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**TOWN OF DUCK
BOARD OF ADJUSTMENT MINUTES
FRIDAY, JULY 18, 2008
RECONVENED MEETING**

The Board of Adjustment for the Town of Duck reconvened at the Duck Municipal Offices at 2:00 p.m. on Friday, July 18, 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 and Alternate Ken Benton.

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 and Brynn Waite of Southern Shores Home Design.

The meeting was called to order by Chairman Taylor, at 2:03 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 stated he had a discussion with Director Garman as this was the first time the Board was dealing with an exception of this type. He stated that the issue was a project exception in that it doesn't run with the land. He stated that he wanted to check to make sure that whatever the Board decided would be amended to this specific project as proposed with the conditions that the Board would put on it. He added that any other land disturbing activity would have to come back to the Board for another exception. Director Garman agreed and stated that the draft order noted as such.

Vice Chair Starr stated he was confused and asked if the special exception was granted and the applicant decided not to go through with the project and sold the land to someone else, the new owner could do the same as what was being granted for this special exception. He thought part of the issue the Board was dealing with was the applicant wanting the land to basically conform to the house instead of the house conforming to the land. He thought that if the Board granted the exception, it could be developed the way the applicant wanted. He stated that he understood that if the applicant decided to sell the land before developing it, the new owner would have to come back to the Board to

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obtain a special exception. Director Garman stated that it wasn't his understanding. He stated it was essentially a conditional use permit, which runs with the land. He added that the only thing that would void the permit would be a deviation from what was approved by the Board. Chairman Taylor stated that the Board will have to be very careful and specific in how the exception would be worded.

Vice Chair Starr noted that by granting the request, the Board was allowing certain vegetation to be removed and certain filling to be done. He stated that it was directly related to the fact that there was a certain plan for a particular house on that lot. He asked if the Board was stuck with that. Director Garman stated that if the property changed hands and the new owner wanted to do something differently, what they would propose to do could be permitted within the existing zoning ordinance. He stated that something like that could be approved without a special exception. Chairman Taylor agreed and noted that the special exception would still be there as long as they stayed within the guidelines of what the Board set. He explained that the Board was dealing with a specific footprint that was defined. He thought that whatever the Board did, it should be worded so that it would apply only to the footprint of the plan.

Vice Chair Starr stated he would be concerned if the Board allowed something to happen that would destroy the substantial portion of the dune on the west side and then a new owner comes in with a plan that doesn't require another special exception. He hoped the Board was not stuck with that decision and noted that they were confronting a specific request from the applicant. He stated that he was fine with what the applicant was proposing but was not sure the Board should allow it if another owner buys the property before it's developed and puts in a house that doesn't require any of the conditions set by the special exception. Chairman Taylor stated that if the Board defines the plan, they should be careful to limit a future owner from taking advantage of the exception when it was not necessary. Director Garman noted that there were regulations in place to prevent clearing the lot without submitting a building permit. He added that the Board could place further conditions in the order if they did not want the exception to be open-ended.

Chairman Taylor thought it would be helpful if the Board looked at Ordinance 05-06 and discuss it in conjunction with the proposed exception request. The Board went on to review Ordinance 05-06.

Vice Chair Starr asked for clarification on the driveway. He asked if the driveway would be gravel or concrete. Director Garman stated that it was not clear previously and he had assumed it was to be gravel, however the most recent site plan clearly identifies the driveway as concrete. Rob Bachman was recognized to speak. Mr. Bachman stated that originally it was not differentiated on the site plan. He stated that as they continued to tweak the plan, the driveway changed many times but was intended to be concrete all along.

Chairman Taylor asked how bad it would be if the Board made a condition to limit the nonpermeable surface area and required a gravel driveway. Rob Bachman didn't know why the concrete driveway would make a difference in the plan. Vice Chair Starr noted that concrete contributes to stormwater runoff. He clarified that the parking would be gravel and not concrete. Rob Bachman stated he was correct.

Chairman Taylor asked if erosion would be an issue. Vice Chair Starr stated that it would depend on how the reconfigured dunes would be vegetated and configured. He stated that there was clearly a

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potential for erosion if the dunes weren't managed correctly. He added that he was concerned about the dune on the western edge of the property. Rob Bachman stated that the proposal he was presenting would minimize the amount of erosion that would happen.

Chairman Taylor asked how far the dune would be taken down. Rob Bachman stated that he would take the highest point of forty-six (46) feet down to thirty (30) feet. Director Garman noted that at the top of the dune, it was relatively flat but that it dropped off significantly. Chairman Taylor pointed out that the slope was currently heavily vegetated.

Director Garman asked that if the applicant would be disturbing any land beyond the thirty (30) foot line. Rob Bachman stated that they would towards the west. Director Garman asked if anything would be done to the slope. Rob Bachman stated that something had to be done to stabilize the slope and had proposed sloping the grade 3 to 1 from the thirty (30) foot mark down to the twenty-three (23) foot mark.

Vice Chair Starr asked if the existing slope would be steeper or less steep. Rob Bachman stated it would be less steep after grading. Member Neren asked if the slope would be re-vegetated. Mr. Bachman stated it would. Chairman Taylor stated that the erosion on the sound side did not appear to be a concern to him. Vice Chair Starr stated that the erosion should be a concern and added that the property owner had a significant incentive to address it. He thought the proposed plan seemed to address the issue. The Board went on to discuss the changes from the original plan submitted and the revisions.

Vice Chair Starr asked if anything would happen with the pool height being thirty-two (32) feet versus thirty (30) feet. He wondered if it was driven by the attempt to minimize the disturbance of the trees. Director Garman thought it would be more of an impact to the property owner than the actual property. Rob Bachman stated that he did not want to put the foundation on fill. He added that the trees were presently at the thirty-six (36) foot mark. He stated that trying to save them by bulkheading would make them four (4) feet higher than the pool and a potential safety hazard.

Member Wander asked where the proposed trees would be planted. Rob Bachman stated that they were planning to plant trees to re-vegetate what has been taken out. Member Wander asked if it would be governed by the tree ordinance. Director Garman stated it would.

Vice Chair Starr felt the Board should be concerned with the addition of fill above the amount that was allowed. He noted that Director Garman had flagged in his report that the bottom of the depression would be elevated with fill of approximately four (4) feet, indicating that the entire area would be cleared. He felt there were two (2) areas of concern – the activity on the adjacent property and the additional fill in the depression area that would not be allowed without the special exception. He stated that since Director Garman raised the concern, he wanted it addressed. Rob Bachman stated that the bottom of the area was at fourteen (14) feet and with the fill it would go to thirty (30) feet to accommodate the house pad. He stated that there needed to be enough room to accommodate the rest of the parking and garage.

Brynn Waite was recognized to speak. Ms. Waite pointed out that the spirit of the no fill law was to keep people from building homes higher on fill. She stated that the house would be built fourteen

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(14) feet below the highest point. She noted that they were taking stuff and moving it and not increasing the height of the lot. Vice Chair Starr felt Ms. Waite was being disingenuous as she was making the lot conform to the house and not the house conforming to the lot. He stated that he did not agree that the Board was just worrying about the raising of the fill. He stated that there was going to be a lot of activity on the lot as well as a lot of land disturbances to make the lot conform to the house design. He thought Director Garman had raised a valid question with regard to runoff. Rob Bachman stated that their proposal was to raise the drainage area from fourteen (14) to eighteen (18) feet, which was still twenty-two (22) feet lower than the house. He noted that the properties to the east and south drain towards the drainage swale and that he was not proposing to change that. He stated that it was shown on their proposal how the drainage would work from the other properties.

Chairman Taylor stated that the ordinance clearly dealt with using fill to raise the height of the house. He noted that in this case, the fill was not raising the height of the house. Vice Chair Starr agreed.

Director Garman asked if the applicant was proposing any vegetation besides sod. Rob Bachman stated they weren't at this time. Brynn Waite noted that the applicant was already 1,100 square feet over the required vegetation. Mr. Bachman stated that Mr. Rassoulpour was very particular about what would be planted on the property.

Member Neren pointed out that Monica Thibodeau had noted at the previous meeting that she never noticed any water build up in the depression on the Rassoulpour's property.

Chairman Taylor suggested the Board look at the draft order and discuss it. The Board went on to review the draft order.

Member Wander asked if the engineer's stormwater plan was based on a gravel driveway. She thought that since the square footage of the lot coverage for concrete was added only to the last proposal, it was assumed that it was pervious. Rob Bachman stated that he thought the engineer assumed it was concrete. Member Wander noted that it wasn't mentioned on the plan. She asked if the septic could be put under concrete. Mr. Bachman stated it could. Brynn Waite stated that most of the earlier versions had the concrete driveway. Member Wander stated that she was concerned that the driveway would be put in in such a way that the apron will not be increased. Mr. Bachman stated that he can put in a swale or break in the driveway so that water cannot go to the road. Member Wander thought it should be put in the conditions that this issue be addressed. Mr. Bachman didn't think it would be difficult to address.

Chairman Taylor stated he was comfortable with the original plan. He wondered how the Board could get comfortable with adding additional language to ensure no stormwater runoff will go to the street. Vice Chair Starr stated that a break, a swale or a slope could be added. Chairman Taylor agreed and stated he was concerned with how it would be worded in the exception. Vice Chair Starr thought it could be added to the conditions. Director Garman stated that the condition could be added. He added the following condition to the order: "Prior to the building permit, the plan shall be revised to include mitigating measures to limit transmission of stormwater from the concrete driveway to the street. These measures may include installation of a swale at the property line, adjacent to the street with a dip in the driveway apron, installation of a break in the driveway to

