

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
May 4, 2022**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, May 4, 2022.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Sandy Whitman; Councilor Rob Mooney; and Councilor Tony Schiano.

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Drew Havens; Police Chief Jeffrey Ackerman; Fire Chief Donna Black; Attorney John Leidy; Public Information and Events Director Christian Legner; Finance and Human Resources Administrator Jessica Barnes; Donna Creef of Creef Consulting; Senior Planner Sandy Cross; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Director of Community Development Joseph Heard and Town Attorney Robert Hobbs.

Mayor Kingston called the meeting to order at 6:00 p.m.

Mayor Kingston asked Senior Planner Sandy Cross to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments. He noted that comments will be limited to three minutes as there was a timer for the time limit. He added that the public could email public comments, but they must be received by 4:00 p.m. on the day of the Council meeting. He noted that written comments must also be limited to three minutes when read aloud. He asked that any comments related to the public hearings be held off.

Dennis Wojcik of 103 Dune Road was recognized to speak. Mr. Wojcik stated that he wanted to voice his concerns regarding the Resort Realty development project, which he was made aware by the Duck Ridge Shores Civic League. He explained that the information he was provided included the Planning Board's meeting packet and upon looking at the plans, he came to the conclusion that it was a poor design. He stated that he based this decision based upon his civil engineering background as well as his experiences while riding his bicycle in Town. He pointed out that the plan was based around two dead-end parking aisles, adding that he has experienced many close calls on his bicycle due to this type of design causing irregular, unexpected vehicular movements along with sudden stops of vehicles that were pulling into a parking lot.

Dennis Wojcik stated that he had met with Senior Planner Sandy Cross and Community Planner Jim Gould to review the plans in order to get a better understanding, which led him to review the Town's zoning ordinance and other statutes and policies that would be pertinent. He stated that his engineering and common-sense analysis was verified by the zoning ordinance regulations that do not allow the type of design that was being presented. He stated that he brought up many concerns via correspondence to the Planning Board members as well as at their meeting. He added that at the Planning Board meeting, he was frustrated that the Town staff did not share his concerns and acted as an advocate for the project as well as not presenting a fair and accurate picture of the project. He noted that the staff presentation emphasized that they considered it a redevelopment project and he felt that because of this, the requirements of the zoning ordinance did not have to be fully implemented. He stated that he was relieved that the Planning Board had voted to deny the project.

Dennis Wojcik stated that upon hearing that the developer had decided to take the plan to the Town Council without an approval recommendation from the Planning Board, he decided to further investigate the project. He stated that after finding that the zoning ordinance did not define redevelopment, he contacted Senior Planner Cross and was informed that the definition came from the North Carolina Urban Redevelopment League law. He stated that he had sent email correspondence to Town Council and included a link to the law and hoped that Council had the opportunity to review it. He pointed out that it was clearly not appropriate for use in regard to the project.

Robert Lotze of 117 Dune Road was recognized to speak. Mr. Lotze echoed Dennis Wojcik's comments, adding that he supported him in his research. He stated that he had looked at the statutes and believed that the Town of Duck was taking a redevelopment project that was completely out of context. He thought it was the crux of the issue as it was not even close to being defined in that respect if one looked at the statute. He apologized for taking issue with it, adding that he thought there were some people that think they have experience in this. He noted that he was not saying that his experience in reading it came differently, but thought the major concern was with the term "blighted."

Rick Fagersten of 101 Dune Road was recognized to speak. Mr. Fagersten stated that his major concern was that the parking lot on either side for the project was surrounded by the boardwalk. He noted that there was a No Parking lane between them, adding that North Carolina provides a manual with how to access a North Carolina state highway and where one can park on it as well as how the roads access it. He pointed out that it was done to keep people safe. He stated that with the design for the project, without the lane in between or a no parking lane between two parking spaces, once the parking lot was full, anyone that pulls into the parking lot could not exit the parking lot unless they back out onto Duck Road. He stated that when the building was originally developed, the parking lane was added but has since disappeared. He thought the North Carolina state people that approved the original design were not asked to approve the new design. He asked that the pass-through lane be put back in for the project.

James Braithwaite of 135 Bayberry Trail, Southern Shores was recognized to speak. Mr. Braithwaite stated that he was the adjacent property owner to the project site and was in favor of the project and making it the best project it could be. He did not feel that parking was an issue, adding that he has more than enough parking at his property. He pointed out that when the parking lot fills up, people will drive to another parking lot. He reiterated that he did not have an issue with the project.

There being no one else wishing to speak, Mayor Kingston closed the time for public comments.

CONSENT AGENDA

Minutes from the April 6, 2022, Special Meeting; Minutes from the April 6, 2022, Regular Meeting; Contract Extension with CrowderGulf for Disaster Debris Management and Removal Services; Resolution 22-08, a Resolution of the Town Council of the Town of Duck, North Carolina, Designating an Official to Make Recommendations to the North Carolina Alcohol Beverage Control Commission on ABC Permit Applications; and Budget Amendment

Mayor Pro Tempore Thibodeau moved to approve the consent agenda as presented.

Motion carried 5-0.

SPECIAL PRESENTATIONS

Recognition of Nancy Caviness in Receiving the 2022 Governor's Volunteer Service Award

Mayor Kingston stated that several months ago, Governor Roy Cooper put out a call soliciting for the Governor's Volunteer Service awards and several Council members thought the ideal candidate would be former Councilor Nancy Caviness. He stated that an application was submitted and she received the award. He noted that Ms. Caviness was not only a Council member for all but one term, but also a volunteer firefighter, running the Advice 5 Cents turkey trot, and a member of the Outer Banks Community Foundation. He felt she was well deserving of the award and received it from the Dare County Board of Commissioners at their April 20, 2022 meeting. He and Council congratulated Nancy Caviness on the award.

Presentation by Candice Andre of VHB, Providing and Update on the Work of the Resilient Coastal Communities Program Grant

Candice Andre of VHB was recognized to speak. Ms. Andre went on to give a short presentation on the Resilient Coastal Communities program grant to Council and the audience.

Mayor Kingston thanked Candice Andre for her presentation.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of SUP22-001, an Application by Bissell Professional Group, on Behalf of Property Owner Phantom Enterprises, LP, for a Special Use Permit to Redevelop the Existing Property in the Village Commercial District at 1248 Duck Road as a Group Development to Include a 49-Seat Restaurant with Two, Three Story Buildings each with 1,250 Square Foot 1st Floor Retail Space and 3-Bedroom Accessory Dwelling Units on the 2nd and 3rd Floors

Mayor Kingston turned the meeting over to Attorney John Leidy.

Attorney Leidy stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. He stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine, and cross-examine witnesses. He asked if any member of Council needed to disclose any communications about the subject of the hearing that a Council member may have had with the applicant or any person prior to the hearing, they needed to disclose that communication.

Mayor Kingston stated that Council, staff, and the Planning Board all received multiple emails. He stated that he responded to them to let them know it was a public hearing and that Council would not respond. Attorney Leidy asked if there was anything about the communications that were received prior to the hearing that would cause him to make a decision one way or another in this case. Mayor Kingston stated that there was not. Attorney Leidy asked if he would be able to make a decision on the case based solely on the evidence that would be presented at the hearing. Mayor Kingston stated that he would.

Mayor Pro Tempore Thibodeau stated that she received communications and emails as well as having a meeting with the applicant that was unrelated to the hearing, but it did come up. She stated that she met one time with the applicant but it would not affect anything that she would hear at the public hearing, nor has she made any predeterminations from the emails or the meeting. Attorney Leidy asked if she would be able to make a decision based solely on the evidence that would be presented at the hearing. Mayor Pro Tempore Thibodeau stated that she would.

Councilor Mooney stated that he received the same emails as the rest of Council with one response to Dennis Wojcik but it was not substantive. Attorney Leidy asked if Councilor Mooney made any determination or decision regarding what the outcome of the application should be prior to this hearing. Councilor Mooney stated that he did not. Attorney Leidy asked if he would be able to make a decision based solely on the evidence that would be presented at the hearing. Councilor Mooney stated that he would.

Councilor Whitman stated that he had received the same emails and was the Council liaison for the Planning Board. He stated that he sat through the Planning Board meeting, but nothing would affect the way he will be voting. Attorney Leidy asked if he would be able to make a decision based solely on the evidence that would be presented at the hearing. Councilor Whitman stated that he would.

Councilor Schiano stated that he received the same emails and was a member of the Sanderling Property Owners Association. He stated that the chairman had drafted a letter that he wanted to send in concerning this topic, but he did not review the letter and told him to state that he had not viewed it and had no involvement in the drafting of the letter. Attorney Leidy asked if he would be able to make a decision based solely on the evidence that would be presented at the hearing. Councilor Schiano stated that he would.

Attorney Leidy stated that anyone that would be presenting evidence in connection with the hearing would need to take an oath. He asked that anyone wishing to testify come forward to be sworn in.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman proceeded to swear in the applicants and staff for the public hearing.

The following persons were sworn to provide testimony during the hearing: Donna Creef, Sandy Cross, Crouse Gray, Ben Vorndran, Reid Carter, Dennis Wojcik, Maryann Beard, Robert Lotze, Michael Robinson, David Klebitz, Lori Gray, Tom Stewart, and Wes Stepp.

Attorney Leidy opened the evidentiary portion of the hearing. He stated that Donna Creef would give an overview.

Donna Creef was recognized to speak. Ms. Creef stated that she was a consultant for the Town of Duck and was filling in for Director of Community Development Joe Heard. She stated that Phantom Enterprises owns 1248 Duck Road, which features a commercial structure on the property that was used for real estate offices for Resort Realty. She pointed out that the property has been vacant for a year and a half and that the property owner was seeking approval to demolish the existing structure and redevelop the site with three commercial structures. She stated that the new structures will be dedicated to retail and restaurant uses with residential uses on the second and third floors of the two structures. She explained that there will be walkways and decks that will connect the buildings and extend over the Currituck Sound. She noted that the proposed development was subject to special use permit review because of the restaurant as well as the location of multiple buildings on the site. She added that multiple buildings on the site were considered a group development and both triggered special use review under the Village Commercial zoning regulations. She stated that the applicant was also seeing special exception approval for parking reductions and reductions of the rear yard setback requirements in the Village Commercial zoning district.

Donna Creef stated the adjoining property to the north was owned by Duck Ridge Shores Civic League and was used for sound access by Duck Ridge Shores subdivision property owners and residents, which was also zoned Village Commercial. She stated that the adjoining property to the south was developed commercially as Duck Waterfront Shops and was zoned Village Commercial. She noted that across NC 12 to the east of the site was lot 13 of the Duck Ridge Shores subdivision and was zoned RS-1 residential.

Donna Creef stated that the existing real estate office building will be demolished and three new mixed-use structures with associated parking, wastewater system, decks and boardwalks, landscaping and other site improvements were proposed. She pointed out that Section 156.036(C)(4) establishes a gross floor area of 5,000 square feet of heated space for commercial structures. She added that Building C on the southern end will be a two-story restaurant with 1,936 square feet of space on the first floor and 864 square feet on the second floor. She stated that the second floor also included 500 square feet of outdoor restaurant space. She stated that Building B in the middle featured 1,250 square feet of retail space on the first floor with a three-bedroom residential apartment on the second and third floors. She stated that Building A on the northern end featured a first-floor retail area of 1,250 square feet with a three-bedroom residential unit on the second and third floors.

Donna Creef stated that the three buildings were subject to the Group Development standards of Section 156.059 of the zoning ordinance and that this section requires a separation distance of 20 feet between each structure unless a fire suppression system was used, then the separation could be decreased by 10 feet. She pointed out that a fire suppression system will be used according to the plans and evidenced by the project engineer at the Planning Board meeting on April 13, 2022. She explained that the Village Commercial district establishes a 50% residential square footage limitation for accessory apartments located above commercial uses and because the project was a group development, the accessory apartment size limitation has been applied to the total amount of commercial square footage instead of each building individually.

Donna Creef stated that the restaurant was proposed for 42 indoor seats and seven additional seasonal seats, noting that Section 156.094 allows for an increase of 25% of seating capacity or 18 people, whichever is less, without requiring additional parking. She noted that the proposed seasonal seating was consistent with the requirement.

Donna Creef stated that Section 156.065(B)(1) states that structural setbacks cannot be reduced by more than 50% and the Village Commercial district establishes a rear yard setback of 20 feet. She stated that a reduction of 10 feet in the rear yard setback was requested by the applicant for Buildings A and B and that the site plan depicted the normal water line adjacent to the public boardwalk to be 10.1 feet from the northern corner of Building B and 11.8 feet from the front of Building A. She pointed out that the setbacks do not exceed the 50% reduction threshold established in the zoning code.

Donna Creef explained that, based on the parking table in the sketch plan, a total of 34 parking spaces was required for the proposed uses. She stated that the applicant was

requesting a reduction of four spaces for a total of 30 on-site parking spaces. She noted that Section 156.065(B)(3) of the zoning code allows for a reduction in parking of five spaces or 20% of the total parking. She added that this reduction was consistent with the criteria set forth in the zoning code and may be authorized as a special exception, noting that there were currently 33 parking spaces at the site.

Donna Creef stated that in the past, the Town has approved reduced parking standards for seven development proposals under the Village Commercial Development Option for Loblolly Pines, NC Coast Restaurant, Scarborough Faire, Roadside Bar & Grill, Wee Winks, Aqua Restaurant, and Twiddy Realty. She pointed out that each of these individual applications were reviewed and considered on their own merits. She stated that the zoning ordinance establishes specific criteria that must be met to be approved as a special exception under the Village Commercial Development Option and some requests have been revised by Council to grant a reduction in parking but not to the full extent of the developer's request.

Donna Creef stated that staff discussed the impacts on NC 12 with VHB, the project engineer for the BRIC project, and received preliminary comments from NCDOT District Engineer David Otts. She stated that Mr. Otts indicated that the proposed redevelopment will not negatively impact the two existing access drives to the site and may enhance ingress/egress from the site. She added that VHB reviewed the plans and indicated that it was possible to accommodate a full-size turn lane into the site at the southern entrance.

Donna Creef stated that in order to grant approval of a special use under Section 156.065 Village Commercial Development Option of the Code, the Council must make findings that substantial evidence has been provided to document the development proposal and complies with the following general criteria:

1. The development proposal is consistent with the adopted Vision and Comprehensive CAMA Land Use Plan for Duck Village.
2. The development proposal is consistent with the desired scale, character, and function of Duck Village.
3. The property and development proposal contain many of the characteristics established in the 156.065(E) guidelines.
4. The requested modifications are the least necessary to accommodate the proposed development and meet the intent of the Village Commercial Development Option.
5. The requested modification will not negatively impact adjacent properties or the surrounding area.

Donna Creef stated that the project was reviewed by the Planning Board at their April 13, 2022 meeting with several property owners speaking at public comment and during the review of the project. She noted that the property owners expressed concerns about the

size of the development, the proposed decrease in parking spaces, access to the adjoining property owned by the Duck Ridge Shores subdivision, and traffic impacts. She stated that, after hearing from the project representatives and the public, the Planning Board voted 3-2 to recommend denial of the redevelopment project. She added that the three members voting to recommend denial expressed concerns about the overbuilt nature of the project and felt the parking reduction of five spaces should not be supported.

Donna Creef stated that in response to the Planning Board meeting, the developer revised the sketch plan to decrease the size of the first-floor retail space to 1,200 square feet which results in a parking reduction to 34 spaces. She added that the developer was also proposing fencing along the Duck Ridge Shores subdivision site to prevent pedestrian access to their property, which was a concern that was expressed by members of the public.

Donna Creef stated that it was staff's opinion that the proposed redevelopment was consistent with the 2027 Duck Vision statement, the Duck Comprehensive & Land Use Plan, and the Duck zoning ordinance and was recommending approval. She stated that a draft Special Use Permit was in Council's packets with the following findings and conditions, if approved:

1. The applicant must obtain a land disturbance permit from the Community Development Department prior to engaging in any fill or grading activity on the site.
2. A site lighting plan must be submitted and approved by the Community Development Department to ensure compliance with the Town's lighting standards.
3. A landscaping plan must be submitted and approved by the Community Development Department and necessary plantings installed prior to the issuance of a Certificate of Occupancy.
4. Signs must be reviewed and approved under a separate permit by the Community Development Department.
5. The applicant must obtain a permit from Dare County Environmental Health for the design and installation of the proposed wastewater treatment system improvements prior to the issuance of a land disturbance permit.
6. The applicant must submit a utility plan to Dare County Water Department for final approval.
7. The applicant must obtain a CAMA minor permit for all work and improvements within the Area of Environmental Concern prior to the issuance of a land disturbance or building permit.
8. The buildings must be constructed in substantial conformance with the elevation drawings and floor plans submitted with the SUP application, as prepared by Cahoon and Kasten Architects, dated April 27, 2022.
9. The applicant must submit the final site plan and site plan review fees as provided for in the Town's adopted fee schedule concurrent with final engineer-stamped site plan drawings, as may be revised through the approval and condition process,

with all required information referenced in the SUP conditions, prior to issuance of a building permit for the project.

10. The applicant, for public purposes, shall grant to the Town of Duck, an easement as shown in Exhibit E, being generally described as a eight foot wide access easement for public boardwalk extension by Town of Duck and sidewalk connection to match access to the boardwalk along the northern property line running from west to east, and an easement for possible future boardwalk extension to connect with the existing boardwalk at the Waterfront Shops along the western portion of the property north of the coastal wetlands. Such easement shall be shown on the final site plan for the proposed development of the property, a deed of easement to the benefit of the Town shall be prepared and accepted concurrent with final site plan approval and such easement shall be duly recorded in the Dare County land records prior to issuance of a building permit for the development of the property.
11. The eight-foot-wide access boardwalk connection must be designed by an engineer to comply with the standards and specifications of the Town's boardwalk and applicable codes.
12. This special use permit will expire in 18 months from the date of approval unless construction of the proposed development has commenced.

Mayor Kingston asked if the 49 seats for the restaurant was in the parking calculation or if it was 42. Donna Creef stated that the parking was based on 42 spaces because the zoning ordinance specifically allows a seasonal increase with no associated increase in parking. Mayor Kingston noted that both NCDOT and VHB had stated that the road could be widened to accommodate a turning lane. He asked what the cost would be and if it would be a cost the Town would be responsible for. Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross stated that VHB had stated that a preliminary review showed that it was possible, but staff has not asked them to go any further with design because it was unknown if it would be necessary. She stated that it was something that could be facilitated if Council wanted to do that. Mayor Kingston clarified that there could be significant cost to the Town to widen the turning lane. He asked if the costs have been determined. Senior Planner Cross stated that staff has not had any discussions regarding cost to implement it. Mayor Kingston thought it was not an option at this point. Donna Creef thought it was undetermined at this point, adding that she did not want to direct VHB to expend their time and resources to the design of a left-hand turn lane if the project was not feasible. Mayor Kingston pointed out that Council was looking at one of the solutions to help the parking and traffic, which was a turning lane and it was not even defined. Donna Creef stated that in her conversations with VHB, they felt it was doable without a substantial change in the plan. She stated that she was not sure how that translated in terms of cost as it was not something VHB was asked.

Mayor Pro Tempore Thibodeau thought that the turning lane through Town, regardless of what happens on the site, that the Town may want to request a third turning lane for overall traffic flow. She was not sure if it was relevant to the project, but if NCDOT was willing to entertain a turning lane that it could be beneficial to the community. Donna

Creef thought if the turning lane could be accommodated, it should be something that the Town should investigate with VHB if it was not at a substantial cost.

Attorney Leidy asked if the applicant had any questions for Donna Creef.

Crouse Gray of Gray and Lloyd was recognized to speak. Mr. Gray stated that he was the attorney for the applicant. He asked Donna Creef for her educational background. Donna Creef stated that she graduated from East Carolina University in 1988 with a degree in Business Administration. She stated that she was a Certified Floodplain Manager by the state of North Carolina. Mr. Gray asked if Ms. Creef was an expert in planning. Attorney Leidy explained that Crouse Gray was asking to have Donna Creef qualified to give expert testimony, which a lay witness can only give testimony regarding matters that they have personal knowledge, matters they have observed, matters they have experienced, and matters they have heard. He stated that expert witnesses can give an opinion testimony, meaning they can give testimony regarding matters that were based on their experience and not based on matters they have observed or have personal knowledge of, but they can give an opinion regarding the set of facts for the application or the law. He stated that Crouse Gray was asking for her to be qualified as an expert witness and in order for Council to qualify her, they would have to find that she has experience, training, and background as an expert in the field of planning and development. Crouse Gray stated it was planning. Attorney Leidy stated that if Council found Donna Creef qualified to give testimony, she would be able to give her opinion testimony to the extent she feels qualified.

Mayor Pro Tempore Thibodeau asked if Donna Creef was asking Council to confirm her as an expert. Attorney Leidy stated she was correct, adding that Ms. Creef was asking that Council accept that she be qualified as an expert so she could give that form of testimony in response to the questions. It was *consensus* of Council to accept it. Attorney Leidy asked Donna Creef if she had been qualified to give expert testimony previously. Donna Creef stated that she had.

Crouse Gray understood that the existing lot coverage was approximately 16,880 square feet or approximately 56% of the site. Donna Creef stated that it was decreasing from 56% to 46.7%. She noted that the Village Commercial district allows 60% lot coverage. Mr. Gray clarified that there was one building that was 6,000 square feet and the applicant was now creating three buildings where the overall square footage was less. Ms. Creef explained that the overall impervious coverage of the site was less and included more than just the structures. Mr. Gray clarified that the present coverage in the Area of Environmental Concern was 1,165 square feet. Ms. Creef stated he was correct. Mr. Gray clarified that proposed impervious surface within the Area of Environmental Concern was decreasing to 9,445 square feet. Ms. Creef stated he was correct.

Crouse Gray clarified that in the CAMA buffer zone, the existing impervious coverage was 4,017 square feet. Donna Creef stated that the 30-foot CAMA buffer was 4,017 square feet. Mr. Gray asked what the proposed impervious coverage in the Area of Environmental Concern would be. Ms. Creef stated that it would be 3,252 square feet.

Mr. Gray clarified that there was a reduction in each one. Ms. Creef stated he was correct.

Crouse Gray believed Donna Creef had previously testified that that amount of parking that was allocated to the present use was 33 spaces. Donna Creef stated he was correct, adding that was the testimony that was heard at the Planning Board meeting. Mr. Gray clarified that the amount that was being proposed was 30 parking spaces. Ms. Creef stated he was correct. Mr. Gray clarified that there was no reduction to the maximum of 34 parking spaces. Ms. Creef stated he was correct. Mr. Gray clarified that the applicant was looking to reduce the number of parking spaces. Ms. Creef stated that it was the request of the applicant.

Crouse Gray asked Donna Creef if she had been hired when the project first came before Town staff as a consultant. Donna Creef stated that she did not as her contract started in March. She understood from conversations with Senior Planner Cross that there were conversations regarding the project for a couple of years where the applicant and the project engineer have met with Community Development staff and have discussed the development and the standards of the zoning ordinance until they got to a point where they could submit it to the Planning Board. She stated that she first became involved at the Planning Board meeting in preparation of the staff comments leading up to the meeting. She noted that she did have access to Director of Community Development Joe Heard's notes and technical review that he completed.

Crouse Gray asked to have the site plan shown. He asked Donna Creef if it was the site plan that she had reviewed. Donna Creef stated that it was. Mr. Gray clarified that there were two accesses on NC 12. Ms. Creef stated that there were two existing accesses as well as two shown on the site plan. Mr. Gray clarified that the two proposed accesses were in the same location as the existing accesses on the property. Ms. Creef stated he was correct, adding that they were proposed to be widened. Mr. Gray asked how wide the existing curb cut was. Ms. Creef stated that she could not answer that because she did not know what it was.

Attorney Leidy asked if any of the sworn witnesses had questions of Donna Creef.

Ben Vorndran of 104 Sea Hawk Drive West was recognized to speak. Mr. Vorndran stated that the roadway by the project area has issues with water and the elevations. He asked if there was any consideration given that would affect positively or negatively on adding more water to the street. Donna Creef stated that she had not been involved in the discussion and would have to defer to the Town's engineer.

Reid Carter of 153 Speckle Trout Drive was recognized to speak. Mr. Carter stated that he was worried about people trying to come into the restaurant or retail parking and have to exit if there was not any available parking because of the reduced number of spaces proposed. He asked how a person that enters the parking lot and finds the lot full would exit the parking lot without backing across the sidewalk or into NC 12. He further asked if it was a concern with regard to the planning of the project. Donna Creef explained that

the plan meets the merits of the zoning ordinance, adding that the uses proposed required 34 parking spaces, but the applicant was asking for a reduction of four spaces, which was allowed by the zoning ordinance. She stated that the drive aisles meet the width and in terms of people backing onto NC 12, that was a concern of hers but it met the standards of the zoning ordinance. Mr. Carter stated that there was quite a bit of discussion at the Planning Board meeting regarding the danger of backing out onto NC 12. He pointed out that the plan, as modified six days prior, had a turnaround spot added in one of the two lots. He clarified that it would allow exiting from the south lot in a forward direction, but not in the north lot. He asked if there was a turnaround opportunity in the north lot. Ms. Creef reiterated that the parking lot met the standards of the zoning ordinance, so there was no requirement for a turnaround. She assumed that someone that was driving along Duck Road would have the wherewithal to realize the parking lot was full before they turned in and would avoid an accident.

Reid Carter stated that the parking lot was short a number of spaces and with other restaurants, the parking lots can get full. He stated that at NC Coast Restaurant, many people that dine there have to park at a nearby parking lot. He stated that when the parking lot for the proposed restaurant was full and someone has to park nearby, they would most likely park at Tommy's Market or the Waterfront Shops. Attorney Leidy asked Mr. Carter to ask questions and not give testimony at this time. Mr. Carter asked where people will park that could not get into the parking lot. Donna Creef reiterated that the parking design meets the standards of the zoning ordinance and when it meets those standards, she or a Planning staff member cannot have the authority to require more parking. She stated that a good problem to have for businesses is not enough parking, but it seemed to be, based on what Reid Carter just testified, that it was consistent with all of the other businesses in Duck. She was not sure how this project can be singled out and held to a higher standard than what was in the zoning ordinance. Mr. Carter asked if anyone considered talking to the owners of Tommy's Market regarding the impact on them. Ms. Creef stated that she had not.

Dennis Wojcik of 103 Dune Road was recognized to speak. Mr. Wojcik stated that Donna Creef had mentioned that the design met the zoning ordinance and that the parking met the zoning ordinance. He pointed out that Section 156.112(E)(4) stated the following: "...no parking aisle serving the general public that contains more than 10 parking spaces shall then..." He stated that the south parking lot had 11 spaces and dead ends. He asked how it met the zoning ordinance. Donna Creef stated that she counted nine parking spaces today when she was preparing for this meeting. Mr. Wojcik referenced the site plan and counted 11 spaces. Ms. Creef stated that it got back to the discussion at the Planning Board regarding redevelopment and new development. She explained that when one reads the parking standard that Mr. Wojcik referenced in context, it uses the term new development. She added that these were existing parking spaces that were being refurbished as part of the development of the development project. She stated that the requirement and the dead-end discussion was not applicable as it would be with a new development or a project that was starting from scratch.

Dennis Wojcik disagreed with Donna Creef because the definition of development in the ordinance spoke about construction, erection, operation, renovations, substantial repairs, movement to another site, or definition of any structure. He noted that it was not redevelopment as defined by the ordinance. He added that the parking lot was being built new with 11 parking spaces and the ordinance states that there can be no more than 10 spaces. Donna Creef stated that she stood by her testimony that it was redevelopment and not new development. Mr. Wojcik stated that there was no definition of redevelopment. Attorney Leidy asked Mr. Wojcik to ask questions and not give testimony at this time.

Dennis Wojcik pointed out that Donna Creef had stated that it met the zoning ordinance for the north parking lot. He added that the north parking area does not have a turnaround. He stated that Section 156.112(E)(4) indicates that any lot shall provide an appropriate turnaround and any parking aisle that dead ends shall be provided a suitable turnaround. He pointed out that the lot did not have a suitable turnaround. He asked how that met the ordinance. Donna Creef reiterated that it was her opinion that it was redevelopment and not new development and the standard Mr. Wojcik was citing was not applicable in this instance. She pointed out that there were nine parking spaces there and the ordinance was specific in that if there were 10 or more parking spaces, it could not dead-end.

Dennis Wojcik stated that there were nine parking spaces and could dead end, but the zoning ordinance says it must be provided a turnaround. He pointed out that a turnaround was not there. He asked for an explanation. Donna Creef reiterated that it was redevelopment. Mr. Wojcik asked if Ms. Creef if she did not agree that the site meets the development definition that was in the ordinance. He further asked if she did not agree that she should use the ordinance definition for this and not the definition that comes from a different statute that has nothing to do with the project. Ms. Creef stated that it was not new development, it was redevelopment and the definition of development that was in the zoning ordinance included the word renovation. She added that the definition was something that was required by state statute that the Town of Duck as well as all local governments in North Carolina use. She stated that there no leeway when using that definition of development. She agreed that there was not a definition of redevelopment in the zoning ordinance, but there were sections of the zoning ordinance that use the terminology redevelopment. She reiterated that it was her opinion that this was redevelopment and not new development and that the standards Mr. Wojcik was referencing were not applicable. She stated that it was her professional opinion and Mr. Wojcik was entitled to his opinion but was not sure if he was qualified as an expert witness at this point to offer that opinion.

Mary Ann Beard of 114 Dune Road was recognized to speak. Ms. Beard stated that the two lanes were not very wide. She stated when turn lanes are put in Duck, they had to cut into properties. She asked if they had to cut into the Resort Realty property that some parking spaces would be lost. Donna Creef stated that she was not a traffic engineer and was not qualified to answer the question as it would be a question for NCDOT. Ms. Beard pointed out that the two lanes that currently existed were not very wide. She stated

that it was not July or August yet, but the traffic was very heavy to get through there. She thought if they had to cut into Resort Realty's property for a turning lane, it may end with parking spaces lost.

Robert Lotze of 117 Dune Road was recognized to speak. Mr. Lotze stated that he did not want to be conflicting or hard but needed to hold people accountable and went on to read what was in the North Carolina Code. Attorney Leidy asked Mr. Lotze to ask questions and not give testimony at this time. Mr. Lotze stated that Donna Creef was applying general standards understanding that there was not a definition of redevelopment in the Town code. He asked if she was aware of the code for North Carolina General Statutes 160A, Cities and Towns, Articles Urban Redevelopment Law. Donna Creef stated that she has read that prior to the Planning Board meeting. Mr. Lotze asked if she was reading it in the way he read it in terms of Paragraph 2A that talks of blighted parcels. Ms. Creef stated that she had not, explaining that it was specific for redevelopment authorities, adding that she was using redevelopment in the generally accepted planning practice that redevelopment of the site was a development that occurs on a property that has been previously developed and not vacant. Mr. Lotze asked if Ms. Creef did not understand that there was a redevelopment commission, a public body, that is asked to be set up as part of a process when there is a redevelopment project. Ms. Creef stated that she did understand it. Mr. Lotze asked if that commission has been set up. Ms. Creef stated that, to her knowledge, it had not. Mr. Lotze stated that these items clearly state that a commission was needed. He added that through this law, it talks of blighted and abandoned properties as a basis for the redevelopment definition. He stated that he wanted to make sure Donna Creef had read through that as he thought it applied in this case.

Reid Carter asked if the property was not vacant and was cleared of everything, it would become vacant and be considered new development. Donna Creef understood from the proposal that the parking lots would remain after the building is demolished so there would still be improvements on the site. Mr. Carter asked where the parking lots would remain on the site plan. Ms. Creef stated that the applicant was reconfiguring the parking lot and using the existing parking for the basis of what was there. Mr. Carter clarified that the applicant was reconfiguring the parking lot by tearing up the concrete and pouring new concrete. Ms. Creef asked if everyone could agree that Reid Carter disagreed with her definition of redevelopment and the way the applicant was applying it. Attorney Leidy thought it was a fair statement and was Donna Creef's position.

Attorney Leidy asked if staff had any further evidence to present regarding the analysis of the application. Donna Creef asked that Mike Robinson come forward to give his comments regarding items she was unable to answer in terms of the parking lot and stormwater.

Mike Robinson of 104 Jester Court, Kill Devil Hills, was recognized to speak. Mr. Robinson stated that with regard to the north parking lot and the questions regarding the dead-end, the drive aisle was 20 feet wide with the parking spaces 18 feet wide. He stated that there was a curb stop at the edge of the driveway. He noted that he drives a

large truck and from the front of his front tire to the bumper was 16.5 feet, adding that it was a full-size pickup truck. He stated that, in effect, there was the 20-foot drive aisle with two feet on either side for a total width of 23 or 24 feet. He noted that if a 3-point turn could not be achieved in a 23–24-foot drive aisle, one would need to rethink their license since it was a requirement for a driver’s license. He stated that the southern parking lot did have a turnaround. He added that David Klebitz from Bissell Professional Group had made some revisions to it to remove any conflicts with the handicapped parking space.

Mike Robinson stated that he had heard a comment regarding stormwater management. He explained that stormwater management has not been designed on the property due to another step that was required where the applicant has to go to final engineering. He stated that he and David Klebitz have been in contact about the stormwater management requirements and were well aware of them. He assured Council and the audience that he would be taking a very close look at it to make sure there were no impacts on NC 12 or adjacent properties.

Mike Robinson stated that he kept hearing the terms development and redevelopment. He knew that the property was developed and was being redeveloped. He did not understand the comments about it, adding that CAMA considered it a redevelopment project as does the state stormwater. He did not think there was a stormwater permit required of the project since it was redevelopment and did not meet the criteria for new development.

Attorney Leidy asked if Council had any questions for Mike Robinson.

Councilor Schiano asked Mike Robinson if he was the person that would be addressing the question on stormwater. Mike Robinson stated that he was, adding that the project has another step which was final engineering, which was where he would be looking at the grades, the stormwater collection system, the stormwater management system, and the use of permeable pavers. He added that he needed to take into account the super elevation of the new roadway that would be installed that will be shedding towards the site, which would be a big hurdle to get stormwater management and he was going to have to take a very close look at it, but he felt it could be achieved.

Attorney Leidy asked Crouse Gray if he had any questions for Mike Robinson.

Crouse Gray asked Mike Robinson for his educational background. Mike Robinson stated that that he graduated with a degree in mechanical engineering from the University of Maryland in 1984 and moved to the Outer Banks two days later. He stated that his first job was with Triangle Engineering, adding that he has worked in the business since then doing engineering and surveying. He added that he was a licensed civil engineer and was licensed as a civil engineer in 1993 as well as land surveying in 1988. He stated that he has completed numerous projects, with typical projects being the Marriott Hotel in Kill Devil Hills, a new brewery, and one or two phases of the Duck Village shops for Jim Braithwaite.

Crouse Gray asked for an approximation of the number of commercial site plans Mike Robinson had been involved in. Mike Robinson stated that it was dozens and dozens as well as thousands of residential site plans. Mr. Gray stated that Mike Robinson was an expert in the design of commercial site plans. Attorney Leidy asked if Council had any concerns about Mike Robinson giving expert testimony. Councilor Mooney asked Mike Robinson if he testified as an expert witness previously. Mike Robinson stated that he did at a court trial three years prior. It was *consensus* of Council to accept that Mike Robinson could give expert testimony.

Crouse Gray asked Mike Robinson if he had an opportunity to review the site plan. Mike Robinson stated that he had. Mr. Gray clarified that it was reviewed on behalf of the Town. Mr. Robinson stated he was correct. Mr. Gray asked if there was any input to Donna Creef or anyone else regarding any issues, he had with the site plan. Mr. Robinson stated that there were multiple reviews of the site plan from the time it was originally submitted until the current one. He noted that it was not the product that he reviewed a year ago. He stated that he heard the comment that Town staff was an advocate for the developer, adding that from the time he was involved there was a lot of back and forth where the applicant was asking for things that staff would not allow to happen. He pointed out that Town staff have not acted as an advocate. He stated that Donna Creef came in a little late to the process and by the time she came in, there was one version back on it, but it was where the project was now.

Crouse Gray clarified that, with regard to the multiple revisions, suggestions and changes being made by the applicant, were based on the suggestions by Town staff and Mike Robinson. Mike Robinson stated he was correct. Mr. Gray clarified that the plan in front of Council encompassed many, but not all, the suggestions that were made by staff. Mr. Robinson stated he was correct. Mr. Gray asked, in Mike Robinson's professional opinion, if the site plan was compliant with other site plans, he had developed. Mr. Robinson stated that it was.

Crouse Gray asked if a revision had recently been completed on the southern parking area. Mike Robinson stated he was correct. Mr. Gray asked what the revision was. Mr. Robinson explained that one of the earlier versions utilized a handicap parking access aisle, which by definition meant unoccupied by a vehicle as a portion of the turn aisle. He stated that there were some comments about whether or not it could be done and he thought there needed to be further research although he did not believe it was ever said that they could not as it was not a good idea. He added that David Klebitz went back and completed some revisions, pulled that out so there was no connection between that handicapped parking space and the turn aisle at the end of the southern parking lot.

Crouse Gray asked Mike Robinson how long he has been the engineer of choice for the Town of Duck. Mike Robinson thought it was six or eight years. Mr. Gray asked if he had been involved in other development projects or reviewed other development projects for commercial site plans that had a parking area comparable to the northern parking area. Mr. Robinson stated that he had. Mr. Gray asked if they were approved. Mr. Robinson stated that they were.

Reid Carter noticed on the plan that there was concrete to be poured in the parking lot everywhere but the four spaces as well as concrete down the center of the northern parking lot. He stated that he had a conversation with the developers and was told that they did not want to install pervious spaces because of the cost. He asked if the concrete would contribute to any stormwater that could run into the Currituck Sound, further asking if there was any chance that the stormwater would run into the property owned by the Duck Ridge Shores Civic League. He asked if there was a chance that it would, it would improve the situation if the developer planned to install pervious parking spaces around the building and parking lot. He asked if it would be an improvement with the stormwater situation to change the material on the two parking lots. Mike Robinson explained that the permeable pavers shown on the site plan was currently a preliminary layout according to his discussion with David Klebitz, adding that it was not a commitment to put down a certain number of square feet of permeable pavers. He stated that runoff calculations will determine the number of square feet of permeable pavers that will need to go on the site to manage the Town designed storm, which he thought was 2.4 inches. He stated that once they go through the stormwater calculations to see what they were dealing with, they will go to final engineering to include runoff calculations, grading plans, and at that point they will look at the stormwater. He pointed out that pavers were a great way to manage stormwater in a parking lot. He suggested that Reid Carter not get hung up on the amount of pavers shown in the plan because it was subject to change. He believed it was the minimum that was required by Town ordinance.

Reid Carter asked if it was a new development project, it would require better consideration of the permeability of the parking lot for stormwater. Mike Robinson stated that it would not because the standard did not change for redevelopment as opposed to new development since there was still a stormwater standard where adjacent properties or NC 12 could not be impacted. He added that the stormwater has to be managed on-site either through shallow infiltration basins, managed in the parking lot through permeable pavers with a gravel base, or through the underlying interstitial storage within the soils. Mr. Carter asked if it was appropriate of Council to have to consider this project plan without the stormwater part being refined and determined. Mr. Robinson stated that it was a question for Council. He stated that in his opinion it was because this was a zoning document and the zoning concept needed to be approved. He stated that they will go to final engineering and he will review it and make sure everything was spot on.

Dennis Wojcik asked if the zoning ordinance required a turnaround for any parking aisle that dead ends. Mike Robinson believed it did for new development, but not for redevelopment. Mr. Wojcik pointed out that for stormwater, it did not matter whether it was new development or redevelopment, as the standards had to be followed. He asked why it was a different standard for parking than for stormwater. Mr. Robinson explained that stormwater impacts the roadway in that it could flood the roadway and adjacent properties, so the property has to be developed in accordance with the current stormwater standards. Mr. Wojcik pointed out that there was no real answer to his question since the applicant has to follow the new standard while with the other, they do not. Mr. Robinson

was not sure if they had to follow it, but they will in order to avoid impacts to the sound, NC 12, and adjacent properties.

Dennis Wojcik clarified that Mike Robinson gave his opinion that a turnaround was not needed in the northern parking area because there was a 20-foot-wide aisle coming in. Mike Robinson stated he was correct. Mr. Wojcik asked if 20-feet wide was the minimum that was required by the zoning ordinance. Mr. Robinson stated that it was. Mr. Wojcik clarified that Mr. Robinson's opinion was that there was no parking lot that meets that minimum aisle width that would require a turnaround. Mr. Robinson stated that he could not make that statement one way or the other. Mr. Wojcik pointed out that Mr. Robinson just did. Mr. Robinson asked for the question to be repeated. Mr. Wojcik stated that Mr. Robinson had said that because there was a 20-foot-wide aisle, a turnaround was not needed. Mr. Robinson stated that if he did say that he had misspoke. He added that there was adequate space in that parking lot to complete a three-point turn to exit it without having to back onto NC 12. Mr. Wojcik clarified that if the applicant met the minimum width, they would never need a turnaround in the parking lot because Mr. Robinson was saying there was adequate space to do so. Mr. Robinson asked Mr. Wojcik if that was a question. Mr. Wojcik stated that it was. Mr. Robinson asked Mr. Wojcik to rephrase the question because he did not understand. Mr. Wojcik clarified that Mr. Robinson was saying that as long as a minimum width drive aisle exists, a turnaround would never be required. Mr. Robinson stated he was incorrect, explaining that he believed that for certain lengths of parking lots, a turnaround was highly recommended. He reminded Mr. Wojcik that it was eight or nine parking spaces in the northern lot. Mr. Wojcik asked if the ordinance did not require a turnaround for any parking aisle that dead ends. Mr. Robinson stated that he could not answer the question with certainty. Mr. Wojcik pointed out that it did and wanted to express his opinion. Attorney Leidy reminded Mr. Wojcik to ask questions and not give testimony at this time.

Robert Lotze clarified that the adjacent property – the Blue Point Restaurant – had a parking lot. Mike Robinson stated he was correct. Mr. Lotze asked if anyone had approached Blue Point Restaurant regarding adjoining the two parking lots. He pointed out that in the parking standards, it talked of adjoining properties to alleviate problems. He wondered if anyone had talked to anyone at the Blue Point Restaurant. Mr. Robinson stated that the owner of the parking lot was Jim Braithwaite and not the Blue Point Restaurant, adding that Mr. Braithwaite had spoken during public comments that he had no objections to the project. Mr. Lotze thought it would be a great option to connect both lots in some way.

Ben Vorndran asked why the applicant eliminated the drive through. Mike Robinson explained that they needed the green space for wastewater treatment. Mr. Vorndran asked if it would be a consideration in the new design. He further asked if Mr. Robinson thought a trash truck could service the dumpster and safely turn around in a 20-foot space. Mr. Robinson stated that where the trash dumpster was located would work for the truck to safely turn around. He added that he received confirmation from Waste Management that they liked the configuration of the dumpster. Mr. Vorndran stated that

a trash truck does not have a specific time that they come through Duck to service the dumpsters. He asked if that was okay. Mr. Robinson stated that Waste Management would not come through Duck in the summer during the day but would come overnight. Mr. Vorndran clarified that the concerns were being able to turn around. He added that he has an 18-foot truck and would have trouble turning around. Mr. Robinson agreed, adding that he has struggled to turn around at times with his truck. Mr. Vorndran asked if anyone had taken steps to see where the actual water level was with regard to stormwater. Mr. Robinson stated that the sound forms a barrier condition for groundwater so the groundwater will seep at the same level as the sound. He added that the wastewater system was evaluated by the Dare County Health Department and was a no-fill wastewater system, so there was at least four feet to the seasonal high-water table and a lot of interstitial storage. Mr. Vorndran clarified that Mr. Robinson did not see any issue in the future if the stormwater rises up. He further asked if it would be adequate to sustain the business unlike other areas north of Duck. Mr. Robinson explained that those sites were likely improperly sited in the first place. He stated that they have experienced a rise in the water table in Dare County, adding that this was a pump wastewater system so it can be put up higher and not rely on gravity to distribute it into the wastewater system. Mr. Vorndran clarified that it was a pumping system. Mr. Robinson stated he was correct. Mr. Vorndran asked if the applicant's septic system was a better system or same system as was currently in place. Mr. Robinson stated that anytime there was grease in the wastewater stream, there will be problems with the drain field and the treatment system. He explained that the system that the applicant has proposed will do a much better job of handling grease. He added that it also depended on the restaurant management practices. Mr. Vorndran asked if the applicant would consider making a turnaround in the parking lot to make everyone happy. Mr. Robinson stated that he did not have an answer.

Attorney Leidy asked the applicant to make a presentation.

Crouse Gray asked Senior Planner Cross how long she worked in the Planning Department. Senior Planner Cross stated that it was 18 years. Mr. Gray asked when the project was originally presented to staff, he understood that Director of Community Development Joe Heard was present. Senior Planner Cross stated he was correct. Mr. Gray asked if Director Heard was actively involved in making suggestions to the applicant, engineers, and designers of potential changes. Senior Planner Cross stated he was correct. Mr. Gray asked Senior Planner Cross if she was involved as well. Senior Planner Cross stated she was. Mr. Gray asked if at the time that Director Heard was no longer able to be in Town, that he had developed any opinion regarding the project. Senior Planner Cross stated that, other than the facts as to whether it met the ordinance, not that she was aware of. She added that they discussed how it met the ordinance and what the applicant needed to change in order to make the project meet the ordinance. Mr. Gray asked if the applicant made the changes. Senior Planner Cross stated that they did. Mr. Gray clarified that the plan that was submitted was changed from what was originally submitted to the Planning Board. Senior Planner Cross stated he was correct. Mr. Gray clarified that the plan incorporated the suggestions that were made by staff to the applicant. Senior Planner Cross stated that he was correct.

Crouse Gray clarified that the northern parking lot dead ends. Senior Planner Cross stated that it did. Mr. Gray asked if there were any other circumstances where the Town has approved a dead-end parking area. Senior Planner Cross stated that there was. Mr. Gray asked how long the requirements for a parking lot that dead ends have been in the Town's ordinance. Senior Planner Cross stated that a full revision was completed in 2004 and if there have been changes to the language regarding dead ending in a parking lot, it was done in 2004. Mr. Gray clarified that it was about 18 years that it has been in the ordinance, adding that there have been development projects over the last 18 years that have dead ending of parking areas. He further clarified that there were two at Town Hall. Senior Planner Cross stated he was correct.

Attorney Leidy asked Council if they had any questions for Senior Planner Cross.

Mayor Kingston asked for a clarification on what the Town's ordinance language was with regard to dead ending. Senior Planner Cross stated that the ordinance read as follows: "...no parking aisle serving the general public that contains more than 10 parking spaces shall dead-end. Any parking aisle that dead ends shall be provided a suitable turnaround. For dead-end drive aisles containing less than six spaces, the width of the drive aisle may be reduced to no less than 18 feet..." She noted that nowhere in the ordinance does it state that it was prohibited in its entirety. Mayor Kingston clarified that Town Hall's parking lot has a turnaround. Senior Planner Cross thought it could be considered one. Mayor Kingston pointed out that a vehicle would not have to back out onto NC 12 but could back into the other parking lot. Senior Planner Cross stated he was correct.

Mayor Pro Tempore Thibodeau clarified that the width of the 18 feet would allow for a three-point turnaround. Senior Planner Cross thought the more important point was that the ordinance stated that a new parking aisle serving the general public that contains more than 10 parking spaces shall dead-end. She noted that more than 10 parking spaces was the trigger for a turnaround. She added that any parking aisle that dead-ends shall be provided a suitable turnaround, which follows the no parking aisle serving the general public that contains more than 10 parking spaces shall dead end.

Mayor Kingston stated that his point was he was not seeing where the Town was applicable in that case because one could back into the other parking lot and go out without having to back onto NC 12. Senior Planner Cross stated that it could be looked at it that way but there was no designated turnaround in the Town Hall parking lot.

Councilor Schiano asked if the 20-foot-wide lane was considered the equivalent of a turnaround. Senior Planner Cross stated that it was.

Reid Carter asked if a trash truck could turn around in the northern parking lot. Senior Planner Cross explained that trash trucks do not turn around in the commercial district parking lots. Mr. Reid clarified that there was a dumpster specified in the corner of the northern parking lot for the residents. Senior Planner Cross explained that there were

instances within the Town where it takes 36 feet for a trash truck to turn around, adding that in these instances, there would not be any vehicles in the parking lot when the trash trucks come to service the dumpsters and if there were, the trash truck would have to back out. Mr. Carter clarified that the document the applicant submitted showed that it may be reserved for the six-bedrooms in the two apartments that would be built for those people to park. He pointed out that there were nine spaces with six vehicles in the parking lot overnight. He asked how that would work. Senior Planner Cross explained that the trash truck would do what it does in other parking lots, which was to back out at six o'clock in the morning. Mr. Carter asked if the arrangement would cause any difficulties from people in Duck Ridge Shores using Dune Road to get onto NC 12. He further asked if there will be congestion or blockages that would occur due to vehicles leaving the property by backing onto NC 12. Senior Planner Cross thought she could not speak her opinion. Attorney Leidy asked if she had been qualified as an expert. Senior Planner Cross stated that she had not. Attorney Leidy did not think she should give opinion testimony until she has been tendered as an expert. Mr. Reid thought there will be a problem.

Dennis Wojcik clarified that the ordinance stated the following language: "...no parking aisle serving the general public that contains more than 10 parking spaces shall dead end." He thought Senior Planner Cross had stated that it was what triggers a turnaround. He added that he read that statement as an absolute and asked if she disagreed with him. Senior Planner Cross agreed that it was an absolute, but it also read as follows: "...any parking aisle that dead ends shall be provided a suitable turnaround." Mr. Wojcik believed that the statement applied for parking aisles that have less than 10 parking spaces. Senior Planner Cross disagreed adding that was not how she read the ordinance. Mr. Wojcik asked where in the ordinance it gave the right for redevelopments to violate the zoning ordinance. Senior Planner Cross did not see how it was violating the zoning ordinance when the ordinance allows for parking reductions at a certain amount and setback reductions at a certain amount. She added that in the Village Commercial Development Option there were allowances. Mr. Wojcik interjected that he was not questioning that and agreed that the zoning ordinance allowed that. He pointed out that he was talking about all of the parking issues that were in the zoning ordinance that this plan violates. He asked where it stated in the zoning ordinance that if a project was called redevelopment, the applicant did not have to meet the ordinances. Senior Planner Cross reiterated that the Village Commercial Development Option allows for exceptions and reductions to parking as well as setbacks. She added that this project meets those setback and parking reductions that have been requested. Mr. Wojcik stated that his question was not about that. Senior Planner Cross continued that the Village Commercial Development Option was recently modified and before that there were no limitations and applicants could ask for reductions for seven parking spaces and it could have been considered. She pointed out that there have been other developments where there have been more than 20% and there have been more than five parking spaces reduced. She stated that looking at the strict letter of the ordinance, they meet that standard. Mr. Wojcik stated that he was not questioning that and was not going to question it because he understood that the ordinance allows it. He added that he was questioning the other issues regarding parking – the aisle lengths, the turn around and the connection of parking lots – as they were all

listed in the ordinance as “shall”. He asked again where in the ordinance it stated that if it was redevelopment, the applicant did not have to do it. Senior Planner Cross stated that she could repeat Section 156.112 regarding the parking aisle requirements if Council desired.

David Klebitz of Bissell Professional Group was recognized to speak. Mr. Klebitz stated that he was a licensed professional engineer in the state of North Carolina and has worked for Bissell Professional Group for 17 years and has been a licensed engineer for seven years. He stated that prior to that, he worked at Old Dominion Research Facility during his graduate studies and graduated from Old Dominion University with a civil engineering degree. He stated that he went through graduate studies for a coastal engineering degree and prior to that he worked at the Field Research Facility in Duck for a year.

Crouse Gray asked David Klebitz for an approximation of how many site plans he had been involved in since he started working for Bissell Professional Group. David Klebitz stated that a rough estimate would be 500, adding that he had the opportunity to work through a gamut of different types of projects, many residential subdivisions, a few commercial developments, environmental impact projects, living shoreline projects, dike projects for the federal government, utility projects for the federal government, as well as projects for local municipalities. Mr. Gray stated that he would tender David Klebitz as an expert in project design of commercial site developments. Mr. Klebitz added that he completed the site plan for the Village Table and Tavern, the site plan for the three new building additions at the Waterfront Shops, the site plan for the outdoor entertainment facility at the Blue Point Restaurant, as well as the site plan for the Tap Shack. He noted that all of these projects went through the conditional use permit process with the current Council.

Attorney Leidy asked David Klebitz if he had testified as an expert witness in other proceedings. David Klebitz stated that he had. Attorney Leidy asked Council if they had any objections. There were none.

Crouse Gray asked for a brief overview of the major points regarding the project. David Klebitz explained that it was a redevelopment project with one single 6,000 square foot building that was currently vacant on the property that has two curb cuts that provide access to two separate driveways, adding that the building was built in 1985. He stated that the proposal was to remove the building and construct three new buildings that were 8,610 square feet in total. He stated that within those buildings, the southernmost building will be a two-story restaurant, with 42 indoor seats and seven outdoor seasonal seats. He stated that the first floor of the middle building will be 1,250 square feet of retail space with a three-bedroom dwelling unit above. He stated that the northernmost building will have 1,200 square feet of retail space on the first floor and another three-bedroom dwelling unit on the second floor. He stated that the new parking lots that will be built will utilize the same curb cut locations, adding that the aprons will be improved as they connect to the driveway in order to provide a much greater radius to allow vehicles to pull in and out a lot easier than can be done currently.

David Klebitz stated that in addition to the ingress/egress connections, it was briefly discussed by Mike Robinson that portions of the parking lot will be constructed with permeable pavement. He stated that the current plan was a conceptual development plan and was not intended to be a final grading and engineering plan and showed the minimum required by the ordinance. He added that when they get into the final design of the site, should it move forward, they will get into the stormwater calculations, the grading design, and at that point that they find they are unable to provide sufficient stormwater through infiltration areas, then they will begin to increase the permeable pavement as needed to manage the stormwater as per the Town's ordinance. He stated that he has reviewed the plans that were prepared by VHB for the widening of Duck Road and understood what they were planning to do and that there were concerns regarding flooding. He added that he planned to make sure that he does all that he can to meet the Town's ordinance as well as making sure that they would not increase flooding on Duck Road or any adjoining properties.

Crouse Gray understood that the buildings would be sprinklered. David Klebitz stated that they would, adding that since it was defined as a group development, the rules specify that the buildings have to be separated by 20 feet unless they are sprinklered. He stated that they have committed to sprinklering the buildings and were aware that this was necessary. He pointed out that in the southeast corner and along the southern property line, the installation of a backflow preventer, fire service line and FDC connections were shown on the site plan since they were required.

Crouse Gray clarified that after the Planning Board meeting, there were a few modifications made to the site plan. David Klebitz stated he was correct. Mr. Gray asked what the modifications were and why they were made. Mr. Klebitz stated that there were some comments received at the Planning Board meeting of concerns regarding people possibly being able to walk onto the adjoining Duck Ridge Shores property. He stated that in order to mitigate it from happening, he added and specified that a fence be installed along the property line. He stated that in the same vicinity, there was a bulkhead between the northwest property corner and where the boardwalk ends that previously was shown as a drop-off. He stated that it was a safety concern and a barrier will be added in that area. He noted that they have not finalized the design on the fence but was something they were willing to do. He stated that there was a comment made with regard to the previous plan showing that the ADA accessible space in the southwest corner of the southern parking lot was being shared for the required turnaround. He stated that he completed some research into that and did not come to a final conclusion on it but addressed it by separating the two by lengthening the parking lot so that there was a turnaround space as well as a dedicated ADA van accessible aisle next to it. He stated that the other modification was reducing the square footage in one of the retail buildings to reduce the parking requirement. He explained that they were asking for five spaces but were now asking for four spaces.

Crouse Gray asked for a clarification on why the applicant was asking for four parking spaces instead of five. David Klebitz explained that the Town's ordinance under the

Village Commercial Development Option gives Council the ability to allow modifications in the parking requirements, adding that there were limitations to it in that it was five spaces or 20% and the four spaces being requested were within the allowances provided in the ordinance. He stated that the other allowance they were requesting was a reduction in the rear setback. He explained that the Town's ordinance puts a limitation of 50% on it and the general rear setback for Village Commercial is 20 feet and they were requesting 10 feet, which was within the allowance, with the reason being that it was a soundfront development with its core to the project as a whole. He stated that they were proposing a boardwalk along the soundfront similar to the one at the Waterfront Shops and many other areas on the Town's boardwalk. He added that they wanted the buildings to be accessed by the boardwalk and did not feel there was any negative impact to anyone on it because the rear property line was the sound shoreline. He stated that they were asking for a reduction to the sound shoreline which was the rear property line. He noted that North Carolina's Coastal Area Management Act (CAMA) reviewed it and have no issue with the proposal with regard to the setbacks to the sound. He added that since the site was already developed and was being redeveloped, the State Department of Environmental Quality Stormwater regulations will allow what was being proposed without having to obtain a state stormwater permit because it was considered redevelopment.

Crouse Gray asked if the extension of the boardwalk was shown on the site plan. David Klebitz stated that it was. Mr. Gray asked if the structures were close to the boardwalk. Mr. Klebitz stated they were. Mr. Gray clarified that the applicant did not want a large gap between where the boardwalk was and the structures were located. Mr. Klebitz stated he was correct. Mr. Gray asked if bicycle racks would be added or other items of that nature to encourage people to come to the location by bicycle or on foot. Mr. Klebitz stated that each parking lot has a proposed bicycle rack immediately adjacent to the entrances to access the buildings.

Crouse Gray asked why the applicant was asking for a reduction in the number of parking spaces. David Klebitz stated that they have utilized every square foot of the site and the design was consistent with the Village Commercial District, was consistent with the CAMA Land Use Plan, consistent with the Vision of Duck and since it was in the Village Commercial District, and the allowances were there, the project's connection to the boardwalk and sidewalks in the future all met the reasons why the parking allowance should be granted. He added that there was a reason why those allowances were put in the ordinance and, in his opinion, this project warranted those reductions. Mr. Gray asked if there were other projects in Town where parking reductions have been granted. Mr. Klebitz stated that there were, adding that there were seven existing developments within the Village Commercial District that have been granted parking reductions, presumably because of their connectivity to the boardwalk and the pedestrian accessways as well as being in the Village Commercial District. He went on to review a packet of information that was given to Council regarding businesses that were granted parking reductions.

Crouse Gray asked for an explanation of the page entitled “Parking Lot Circulation.” David Klebitz explained that the section intended to qualify parking circulation of existing parking lots within the Town’s Village Commercial District, which were parking lots that currently existed. He went on to review the list with Council and the audience. Mr. Gray asked when one comes into the Town Hall parking lot, they would have to back up into the other parking lot to turn around. Mr. Klebitz stated he was correct. Mr. Gray asked if the ordinance addressed it. Mr. Klebitz stated that it was debatable but thought it did. He pointed out that the section of the ordinance had been read several times during the meeting as follows: “...no parking aisle serving the general public that contains more than 10 parking spaces shall dead end...” Mr. Gray clarified that one of the examples presented was the aerial photograph of Duck Village Outfitters, which had seven parking spaces. Mr. Klebitz stated he was correct. Mr. Gray clarified that it showed a dead-end with no turnaround. Mr. Klebitz stated he was correct, noting that he was not stating that Duck Village Outfitters was out of compliance, but was using it as an example. He stated that the first three exhibits were not intended to show non-compliance but to show compliance in that the parking lots had more than 10 spaces and a dedicated turnaround has been provided. He stated that the ordinance also read as follows: “...any parking aisle that dead ends shall be provided a suitable turnaround...” He noted that it did not state that it should be provided a dedicated standalone parking space. He added that the question was if the Town’s parking lot was in compliance, noting that Mayor Kingston had stated that someone could back in one parking area to another and it would be considered a suitable turnaround. He stated that parking lots that have less than 10 spaces where a dedicated turnaround was not required, a suitable turnaround was provided in the sense that a vehicle could turn around in three or four maneuvers. He stated that it was his understanding of the ordinance since he started working on projects in Town and he thought the exhibits he provided supported that interpretation because that is how he and staff interpreted, adding that the Council has issued multiple Conditional Use Permits based upon that same layout.

Crouse Gray stated that there was an email from David Otts to Senior Planner Cross and Mike Robinson. He asked who David Otts was. David Klebitz stated that David Otts was the District Engineer for NCDOT Division 1 out of Elizabeth City, overseeing Dare County, Currituck County and Elizabeth City. Mr. Gray asked Mr. Klebitz to read a portion of the email to Council and the audience. Mr. Klebitz read the following: “...subsequent to a brief review of the documents you provided this morning, I believe the Department would still allow the use of dual driveways to access this parcel. While the minor change of use of the property will likely generate a few more trips per day, it is my opinion that the impact on NC 12 may actually lessen as the applicant is proposing to widen both driveways, allowing vehicles to simultaneously enter and exit. The existing driveway width likely required a motorist to stop on NC 12 and wait for the driveway to clear prior to turning in. This decision is also based upon the 25-mph speed limit and prior precedence along this corridor. It should be noted that a more thorough review will be conducted once the necessary permit applications are received.”

David Klebitz noted that the next three pages were copies of the driveway permit application that was submitted to NCDOT on April 15, 2022 so they could obtain an

official driveway permit. He added that, unfortunately, after trying many times to get ahold of NCDOT, he was not able to secure a permit by this meeting, but the application was submitted. He explained that this would be something they would do at the next stage with the final design, but given the concerns stressed by the community, they went ahead and submitted the application formally so that they could get it. He stated that the fourth page was an email from the engineer at VHB, responding to Senior Planner Cross. He pointed out that the engineer was designing the improvements to Duck Road and they had sent the plan for their review and comment. He clarified that with regard to some comments earlier in the meeting with regard to the center turn lane, it was discussed in detail in the report. He stated that what Chris Dewitt of VHB was talking about was extending the center turn lane width further north to the point of providing a full width turn lane at the southern driveway. He pointed out that currently the intersection at the southern driveway on Duck Road was part of the taper and not a full width turn lane. He added that the proposed plans prepared by VHB still show the taper occurring in that location. He stated that Mr. Dewitt did not include numbers in his email, but he has looked it and the current approximate width of the taper at the southern driveway intersection was eight feet. He believed that the proposed center turn lane width with the new improvements would be either 10 or 11 feet in width. He added that Mr. Dewitt was saying that he thinks it was possible and will not be too much of a problem to extend the full width turn lane of 10 to 11 feet all the way to the southern access point where it was currently eight feet. He noted that at no point were there discussions about extending the center turn lane all the way through to the north parking lot as that would require significant changes to the plans that have already been prepared.

Crouse Gray clarified that David Otts had indicated that, irrespective of whether the turn lane would be completed or not, the plan as presently designed will not result in any significant change to the traffic issues on NC 12. David Klebitz stated he was correct. Mr. Klebitz stated that the last two pages of the handout had an aerial comparison of Duck Road in front of Sunset Grille. He pointed out that on the left side of the aerial it originally showed the center turn lane extending all the way to the northern entrance of Sunset Grille. He added that within the last couple of years, the Town and NCDOT decided that the turn lane was no longer necessary because the current condition shows the center turn lane filled in to provide a safety island for the crosswalk and has eliminated the center turn lane that used to exist in the northern parking lot of Sunset Grille. He pointed out that he was sharing this information because it was an example of something that was very similar to what they were proposing to do and because there has been concern expressed regarding the need for the center turn lane extending all the way to the northern drive aisle. He stated that he was presenting to Council the opposite of that where it was removed.

Attorney Leidy asked Council if they had questions for David Klebitz.

Mayor Kingston pointed out that David Klebitz had attended the Planning Board meeting where there were a lot of questions and public input and the Planning Board denied the application. He stated that based upon that, a couple of minor modifications have been made. He asked if the applicant did not get the four parking spaces, what they would do.

David Klebitz stated that if they do not get the four parking spaces, there will have to be substantial changes to the site plan. He stated that he was not the owner of the property and was not familiar with the financial side of things, but four parking spaces equal something, such as bedrooms, seating, or retail space. He added that removing them would remove something from the development, but he was not in a position to say whether or not it will still be a feasible development for the applicant.

Mayor Pro Tempore Thibodeau asked for more information regarding the connectivity of the site with the current pedestrian walkways and the boardwalk. She asked if pedestrians could use the boardwalk in isolation and then access the sidewalk in the front. She further asked how the plans have been considered. David Klebitz stated that the plan showed a future possible connection of the Town's boardwalk system being extended from the Waterfront Shops. He noted that he was not involved in the design or permitting of the Town's boardwalk system but understood that CAMA will want the boardwalk to extend out over the water and not cut across the wetlands on the applicant's property. He added that was why it was not shown as a connection on the south end because the boardwalk from the Waterfront Shops was not located there and the boardwalk would have to go out the water. He stated that for the northern connection, it was a proposed easement to allow the Town to continue the boardwalk to the northwest corner and along the north boundary to make a connection back to the sidewalk. He pointed out that part of the reason why they do not have any details of that was because they will not know what the Town may do. He stated that he has heard discussions in the past that the Town may be interested in putting a viewing tower in that corner or adding certain other amenities to the boardwalk in that corner, adding that the developer does not have a problem with that and was offering an easement to allow that connection to be available. Mayor Pro Tempore Thibodeau asked how wide the easement was on the northern end. Mr. Klebitz believed it was eight feet wide. Mayor Pro Tempore Thibodeau clarified that the easement ran from the sound to the road on the northern side with the applicant proposing a fence in that area. Mr. Klebitz stated she was correct. Mayor Pro Tempore Thibodeau clarified that the setback request of 50% was only along the rear of the property. Mr. Klebitz stated she was correct.

Councilor Schiano asked about the stormwater management. He stated that David Klebitz had mentioned that once the survey and engineering work was completed, he would do what was necessary to mitigate the stormwater issues. David Klebitz explained that there were shaded areas on the site plan on the southern property line that extends under the boardwalk, in the middle of the two buildings was an open area which will be a filtration area and pocketed around the northern parking lot as well as the southern parking lot there were infiltration areas. Mr. Klebitz stated that the way it would be designed and because of the separation to the water table and sandy soils that were present, this would be an infiltration type system, similar to other systems in Town. He stated that the reason why he could not get into any more definitive detail was because there was a lot of work that goes into designing the stormwater system and a final grading plan will need to be completed to make sure everything drains and is captured. He noted that it was beyond the scope of a conceptual development plan because they do not want

to expend a lot of hours completing a grading plan on a layout that could change or be denied.

Councilor Mooney asked why a turnaround was prohibited between the two parking lots. David Klebitz stated that the entire space between the parking lots was totally dedicated to the septic system to support the development.

Councilor Schiano clarified that the northern parking lot would be used primarily by the residents in the apartments. David Klebitz stated he had no way to know if it would be used by them. Councilor Schiano clarified that it would be the most convenient parking lot for them. Mr. Klebitz stated he was correct, adding that he had put it in the development summary.

Mayor Kingston asked if the residents of the apartments would be guaranteed a parking space adding that six spaces would need to be taken away since they would be occupied 100% of the time. David Klebitz stated it was a question for the developer as he was not sure what their long-term intent was. He thought if parking was an issue for tenants, they could erect signage that would be for tenant parking. Mayor Kingston pointed out that by the time the six tenant spots were taken as well as the six spaces for the restaurant employees, it brought the parking down to 22 spaces for a 49-seat restaurant, which will have significant turnover during the summer. He asked if the project has been overdeveloped. Mr. Klebitz stated that it was not, adding that they were within all of the limitations promulgated in the ordinance and the allowances within the ordinance. He pointed out that they were at 47% lot coverage.

Mayor Kingston called for a 10-minute recess. The time was 9:00 p.m.

Mayor Kingston reconvened the meeting.

Reid Carter asked if the density over the footprint was any more dense than what would typically be found on the waterfront. David Klebitz stated that the allowable density was 60% as per the Town's ordinance and they were at 47%. Mr. Carter noted that a statement was made earlier that it was consistent with the development of the Village Commercial area, particularly the part that was on the sound side. He stated that he did not see much that went above one-story retail as well as storage areas under roofs, but he has not seen any other three-story buildings. Attorney Leidy reminded Reid Carter that he needed to ask questions and not make testimony. Reid Carter asked if the site plan was consistent with what currently existed in Duck. Mr. Klebitz believed that it was. Mr. Carter asked what the density was above the square footage. He pointed out that the square footage of the buildings was 8,000 over 5,000 square feet of footprint, asking if it was an increased density. Mr. Klebitz explained that Building A has a footprint of 1,200 square feet and Building B has a footprint of 1,250 square feet. Mr. Carter asked what the square footage of the building would be. Mr. Klebitz stated it was 3,089 square feet. Mr. Carter clarified that it was 3,000 square feet total and 1,200 feet on the ground. Mr. Klebitz stated he was correct. He stated that Building A was 1,200 square feet in footprint and 2,721 square feet in total heated floor space. Mr. Carter asked if it was consistent

with what currently existed on the waterfront in Duck in terms of density, density of use, and retail. He thought it would be more dense, adding that Mr. Klebitz had told him after the Planning Board meeting that he was proud to be bringing more density to commercial area. Mr. Klebitz disagreed. He stated that Building C was 1,936 square feet. Mr. Carter asked what the total square footage was for the building. Mr. Klebitz stated that the size of the restaurant was 2,800 square feet. He noted that all three buildings were reasonably sized buildings, adding that the total square footage of all three buildings was 8,610 square feet. He stated that last time he checked, there were several single-family residential homes in Duck that have more square footage than all three of the buildings combined. He pointed out that they were not large buildings. Mr. Carter stated that the reason for the public hearing was because two or three of the dimensions were required by the Town ordinance such as parking, setbacks, and spacing between the buildings. He added that the applicant was asking Council to make an exception in order to bring the buildings closer together and put in more parking. Mr. Klebitz disagreed, adding that they were not asking Council for a reduction in building separation, adding that the 10 foot they were showing was allowed. Attorney Leidy told Reid Carter that this was not an opportunity to argue with the witness and that he needed to ask any questions he had.

Reid Carter asked if the parking problem would be solved if some of the height density of the buildings were reduced, as well as the closeness of the buildings and number of buildings. He asked if there was any way to solve the parking problem. David Klebitz stated that there was, but it could make the project not feasibly developable. Mr. Carter asked, as a site planner, David Klebitz would not develop a different plan and have the land continue to be vacant. Mr. Klebitz stated he could not answer the question.

Dennis Wojcik clarified that a state stormwater permit was not needed because the project was a redevelopment. David Klebitz stated he was correct. Mr. Wojcik pointed out that the report that the Town produced indicated that the land disturbance was less than one acre and that was why a stormwater permit was not needed. Mr. Klebitz stated that was not the reason why. Mr. Wojcik clarified that the Town's report was incorrect. Mr. Klebitz stated that if Mr. Wojcik had read his report, it did not state that. Mr. Wojcik clarified that the Town's report was incorrect. Donna Creef stated that the one statement was incorrect.

Dennis Wojcik asked if the northern driveway was in the functional area of Duck Road and Dune Road intersection. David Klebitz asked what Mr. Wojcik meant by "functional area." Mr. Wojcik explained that it was defined by the North Carolina Department of Transportation policy. Mr. Klebitz stated that he did not know the answer, adding that, as was stated previously in the hearing, the Division Engineer has looked at the plan and did not see an issue with it. Mr. Wojcik clarified that Mr. Klebitz did not know the answer. Mr. Klebitz agreed, adding that he was basing the driveway connections on the fact that they were connecting in exactly the same locations that currently exist and were not changing anything with regard to the location of the driveways and its connections and proximity to Dune Road. Mr. Wojcik was not sure where the exact location was determined, but the applicant was proposing to widen the turn lane. Mr. Klebitz stated he was correct. Mr. Wojcik clarified that it was not in the same location because the ingress

and egress would be larger. Mr. Klebitz stated that he determined it by surveys that were conducted and information given to him. Mr. Wojcik asked if it was based on the centerline. Mr. Klebitz stated that it was.

Ben Vorndran asked David Klebitz if he was aware of Phase 4 of the Pedestrian Plan. David Klebitz stated that he was, adding that he has reviewed those plans and the plan he prepared has been sent to the engineer that was preparing the Phase 4 plans for review. He noted that an email regarding that conversation had been provided to Council for evidence in this hearing. Mr. Vorndran asked if he was aware of the issue of the two feet that has to be raised to make way for the pedestrian walkways. Mr. Klebitz stated he was. Mr. Vorndran asked if he was aware that the reason the center turn lane was taken away was to make way for the Phase 4 project. Mr. Klebitz stated that, based on his review of the plans, the center turn lane at the southern access was almost identical to what currently exists. He noted that he was aware of the changes to Duck Road and would be incorporating those changes in the final design, engineering design, and grading design of the project so it can receive approval. Mr. Vorndran asked Mr. Klebitz if he felt it would be a safe thing for his children and other pedestrians that vehicles will perform a three-point turn to exit the parking lot. He further asked if what was on paper was a good thing for what happens on the land. Mr. Klebitz thought what was proposed exists everywhere. Mr. Vorndran asked if it was safe. Mr. Klebitz stated that in a 25mph zone, it would be safe. He pointed out that it was a subjective question. Mr. Vorndran asked if it would be safe. Mr. Klebitz stated that it would.

Lori Gray of 107 Speckle Trout Drive was recognized to speak. Ms. Gray pointed out that it was stated earlier in the hearing that one of the buildings was recently reduced from 1,250 square feet to 1,200 square feet in order to free up one parking space. David Klebitz stated she was correct. Ms. Gray asked how many reductions in square feet in the building space will be needed to free up the four parking spaces that remain in the parking exception category. She further asked if it would be 200. Mr. Klebitz stated that it was one per 200 square feet. Ms. Gray asked if 50 feet did not equal one parking space. Mr. Klebitz explained that it did due to rounding, adding that it was one per 200 so to eliminate four parking spaces would require removing 800 square feet. Ms. Gray clarified that it was 800 square feet out of a total of 4,386 square feet. Mr. Klebitz disagreed, adding that he was talking about retail space. He stated that there was 2,450 square feet of retail space being shown and 800 square feet would need to be eliminated to achieve the four parking spaces.

Lori Gray pointed out that earlier in the hearing, prior exceptions that were approved by the Town were discussed. She asked if any of those recent exceptions were multi-use buildings or projects. She pointed out that NC Coast was just a restaurant, Loblolly Pines was strictly retail and Wee Winks Market was only retail. She asked if there have been any prior exceptions for a multi-use development. David Klebitz stated that he did not know the answer as he was not familiar with the details of those projects. Ms. Gray stated that parking was different for retail, residential and restaurants and therefore it mattered in this exception. She asked if any of the recent exceptions were multi-use. Mr. Klebitz stated that the list he had only gave him the names.

Robert Lotze asked if it would be possible to move the septic system so parking lots could be adjoined. David Klebitz stated that the septic system could not be moved north because of the required setbacks to the sound as there was no space for it. He added there may be a possibility to move the septic system south and move the southern parking area north, but he noted that what he anticipated would happen would be two driveway connections that would be closer to one another which was not acceptable and if the parking lot moved north, more parking spaces would be lost. Mr. Lotze asked if there were any designs commercially that allow any driveway to enter into an intersection in the same manner as what was proposed. He stated that he was concerned about traffic in that area. Mr. Klebitz stated that what was ideal was opposite driveway connections to coincide.

Mary Ann Beard asked David Klebitz if he was aware of how much wetlands and land has been lost due to hurricanes along the soundfront. David Klebitz stated that he did not. Ms. Beard stated that it was significant. She asked if the 10-foot setback versus a 20-foot setback was going to cause parking spaces to be lost. Mr. Klebitz stated that it affected more than just the parking spaces. Ms. Beard asked what else would happen. Mr. Klebitz explained that the septic system and the parking would no longer be feasible, adding that this development was supposed to be a soundfront one. He added that one of the first plans that was presented to Town staff had the buildings against the sound with a boardwalk over the sound. He pointed out that the reason why it was proposed was because under the previous Village Commercial Development Option that were in the ordinance, it would have been allowed; however, Council amended the ordinance to put a limitation on the 50% reduction so they went back and changed the entire development plan to move all the buildings back 10 feet, changed the septic and the parking.

Mary Ann Beard asked how the connection by the Blue Point Restaurant would work. David Klebitz stated that he did not know. Ms. Beard clarified that it was currently Blue Point Restaurant's. Mr. Klebitz stated that it was. Ms. Beard clarified that a boardwalk was to be installed in front of the property but not have it connected to the rest of the boardwalk. Mr. Klebitz stated that the intent was for it to be connected to the rest of the boardwalk. Ms. Beard pointed out that he would have to go around the Blue Point Restaurant and out on the water. Mr. Klebitz stated she was correct. Ms. Beard clarified that the applicant did not want to do that. Mr. Klebitz disagreed. Ms. Beard pointed out that the applicant was not going to put their boardwalk on the water and asked if that was why the variance was requested. Mr. Klebitz asked for clarification on the question. Ms. Beard clarified that instead of a 20-foot variance, the applicant wanted a 10-foot variance and they did not want the boardwalk to go over the water. Mr. Klebitz stated that the applicant originally did. Ms. Beard agreed, clarifying that the Town did not want it. Mr. Klebitz pointed out that it was not allowed. Ms. Beard thought it would be a hard connect between the boardwalk at the applicant's property and the current boardwalk if it had to go around Blue Point Restaurant. Mr. Klebitz stated that he did not know the specifics of how that connection would be made. Ms. Beard clarified that a connection was not planned. Mr. Klebitz stated that the applicant's plan did not include that but has been the intent from the beginning that the connection would be made. Ms. Beard

thought David Klebitz had stated the intent was for the boardwalk by these shops and restaurant to connect with the rest of the boardwalk. Mr. Klebitz stated she was correct. Ms. Beard pointed out that David Klebitz was not sure it would happen because the Blue Point Restaurant was in the middle. Mr. Klebitz stated that he was not sure how it would happen, not because it could happen, but because he was not the designer for the boardwalk. Ms. Beard stated that there was a water issue involved. Mr. Klebitz stated she was correct, adding that CAMA rules want that boardwalk to extend out over the water instead of over the wetlands, which was what the Town has done with their boardwalk.

Mary Ann Beard stated that waterfront and wetlands were more of an issue to her than the parking lot and was a big issue to her in regard to what will be done there as it was a special area. Attorney Leidy asked Mary Ann Beard to ask questions and not give testimony at this time.

Tom Stewart of Phantom Enterprises was recognized to speak. Mr. Stewart stated that he was Chief Operating Officer for Resort Realty and was also the developer for the project. Crouse Gray asked Tom Stewart if he was a licensed real estate agent. Mr. Stewart stated that he was a licensed broker in the state of North Carolina. Mr. Gray asked when he first got involved in the project, he looked at the surrounding properties to determine what uses were being made in those properties. Mr. Stewart stated that when he looked at this project, he looked at all of the neighboring properties. Mr. Gray asked if he had made a determination as to whether this project would have any negative impact to the values of the properties. Mr. Stewart stated that he did not, adding that he looked at what currently existed as potentially having a negative impact on the value of the properties. He added that he looked at it as something that would be a boon and a benefit not only to the Town but also to the neighboring properties.

Crouse Gray clarified that the existing building was approximately 6,000 square feet. Tom Stewart stated that it was and was a three-story building that was off the ground. He stated that in its day, it was the height of architectural design, and was primarily a real estate and property management office. He stated that over the years and up until recently, a dozen or so real estate agents worked out of that office along with a full-time staff of four to five property management personnel seven days a week, along with two technicians for the rental homes. He stated that they had approximately 12-20 home inspectors and 50-75 housekeepers, as well as 100+ homeowners that they represented over the years that would be in and out of the buildings. He noted that they had 100-200 guests on changeover days visiting the property.

Attorney Leidy asked Council if they had questions for Tom Stewart.

Mayor Kingston clarified that the building was originally Prudential Realty. Tom Stewart believed it was and thought in the last 15 years it had switched names to Resort Realty but it was before he worked there.

Ben Vorndran asked if the only operation in Duck were rental homes. Tom Stewart stated that they had five offices. Mr. Vorndran asked if the figures Mr. Stewart gave was for all five offices or just the Duck location. Mr. Stewart stated that it was just for the Duck location. Mr. Vorndran clarified that hundreds of people were coming in and out of the parking lot that had a connecting driveway. Mr. Stewart stated that as long as he worked there, it has always been two separate parking lots. Mr. Vorndran asked if there were 25 parking spaces. Mr. Stewart stated there were 33. Mr. Vorndran clarified that 33 parking spaces handled 200 people coming and going as well as maintenance staff. Mr. Stewart stated he was correct. Mr. Vorndran clarified that they were able to not have to back in or out of the lot. Mr. Stewart stated that in order to accommodate all of that at one time would be impossible, but for what they did, it handled it just fine and was a quick operation. Mr. Vorndran asked how many people were employed in the building. Mr. Stewart stated it was about 15-16 on a daily basis, but there were 100 different employees in a week. Mr. Vorndran clarified that they were permanently employed in that building. Mr. Stewart thought it was about 12 real estate agents and four to five property management personnel.

Mary Ann Beard asked how much time Tom Stewart spent in the building as well as how long he was associated with it. Tom Stewart stated that he worked for Resort Realty for the past five years. Ms. Beard clarified that over the five years Mr. Stewart knew about the Duck location. She asked how much time he spent in the building. Mr. Stewart stated that his office is in Nags Head and he spends time in other buildings, adding that he could spend an entire day in the Duck office or a weekend there. Ms. Beard asked him if he did spend time at the Duck location. Mr. Stewart stated that he did. Ms. Beard noted that the building has been empty for a few years. She asked Mr. Stewart if he was in and out of the building for two to three years. Mr. Stewart stated that he had. Ms. Beard noted that she has lived in Town for 36 years and was in and out of the parking lot quite a bit, adding that she never saw the parking lot half full but it was mostly just a handful of vehicles. She was not sure if Tom Stewart knew exactly how many vehicles were in the parking lot on a weekly basis in the summer. Mr. Stewart stated that up to four to five years ago, there were a lot of vehicles there.

Attorney Leidy asked Crouse Gray if he had any further witnesses. Crouse Gray stated that he had a few more, but in the interest of time, he would not have them come forward. He asked that the applicant be allowed to give a closing statement after everyone else has testified.

Attorney Leidy asked if any members of the audience that have been sworn wished to offer evidence beyond what they already offered in their questioning should come forward.

Dennis Wojcik understood that this was a quasi-judicial hearing to make a decision. He stated that the definition of quasi-judicial decision listed in the zoning ordinance begins with the following language: "...the decision involving the finding of facts..." He stated that he wished to submit the following facts regarding the project:

- The Town zoning ordinance defines development
- The project proposed clearly meets the Town zoning ordinance definition of development
- The Town zoning ordinance does not define nor address standards in any regard for redevelopment
- It is a fact that the project does not meet the requirements necessary to be considered redevelopment as defined by the law cited by Town staff
- It is fact that identification of this project by Town staff is redevelopment based on the definition and requirements of the North Carolina Urban Redevelopment law is clearly not appropriate
- It is a fact that the project includes demolition of all buildings, ingress/egress drives and parking areas existing on this site
- It is a fact that the project includes new construction of buildings, ingress/egress drives and parking areas
- It is a fact that the project clearly violates three requirements of the Town zoning ordinance, the northern parking area does not have a zoning ordinance required turnaround, the southern parking area exceeds the zoning ordinance allowable length for a dead-end parking aisle, and the two new parking areas do not connect as required by the zoning ordinance

Dennis Wojcik stated that the violations of the zoning ordinance will create problems for motorists, bicyclists, and pedestrians. He added that he wished to give his opinions on the project:

- The project does not supply any benefit to the Town that would justify the special uses requested
- There exists a shortage of parking within the Town commercial area and Council should not exacerbate by providing relief from the required standard
- The requested special use in regard to parking is due to the developer's attempt to construct much more on the site than it can support
- The only green areas on the site are due to the need to meet county health department standards and stormwater control requirements

Dennis Wojcik believed the project was poorly designed and that it was not in the best interest of the Town. He believed the Town Council was duty bound to deny the development proposal as it did not comply with the requirements of the Town zoning ordinance and that the special uses requested were not justifiable.

Lori Gray stated that the Planning Board and many citizens have expressed compelling points and arguments as to why the application should not be approved by Council. She added that she fully supports the position and urged Council to deny the application. She emphasized that she supported orderly and smart development that occurs in Town and was not against orderly development for commercial and residential use. She added that redevelopment of existing properties was necessary and essential for the Town to continue to flourish and draw in visitors and additional businesses. She pointed out that the Wee Winks redevelopment site was a good example of transformation of an aging

property into a new development that offers significant benefits to the community while not placing a burden on the surrounding properties or creating undue traffic and parking concerns or safety issues.

Lori Gray stated that the approval of the applications for NC Coast Restaurant and Roadside Bar and Grill were examples where the Town approved parking space reductions that resulted in inadequate on-site parking. She stated that it places a burden on adjacent property owners with overflow parking. She noted that Town staff's point that the reduction was okay because the Town has approved it before was not a prudent basis for justification in this case. She pointed out that parking for NC Coast and Roadside clearly did not work well. She cautioned Council not to repeat the same mistake again.

Lori Gray noted that in addition to the parking, the site plan associated with the application did not provide an adequate ingress and egress to the property from NC 12. She added that it was inevitable that this will lead to substantial traffic issues at the entrance of the property and into the Duck Ridge Shores subdivision. She stated that it will create a difficult and hazardous situation; however, it could be remedied with a circular traffic flow through the entire property and extensions of the center turn lanes north of Dune Road. She pointed out that without them, the redevelopment will make it difficult and hazardous for vehicles entering and exiting the property as well as Dune Road. She stated that for these reasons as well as all the reasons expressed by others, she requested that Council deny the application.

Reid Carter stated that his family purchased property in Duck 50 years ago and were delighted 20 years ago when Duck incorporated in order to stop the concept of density of development with a Food Lion shopping center in the middle of Town. He stated that the vision of the Town was also created along with rules that stopped what was happening with Dare County with regard to allowing tall, dense condominiums. He pointed out that Duck was basically single-family homes with limited heights and limited number of bedrooms as well as adequate parking. He added that the founders of the Town did a great job controlling density and Town staff have been enforcing the rules to keep the Town moving in the right direction. He stated that he would love to see new development on the property with restaurants and businesses, but he felt that because the buildings were overbuilt by putting more density and new uses into the property, they have required Council to make exceptions. He pointed out that there were certain exceptions that were granted in the ordinances, such as parking that has to be met but could be reduced by 20%. He stated that the reason the exceptions are needed was because too much density has been built.

Reid Carter stated that he had attended the Planning Board meeting and felt at this meeting that the developers have insulted the process of staff looking at things to make sure they met the criteria. He stated that the Planning Board looked at the project and had to decide if it was appropriate and if there were other considerations with the Board members pointing out that they thought the project was overbuilt and to come back with changes. He added that the applicant came back with a 50 square foot reduction for one

of the buildings which allowed them to have some extra space to add a turnaround in the dead-end parking lot. He stated that the applicant offered to install a fence to protect the Duck Ridge Shores property but that it would be located in an easement area that they could not control and that the Town would have to spend money to build a boardwalk along the easement area.

Reid Carter stated that the applicants had insulted the neighborhoods that were impacted and never came to the neighborhoods and Tommy's Market to let them know about the impacts to parking. He was not sure if they talked about the overflow parking that may happen at the Waterfront Shops, but he hoped that the restaurant was popular. He pointed out that there would be overflow from the parking lots that will cause vehicles to have to park elsewhere. He reiterated that the applicants never came to Duck Ridge Shores or Tommy's Market and did not treat the neighbors well. He thought the applicants insulted Council by bringing the project forward without making serious modifications to address all of the issues. He thought if the applicant did not make the project so big, they would not have to ask for four additional parking spaces or relief from some of the setbacks. He hoped Tom Stewart could solve the problem and encouraged Council to deny the project, reiterating that the applicant insulted the residents, the Planning Board, and Town Council.

Robert Lotze stated that he supported the applicant's position and did not want the application to be approved as presented. He thought they could go back and complete some planning to come up with a better idea. He thought giving exceptions was not the best and thought there were a lot of questions that were either incorrectly answered or assumptions that were being made. He stated that he has worked with the Town of Duck at length and thought Council was doing a great job and trusted that Council would make the right decision on a project that needed more work.

Mary Ann Beard stated that when she first moved to Duck in 1985, she fell in love with the area, her neighbors on Dune Road and the view of the sound, adding that she was happy when the Town incorporated 20 years ago. She stated that she had attended the Planning Board meeting and was dismayed to hear that there were different rules for new development as opposed to redevelopment. She stated that she did understand the difference and was shocked when she heard that the building would be demolished, the parking lot would come out, but it was still considered redevelopment. She stated that if that was the case, she would ask Council to change the Town's requirements for redevelopment. She added that she was heartened when she heard the Planning Board vote 3-2 to deny the project. She noted that a lot of people at the meeting discussed overbuilding, which she thought was the case with this project. She hoped that Council would deny the application as well.

Wes Stepp of 254 North Dogwood Trail, Southern Shores, was recognized to speak. Mr. Stepp pointed out that he owns Red Sky Café, Red Sky Catering and NC Coast Restaurant with the small parking lot that was talked about earlier. He stated that he has heard numerous times how small his parking lot was and he finally had to tell people that

they were down south and it was cozy. He added that he did not envy Council's job because no matter what they did, it was politics and someone was not going to like it.

Wes Stepp stated that he came to Duck in 2002 and May 10, 2022 will be the 20-year anniversary for Red Sky Café. He stated that when he came to Duck back then it was a new town, and since then a boardwalk has been installed, and he tells people he is from Duck, North Carolina, which he felt was the quintessential community on the Outer Banks. He stated that his reason was the uniqueness of the Town because one could park at a restaurant and then walk to the shops. He stated that there was something about the community spirit in Duck that makes it so unique. He added that a lot of the things that were discussed were actually quality problems. He stated that the proposed project was another business with parking being an issue and he agreed with Jim Braithwaite's comments earlier that he was in favor of the project. He trusted that Council would do the right thing.

Attorney Leidy asked Crouse Gray if he had any rebuttal evidence he wished to present or if he wanted to give his closing argument. Crouse Gray stated that he would give his closing argument.

Crouse Gray stated that as Council was instructed by its legal counsel, they have to make a decision based on competent material and substantial evidence. He acknowledged that the initial burden was on him and his client to provide that to Council. He stated that he qualified three expert witnesses to give expert testimony that they met the ordinance. He added that there were two components that they were asking a special exception with a special use. He stated that they acknowledge that and met the ordinance by all of the expert testimony that has been submitted to Council.

Crouse Gray stated that with regard to the issue of redevelopment, redevelopment was defined as follows: to develop again. He pointed out that whether the project was development or redevelopment did not matter. He stated that there was expert testimony that this project meets the ordinance requirements for a group development. He added that the only thing they were asking for was the setback requirement be set at 10 feet instead of 20 feet and the parking. He noted that there had been a lot of conversation during the hearing regarding a lot of other things and he was prepared to argue all of them but he was not going to since he wanted to focus on the setbacks and the parking. He stated that they have indicated to Council that they would like to move the buildings 10 feet closer to the sound and to the west side. He pointed out that it was not harming anyone and the benefit to them was that it gave them more developable space as well as it being up against the boardwalk, which was what they wanted to do. He noted that there were CAMA regulations that the testimony discussed where the boardwalk could be and could not be, there were comments made about not going around the corner or in front of the Blue Point Restaurant. He pointed out that they did not have the ability to do that as they do not own that property, adding that they were willing to have the boardwalk come to their property.

Crouse Gray stated that there were comments regarding the fact that the boardwalk ends and abuts as it gets to the Duck Ridge Shores common area property which they own. He stated that with regard to the path crossing over toward the road, they could not tell what would go in there as they did not know at this point. He pointed out that it was granting an easement to the Town and then the Town could decide what to do with that area, adding that it was not their decision. He stated that other issue was reducing the number of parking spaces. He stated that he found the argument to be confusing because there seemed to be a complaint that if there was traffic going onto NC 12, increasing the number of parking spaces would increase the traffic onto NC 12. He noted that there was a logic he was missing. He stated that Council had expert testimony before them that stated that the way it was proposed, it met the Town's ordinance, not only from Town staff but from the developer as well. He pointed out that they were meeting the Town's ordinance on how the parking was for the northern and southern parking lots.

Crouse Gray stated that it was always the intent of the developer to develop and try to do the best use they can to their property. He stated that it was up to the towns to set the standards. He added that the key component from him in addressing this was that every piece of evidence Council had in front of them from the experts was that they met the requirements that Council set. He stated that they gave examples where Council had approved other projects, noting that Council was not bound to approve this project just because they approved another one. He added that it showed how Council interpreted the ordinance when the projects were approved. He stated that they were following what Council has done in the past. He stated that he was respectfully submitting to Council, even though they have heard a number of people that were not in favor of the project, that when Council looked at the project from an evidentiary standard, the question was what evidence the people presented. He stated that he had made notes as to what people were saying as well as what evidence they were submitting, but he heard a lot of opinions. He pointed out that none of the people that spoke qualified themselves as any type of expert, adding that they were not supposed to give their opinion because Council could not rely on their statements when it was an opinion. He stated that he and the applicant presented substantial, competent, and material evidence to support all of the propositions. He added that Town staff had provided their reasons on why they believed that the applicant met each of the criteria that was in the ordinance. He reiterated that they met that criteria with competent, material, and substantial evidence. He noted that there was no contrary evidence that was presented to Council.

Attorney Leidy pointed out that Town staff had compiled all of the emails that have been received prior to the hearing and would be part of the official record of the hearing as well as a list of the written comments that have been received by staff but had not been shared with the Council that contained the names and addresses of the people that provided those comments and would be part of the official record. He stated that the handout and all other evidence that David Klebitz had provided would be part of the official record. He asked Council if they wished to hear any other further evidence. There were none.

Attorney Leidy closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. He noted that a vote of the majority of Council would be required to approve the application. He added that as part of Council's deliberation and if there was a motion to approve the application, there were various findings that would need to be made and it would be helpful if the motion referenced the findings as well as the proposed conditions.

Mayor Pro Tempore Thibodeau stated that it was clear that people were passionate about the issue from both sides. She stated that she has lived in Duck since 1988 and has been a big part of what the Town has been able to do and was pleased to hear that so many people support what Duck is and what makes it unique. She stated that it goes with a vibrant commercial business environment as well as residential, adding that the Town has a vision and has had a lot of public involvement over the years with great support from the state agencies to allow the Town to receive grants to leverage its funds in order to complete projects over the years. She stated that she has been extremely proud of the unique village that has been created and thought part of it was due to the Village Commercial Development Option, which provided a lot of flexibility due to the smaller scale of the Town and the ability to make it walkable. She pointed out that a lot of towns are bound by very strict zoning requirements which have limited what they could create. She thought the Village Commercial Development Option allowed the Town to have things on a smaller scale, allowed for some compromise on standards that gave the Town something great as well as adding it to the pedestrian plan and boardwalk gave one a lot of ability to walk around the Town.

Mayor Pro Tempore Thibodeau knew the Village Commercial Development Option allowed Council to bend some rules that some were not in favor of. She thought as Council heard at the public hearing, Council had reevaluated the Village Commercial Development Option so that things did not go off the rails in terms of allowances. She didn't disagree with the facts that were presented at the hearing and did not disagree that this was a redevelopment based on the testimony that was heard. She stated that she puts a lot of confidence and faith in Town staff and the experts, pointing out that this project has been planned for over a year with a lot of conversation with staff and sharing ideas as the Town develops the new phase of the pedestrian plan and boardwalk. She appreciated being reminded that the Town has talked of connecting the boardwalk if the project moves forward with the existing boardwalk, adding that it will take some work with CAMA.

Mayor Pro Tempore Thibodeau stated that she was very cognizant of the safety aspects that have been brought up and thought what was mostly commented on was safety of traffic and backing onto NC 12. She stated that she did not have an issue with the setback request as it felt very legitimate. She appreciated the public involvement and all of the comments that were made. She stated that she was reminded that when Council listened to the redevelopment of the Wee Winks project that there was concern in the neighborhood of how that project would affect traffic, but it has worked out very well. She pointed out that there was always a fear of change, but she did not have an issue with the three-story buildings and saw the ability to ask for the special use permit based on the

fact that it was a restaurant and group development. She felt it was legitimate what was being requested.

Mayor Pro Tempore Thibodeau stated that she put a lot of weight on what the Planning Board came up with and took credence that there was concern from the Planning Board that some of the questions had not been fully addressed. She believed that the project needed a little more thought before it is finalized, but on the whole, she felt it had a lot of merit and was a really good case for a new, vibrant mixed-use development on the site. She thought it was very much in keeping with the Village Commercial aspects with having some residential, some commercial, and some restaurant, adding that she thought it does work. She thought parking restrictions being reduced for mixed-used development have been completed, pointing out that Scarborough Faire had residential, restaurant, and retail uses.

Mayor Pro Tempore Thibodeau stated that she could not ignore the passion she heard from the public but felt that the project was very close to being something that could be very workable for the Town. She felt that it needed more work and further review before any final action could be taken.

Councilor Mooney stated that when he first looked at it, he thought the applicant would be putting a lot into a small space, adding that he was concerned about further development because there have been conversations previously with regard to how Duck is built out. He stated that it concerned him but there was already an existing structure on the site, so he thought redevelopment was what would be happening there. He thought there was a lot being put on the site. He understood everyone's concern regarding safety and not wanting vehicles backing onto NC 12, but the traffic will not get better or worse because of this project. He pointed out that Council could not legislate good driving habits as people are terrible drivers. He stated that he did not have a problem with the parking or setback requests, but he thought there was some more work that needed to be done and thought the developer needed to listen to what was said at this hearing and consider some of the things to see if there were some modifications that could be made in order to satisfy some of the concerns. He reiterated that it was a lot to put into a small space and thought the appetite was too big for that particular site.

Councilor Schiano appreciated everyone that was present for the public hearing and expressing themselves as it was very helpful. He wished that the project had gone back to the Planning Board before it came to Council, but it was not a requirement. He stated that the applicant did make modifications based on some of the input that they heard from the Planning Board and from public reaction, which was a good thing. He stated that the site needs to get redeveloped, adding that the building was just sitting vacant and did not fit with the vision of the Town in terms of elevation and décor. He thought the applicant did make modifications to comply with the way the community wanted things to look. He added that it was a little more dense in a sense than what Council was used to because there was more mixed use there than has been seen in the past.

Councilor Schiano stated that when he listened to all of the facts and how it measured up against the Town's zoning requirements, it lined up pretty good except for the setback and the parking spaces. He noted that the request for the waiver on the parking was for four spaces, which surprised him since that was all that it was from what was required in the regulations. He pointed out that it has been done before but did not mean Council has to do it again, but it seemed that developing in the Town, which was going to be primarily redevelopment since there was not any more available land, would have to be creative. He stated that sometimes it may not be exactly the way everyone will like it in a perfect world, but they have to try to make it work within the boundaries of the reality that the Town has.

Councilor Schiano stated that it would be a lot easier if the middle turning lane went all the way up to the north entrance. He was not sure if that was possible or what could make that happen and thought Council could not make a legal requirement that it happen in order to rule on the application but thought it would make things a lot simpler. He assumed that the comments on the record have to be accurate and truthful, but he believed that people would have to live up to the comments that they made if they stated that they would take care of the stormwater issues. He asked if they would have to do that.

Attorney Leidy stated that Council could impose reasonable conditions if the application was approved. He stated that other than what was required by law, Council heard there would be other phases of approvals that would be required before the applicant could construct the buildings. Councilor Mooney pointed out that there was a list of conditions at the end of the staff report.

Councilor Whitman thanked everyone for their comments as well as the applicant. He stated that he was not happy with the proposal, but he was elected to uphold the rules of the Town and he trusted that the Town's engineer, planners, and Community Development department were all telling Council what was and was not on the site. He stated that parking was his biggest issue, adding that he was not sure how it would be resolved.

Mayor Kingston thanked Town staff for their input as well as the work that has been done over a period of time. He appreciated the developer being present at the meeting as well as the input they gave. He appreciated the input from the public as well. He looked at the issue as the Council was sitting in their seats because the citizens elected them. He stated that Council represented the citizens of Duck as well as representing the ordinances that have been put in place. He pointed out that when one looks at the history of past exceptions, some of them had reasons why they were done, but to continue into the future, it would only accelerate a problem of parking and traffic in the Town. He stated that he liked the development, the look of the development, he did not have an issue with the setback, but his issue was with the parking. He knew that, to an extent, the applicant meets the ordinance for parking, but he was not sure the problem needed to continue by adding more exceptions to parking. He thought that that area would be redeveloped, but he thought it needed to be looked at again. He thought the Planning Board did their job

and were opposed to the project. He pointed out that in the past Council has overruled the Planning Board and he thought it was not a good decision at one time.

Mayor Kingston asked if Council should send the proposal back to the Planning Board to rework it with the developer or if the application should be denied. He stated that he wanted to see the developer take another look at the proposal as he thought something could be developed that would meet the regulations without contributing to the problem. He appreciated the business owners that stated that they would allow the applicant to use their parking lots for overflow parking. He stated that he was in opposition of the proposal due to the parking and would like to see staff, the developer and the Planning Board look at the project again to see if a better plan that fits the site could be achieved. He reiterated that he was opposed to the special exception.

Mayor Pro Tempore Thibodeau asked if Council asked for the decision to be continued and rejected the application at this meeting, what would it mean for the applicant. She stated that she did not want to end the whole thing and wanted to be able to continue working through the issues that have been brought forward. Attorney Leidy explained that if Council denied the application, it did not prohibit the applicant from making changes and resubmitting the application. He added that the other remedy was to seek review in superior court of the Council's decision if they think they could demonstrate that they satisfied their burden of proving that the application as submitted satisfies the requirements of the ordinance and that the Council's decision was erroneous. He noted that if they win at that level, the applicant would be entitled to issuance of the permit.

Mayor Pro Tempore Thibodeau stated that because parking seems to be a point that was talked about during the hearing, with the connectivity of shared parking completed in the community. She stated that she has a parking lot that was most likely being used for people attending this meeting because there was not enough parking in the Town to accommodate a meeting of this size. She stated that her business closes at 5:00 p.m. and she did not know what happens in her lot after she leaves for the day, but she knew that people were parking in other lots as well as hers. She thought it was in the spirit of what goes on in Town after normal business hours. She thought there has to be some allowance for some flexibility, which was why Duck had the Village Commercial Development Option. She did not feel insulted by the process at all and felt there has been nothing but respectful dialogue and working behind the scenes for quite some time on a substantial project. She pointed out that it was a good problem to have and a lot of the work over the years has resulted in the special place now. She stated that it was because of the flexibility and working together that Duck has a unique and vibrant community.

Mayor Kingston moved to deny SUP 20-001 as presented.

Councilor Whitman stated that he wanted to send the application back to the Planning Board and staff to see if they could work with the applicant to come up with some more parking. Mayor Kingston thought it was up to the applicant. Mayor Pro Tempore Thibodeau thought the applicant could come up with a shared parking arrangement. Councilor Mooney asked if the applicant needed to be denied or if Council should

suggest that the applicant start over. Attorney Leidy stated that Council had to vote on it now or table it but they would still have to make a decision based on what was submitted.

Motion carried 5-0.

Public Hearing/Discussion/Consideration of the Proposed FY 2023 Budget

Mayor Kingston turned the meeting over to Attorney Leidy.

Attorney John Leidy stated that Town Manager Havens would give an overview.

Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that at Council's April 20, 2022 meeting, he presented the Proposed FY 2023 budget. He pointed out that the proposed budget was based on an Ad Valorem tax rate of \$0.22 for Fiscal Year 2022-2023 which was unchanged from Fiscal Year 2021-2022. He added that the proposed budget also sets the tax rates for the two MSDs as follows: MSD-A would be at the rate of \$0.1296 and MSD-B at the rate of \$0.285. He noted that both remain unchanged from the Fiscal Year 2021-2022 budget. He noted that Council may hold additional work sessions, as needed, on the budget and that the budget needed to be adopted by June 30, 2022. He reviewed the proposed budget with Council and the audience.

Attorney Leidy asked Council if they had questions for Town Manager Havens. There were none.

Attorney Leidy asked if any members of the public wished to comment on the proposed budget. There were no comments.

There being no one wishing to speak, Attorney Leidy closed the public hearing and turned the meeting back over to Mayor Kingston.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

There was no Old Business to discuss.

NEW BUSINESS

There was no New Business to discuss.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Attorney Leidy stated that he had nothing to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Departmental Updates

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman gave a brief overview of the past month's police activities to Council and the audience.

Fire Chief Donna Black was recognized to speak. Fire Chief Black gave a brief overview of the past month's fire activities to Council and the audience.

Senior Planner Cross gave an overview of the past month's permit activities to Council and the audience.

Public Information and Events Director Christian Legner was recognized to speak. Director Legner gave a brief overview of activities to Council and the audience.

April FY 2022 Financial Presentation

Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes gave a short presentation on the April Fiscal Year 2022 financials to Council and the audience.

MAYOR'S AGENDA

Mayor Kingston stated that he has his mayors/chairmen meeting on May 17, 2022, which will be hosted by the Town of Kitty Hawk. He stated that he is no longer on the North Carolina League of Municipalities Board with Elizabeth Morey, the mayor of Southern Shores, replacing him as a representative for District 1. He thanked Town Clerk Ackerman for all of her support while he was on the board over the past four- and one-half years. He stated that he attended the Local Leadership Foundation meeting on April 26, 2022 where he was re-elected as president. He thanked Director Legner, Public Relations Assistant Betsy Trimble, and everyone else that was involved in the 20th anniversary celebration.

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau gave a short update on the Tourism Bureau meeting to Council and the audience. She thanked everyone for the 20th anniversary celebration.

Councilor Mooney stated he was sorry he missed the 20th anniversary celebration.

Councilor Whitman thanked Town staff for the 20th anniversary celebration. He noted that he will be out of town and will not be able to attend the June 8, 2022 Planning Board meeting.

Councilor Schiano thanked Town Manager Havens for a good job on the budget. He thought the Town was in good shape.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments.

Dennis Wojcik thanked Council for their consideration of the public comments earlier in the meeting. He agreed with their decision on the public hearing and thanked them. He thanked Town staff for the hard work they do and apologized to Senior Planner Cross for interrupting her during the public hearing as it was unprofessional and he should not have done that. He asked Council to keep the issue of the center left turn lane reaching the northern entrance of the Resort Realty property on the table. He added that the site will be developed at some point and thought it was necessary. He noted that he was a retired engineer with 30 years' experience and looked at the plans for the rebuild of NC 12 and thought it could be built to the southern entrance without a problem. He did not think getting to the northern entrance could be achieved feasibly. He reiterated that he did not want Council to forget about it because when the site is developed, it will be needed. He added that if there was going to be consideration given to redevelopment items, that it be put into the ordinance so it was clear what the considerations were as well as what was considered redevelopment.

There being no one else wishing to comment, he closed the time for public comments.

Mayor Kingston noted that the next meeting would be the Mid-Month Meeting on Wednesday, May 18, 2022 at 1:00 p.m.

ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0.

The time was 11:30 p.m.



Lofi A. Ackerman, Town Clerk

Approved: July 6, 2022


Don Kingston, Mayor

