.*
- *Staff finds that the application complies with Finding 3.*

4. The use will be in harmony with the area in which it is located and be in general conformity with the Comprehensive & CAMA Land Use Plan.

- *A more detailed analysis of compliance with the Town's adopted Comprehensive & CAMA Land Use Plan can be found in the following section of the staff report.*
- *The proposed change to a residential use is compatible with the surrounding area as most of the area is zoned and used residentially.*
- *Staff finds that the application complies with Finding 4.*

In staff's opinion, the proposed special use permit for a residential duplex is appropriately designed and scaled, does not involve additional site development, and will not negatively impact the surrounding area. Therefore, the proposal appears to comply with the noted goal and policy objectives from the Comprehensive & Land Use Plan.

As the required findings are met in staff's opinion, staff is recommending APPROVAL of this special exception application and asks the Board members to consider the following conditions:

1. The applicant must obtain approval from the Dare County Environmental Health Department that the current septic system can accommodate the proposed change of use.
2. The applicant must submit required application materials and obtain a building permit for any interior improvements associated with conversion of the retail space to an apartment.
3. A final inspection must be successfully completed and Certificate of Occupancy obtained before occupation of the apartment is allowed.

Chair Cofield invited the applicant to speak to the Board. Client Attorney Bob Hornick of the Brough Law Firm located at 1526 East Franklin Street Suite 200 in Chapel Hill, NC stated that he was representing the owner of 1448 Duck Road, Andrew Meredith. He added that there was not much more that he needed to add to Director Heard's presentation as he covered most of the information in the application. Attorney Hornick explained that the text amendment was presented to the Planning Board and Council; that amendment was approved and that is what led to the applicant applying for the amendment to the existing Special Use Permit.

Chair Cofield called for questions from the Board. There were none. Chair Cofield called for Mr. Meredith or Marty Barnette to add to the comments. There were none.

Vice Chair Blakaitis asked if the owner ever wanted to change the residential unit back to a retail space, would it require a change in the Special Use Permit. Director Heard explained that it would not need a Special Use Permit if it complies with Town standards.

Chair Cofield called for other questions and Board discussion. There was no discussion.

Member McKeithan made a motion to recommend approval of the application with the attached three conditions.

Chair Cofield stated that he wanted to amend the motion to state that the applicant must obtain approval from the Dare County Environmental Health Department to be consistent with what staff recommended. Member McKeithan accepted the amendment.

Vice Chair Blakaitis seconded the motion. Member Morton questioned the conditions included in the motion. Chair Cofield clarified the condition regarding Dare County Environmental Health approval and called for any questions on the motion. There were none.

Chair Cofield called for a vote. All present members voted in favor of the motion. Chair Cofield stated that the motion passes 4-0.

Text Amendment Ordinance 22-09: Regulatory Standards for Dune Walkover Structures

Senior Planner stated that this was brought to the attention of the Board via a text amendment concerning dune requirements as they relate to setback exceptions. Senior Planner Cross reminded the Board that there were inconsistencies in the ordinance where setback encroachments are permitted provided they are no wider than four feet and no more than twelve inches above grade. She stated that our dune management and regulatory standards for structures in the primary frontal dunes has a requirement that dune walkways and access ways be 18 inches above the dune and no more than 30 inches. This was an inconsistency that was addressed as a result of that discussion however there was some question as to whether the 18 inches above the dune was necessary and whether it was applicable to all of the ocean front since we have varying dune heights. Senior Planner Cross explained that there was a special Planning Board meeting on August 19 to conduct site visits on the beach to view the varying conditions throughout Town beaches.

Senior Planner Cross stated that Chapter 94 of the Town Code speaks to beach and dune management and explained that the code specifies that dune walkover structures shall be constructed without a roof or walls, shall be elevated 18 inches above the dune, and shall extend east of the seaward vegetation line. She added that the purpose of Chapter 94 is to preserve and enhance the natural function, aesthetic value, and protective qualities of the Town's barrier beach and dune system. Senior Planner Cross explained that it establishes regulations to permit reasonable uses and intrusions into the dune system and the ocean beach consistent with sound beach and dune conservation practices. She added that there is a section in the zoning ordinance in subsection 156.124 which speaks to structures within the primary and frontal dunes and regulatory standards for dune walkovers. Senior Planner Cross stated that this particular section of the code says that the underside of the dune walkover structure across the primary or frontal dune shall be a minimum of 18 inches or a maximum of 30 inches above grade. She added that while these requirements are slightly different, they have the same basic premise with regard to the 18 inches above the dune requirement.

Senior Planner Cross explained that in 2009 the Town adopted the Beach Management Ordinance that speaks to defining the dune system, access ways, what's acceptable on the beach with regard to tents and driving, etcetera. She added that in 2012, Hurricane Sandy caused a devastating impact in which ten oceanfront pools were lost and property owners were then looking to rebuild those pools on dune systems that were no longer there. Staff approached Council with their concerns about the dune system and Council asked Staff to research ways to further regulate dune systems during the 2013 Council Retreat. One of the things considered was a standard being used by Pine Island to help rein in some of the dune walkways that were twenty feet out on to the beach and twenty feet above the berm or wet sand beach. Pine Island's regulations included 18 inches which is where Staff derived the Town's 18-inch requirement. Senior Planner Cross added that CAMA regulations were also reviewed, and they did not specify a required elevation for walkovers but rather included subjective language that can be interpreted in a number of ways which has led to the Town implementing certain regulations. Senior Planner Cross stated that beach nourishment in 2017 left a rather large beach and hardened structures on the dune were prohibited because they can cause damage to the dunes. She added that this is a very defined area, and you can only have

beach matting. Senior Planner Cross described storm events that have had impacts to the beach and instances where dune decks were being considered for possible condemnation. She reminded the Board that the beach is very dynamic and explained that in 2013 when dune deck and walkway elevations were being considered, the 18-inch requirement was to keep the dune walkway from being covered with sand and to mitigate the impact of the walkway on the dune. She stated that the main question becomes how the Town can separate out different areas of the beach that change on a daily basis. Senior Planner Cross added that from a staff perspective, it is going to be very difficult to differentiate standards for different areas so staff recommends that if there is to be a change that it applies across the board to include all areas of the beach. She explained that the Town's annual profile surveys and Rapid Beach Assessments are used to monitor changes to the dunes. The Town manages its own CAMA program in cooperation with the State so Staff is regularly involved in any oceanfront permits. When regulations from subsection 156.124 were implemented, staff started meeting contractors prior to work starting on walkways to advise on zoning regulations. She noted that there is a benefit to the owners to maintain their walkway without having to unbury it. She stated that she has enforced CAMA regulations for fifteen years working to protect the integrity of the dunes. She stated that if the Board wanted to change the elevation requirements, then Staff would recommend that the change is applied across the board, excluding the nourishment area. Senior Planner Cross added that Staff did review other communities and aside from the Town of Duck and Town of Southern Shores, no other communities have regulatory standards for the elevation of dune walkways or decks.

Member Morton asked what other communities do when sand builds up on top of walkways. Senior Planner Cross stated that she was unaware and they may be allowed to be dug out but her concern is a level of protection consistent with the purpose in Chapter 94 and a similar purpose in subsection 156.124 to protect the dune system and further explained scenarios in which the application of the 18 inch standard would be applied.

Senior Planner Cross stated that an email was sent by Mark Leahy to some, not all members of the Planning Board as well as some of the Town Council, and she would read it into the record.

James and Joe:

The town has been permitting beach access stairs under the residential code vs. the commercial code that actually applies.

Senior Planner Cross advised that she would interject and comment on the email as she reads it. She stated that Mr. Leahy is correct when it comes to community access ways. Senior Planner Cross stated that the town's building inspector did research and was advised by the Department of Insurance that if a community access way serves more than one person, the access way will need to meet the commercial standard. She explained that most of the building inspectors on the Outer Banks have maintained a level of reasonableness when it comes to oceanfront development on the dune. She stated that if you are building a set of steps at a residence you need to have stair treads and risers but when building steps on the beach, they are not typically required as they can cause more damage to the dunes than if there are no risers. As a standard, they have never required risers for beach stairs, nor have they required the residential code requirement for rails provided the walkway was not more than 30 inches above grade.

As a result their underlying assumptions are flawed. The correct code has a maximum riser height of 7" which extends the stairs further and obviously requires more risers.

Senior Planner Cross stated that she thinks you can have between a seven to 8 and a quarter inch riser required but she was not positive.

For instance, Staff has told me that after 12 risers on the beach side the applicant can turn the stairs perpendicular to the dune. That's only 7' of rise in a 12 rise stair which will not get close to the bottom of the dune.

That is not what the ordinance says nor was that communicated to Mr. Leahy. If there is more than a twelve foot vertical rise, not risers, that equates to about 16 steps, then you are required to put a turn in and that is something required in the regulatory standards since 2013. She reminded the Board that she works with contractors frequently and very rarely are they not able to get steps down to the beach in 16 steps.

Also, they propose making the walkway surface clear the dune by 18". By code any walking surface 18" or greater above the grade requires 42" guard rails.

Senior Planner Cross stated that she cannot speak to guardrails as that concerns the building code but she thinks that he is referring to commercial situations. She explained that if the rails are no more than 30- inches above grade in a residential setting, rails are not needed.

Also, doing the math: 18" above dune, then 2x8 construction and 2x4 deck boards =27.25" above the dune so not only will it require guards, it will require 4 risers to get back down to the dune surface with both guards and graspable handrails at the stairs.

One of the Staff comments that rings in my ears is their stated desire to limit the amount of construction on the dune, which I support. But by proposing an 18" clearance over the dune the result will be more construction. Our focus should be to get the terminal run of stairs to land at the nearest point practical on the dune and limit the walkway as much as possible and not create a stair at the end of the walkway back down to the dune top.

Senior Planner Cross stated that she agrees but the 18 inches is not creating this problem.

I support a community beach access standard and a primer (template) for property owners and communities.

Senior Planner Cross stated that Staff has been working with Mr. Leahy on this already.

I would be glad to continue to work with the town Staff on this endeavor, but in the meantime our town should utilize, apply and enforce the correct code.

Senior Planner Cross reemphasized the Mr. Leahy is interpreting the code incorrectly and reminded the Board that since the building inspector spoke with the Department of Insurance, all community walkways will be enforced to the commercial standard. Community access ways are different than residential walkways and she noted that while it may not have been Mr. Leahy's intent to distinguish the two, there is a distinct difference between commercial and residential accessways.

Chair Cofield stated that one of his questions was answered regarding the standards of other towns. Senior planner Cross stated that her expectation is that all towns probably rely on CAMA.

Chair Cofield called for questions or comments from anyone in the audience.

Terry Cullen of 122 Martin Lane stated that she has been following this since the incorporation of the Town. She stated that she has been here since 1985 and she has seen both the changes and what has been done in Sanderling to build up the dunes as private homeowners. She reminded the Board that the dunes are deeper and higher than anywhere else in the Town. She stated that she does not have an issue with the 18- inch standard but rather how they have been advised a number of different things over the years when there is an accretion of sand, which she stated was great, but since beach nourishment, they have gained four feet of sand in height and they cannot access the beach with the current directions that are in place. She stated that they were never allowed to dig out or clear sand in the beginning. She added that she currently has three structures underneath her current dune walkover so what is happening is as the sand comes over, it either exposes one of those structures underneath or if they lose sand, the structure is exposed and it becomes dangerous for them to walk down to the beach. As a result of this, there are flags on every step down to the beach. They have lost 13 steps with sand over the last two years. She stated that this is an entirely different situation than what is being dealt with now but she wanted to say if there is any wiggle room at all it has to be in saying to the homeowners that they can be allowed to shovel some sand to create a safe passage to the beach.

Chair Cofield asked Ms. Cullen what she thinks the remedy is. She stated that the dunes are 40 feet deep which is a great deal of sandy to go through for an event. She explained that it is difficult to get down to the beach and because her boardwalk is a private boardwalk, she is asking for consideration of these rules so she can shovel it out Ms. Cullen noted that she met with Andy Garman previously and with the rules that were in place, a bulldozer would have come into the 40-foot deep dune system to install pilings however Mr. Garman advised that this was not possible and granted them an exception, which is what she is looking for today. She stated that 18-inches is fine but the dunes vary throughout the Town.

Dennis Zenger of 118 Spyglass Rd stated that he agrees with the Ms. Cullen. His observation is that his walkway to the ocean has been increasingly covered in the past twelve months or so and just being able to dig out the sand as it drifts and allowing passage would be a great benefit for everybody that lives in the community. He stated that the current structure was installed after the last beach nourishment, and was done to code, however the beach has shifted and has started to cover up part of the top of the access. He said that he can only imagine with the new nourishment that is coming up in November, that the situation will worsen.

Tony Parisi of 1540 Duck Road stated that he has two questions. He asked if the commercial standards start applying to walkways, what does that mean exactly and how will that affect the reconstruction of a walkway that belongs to a property owner's association.

Senior Planner Cross explained that the commercial standard has different height requirements for rails. She noted that residential rail requirements are 34-36 inches whereas commercial requirements are 38-42 inches. The Town only requires top, middle, and bottom rails provided the walkway is not more than 30 inches above grade; this requirement is not relevant to commercial accessways.

Mr. Parisi questioned clearing sand in the beach nourishment area since mats are only allowed such as the mat at Martin Lane in Sanderling. He stated that over the past year since the mat was installed, it has been covered by more than 18 inches of sand however they are unable to clear more than 18 inches of sand. Mr. Parisi explained that if they were able to temporarily remove the beach access matting to remove the sand and then place the matting back on top of the sand, this would help to protect the dune and give people access. He questioned what will happen in the beach nourishment area with the matting that is used.

Senior Planner Cross explained that there are five communities that have beach access matting that place their beach mats at the beginning of the season and remove it at the end of the season. She stated that her policy has always been 18 inches, per CAMA regulations and that she regularly meets with contractors to determine walkway specifics. It is important to weigh the challenges of building a walkway up and over a dune rather than digging through the dune as creating a cut-through yields a direct opening for the ocean to come through.

Senior Planner Cross noted that the nourishment area is different and while sand builds up, they have built a 20 foot tall by 20 foot wide dune that is desperately needed in some areas. If it is not done, there will be residential losses at some point. She added that Town Council has made the decision that they don't want hardened structures in the nourishment area because it could potentially cause damage. She explained that sand fencing is cut and removed from the nourishment area when it starts to dangle because it can cause damage. Senior Planner Cross advised that she is unaware of what will happen in the nourishment area after nourishment but should something occur, that is when a conversation will be had and depending on the scenario, various remedies may need to be considered.

Senior Planner Cross addressed digging on the dune and stated that it is important to weigh the line between damaging the integrity of the dune and impacting the dune system. She explained that the solution to dealing with a great deal of sand is maintaining the walkway and planning to build up and over because if the walkover continues to be covered by sand, then that is going to continue happening. Matting can be rolled up and hauled off, however, and there are other alternatives to wood matting.

Member Morton spoke to the beach matting at Osprey and Sea Ridge. He explained that the matting goes down during the season and is removed at the end of the season. Additionally, if there is a nor'easter that will cause sand to cover the matting, the matting is removed. Member Morton added that those respective areas have been cut out as the northern beaches have with the beach

nourishment and explained that there had been significant dune and beach loss. He added that the Town has contributed to allowing access to come down to the beach. Senior Planner Cross noted that this is part of the CAMA major permit for beach nourishment to maintain and repair the dune which is why they are allowed to grade that.

Ms. Cullen questioned if she is allowed to grade at all. Senior Planner Cross responded that she is not in the nourishment area.

Ms. Cullen stated that they are happy for the accretion of sand however the interpretation of the Town's rules have been so different about what is permitted and what is not permitted. She expressed that she had given up because she was advised she could not even sweep the walkover unless it was down to the bottom of the beach. Ms. Cullen stated that it is unfair that they have the situation where we have been building a dune system and the homeowners deserve some flexibility to have some relief so there are no structures underneath the sand. She asked Member Morton if the dunes are flat in his area and if they have a hand and rail system. Member Morton stated that the dunes are pretty steep and that after beach nourishment, the beach was flat and there were mats going out to the beach. He stated that the hand rail system and the matting goes down to just the toe of the dune.

Mr. Zenger provided an observation with beach matting in that there is so much traffic on the matting that it eventually packs down and makes for a more controlled slope down the hill. He added that at the beginning of the season, especially after a spring storm, the dune was much steeper but the mat starts to settle down so it creates more of a walkable surface to go down from the platform at the top of the dune.

Chair Cofield asked if the 18- inch standard applies at the highest point of the dune, the beginning on the east side where the stairs go down, or is it on the west side. Senior Planner Cross illustrated a dune structure with a walkway and advised that where that measurement is taken is something brought that Member McKeithan brought up as well and needs to be addressed. Chair Cofield illustrated his concept regarding walkover structures. Senior Planner Cross reiterated that the beach is dynamic and the measurements will vary because it is constantly changing.

Senior Planner Cross advised that the purpose of these regulations is to preserve the dune system and the natural environment. She added that if Planning Board feels the need to modify the elevation, it can be done, however defining specific areas with their own respective measurement is going to be difficult because the beach is dynamic.

Chair Cofield called for any other questions. There were none. He stated that the real important phrase in Senior Planner Cross's comments is that the beach is dynamic which shows the need for flexibility. The beach might change from June to October in one area but additionally, there is a six-mile stretch of beach and each area is different. Chair Cofield pointed out that his dune structure has not changed in 35 years so he does not see a need to implement an 18- inch minimum standard when the top of his dune has not changed whereas other areas have changed so significantly. He added that he was leaning toward giving the same recognition for this that the Town has already implemented with respect to beach nourishment. The town recognizes the dynamic changes along the six- mile stretch of beach and that is why beach nourishment was

performed where it was needed. He reiterated that the dynamic nature of this problem requires flexibility depending on the specific circumstances of the site in question.

Senior Planner Cross stated that she does that on a regular basis aside from consistently not allowing anyone to dig out more than 18-inches of sand. She reiterated the importance of maintaining a walkway. If a walkway cannot be maintained, then the owner should be considering elevating the walkway which is in the best interest for the community. She explained that there is an asset and there is a liability so if you are not preparing for those situations, then you are doing a disservice to the community. Chair Cofield asked if that was an appropriate standard for Senior Planner Cross to continue to use. She advised that if she changes her standard now, then her standard will be inconsistent.

Chair Cofield clarified and stated that was asking Senior Planner Cross if it was appropriate to continue making that judgment on site. Senior Planner Cross reiterated that the beach is dynamic so the requirement will not always be 18-inches so her site visits do entail flexibility. She explained that she reviews a dune walkway for room underneath for dune grass to grow or for sand to move underneath.

Member Morton stated if there is no standard in the ordinance, then there is a possibility of lawsuits because people will have been advised of different standards. Member Morton discussed Chair Cofield's platform and pointed out that the beach at his property has changed.

Chair Cofield stated that Member Morton is assuming that there has been a build up of sand over the years and there has not been. He reiterated that this whole discussion cries for flexibility and for the Town to recognize the dynamic nature of the oceanfront because the municipal service district created a whole new district in the town just to do beach nourishment.

Member McKeithan asked if other towns require dune walkover structures to be off the ground. Senior Planner Cross stated she did not know because they don't have any regulations and deferred to Community Planner Jim Gould to discuss his research.

Community Planner Gould stated that other towns complied with CAMA regulations as they did not have their own standards in place. He noted that some towns feared that without having regulations in place, property owners could build extremely high dune walkovers. Community Planner Gould explained that the other towns want to promote the growth of grass over the dune and one town stated that they share the same concern with owners digging through the dune, creating an opening.

Member McKeithan questioned if these towns are building their walkovers a certain height over the dune as they are deferring to CAMA regulations. Community Planner Gould explained that the CAMA guidebook from April 2014 states that no structure should be touching the dune and it should be as least invasive or destructive as possible to allow for sand to pass freely underneath that dune walkway.

Member McKeithan stated that if the Board does not approve of the standard, then they are leaving it to Staff to make those decisions with no guidelines at all. Senior Planner Cross stated that the

decision would be subjective and up to her to make that determination. Member McKeithan asked if Staff prefers to work within these standards and if so, do they recommend changing from 18-30 inches or 12-30 inches and if Staff is looking for a standard.

Senior Planner Cross explained that she is comfortable with the existing standard. She meets with contractors and homeowners to discuss what they can and cannot do. She stated that if the Board is looking to change the ordinance and leave it flexible, she would refer back to CAMA, which has three different references and are ambiguous and open to subjectivity. She understands Chair Cofield's request for flexibility and reiterated that she regularly meets contractors and property owners on site. When we are dealing with existing community access ways and they are only replacing a small portion, we are not requiring them to elevate 18 inches. Not required but good practice.

Director Heard stated that if the Town changes to a more flexible standard, the Town's Attorney would need to be involved in that conversation. He agreed with Member Morton and Member McKeithan that this could potentially open the Town up to legal challenges. It becomes difficult for the town from a legal standpoint and we can get interpretation from the town attorney to speak to that issue if the board chooses.

Chair Cofield asked for other comments.

Member McKeithan asked if we recommended to council to giving staff more flexibility like 12-30 would that be good and would that potentially create legal standards since there are standards in place. Director Heard repeated Member McKeithan's question to give clarity for giving a wider range of height. Because of all the differences, this would give more flexibility but have established standards.

Senior Planner Cross stated that Option 2 "Dune walkover structures shall be constructed without a roof or walls, shall be elevated at least x inches above the dune" is something that is left up to the Planning Board. If you want to change this, the Board needs to provide a number but twelve inches is the minimum she would recommend and having a maximum is a good standard. She noted that a 30- inch standard triggers a higher building standard in a high velocity or coastal high hazard area where structures would have to meet the V-Zone standard.

Vice Chair Blakaitis stated that if the Board does anything, they should stick with Senior Planner Cross's standards and discussed Chair Cofield's dune. Chair Blakaitis stated that he does not believe that the Board would come to any different action if they discussed this at a later date. Chair Cofield pointed out that there are two options for the Board: they can vote on the proposal that Staff has drafted or, what he would recommend, is take it under advisement and continue the discussion because of the number of issues that have arisen. Senior Planner Cross requested Chair Cofield to specify which issues would need to be addressed to which Chair Cofield stated the goal is to have flexibility to acknowledge the dynamic nature of the beach in Duck.

Director Heard stated that the only way this can be instituted is to change the Town Codes to guidelines but this would require a discussion with the Town Attorney as these guidelines would

not be enforceable. If a property owner wanted to build a walkway ten feet in the air, there is nothing that the Town could do to stop that.

Vice Chair Blakaitis questioned how Senior Planner Cross is flexible with dune walkovers. Senior Planner Cross explained that she meets a contractor or owner on site to look at the area, existing conditions, and talk through solutions that meet Town standard and work for the owners. Member Morton reiterated that having flexibility would lead to conversations with the Town's attorneys because the enforceability of standards would be removed.

Senior Planner Cross pointed out that there was an annual CAMA training with the Division of Coastal Management in which they could raise this question in the presence of all CAMA LPOs and others from along the coast. She could get more information and review what other Towns do and bring that information back to the Board at the next meeting.

Chair Cofield pointed out that it would be acceptable to take this matter under advisement to obtain additional information. Member Morton questioned if this required a motion. Chair Corfield confirmed that it did. Member Morton motioned to defer the ruling on the 18-inch standard to allow Staff to have conversations with CAMA and researching other communities. Chair Cofield seconded the motion and called for questions. Hearing none, he called for a vote. All member voted in favor.

Motion passes 4-0.

Senior Planner Cross suggested pushing the conversation to January since beach nourishment is about to occur. Chair Cofield asked if Member Morton would modify the motion. Member Morton modified his motion to reflect the discussion of the ruling at a later date.

APPROVAL OF MINUTES

Minutes from the August 10, 2022, Regular Meeting

Vice Chair Blakaitis moved to approve the minutes as presented. Member Morton seconded.

Motion carried 4-0.

Minutes from the August 19, 2022, Regular Meeting

Member McKeithan moved to approve the minutes as presented. Member Morton seconded.

Motion carried 4-0.

STAFF COMMENTS

Summary of September 7, 2022 Regular Town Council Meeting

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

Director Heard gave a short summary of upcoming Town meetings.

BOARD COMMENTS

Member Morton stated it was good to see Director Heard back at the meeting and advised that he will not be in town for the next meeting.

Chair Cofield provided a copy of Section 156.059 of the Ordinance to the members of the Board. He read this section regarding off- street parking and loading facilities and stated that he is bringing this up due to the recent decision made in regards to Resort Realty. He stated that the project was presented to the Board as being compliant with the Ordinance however it clearly conflicts with this section of the Ordinance. Chair Cofield stated that the Board, and he, wants to hear a straightforward presentation from the Staff representing the facts as they are, not the facts as someone would color them to be and not the facts as someone would represent them to be because they are an advocate for the applicant. Chair Cofield stated that as a member and Chairman of the Board he expects the Staff presentation to be straightforward, factual, and not color the truth which he thinks clearly happened. He explained that he is unsure how anyone could say that this project would not interfere with the efficient flow of traffic and that he wants to go on record as being very uncomfortable with the Staff recommendation at their meeting and he does not want to be in the position of having to look through, under, and sideways at a presentation by the Staff which colors the truth.

Member Morton stated that he disagreed with Chair Cofield’s comments.

Council Liaison Whitman questioned if Chair Cofield was speaking for the Board or if he was speaking personally. Chair Cofield stated that he has not asked for Board action and advised Council Liaison Whitman he can consider that as he sees fit.

No other comments.

ADJOURNMENT

Chair Cofield called for a motion to adjourn. Member McKeithan and Member Morton simultaneously made the motion to adjourn. Chair Cofield declared the meeting adjourned.

The time was 8:30 p.m.

Approved: _____
/s/ James Cofield, Chairman