

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
February 12, 2014**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, February 12, 2014.

Present were: Chair Joe Blakaitis, Vice Chair John Fricker, Ron Forlano, Tim McKeithan and Marc Murray.

Absent: None.

Also present were: Director of Community Development Andy Garman and Permit Coordinator Sandy Cross.

Others Present: Town Engineer Mike Robinson, Michael Strader of Quible & Associates, P.C., Chris Nason of Beacon Architecture, P.C., Robert Konstanzer, Richard Hess, Chuck Straub, John Chenoweth, Dick McAuliffe and Ron Carter.

Absent: Council Liaison Chuck Burdick.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for February 12, 2014 at 6:37 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion of Town of Duck Low-Impact Development and Stormwater Ordinance

Director Garman stated that the Board has been working on the ordinance for a few months and at the January 8, 2014 meeting, staff presented a draft ordinance that the Board reviewed. He thought the Planning Board was comfortable with the language in general; however, a few changes were requested to be made to the ordinance. He stated that those changes were incorporated into the draft ordinance. He stated that he asked Town Engineer Mike Robinson to attend the meeting to answer questions specifically regarding the design storm threshold the Town may use in the ordinance. He noted that Town Engineer Robinson had asked that staff put in additional language beyond the 1.5 inch design storm to address unusual circumstances where the Town might want to require more stormwater management.

Director Garman stated that on Page 4 of the draft ordinance, E1 states the following: "...all stormwater runoff from the project's built upon area must be directed into an approved stormwater management system designed to accommodate a minimum volume of runoff generated by a 1.5 inch designed storm..." He added the following: "...in instances where it's

determined by the Town engineer that the potential for flooding exists from a specific development plan that would not be sufficiently managed by the above requirement, the Town may require the applicant to provide additional stormwater retention on a case by case basis...” He noted that the new language was added in to the ordinance. He stated that staff reviews stormwater management through the Town’s Conditional Use Permit process in most instances, and this would allow the Town to require additional stormwater management if staff thought an area was particularly susceptible to problems.

Director Garman stated that staff added language under 6 that dealt with when the thresholds would kick in. He added that the Board discussed at their last meeting that if there was an existing developed site and an addition is added or part of the site is redeveloped, when the requirements would kick in. He stated that that language was added that if one was adding more than 1,000 square feet of lot coverage, stormwater management would be required to be provided for a commercial site. He stated that it would not apply to the existing developed area that was not part of the project, but just to the newly developed area. He added that that portion of the project would have to meet the requirements listed in the draft ordinance. Chair Blakaitis thought Town Engineer Robinson should speak as to the reasoning for the additional language.

Town Engineer Mike Robinson was recognized to speak. Town Engineer Robinson stated that the inch and half was required by the State and was generally adequate to control stormwater runoff, but there may be other instances where the inch and a half would not be enough, such as downhill flow.

Vice Chair Fricker asked what the rationale was for E6 in that it doesn’t apply until 1,000 square feet. Director Garman stated that the Board had discussed at their last meeting when it would kick in. He explained that with a commercial project and a small improvement being done, the Town would not want to require stormwater management for every minor thing being done, but once 1,000 square feet of coverage was reached, then it got into a level of improvements that should require some sort of stormwater management. Vice Chair Fricker asked where Director Garman came up with the figure. He further asked if it was based on experience in the Town of Nags Head and the Town of Duck or in the day to day working with contractors and seeing results of things done and not done. Director Garman stated that it was a starting point for a threshold. He thought it was referenced in other parts of the Town’s ordinance when it came to what constituted a plan of development versus a minor site plan.

Chair Blakaitis asked Town Engineer Robinson if there have been a lot of areas in Duck in the past that should have had this approach to stormwater runoff. Town Engineer Robinson stated that there was some localized flooding that the draft ordinance could have addressed, but the majority of problems in Duck were due to the high water table and low elevations.

Director Garman noted that there were areas in the Village that were more susceptible to flooding but there was relief via NCDOT outfalls that function as overflow for some of the developed sites. He thought the draft ordinance not only addressed the flooding problem, but also a water quality issue. Chair Blakaitis clarified that it would be looked at on a case by case basis. Director Garman stated it would for a minimum 1.5 inch, but beyond that if there was a site that was particularly problematic because it was in a low area or there wasn’t much storage in the area, the Town may want to require it.

Town Engineer Robinson explained that the first inch and a half would deal with water quality. He added that it would be on a case by case basis and would depend on the topography and elevation of the lot. Chair Blakaitis clarified that depending on the project, Director Garman's recommendations and Town Engineer Robinson's review of it; the Board may or may not require more stormwater management. He added that he was looking for more teeth for the ordinance that the Town may require that would be sufficient. Director Garman thought it would be up to Town Engineer Robinson's review as he would be looking at the calculations and review the site before making a judgment. He wasn't sure if anything more specific needed to be added to the ordinance. Town Engineer Robinson thought it allowed flexibility for the Town to work with the design engineering. Director Garman stated that ultimately the discussion and alternative that either the applicant developed or the Town proposed would come to the Planning Board where they would discuss the alternatives that were proposed and what was most appropriate.

Vice Chair Fricker thought the language was good language for the draft ordinance. Director Garman stated that staff did not want to require more stormwater management than was needed. He added that there were other communities that have a much more restrictive standard than 1.5 inch storm. He stated that the 1.5 inch would be the Town's minimum and then additional storage could be addressed on a case by case basis rather than making the 4.3 inch storm the rule for what every site would have to do.

Chair Blakaitis clarified that Director Garman was not proposing to write a text amendment. He further asked if it was just for discussion at this time. Director Garman stated that he wasn't planning on making a recommendation to Council at this point but at the Retreat he would provide Council with an overview of the new ordinance, assuming the Planning Board was comfortable with it. He added that he would familiarize the Council with it and bring it back to them within the next few months. He thought staff needed to find out more information on where the State was with regard to the stormwater manual. He thought the Town could adopt the ordinance the way it was drafted and be fine with referencing the existing State stormwater manual, but it would not be clear cut as to how to apply for a LID stormwater permit without the new manual. Chair Blakaitis thought the issue could be revisited and have the information inserted then. Director Garman agreed. He added that the text would be presented to Council at their Retreat.

NEW BUSINESS

SE 14-001 – Application for a Special Exception Permit by Mr. and Mrs. Thomas Duggan, Property Owners of 159 Four Seasons Lane to Allow an Eight Foot Side Yard Setback where a Ten Foot Side Yard Setback is Normally Required in order to Permit the Encroachment of an Accessory Structure

Director Garman stated that the application was from Thomas and Diane Duggan for a special exception for an encroachment of an accessory structure in the side yard setback. He noted that the Town Code allowed exceptions to be made to side yard setbacks in situations such as this one. He stated that Robert Konstanzer was present on behalf of the applicants. He added that he had spoken to Mr. Duggan, who had wanted to attend the meeting, but he was unable to attend due to the weather.

Director Garman stated that the applicants were requesting approximately a 1.8 foot setback reduction for a pool cabana that was erroneously constructed in the side yard setback. He stated that Mr. Duggan has provided a significant amount of detail on how it happened in his application. He went on to review the site plan with the Planning Board and audience.

Director Garman noted that a small corner of the pool hut extended beyond the side yard setback. He stated that it was very difficult to remove and would require reconstructing a large portion of the structure. He thought the applicants would prefer to have it approved for an exception than to reconstruct the pool hut. He added that the Duggan's have requested an exception for some of the wood decking that were beyond the setback line, and thought the pool hut and decking were constructed at the same time since they applied for the permit. He stated that he had advised them against it but thought they decided to do it anyway.

Director Garman believed, based on the Town's ordinance criteria, that the application for the pool cabana encroachment was eligible for the special exception; however, he did not believe the wooden decking would be eligible. He thought the encroachment was much more significant and did demonstrate a disregard for the Town's setback regulations in that case, but added that the pool cabana was an error in the placement of the structure.

Director Garman stated that he had drafted a draft order granting the special exception for the Board to reference if they decided to make a motion to approve it. He noted that Robert Konstanzer was present and would be making comments on behalf of the applicant.

Chair Blakaitis asked Robert Konstanzer if he was part of the realty group. Robert Konstanzer was recognized to speak. Mr. Konstanzer stated that he was. Chair Blakaitis asked what his involvement was in the project. Mr. Konstanzer stated that he saw the whole process take place. He believed that the decking was discussed previously since the bulkhead was higher than the decking and it was considered landscaping. He stated that it was discussed and approved previously. He agreed that an error was made with regard to the pool cabana, but added that they tried to find a surveyor to find where the setback line was. He stated that the north side was just open space with a community walkway.

Chair Blakaitis clarified that there were no immediate neighbors. Robert Konstanzer stated that there weren't on the northern side of the property. Director Garman stated that it was noted in the staff report.

Chair Blakaitis noted that the Board members had visited the site earlier in the day and the way the line was drawn made it difficult to determine if the hot tub was included. Director Garman believed that the hot tub had been moved, adding that the survey did not show it. He added there was a lot of history and communication with the property owners, contractors and Town staff as to how the issue should be rectified. He stated that staff told the applicants that the decking would have to come out of the setback, the hot tub would have to be moved and the pool hut would either have to get an Error in Building Location or an exception to be approved; otherwise it would have to be removed or reconstructed. He stated that the applicants had a contractor working on the project and in his last discussion with the contractor; he thought the decking had

been removed that was in the setbacks. He wasn't sure if it was still in the setbacks. Robert Konstanzer stated that everything had stopped and added that the decking boards were removed.

Vice Chair Fricker noted that the decking boards must have been removed earlier in the day. Robert Konstanzer disagreed and stated that the framing of the deck was intact but the boards were removed. Vice Chair Fricker pointed out that he and Chair Blakaitis were at the site earlier in the day. Director Garman noted that it would not be the entire wood deck that would need to be removed. Mr. Konstanzer added that it would just be the side deck.

Chair Blakaitis felt the issue was confusing to the Board because the hot tub was moved, but wondered if it was moved diagonally towards the house. Robert Konstanzer wasn't sure, but added that the decking boards were removed on the north side. Chair Blakaitis pointed out that there were existing decking boards beyond the setback. Director Garman stated that staff asked the applicant to remove the decking behind the dashed lines on the site plan.

Vice Chair Fricker noted that the decking was still intact earlier in the day, adding that the hot tub had been moved two feet to the south. Director Garman stated that he spoke to the contractor and he was going to remove the wood decking, cut it back in the setback, but when the owner decided to apply for the special exception, the contractor stopped taking the decking out. Chair Blakaitis pointed out that the concrete on the south side was very close to the setback. Director Garman stated that the pool was built when the house was built, which was prior to the Town's incorporation. He added that Dare County allowed a pool deck to be set within five feet of the property line and would be considered a non-conforming feature. He noted that Town staff would not ask the applicants to remove that. He stated that everything else was built in the 2007-2008 timeframe, which would have required them to meet the ordinance. He added that it wasn't permitted, which was why staff was asking the applicant to remove a portion of the wood decking.

Member Forlano asked if the deck was on the ground level or elevated. Chair Blakaitis stated that it was on the ground except for the width of the riser it was sitting on. Director Garman stated that the deck was the same elevation as the concrete. Member Forlano asked if it was flush with the ground. Director Garman stated that it was, adding that it was an extension of the pool deck.

Vice Chair Fricker stated that he had a problem with the Board hearing second, third or fourth-hand information. He stated that on the first page of the staff report, it was noted that the wooden pool deck and pool cabana were built in 2008 after the Town had modified regulations requiring all accessory structures to meet the setbacks for the principal structure. He added that the pool cabana and wooden decks were built without zoning approval. He asked what that meant and if it meant that a permit was not requested or obtained. Director Garman stated that the applicant did not submit the site plan to Town staff showing that the deck and pool cabana were going to be placed on the property. Chair Blakaitis added that they did not obtain a permit.

Vice Chair Fricker clarified that the applicants did not show Town staff anything when they decided to do the work. Director Garman stated he was correct. Vice Chair Fricker thought that any representation by the owner, contractor or representative to the contrary was false. Director Garman stated he was correct. Vice Chair Fricker clarified that there was a permit. Chair

Blakaitis stated that one was obtained after the fact. Vice Chair Fricker read in the staff report the following: "...and the error was discovered by the Town due to an open permit at the property..." He asked what permit was opened. Director Garman stated that there was permit pulled at the property because when the property was built, it was approved by Dare County and received a Certificate of Occupancy. He added that at some point in time a lot coverage violation was discovered in 2006. Robert Konstanzer stated that when the Duggan's bought the house, they knew it was over and because they wanted to make changes to the property, they came to the Town and asked what they needed to do. He added that the reason they pulled the permit was to complete the work in the back yard. He noted that they took out part of the driveway in order to construct the pool cabana and fence.

Vice Chair Fricker stated that one could interpret the phrase, "...an error was discovered by the Town due to an open permit..." to refer to the permit Robert Konstanzer suggested, which was pulled for the installation of the wooden decking and cabana. He clarified that that was not the permit being referred to. Director Garman stated that the Town's records showed a permit to remove a portion of the driveway to rectify the coverage issue. He understood that the coverage issue was something Town staff was not aware of. He added that the Duggan's wanted to fix that issue in order to make other improvements to the property. Vice Chair Fricker pointed out that the improvements were not specified. Director Garman stated that they obtained a permit to remove some coverage from the driveway, replace it with gravel and move the pool fence. He believed that was what the permit was for. He explained that during the course of the permit, as Building Inspector Cory Tate was performing inspections on the property, he saw decking and a pool cabana, with no record of that being part of the permit application. Robert Konstanzer stated that the inspections were not on that. Vice Chair Fricker asked Mr. Konstanzer if he was present when the inspections were completed. Mr. Konstanzer stated that he was there one time and could not remember if it was after the inspection was completed. He added that there was an inspection done on the structure.

Director Garman thought Robert Konstanzer was correct. He thought the Duggan's were building the pool hut and thought the intent was to amend the permit to include the pool hut, but there was never any documentation put into the file about it. He added that he did not have any documentation showing that the location of the pool hut was approved from a zoning standpoint. He stated that it looked like inspections were done but Town staff was never able to verify that it would meet the setbacks and when an as-built survey was received on the property, it showed that it did not meet the setbacks. Robert Konstanzer stated that it happened, the owner decided to make it bigger, which created the problem.

Vice Chair Fricker asked for clarification from Robert Konstanzer regarding the owner making the pool hut bigger. Robert Konstanzer stated that the owner originally wanted it to be 12 feet wide, which caused it to be put in the setback. Vice Chair Fricker thought that, though it may not be the letter of the ordinance, it would influence how he will vote on the decking issue; dependent upon what the Board could determine to be the facts of when the owner knew and what he knew. He stated that if the owner decided to keep it quiet until he decided to sell the property, he would not be sympathetic. He asked if the contractor was Mark Copeland and was the same one that owns Roadside Café. Director Garman stated he was correct. Vice Chair Fricker clarified that the work Mr. Copeland was doing on the pool hut was at the same time he

was constructing his own hut behind his restaurant without a permit. Director Garman thought it was a few years before.

Vice Chair Fricker stated that he was interested in the timeframe that the Town became aware of the issue. Director Garman stated that he did not know the specific date. Vice Chair Fricker asked if Director Garman knew the year that the Town became aware. Director Garman thought it was 2009. Vice Chair Fricker asked Director Garman if he had any record of the Town saying anything to the owner or a representative of the owner regarding the violation. Permit Coordinator Sandy Cross was recognized to speak. Permit Coordinator Cross stated that the applicant was notified and that he had applied for an Error in Building Location for the setback encroachment but never followed through with paying for the permit or providing the Town a survey.

Director Garman stated that originally, the owner was going to pursue an Error in Building Location for the pool cabana, but thought more recently, they discovered that they couldn't do it with an Error in Building Location because it exceeded the percentage reduction it would allow. He explained that an Error in Building Location allows a 10% reduction of the setback and in this case, the corner was more than a foot into the setback. He stated that there has been a lot of back and forth over the years with trying to rectify the issue and it was going from one contractor to the next. He added that originally the contractor was Mark Copeland and more recently, Hal Scarborough was brought in. He stated that it has become a finger pointing issue between the owner and Mark Copeland.

Chair Blakaitis asked when there was intent to apply; it was done by the owner or the contractor. Director Garman thought the contractor handled all of the permitting. Permit Coordinator Cross stated that he didn't do everything. Chair Blakaitis clarified that Town staff did not really know what the owner did. Director Garman stated that the contractor obtained permits, but not for all of the work, only some of the work. Permit Coordinator Cross stated that the owner submitted an Error in Building Location and was aware of the issue back in 2009. Director Garman pointed out that the Duggan's have been making an effort to rectify the pool cabana. He added that with regard to the wooden decking, he didn't think they had ever been under the assumption that they could get it approved except for now, since they applied to get it approved under this process.

Chair Blakaitis asked what plans the Duggan's had for the pool cabana. Director Garman stated that up to this point, they thought they could get an Error in Building Location, but it exceeded the amount that it would allow and they would have to take out a part of the cabana or obtain an exception. Chair Blakaitis clarified that they did not approach the issue until they found out it exceeded the allowance. Director Garman stated he was correct.

Member Murray clarified that Mark Copeland did not obtain permits for the entire scope of work to be completed. Director Garman stated that Mr. Copeland was the only one that pulled any permits for the original work, adding that the owner never pulled any permits. He stated that Mr. Copeland did not include all the work in the scope of the permit.

Member Forlano asked when the owner was made aware that the deck was an encroachment problem. He further asked if it was in 2009. Director Garman stated that it would have been

around the time that the applicant applied for an Error in Building Location. He added that the Error in Building Location did not include the deck, only the pool cabana. He explained that they could not have obtained an Error in Building Location for the wood deck because it was up to within a few feet of the property line in some cases.

Member McKeithan asked if the marked up survey that was included in the Board's packets was the same one that was presented to Town staff in 2009 when Building Inspector Tate noted that the deck needed to be removed to meet the 10 foot setback. Director Garman stated that they were his notes on the survey. Member McKeithan clarified that the notes were not made by Building Inspector Tate in 2009. Director Garman stated that he made the notes in the 2009-2010 timeframe. He added that it was around the time the applicant was applying for the Error in Building Location. Member McKeithan clarified that the owner and contractor should have known at that point that there were violations. Director Garman agreed. Member McKeithan added that it did not look like the applicant ever came back with a request for modification or even submitted a permit based on the knowledge they received in 2009. Director Garman agreed and added that the application sat for a while and then recently came back to the forefront. He wasn't sure why, but thought it may have to do with the fact that the Duggan's are trying to sell the property.

Robert Konstanzer stated that it came back to the forefront because Mark Copeland and Mr. Duggan were battling as to who would fix the problem. Chair Blakaitis asked why the builder didn't take responsibility. Mr. Konstanzer stated that it was dispute over money. Chair Blakaitis noted that it was the owner's ultimate responsibility. He stated that he could not read the notes on the survey and asked Director Garman to read them. Director Garman stated that the notes read as follows: "...deck to be removed to meet the 10 foot setback...one foot of the pool hut and hot tub can encroach per error in building location...after work is done, please verify with updated as-built survey..." He noted that his notes were done under the assumption that the applicant would be able to obtain an Error in Building Location.

Vice Chair Fricker clarified that a copy of the survey with the notes were delivered to the owner. Director Garman stated that it was given to the contractor – Mark Copeland. Chair Blakaitis asked if it was done in February 2008. Director Garman stated that the survey was completed in February 2008, but the notes were written sometime after that.

Member McKeithan asked Director Garman if he was proposing that there be an order granting a special exception just on the 1.8 foot setback reduction on the building and nothing would be addressed regarding the decking. Director Garman stated that in the staff report, his opinion was that the pool hut was eligible for the special exception, but the decking wasn't, so he would not recommend to the Board approval of the wood decking encroaching into the setback. Member McKeithan noted that the owner has requested both. He stated that before he agreed to consider it and due to the history of the issue, the wood decking should be removed before the order is granted. Robert Konstanzer pointed out that the deck boards were removed on the north and south side. Vice Chair Fricker told Mr. Konstanzer that he was in error and had admitted that he had not been out to the site in weeks. Mr. Konstanzer stated that he knew that the deck boards were not put back. Vice Chair Fricker stated that Mr. Konstanzer had no credibility with him. Mr. Konstanzer apologized.

Member McKeithan thought before the issue was considered, Town staff should be able to go out and verify that the decking and underlying material had been removed. Chair Blakaitis wasn't sure if it was important because if the Board didn't approve it, it would have to be removed. Member McKeithan noted that there were other items that happened in 2009 that was in violation and stayed there. Chair Blakaitis stated that if the Board made a determination at this meeting that it had to be removed, the owner would have to remove it.

Vice Chair Fricker noted that the Planning Board was not the executive arm of the Town. Chair Blakaitis stated that the issue would have to be followed up. Vice Chair Fricker asked if the Board chose to vote to grant the exception regarding the pool hut but not the wood decking or hot tub, what assurance the Town would have that the decking would be removed. Director Garman stated that it would remain a violation and staff would follow up on the enforcement. Vice Chair Fricker asked if a vote would be a satisfactory resolution from staff's point of view at the Planning Board level. Director Garman stated that it would.

Member Forlano stated that he understood that it was the Town's responsibility to police the fact that the deck would be removed, but added that it has been in violation since 2008. He asked why it was still an issue. Vice Chair Fricker didn't think it was something the Board should question at this time. He thought it was a matter for Town staff, adding that the Board's responsibility was to recommend certain actions to the Town Council. He added that the Board could ask staff to inform Council that an enforcement action needed to be done. He stated that the Board could decide not to consider the matter and table it until the nonconforming issue was resolved.

Member McKeithan thought it should be tabled until the applicant completed the portion of the nonconforming project since the owner was under the impression of obtaining approval for both issues. He added that Director Garman had noted that decking would not be resolved, so only the pool cabana should be considered. He wasn't sure if the owner would take any action on removing the rest of it. Director Garman stated that he has met with the owner several times and thought they intended to do whatever was required. He thought the reason they did not completely remove the decking was because they were waiting to see if they could get the decking approved. He thought if it wasn't approved, they would still remove it.

Member Murray asked if there was presently a contractor of record for the project. Director Garman stated that Hal Scarborough was the present contractor. Member Murray clarified that Mr. Scarborough had an open permit for the project. Director Garman believed he did. He added that he was working with Mr. Scarborough to address the issue and then the owner took the project over because they felt they should be held accountable for what was done by the previous contractor. He stated that the owners understood it was their responsibility and they felt the easier route was to have the work completed rather than drag it out. Robert Konstanzer agreed.

Vice Chair Fricker moved that the Planning Board recommend to Town Council that the Special Exception permit be granted for the pool hut but not with respect to the encroachment of the decking, consistent with staff's recommendation as reflected in the draft findings and conditions. Chair Blakaitis seconded.

Member Forlano clarified that the motion addressed the pool cabana only. Chair Blakaitis stated that it was to approve staff's recommendation to approve the exception for the cabana but not the wood decking.

Member McKeithan recommended modifying the motion so that the special exception would not be approved until the removal of the wood decking has been completed. Chair Blakaitis didn't think it was necessary as the Board did not normally handle approval or rejection of exceptions that way. He added that it became a Town issue once the Board approved or rejected the exception. Permit Coordinator Cross stated that it would need to be recorded so it would show up in the title search. Member McKeithan stated that if the Board granted the exception, and there would continue to be an outlying problem that the Town knew about, it would be the Board's responsibility to ensure that the owner corrected the outlying problem before the Board approved the exception. Vice Chair Fricker didn't think it was the responsibility of the Board and thought responsibility for enforcement lied with Director Garman and Building Inspector Tate.

Motion carried 3-2 with Member McKeithan and Member Forlano dissenting.

ZMA 14-001 – Application for a Zoning Map Amendment by Mr. E. Paul Breaux, Property Owner of 1316 Duck Road, to Rezone the Property from C-1 Neighborhood Commercial to VC Village Commercial

Director Garman stated the zoning map amendment was for 1316 Duck Road to rezone the property from C-1 Neighborhood Commercial to VC Village Commercial. He stated that the property was owned by Paul Breaux, Jr. He noted that representing Mr. Breaux was Ali Breaux and Richard Hess, who all work for Sun Realty. He added that Sun Realty recently purchased the property. He stated that the applicants met with him over the course of the last few months and indicated that they wanted to make some improvements to the property – interior modifications to the office, adding an exterior staircase on the north side of the building, and continue to use the garage for storage for the property management functions of the business. He added that at some point, they intend to make some improvements to the garage as well, and was trying to figure out the best way to do it. He thought they realized that the Village Commercial Development option was a better tool to allow them to make improvements to the property as opposed to the general language in the C-1 zoning district.

Director Garman stated that the Village Commercial zoning district allowed the property management real estate office function, which was amended last year. He stated that the applicant wanted to take advantage of the use classification.

Director Garman stated that staff recommended the amendment to the applicant during the course of their discussions and staff didn't see a major difference between the Village Commercial and the C-1 districts as far as what uses were allowed, what the dimensional requirements each zoning district would allow as far as lot coverage, setbacks, parking and other things. He stated that he did not see an issue with the rezoning and thought it would be helpful to the property owner and didn't think it would have a great impact on any adjacent properties than the current zoning district. He stated that staff was recommending approval of the zoning map amendment as presented. He noted that there was ordinance language in the Board's

packets for their reference if they wished to approve the amendment. He stated that staff believed that this rezoning was consistent with the Town's future Land Use map, which cites this particular area for general commercial uses. He understood that the applicant wished to continue using the property as a real estate office, which is what it has been for the past several years.

Member Forlano clarified that the Board was only discussing the issue of changing the zoning for the property and nothing regarding any improvements the applicant wished to make. Director Garman stated he was correct. He added that if they wanted to make substantial improvements to the property, they knew they would have to go through the Conditional Use Permit process.

Member Murray asked if there wasn't an option for a Conditional Use Permit with the current zoning. Director Garman stated that there was but there was no option for the Village Commercial Development Option in the C-1 district. He explained that it only pertained to the Village Commercial Zoning District. He thought the Town may want to amend some of the other commercial districts to allow it, but it had not been considered up to this point.

Chair Blakaitis clarified that there was nothing in making the change that would put the Town in a situation that would be regretted later due to a particular use that may arise. Director Garman didn't think so. He added that both districts generally allowed office uses, retail and restaurant uses. He stated that all of the uses could be permitted in either district, adding that the height or the setbacks were any greater in one district over the other. He stated that there would be more flexibility with the setbacks because of the Village Commercial Development Option, but the Board would need to review it under the Conditional Use Permit process.

Member McKeithan asked if the garage was currently being used. Richard Hess was recognized to speak. Mr. Hess stated that they were not currently using the building, but it was being used for storage when they first purchased the building.

Vice Chair Fricker clarified that although the Board was not being asked to address the improvements for the specific use of the specific buildings in the future, if the Board recommended approval to Council, it did not preclude the applicant from tearing the garage down and building a bigger one to store items. Director Garman stated that it would be possible. He added that the particular use that was established for real estate property management office had additional conditions placed on the use, one of which was the total square footage on the property for the size of buildings for the use.

Chair Blakaitis moved to recommend approval to Town Council of ZMA 14-001 as presented. Member McKeithan seconded.

Motion carried 5-0.

Chair Blakaitis called for a short recess. The time was 7:44 p.m.

Chair Blakaitis reconvened the meeting.

ZTA 14-001 – Application for a Zoning Text Amendment by Mr. Michael Strader, P.E. of Quible and Associates, P.C., on behalf of FMC/NV Sanderling SPE, LLC, to Amend the Zoning Ordinance of the Town of Duck, North Carolina, Pertaining to Maximum Building Height in the C-2 General Commercial Zoning District to Increase the Maximum Building Height in the District from 35 feet to 52 Feet for Hotel Buildings with a Roof Pitch 6:12 or Greater

Director Garman stated the applicant was applying for an amendment to the zoning ordinance to increase the height limit in the C-2 zoning district for hotel uses only. He stated that the long term goal for the Sanderling Inn was to add a third story to the north inn building, which was currently 34.5 feet tall. He explained that in order to add a third story, the applicant could do it under the existing height limit, but they would end up with a flat roof and they would rather maintain a more architecturally appealing roof. He stated that the current roof was a 7:12 pitch and in order to do it, they would need to increase the height limit for that zoning district.

Director Garman stated that the applicant was asking for an increase of 17 feet, from 35 feet to 52 feet. He thought they used the 52 feet because it was currently the height limit of an adjacent zoning district – the RS-2 zoning district – which included Palmer’s Island and Scarborough Lane. He stated that the applicant would like to use the 52 feet in order to accommodate the third floor as well as a 7:12 roof pitch, which currently existed on the building and a cupola. He stated that the 52 feet would allow the cupola and the 7:12 roof pitch in the building section.

Director Garman noted that if the height amendment were adopted, it would only affect the Sanderling Inn because it was the only one in Town that was zoned C-2, General Commercial. He stated that the Sanderling also owned the property across the street on the west side of the road, but it was zoned C-1 Neighborhood Commercial. He stated that if the amendment was adopted, there weren’t a lot of properties in Town that would take advantage of the amendment.

Director Garman stated that staff had concerns about the 52 height limit. He noted that the RS-2 zoning district allowed 52 feet but didn’t think it was something that the Town consciously allowed, since it was an ordinance that was inherited from Dare County. He didn’t think, based on the Town’s Land Use Plan and the language included in the Plan, that the current Planning Board and Council could adopt a 52 foot height limit, since the Land Use Plan for the Town indicated that generally the Town preferred buildings that were 35 feet in height as well as two to three stories high.

Director Garman thought the intent of the height amendment was partially in keeping with the Land Use Plan language since the applicant was intending to add a third story and did not want to add four or five stories to the building. He stated that the question came down to how much height the applicant needed, how much they wanted and how much height the Town was comfortable with granting. He did not think the Town would need to amend the ordinance to make sure the cupola was under the limit because cupolas were exempt from the height limit as long as they were not more than five feet tall and more than 64 square feet in area.

Director Garman stated that it came down to whether the Board wanted to allow any height above 35 feet and if so, what the Board and Council were comfortable with. He added that it basically would start a subjective discussion not only about height, but aesthetics and

architecture. He thought it was best for the applicant to provide a presentation on what they were trying to accomplish.

Michael Strader of Quible and Associates were recognized to speak. Mr. Strader stated they had submitted the application for a text amendment on behalf of the Sanderling Inn. He stated that he appreciated all of the correspondence and feedback that has been received, adding that they have been very open from the beginning with regard to what their intentions were. He stated that regardless of what the Board and Council decided on the issue, they would have to come back before the Board with any subsequent proposal for development due to their existing Conditional Use Permit.

Michael Strader stated that the reason they were proposing the 52 foot height was because they wished to complement the existing cupolas with the new one. He stated that the existing roof pitch was at 7:12 and added that cupolas were allowed to be constructed above the total height of 35 feet. He stated that the existing cupolas exceeded the height and they would like to add a cupola on the north end and have it constructed in a similar fashion to the others so the total height would be 52 feet. He noted that it was important for the Board to understand that it included the additional cupola height.

Michael Strader stated that there were a number of architectural reasons why they wanted to do the project, but overall the Sanderling Inn was a landmark and they would like to construct the third floor but make sure it was something that the Town would appreciate as well as the property owners. He stated that they were willing to incorporate into the language that the building would not go above three stories.

Chair Blakaitis asked how low the applicant would consider going with the roof being at an acceptable pitch. He asked if they would be willing to go down to 50 or 40 feet. He noted that there were various pitches on the north building currently. Chris Nason was recognized to speak. Mr. Nason stated that they worked from the original drawings and did their best to verify the roof pitches. He stated that since they were looking at an older drawing, their figures may not be accurate. He noted that they looked at lower pitches and it made the building look monolithic. He stated that it was so wide that the pitch became very tall.

Chair Blakaitis asked what the pitch was for the south inn. Michael Strader stated that the south inn elevation was at grade and could not be compared to the north inn. He added that there was approximately a two foot separation between the existing average grade at the north inn before the finished floor, causing a two foot loss in total height.

Member Murray asked if the nine foot ceilings were necessary. Chris Nason stated that the nine foot ceiling was their attempt to compensate. He added that if they move forward, they would bring back a proposal for the third floor. Member Murray asked if the Board could give the applicant the option of measuring from the base flood elevation. Director Garman stated that the ordinance states that if any portion of the structure was below base flood elevation, the height must be measured from grade at the center of the structure.

Chair Blakaitis stated that he favored a height lower than 52 feet but wasn't sure how it could be done. He asked if the applicant would be satisfied with the height limit at 45-48 feet. Director

Garman stated that in the section drawing, to the top of the cupola, the height was at 50 feet 6.7/8 inches. He added that the cupola was 5 feet 3 inches. He stated that if the cupola was subtracted from the height, it brought the roof height to about 45 feet. He added that it would keep the roof pitch at 7:12 as shown on the rendering. Chair Blakaitis pointed out that the rendering showed the top of the roof flattened to bring the height to 45 feet. Chris Nason stated that it was not flat but in two sections.

Member Murray clarified that if the Board approved the rendering, as well as a subsequent building on the same site, a new structure would be built that met the flood elevation. Director Garman stated that it would be measured from the base flood elevation. Member Murray clarified that the building would be 35 feet tall. Director Garman stated it would, depending on what the adjacent grade was. He added that if there was a building built at a similar elevation, another four feet would have to be added to the height. Chair Blakaitis noted that some of the building would be taller regardless of what the Board decided. Member Murray stated that whatever the Board amended now, the building was not necessarily the tallest one but could be built on site. He added that if the building were torn down and rebuilt, it could be taller. Director Garman stated he was correct. He added that they would have 52 feet from 12 feet; bringing it to approximately 64 feet tall. He corrected himself and noted that the height would be measured from grade and not sea level, making it 55 feet tall.

Director Garman stated that if the height was amended based on the cupola, there was nothing to say that the whole roof could be built up to 52 feet. He added that there was nothing that required the cupola to be the highest feature. He stated that they could come back with a building that was 52 feet to the ridge without a cupola and the ordinance would allow it because the height limit was at 52 feet. He added that that was one of the reasons in the modified proposal; the height was shown at 45 feet because it excluded the cupola. He noted that he wasn't implying that the applicant would do that, but when thinking about the ordinance, certain protections need to be provided.

Vice Chair Fricker thought the Board recognized that whether it was the applicant or the buyer/new owner, if they could do it, they would. Director Garman agreed. Vice Chair Fricker stated that it wasn't just the north building, but the south building, the overall height, the number of floors, new construction and the Land Use Plan that states that the Town prefers two to three story residential and commercial structures generally 35 feet in height. He stated that when the Meeting Hall was being constructed, people were upset with the fact that the building was higher than 35 feet. Director Garman stated that the Town Meeting Hall was not higher than 35 feet. Vice Chair Fricker thought it was the cupola that people had the problem with. Director Garman agreed, adding that both buildings were less than 35 feet, but the cupola was higher and that was when the ordinance was changed for the 64 square feet. Vice Chair Fricker asked what staff's opinion was regarding the Land Use Plan and the term "preferred". Director Garman stated that the Land Use Plan was written fairly loosely because it was a guideline and not to be used to control every decision the Town made. He thought the idea was that generally this was the type of structure and height that was preferred, but there would be unique circumstances where the height would be higher for a particular reason.

Member Murray noted that in other jurisdictions, 35 feet was determined between the ridge and the top plate, which was more a more reasonable way to interpret it as it takes into account the

problem with the building becoming wider and bringing a portion of the roof up higher. He agreed with Director Garman about the cupola. Director Garman stated that when it's measured to mean roof height, it also addressed the mass of the roof. Member Murray agreed.

Chris Nason noted that the Palmers Island subdivision had a roof height limit of 52 feet. He asked if they were allowed to have four stories. Director Garman stated that there were no floor limitations for Palmers Island. Chris Nason asked how it would be measured. Director Garman stated that it could be measured from base flood plus one. Vice Chair Fricker noted that Duck inherited the height limits for Palmers Island from Dare County. He didn't think the Palmers Island subdivision was relevant to what a commercial or hotel complex should have in a village community. Chris Nason stated that he was trying to come up with a common sense approach to things.

Member Murray thought whatever the Board decided, the roof would need to be addressed and not worry about the cupola. Chair Blakaitis agreed but added that it did not solve the problem of the total height. Director Garman stated that with the 7:12 roof pitch, the applicant should be able to do it with a roof height that was less than 52 feet. He thought there may be ways to reduce the building height even further, such as constructing a lower pitched roof, lower ceiling height on the new third story or measuring from a different location.

Chair Blakaitis asked what the room heights were for the Sanderling Inn. Chris Nason stated that they were currently eight feet, but added that the ground floor may be a little higher. He stated that they supported and understood the concerns of Director Garman and would support any modified language.

Michael Strader asked if the Board had a concern that if the text was amended, new construction would be allowed with a higher height. He suggested that if that was the concern, the language could be adjusted so that it would read: "...existing buildings with a roof pitch..." so the Board would not have to be concerned with the measuring point of new construction versus existing construction. Chair Blakaitis thought the Board wanted to find a way to get the height lower than 47 feet and wasn't sure how possible it would be. Chris Nason pointed out that the modified language had the height at 45 feet. Dick McAuliffe of Sanderling Inn was recognized to speak. Mr. McAuliffe stated that the 45 foot height limit was acceptable to them.

Vice Chair Fricker stated that the problem he was having was that he did not have a global view of the Sanderling Inn complex. He didn't know what the ways, means or locations the Sanderling Inn would have to put sixteen additional rooms on the property or what it would cost. He asked if any other possibilities were explored. Dick McAuliffe stated that the option in front of the Board was the only one that had been discussed. He added that there wasn't any existing room presently on the footprint of the property to put something in and still be able to have the required parking. He stated that the only option they had was to build the additional floor on the north inn. Vice Chair Fricker thought there was more than sufficient parking on the site. Mr. McAuliffe stated that it was two years ago when the Town granted approval for the building project that was completed and they had to modify some of the parking language at that time.

Chair Blakaitis asked if the parking would still be sufficient if 16-20 additional rooms were constructed. Member Forlano stated that the Board was discussing the height of the building.

He thought a can of worms would be opened once the Board started discussing the number of rooms with regard to parking.

Vice Chair Fricker stated that he was not inclined to grant the text amendment above 35 feet at all if there was a way the Sanderling Inn could build another building on the site. Michael Strader thought it was important to acknowledge the location and elevation of the existing buildings. He stated that going beyond the existing footprint would not be feasible on the south inn because building inspections would not allow it and due to the flood regulations.

Chair Blakaitis stated that he had a problem with the 52 and 45 foot height limit, but would be happy to agree to a height around 38 feet. He noted that the highest building on the site was at 37.10 feet and thought having something close to that would be more than reasonable. Member Forlano stated that he did not have a problem with the 45 foot height limit but that would be the limit for him. Chair Blakaitis pointed out that 45 feet was the total building height and 47 feet was the feet above sea level.

Member Murray understood why the Town had a height limit but felt that applying it the same way as for residential structures to commercial structures was unreasonable. He felt there need a more agile ordinance for height in general. He stated that it wasn't bad to limit building height, but bad to do it with such a wide stroke. He thought it was consistent with other portions of the Land Use Plan that alluded to attractiveness of buildings and style that the Town wanted, where credit should be given to someone trying to come up with a decent roof pitch. Director Garman agreed with Member Murray's comments regarding looking at overall height. He stated that he has always worked under a system where an ordinance had a specific height limit to the ridge height. He stated that some communities have a mean roof height, which tended to work better in that it could be exceeded as long as the mass was kept below the mean roof height, allowing more interesting features on the building. He thought the applicant wanted a recommendation in order to move forward, but if that was something the Board wanted to discuss, it should be done at a future meeting.

Member Murray asked if the language could be limited just for this district. Director Garman stated it could be done but staff would need to do some research to come up with the proper language.

Chuck Straub of Sanderling Property Owners Association was recognized to speak. Mr. Straub stated that he was involved with the architectural control committee. He stated that he was pleased that the applicant was moving forward with the plans to keep the look as it currently existed. He understood that capacity was the issue and the Sanderling Inn was bought under the premise that it was already at capacity and now here they were trying to increase the capacity. He stated that he would like to see alternatives to keep the height level down.

Ron Carter of 111 Royal Tern Lane was recognized to speak. Mr. Carter stated that the Board needed to be careful with regard to the architecture of the Sanderling Inn. He stated that if the Board just looked at the height without looking at the architecture, it would be a mistake. He thought a flat roof would not work. He thought a little more research would be helpful.

Chair Blakaitis asked the Board what they wanted to do. He asked if it should be approved with a 45 foot height limit, ask for more information or wait and change the ordinance. He felt that the Board was undecided at this point. Vice Chair Fricker asked what the reaction would be if the Board asked the applicant to come back with a rendering of all of the buildings in the complex showing a 6:12 pitch and the additional floor on the north building. Chris Nason stated that it could be done, but added that the applicant wanted to get the project started as soon as possible. Dick McAuliffe stated that their goal was to begin work on it so they could be ready for next season.

Chair Blakaitis stated that he would like to see all of the elevations for the project. Chris Nason stated that they typically present a proposal and do not present various options for the Board to choose. Chair Blakaitis stated that it may be better if the Board rejected the application and send it back.

Member McKeithan clarified that if the Board approved the 42 foot height limit, the north building would be lower than the main inn. Michael Strader stated that 52 feet would bring all of the buildings into compliance with the ordinance.

Chair Blakaitis stated that the Board had modified language that the applicant was willing to accept at this time. He asked the Board what they wished to do. He noted that the modified language had the height at 45 feet with no more than three stories. Member Murray stated that he did not have a problem with the 45 foot limit. Member Forlano stated that he did not have a problem with the 45 foot height limit but felt it would be beneficial for everyone to see the whole development to scale so the Board could visualize it.

Chuck Straub suggested that in the Board's decision, it was a great idea to have the elevation of all of the buildings in order to determine the roof height on the north building.

Vice Chair Fricker moved to recommend that Council not approve the zoning text amendment until such time as the applicant provides the Planning Board with redrawn building elevations for the four buildings – the north, south, main and Lifesaving Station – with elevations measured by the same standard to include a maximum number of floors and a 6:12 roof pitch on the north, main and south buildings, that would be allowed given the modified language.

Chris Nason noted that the roof pitch would be 7:12.

Vice Chair Fricker continued his motion – based on potential approval of the modified language, which was 45 feet.

Director Garman clarified that the Board didn't want just the new proposal versus the existing other buildings, but the other buildings rendered as if they were to be increased as well. Vice Chair Fricker stated that whether it was 52 or 45 feet height limit in the request, there was the potential for additional floors in the south building. Director Garman stated that if it was restricted to three floors, the only other building would be the main building that could have an additional floor. Vice Chair Fricker stated that it would be raising the north building and the main building could be raised by a third floor. Dick McAuliffe noted that it could not be done with the 6:12 roof pitch.

Vice Chair Fricker withdrew his motion.

Director Garman clarified that the main building measured from base flood elevation was currently measured from 35.84 feet tall, not including the cupola. He added that if the height were increased to 45 feet, it would give an additional 10 feet. He asked if the building could be raised an additional story. Chris Nason stated they would need at least nine feet before they get to the roof.

Chair Blakaitis thought the Board should request the information and phrase it so that it was given to the Board as to what currently existed and then let the Board interpolate what could happen with the third floor. He thought a simple rendering of the four buildings would be sufficient for the Board to look at or approve the proposed text amendment.

Vice Chair Fricker moved to recommend that the Council not approve the zoning text amendment until such time as the applicant submits to the Planning Board a drawing of the four principal buildings on the property, showing the elevations in common measurement and showing the increased height of the north building if the modified language were adopted. Member Murray seconded.

Member Forlano asked if it would be too much trouble to ask the applicant to provide photographs.

Member Forlano amended the motion to include photographs. Vice Chair Fricker seconded.

Motion carried 5-0.

Motion carried on original motion 5-0.

APPROVAL OF MINUTES

Minutes from the December 11, 2013 Regular Meeting

Member Murray had a correction to Page 3 of the minutes.

Vice Chair Fricker moved to approve the December 11, 2013 minutes as amended. Member Murray seconded.

Motion carried 5-0.

Minutes from the January 8, 2014 Regular Meeting

Member Murray had a correction to Page 5 of the minutes.

Vice Chair Fricker moved to approve the January 8, 2014 minutes as amended. Member Murray seconded.

Motion carried 5-0.

OTHER BUSINESS

Request by Town Council to Review Role and Purpose of Town Council Liaison Position

Chair Blakaitis stated that at the Council meeting, the Council discussed the Planning Board Liaison position. He stated that there were some concerns regarding ex-parte communications and information bias that could be brought back to the Council during a public hearing. He stated that Council did not have a problem with it, however, after further deliberation, Council decided that if the liaison was to stay with the Planning Board, they would want certain procedures and rules developed. He stated that Council appointed Mayor Pro Tempore Monica Thibodeau, Town Manager Chris Layton and Director Garman to work on a committee and added that the Board needed to make an appointment for a member of the Planning Board to serve on the committee. He stated that Vice Chair Fricker has volunteered to serve. It was *consensus* of the Board to appoint Vice Chair Fricker.

STAFF COMMENTS

None.

BOARD COMMENTS

None.

ADJOURNMENT

There being no further business to discuss, Chair Blakaitis adjourned the meeting. There was no vote.

The time was 9:31 p.m.

Approved: _____

Joe Blakaitis, Chairman