

Approved April 13, 2009

**TOWN OF DUCK
BOARD OF ADJUSTMENT MINUTES
FRIDAY, JUNE 27, 2008**

The Board of Adjustment for the Town of Duck convened at the Duck Municipal Offices at 2:00 p.m. on Friday, June 27, 2008.

BOARD OF ADJUSTMENT MEMBERS PRESENT: Chairman Sam Taylor, Vice Chairman Allan Starr, Patty Wander, Eileen Neren, and Alternate Ken Yarbrough. Staff present: Director of Community Development Andy Garman, and Board of Adjustment Clerk Sandy Cady.

MEMBERS ABSENT: Member Olin Finch.

Chairman Taylor stated that a quorum was present and that Alternate Ken Yarbrough would be participating in Olin Finch's absence. He noted that Ken Benton was also absent.

OTHERS PRESENT: Rob Bachman of Finch and Company, Ali and Nayereh Rassoulpor, James and Berit Fitzpatrick, and Monica Thibodeau.

The meeting was called to order by Chairman Taylor, at 2:02 p.m.

QUASI-JUDICIAL HEARINGS (Regular Members to Participate)

SE 2008-004 A special exception application, submitted by Finch & Company on behalf of Ali & Nayereh Rassoulpour, property owners at 119 Osprey Ridge Road, also known as Lot 11, Osprey Ridge, in Duck, North Carolina. Pursuant to Zoning Ordinance Section 156.128, this special exception request is to allow land disturbing activities within five feet of a property line and fill in excess of three feet above pre-disturbance elevations. This activity is requested by the applicant for the purpose of constructing a seven bedroom single-family dwelling with a pool. The lot has unusual topography that creates practical difficulties developing the property under the permitted standards contained within the ordinance.

Chairman Taylor noted that Member Olin Finch had recused himself from the meeting. He appointed Member Ken Yarbrough as the alternate to fill in for Member Finch. He asked if any other Board Members wished to disclose any information and recuse themselves. Vice Chair Allan Starr stated that he noticed in reviewing the material sent to the Board, one of the lots adjacent to the applicant was owned by the Fitzpatrick's who were friends of his. He stated that he wanted to disclose the information as he was not sure what information the Fitzpatrick's would be disclosing at the meeting and noted that he had not discussed the application with them. He didn't think his friendship with them would adversely affect or influence his decision in any way. Member Eileen Neren noted that she was also friends with the Fitzpatrick's. There being no one else, Chairman Taylor swore in Rob Bachman of Finch and Company, Ali Rassoulpour, James Fitzpatrick, Berit Fitzpatrick, and Director of Community Development Andy Garman.

Based upon the application received, proper notice having been provided and all witnesses having been sworn in, Chairman Taylor called on Director of Community Development Andy Garman to present his report.

Director Garman provided a brief overview of the circumstances as detailed and submitted in his staff report. He noted that the Rassoulpours were dealing with significant elevation differences on their property, especially towards the rear. He went on to show the Board and audience an aerial photo of the property to demonstrate the various elevations. He stated that the Rassoulpours were proposing to grade a portion of the lot so it would be lower than the neighboring lots and filling in part of a depression. He thought that based on the stormwater plan, most of the water running to the east would be captured by what would remain of the depression.

Vice Chair Starr clarified that the property would be lower than both adjacent properties after the grading. He thought the property to the north would be lower than the proposed grading. Rob Bachman of Finch and Company was recognized to speak. Mr. Bachman stated that there was one section that was westward of the lot that would be higher, with the rest being lower to the north.

Chairman Taylor thought the proposal would leave the existing dune at the rear of the property intact. Director Garman stated he was correct. He stated that the ordinance allows a depression to be filled on a lot, but only to a certain extent, i.e., to the level of the adjacent grade. He stated that based on what the applicant submitted; he would determine it to be approximately eighteen to twenty (18 – 20) feet. He stated that the depression falls to fourteen (14) feet with the applicant allowed to fill up to the eighteen to twenty (18 – 20) foot mark and no more. He stated that beyond that, an additional three (3) feet above the lowest pre-disturbance would be needed. He stated the applicant can fill up to twenty-three (23) feet, but they were proposing to bring a lot of the area of the depression up to twenty-six (26) or twenty-eight (28) feet, which was well beyond what was allowed under the Town's ordinance. He stated that the applicant requested the special exception to make use of that area as well as to deal with filling and grading across the property as the ordinance does not allow for it.

Vice Chair Starr asked if the area between the two (2) property lines that need grading require a special exception. Director Garman stated that if the applicants were cutting the elevation down within their property, a special exception would not be needed. He stated that there was a limit to the amount that can be filled on a property.

Member Yarbrough clarified that the dune on the south side would be flattened and extended beyond the property line. Director Garman stated it would be cut down to approximately thirty-three (33) feet. Rob Bachman stated that approximately ten (10) feet of the south property line would be graded at the adjacent property's grade level.

Chairman Taylor clarified that there weren't any drainage issues involved. Director Garman stated he was correct. Vice Chair Starr clarified that the drainage would flow from west to east rather than towards the adjacent house. Director Garman stated he was correct.

Member Wander clarified that the stormwater analysis was based upon the driveway and parking areas being pervious. Director Garman stated that she was correct and that it would be composed of gravel. He suggested that the applicant stack their parking and bulkhead so as not to have to fill in one area.

Approved April 13, 2009

Member Neren thought bulkheading in the parking area was a good idea. She asked how it would impact their view from the front. Director Garman thought it was hard to say until one was actually out there.

Berit Fitzpatrick was recognized to speak. Ms. Fitzpatrick asked where the septic would be put in. Director Garman showed her the septic field on an aerial photo.

Vice Chair Starr asked what was driving the need to be within the property side yard. He wondered if it was due to the width of the house. Rob Bachman stated there wasn't anywhere level on the lot due to the extreme topography. Vice Chair Starr pointed out that grading was proposed for the side yard of the property and onto the adjacent property to the south. He asked if the house weren't as wide, grading could still be done without touching the side yard or adjacent property. Mr. Bachman stated that the height of the dune was very extreme, and to get a slope away from it to stabilize the hill would put it halfway into the lot. Vice Chairman Starr asked if bulkheading would have the same effect or if it would preserve the dune and vegetation. Mr. Bachman stated that the vegetation could not be preserved as it would make it very unstable.

Director Garman summarized his presentation, stating that the Board could look at the objectives; focusing on preserving some of the areas of the site; ask for discussion and whether or not the Board would like to give the applicant direction on what they should work towards.

Rob Bachman stated that he had received Director Garman's recommendations and objectives and had already addressed them prior to the meeting. He went on to show the Board how he had planned to revise the site plan and building project to meet the recommendations.

Berit Fitzpatrick wondered what the impact would be to the property to the north as far as the slope to the sound. Rob Bachman stated it would not change the adjacent lot.

Vice Chair Starr thought it would be helpful to have more detail as to where the stormwater flow line would be for the adjacent properties as well as if there would be any negative impacts. Rob Bachman stated that the water flow was dictated by where it is directed. Vice Chair Starr asked if there would be a directed flow for the stormwater. Mr. Bachman stated that there will be a parking area to catch the runoff. A gutter collection system will be installed to direct stormwater to the retaining area. Vice Chair Starr stated he would feel more comfortable if there was something that showed graphically how the water would flow.

Chairman Taylor noted that the impervious areas would be the house and the pool, but noted there was nothing in the application packet that showed drains and gutters. He stated that there was nothing that showed the only impervious area would be designed so as not to create drainage issues. Rob Bachman agreed and stated it was not included because their engineer had addressed it already.

Member Wander clarified that with the trees removed; there would be a lot of water coming down on the existing slope. Rob Bachman stated he was proposing to re-vegetate making it more stable than it currently is. Member Wander clarified that more water would drain to the west than what presently occurs. Mr. Bachman stated it would not add any additional runoff. Member Wander asked if there

Approved April 13, 2009

was an engineer's analysis of the proposed re-vegetation. Mr. Bachman stated there was not. Chairman Taylor thought what Mr. Bachman was proposing made sense.

Vice Chair Starr asked if the letter from Dave Ryan of Bissell Professional Group regarding the runoff meant that it would all run into the pool. Rob Bachman stated he was correct as there would be a catch basin running across the west side of the pool that would catch water. Vice Chair Starr noted that Mr. Ryan's letter was clear but it was also quite vague. He stated that the letter made it sound like the level of the pool water would be raised but not going anywhere. Mr. Bachman stated he was correct.

Vice Chair Starr stated he would like to see where the landscaping would be on a plat or sketch. Rob Bachman stated that the property owner was planning to do his own landscaping and noted that it was shown on the revised plan that was submitted. He added that the property owner planned to do significantly more landscaping. Vice Chair Starr stated he did not have a good comfort level yet with regard to the suggestions of protecting the adjoining property owners from any negative impacts. He stated that he would like more explanation regarding it.

Member Neren stated it would be nice to see a defined picture, but thought that just because the engineer said one thing didn't necessarily mean the water would flow where it was supposed to. Vice Chair Starr stated he would like to see the water flow lines on paper.

Monica Thibodeau was recognized to speak. Ms. Thibodeau presented a letter to the Board stating she had no objections to the applicant's project and plans.

James Fitzpatrick was recognized to speak. Mr. Fitzpatrick agreed with Vice Chair Starr that a more defined water flow layout would be prudent.

Member Yarbrough stated he would like to know what trees would be retained as he would like to see as much vegetation retained in the rear yard even if bulkheading was necessary.

Member Wander stated she would like to see something from the property owner association, as well as more detail on water management and planting.

Member Neren stated she would like to see something from the homeowner association as well as a letter from the property owner to the east of the applicant as to how they feel. She stated that she would go along with requesting additional water information, but felt relatively confident with what had been submitted.

Member Yarbrough thought the retaining area was a key factor. He wondered what would be in the retaining area. Rob Bachman stated that they would not be filling the retaining area.

Director Garman thought it would be helpful to know what areas will and will not be disturbed. Rob Bachman stated he would have to look at it more closely and differentiate the contour lines.

Chairman Taylor felt this was a complex situation. He stated that he felt better after the discussion that took place and knowing the property owner's intent, but in order to get the comfort level needed

