



Agenda
Town of Duck Planning Board – Regular Meeting
Paul F. Keller Meeting Hall
Wednesday, September 14, 2022 – 6:30 p.m.

1. Call to Order
2. Public Comments
3. New Business
 - a. *SUP-22-003 Application by Barnette Integrated Land Development, on behalf of property owner Andrew Meredith, for a special use permit to establish a duplex in the Neighborhood Commercial (C-1) district at 1448 Duck Road. The proposal would involve changing the use of the first-floor unit from retail to residential use. No changes to the existing site or building exterior are proposed.*
 - b. *Text Amendment Ordinance 22-09: Regulatory Standards for Dune Walkover Structures*
4. Approval of Minutes
 - a. *Minutes from August 10, 2022 Meeting*
 - b. *Minutes from August 19, 2022 meeting*
5. Staff Comments
 - a. *Summary of September 7, 2022 Town Council Meeting*
 - b. *Project Updates*
6. Board Comments
7. Adjournment



TO: Chairman Cofield and Members of the Town of Duck Planning Board
FROM: Joe Heard, Director of Community Development
DATE: September 14, 2022
RE: Staff Report for SUP 22-003, 1448 Duck Road (North Duck Watersports)

Application Information

Application #: SUP 22-003
Project Location: 1448 Duck Road
Dare County PIN: 995006388784
Existing Use: Mixed Use Commercial/Residential
Zoning: Neighborhood Commercial (C-1)
Property Owner/Applicant: Andrew Meredith, North Duck Watersports
Applicant’s Representative: Marty Barnette, Barnette Integrated Land Development

Public Meeting Advertised: August 28 & September 11, 2022 (Coastland Times)
Public Meeting Notices Sent: September 2, 2022
Public Meeting Sign Posted: September 2, 2022
Public Meeting Town Website: September 2, 2022
Public Meeting Town Hall Posted: September 2, 2022

Application Summary

The recently adopted Subsection 156.033(B)(14) requires approval of a special use permit to establish a duplex on a property in the Neighborhood Commercial (C-1) zoning district. The applicant is proposing to convert the first floor of the existing two-story, mixed-use building from retail use to residential use (three-bedroom apartment). As the second floor already contains a one-bedroom apartment, this building would be reclassified from mixed-use to a residential duplex. There are no physical changes being proposed to the existing site improvements or building exterior. The watersports rental business and boat ramp will continue to operate in their current location and capacity elsewhere on the property.

Property Information

The subject property at 1448 Duck Road is approximately 34,613 square feet (0.79 acre) in size and zoned Neighborhood Commercial (C-1). The property contains structures, boat ramp, and docking facilities associated with the North Duck Watersports business as well as a two-story,



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mixed-use building currently housing an apartment on the upper level and approved for retail use on the first floor.

The abutting property to the north contains an office building for Beach Realty and Construction and is zoned Neighborhood Commercial (C-1). The adjoining property to the south is also zoned Neighborhood Commercial (C-1) but presently contains a single-family residence. The Sound Sea Village neighborhood is located across Duck Road to the east and zoned Single-Family Residential (RS-1). Two houses (one of which is owned by the applicant) are located directly across from the subject property. The western edge of the property abuts the Currituck Sound.

Prior Approval History

This property was formerly a hunt club prior to the development of the boat launching and rental facility. The boat ramp and watersports business on the subject property were originally established by the applicant after conditional use permit approval by Dare County in 1992, a decade prior to the Town of Duck's incorporation. A conditional use permit was subsequently approved by the Duck Town Council on April 2, 2014. The current special use permit application proposes a minor modification to this previously approved permit.

CUP 14-001: Approval to redevelop a portion of the property at 1448 Duck Road with a new mixed-use building and associated parking, lighting, landscaping, septic, and stormwater management improvements. The project involved removal of several older buildings on the north side of the property, which were replaced with an 1,800 square foot mixed-use building (1,200 square feet retail on the first floor and a 600 square foot accessory apartment on the second floor).

Staff Review & Analysis

Staff has reviewed the proposal and compiled the following comments:

Proposed Use – 156.033(C):

The applicant proposes to convert an existing first-floor retail space into a three-bedroom apartment, effectively converting the building into a duplex. A recently approved text amendment allows duplexes subject to special use permit approval in the Neighborhood Commercial (C-1) zoning district.

Building/Unit Size – 156.033(D)(7):

Constructed in 2015-2016, the existing two-story building contains a total of 1,800 square feet, in compliance with the maximum building size standard of 5,000 square feet in the VC-1 district.

The subject unit is 1,200 square feet in size. Although space within the unit will be arranged differently to accommodate the change of use, the size of the unit remains the same.



Building Setbacks - 156.033(D)(2), (3) & (4):

The existing building has the following setbacks from property lines:

	<u>Existing</u>	<u>Required</u>
Front (east)	38.2 feet	15 feet
Rear (west)	120 feet	20 feet
Side (south)	188 feet	10 feet
Side (north)	10.4 feet	10 feet

The existing setbacks comply with the Town’s standards and will remain the same under the proposed change of use.

Lot Area – 156.033(D)(1):

The subject property is 34,613 square feet (0.79 acre) in size. The minimum lot size in the C-1 district is defined as being of “sufficient size to meet the requirements of the County Health Department, to provide adequate siting for structures and to provide parking, loading and maneuvering space for vehicles”. During review of the conditional use permit in 2014, it was determined that the subject property was large enough to accommodate all the existing and proposed uses. So, the subject property appears to comply with this standard.

Lot Coverage – 156.033(D)(5):

With lot coverage estimated as 4,916 square feet, the existing development has lot coverage of 14.2%, well below the maximum lot coverage requirement of 50% in the VC-1 zoning district. The existing lot coverage will remain the same under the proposed change of use.

Access – 156.093(G) & 156.112:

The subject property currently has a single concrete ingress/egress drive 21 feet in width off Duck Road (compliant with Town standards). The existing access will remain the same under the proposed change of use.

Internal Traffic Circulation (156.093 & 156.112):

The northern parking area serving the subject building has a concrete drive aisle 20 feet in width. The gravel parking area to the south serves the watersports business and has an informal drive aisle estimated at 20 feet in width. These drive aisles are compliant with Town standards. The existing drive aisles and internal traffic circulation pattern will remain the same under the proposed change of use.

Parking Spaces (156.093, 156.094 & 156.112):

When approved in 2014, the redevelopment of the site included the existing watersports business, 1,200 square feet of retail space, and a one-bedroom apartment. This tenant mix resulted in a minimum parking requirement of 24 parking spaces, the exact amount provided on the site.



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The minimum number of parking spaces for the existing approved uses on the site is calculated below:

<u>Proposed Uses</u>	<u>Size</u>	<u>Ratio</u>	<u># Required Spaces</u>
Watersports Business:			
Wave Runners	10 WRVs	1/WRV	10 spaces
Pontoon Boats	2 boats	1/boat	2 spaces
Parasail Boat	1 boat	1/boat	1 space
Employees	8 employees	1/2 employees	4 spaces
Apartment (2 nd floor)	1 bedroom	1/bedroom	1 space
Retail (1 st floor)	1,200 s.f.	1/200 s.f.	<u>6 spaces</u>
TOTAL			24 spaces

NOTE: Although a minimum parking requirement for boats/water vehicles is not specifically spelled out in the Town’s parking standards, the 2014 redevelopment proposal was approved using a requirement of one parking space per boat/vehicle. This standard has been carried forward to the current special use permit for the change of use.

The proposed change of use from retail to an apartment in the first-floor unit reduces the minimum parking calculations. Whereas the prior retail use required a minimum of six (6) parking spaces (1,200 s.f. at one space/200 s.f.), the proposed apartment requires a minimum of only three (3) parking spaces (one space/bedroom). Amended to include the proposed change of use to the apartment, the minimum number of parking spaces for the proposed uses on the site is calculated below:

<u>Proposed Uses</u>	<u>Size</u>	<u>Ratio</u>	<u># Required Spaces</u>
Watersports Business:			
Wave Runners	10 WRVs	1/WRV	10 spaces
Pontoon Boats	2 boats	1/boat	2 spaces
Parasail Boat	1 boat	1/boat	1 space
Employees	8 employees	1/2 employees	4 spaces
Apartment (2 nd floor)	1 bedroom	1/bedroom	1 space
Apartment (1 st floor)	3 bedrooms	1/bedroom	<u>3 spaces</u>
TOTAL			21 spaces

As the site presently contains 24 parking spaces, the amount of parking on site exceeds the minimum parking requirement and is sufficient to meet the needs of the existing and proposed uses.

The layout of the existing parking areas and number of parking spaces will remain the same under the proposed change of use.



ADA Parking:

Standards of the Americans with Disabilities Act (ADA) require one (1) handicap accessible parking space on site. This handicap parking space was provided with the site improvements that were approved in 2014, so the site complies with this standard. The ADA space is located in close proximity to a handicap access ramp that provides access to the subject building. The layout of the existing ADA improvements will remain the same under the proposed change of use.

Trees/Landscaping (156.115 & 156.137):

Concurrent with the partial redevelopment project, a buffering and landscaping plan was approved and installed on site. As part of this plan, two large mature trees have been preserved. There are no new landscaping requirements associated with the proposed change of use.

Stormwater Management

When partially redeveloped, the site was designed with a low-impact development approach using sheet flow of stormwater to existing open space and new retention areas, combined with permeable parking surfaces, as the primary means of stormwater management to support development of the subject building and associated improvements. Two stormwater retention basins were provided: (1) one on the north side of the driveway to capture runoff from the concrete apron, easternmost row of parking spaces, and septic area; and (2) a second located between the north side of the building and the northern property line to capture runoff from the proposed building, a portion of the driveway, and the westernmost row of parking spaces. In addition, the use of gravel parking spaces provides some infiltration of stormwater and reduces the velocity of runoff. The Town's consulting engineer reviewed the stormwater plan and associated calculations and found that they met Town requirements. The layout and function of the existing stormwater management improvements will remain the same under the proposed change of use.

Waste Management (156.113):

The residential duplex will use roll carts to address its waste management needs.

Signs (156.130):

New signs are not proposed as part of the change of use.

Wastewater Disposal (156.125):

The Dare County Environmental Health Department must certify that the current septic system can accommodate the proposed change of use.

Flood Zone (Chapter 150):

The entire property is located in an AE flood zone with an elevation requirement of four feet (4') above mean sea level. The subject building was constructed in compliance with this standard in 2015-2016. The proposed change of use does not trigger the need to evaluate compliance with current flood damage protection requirements.



CAMA

A CAMA permit was obtained for the partial redevelopment of site with a mixed-use building in 2014. As there are no site revisions required, additional approval from CAMA is not necessary at this time.

Building/Fire Codes:

The Building Inspector will review changes to the use and space for compliance with N.C. Building and Fire Codes during the permitting process. Final building and fire inspections will be conducted prior to issuance of a Certificate of Occupancy.

Special Use Permit Criteria

Subsection 156.155 of the Duck Town Code establishes review criteria for special use permit applications. The following standards should be considered as part of the Planning Board's review:

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

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

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

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



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

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

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

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

**** NOTE:** When granting a special use permit, the Town Council may prescribe appropriate conditions and safeguards to the location, nature and extent of the proposed use and its relation to surrounding property, for purposes of (1) ensuring that the conditions of permit approval will be complied with; and (2) minimizing any potentially injurious effect of the proposed use on adjoining properties, the character of the surrounding area, or the health, safety and general welfare of the community.

Comprehensive & Land Use Plan

Section 156.155(E)(4) of the Duck Town Code states that the Town must evaluate the proposal's consistency with the adopted Comprehensive & CAMA Land Use Plan.

The Town's CLUP does not address this specific type of special use permit request. However, the Plan provides the following goal and policy objectives that reflect the priorities and concerns of the Town.

Land Use Compatibility - Management Goal: Ensure that development and use of resources or preservation of land balance protection of natural resources and fragile areas with economic development, and avoids risks to public health, safety, and welfare.

4.2: Ensure that development of land minimizes negative direct and secondary environmental impacts, avoids risks to public health, safety, and welfare and is consistent with the carrying capacity of the land.



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4.3.3: Work with local businesses and redevelopment projects to coordinate adequate (and sometimes shared) parking and loading/off-loading areas.

4.3.6: Seek opportunities to provide workforce housing at modest scale in commercial and attached residential areas of Duck while minimizing impacts on adjoining residential neighborhoods.

5.1: Closely protect the character of existing single family neighborhoods as well as multi-family enclaves through the adoption and enforcement of appropriate development standards.

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

The Duck Planning Board may offer a recommendation as to whether or not the proposed project is consistent with the above-listed goal and policy objectives from the Town's Comprehensive & Land Use Plan.

Staff Recommendation

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

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

ATTACHMENTS

- A. Location Map and Property Information
- B. Special Use Permit Application
- C. Cover Letter
- D. Site Plan
- E. Public Input
- F. DRAFT Findings and Conditions



Dare County - Property Records

009271000
1448 DUCK RD, DUCK, NC, 27949

MEREDITH, ANDREW
-
313 SPOT LN
VIRGINIA BEACH, VA,23456, USA

Assessed Value
\$735,800

PARCEL INFORMATION

Parcel ID	009271000	PIN	995006388784
Land Use Code	5000	Land Use Description	RECREATIONAL
District	DUCK	Neighborhood	21560099
Zoning Code	C-1	Zoning Desc.	NEIGHBORHOOD RESIDENTIAL
Subdivision	SUBDIVISION - NONE		
Legal Desc.	LOT: BLK: SEC:		
Plat Cab Slide	PL: SL:		
Deed Date	04/29/1992	Book / Page	0799 / 0392
Tax Status	Taxable		

SECONDARY OWNERS

No data to display

ASSESSMENT DETAILS

REAL ESTATE ASSESSED VALUE

Land Value	\$488,800
Building Value	\$215,900
Other Improvements	\$31,100
Total Assessed	\$735,800

BILLING VALUE

Land Value	\$488,800
Building Value	\$215,900
Other Improvements	\$31,100
Total Value	\$735,800

LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 U56-21-Commercial Sound Front	27,000	0.6198	\$488,800
Total Assessed	27,000	0.6198	\$488,800

BUILDINGS

	AREA INDEX	AREA
+	4	40
WD1 - WOOD DECK		
+	5	30
CP6 - CANOPY ROOF/SLAB		
+	6	565
WR1 - WHEELCHAIR RAMP		

OTHER IMPROVEMENTS

BUILDING #	DESCRIPTION	YEAR BUILT	QTY	SIZE / COUNT
2	RB1 - FRAME OR CB BOAT HOUSE	1970	1	240
3	BS2 - BOAT SLIP AVERAGE	1970	9	1
4	GZ1 - GAZEBO	1970	1	164
15	BK1 - BULKHEAD	1970	1	350

RECENT SALES HISTORY

The sales history includes only qualified sales made since January 1, 2016. A sale is qualified when it has been verified, by the appraiser, as an arm's length transaction for fair market value. Only qualified sales are considered in the appraisal process.

No data to display

VALUE CHANGES

The value change history shows only changes in appraised value; it does not show exemptions, exclusions or deferrals that could reduce a property's taxable value. If any of these are in effect for a particular tax year, it will be shown on the property tax bill for that year. It is also possible that some previous value changes might be missing from this list or listed in the wrong order.

REVALUATION EFFECTIVE DATE	ASSESSED VALUE
01/01/2020	\$735,800
01/01/2013	\$420,500
01/01/2005	\$713,000

PERMITS

Permits issued in the past 6 years. All information deemed reliable but not guaranteed. For more information, please visit Dare County's [searchable permit site](#).

DATE	PERMIT #	PURPOSE	PERMIT AMOUNT
12/11/2014	B14-000184	COMM NEW BLDG	\$245,000
10/22/2014	B14-000143	COMM BLDG DEMO	\$5,000
11/30/2011	B11-000274	STORM DAMAGE REPAIRED	-
09/07/2011	TR11-000196	COMM BLDG CHANGE	\$75





009271-000 21-995006-014 07/18

Data last updated: 09/07/2022



This map is prepared from data used for the inventory of the real property for tax purposes. Primary information sources such as recorded deeds, plats, wills, and other primary public records should be consulted for verification of the information contained in this map.

1448 Duck RD
Duck NC, 27949
Parcel: 009271000
Pin: 995006388784

Owners: Meredith, Andrew -Primary
Owner

Building Value: \$215,900
Land Value: \$488,800
Misc Value: \$31,100
Total Value: \$735,800

Tax District: Duck
Subdivision: Subdivision - None
Lot BLK-Sec: Lot: Blk: Sec:
Property Use: Recreational
Building Type: Retail Multi Occup
Year Built: 2015





Department of Community Development

PO Box 8369
1200 Duck Road
Town of Duck, North Carolina 27949
(252) 255-1234

SPECIAL USE PERMIT APPLICATION - STANDARD

Date: 8/12/22 Application #: SUP 22-003

Amendment to an Existing Special Use Permit? (Y/N) Y If yes, Permit #: CUP 14-001

Applicant: Andrew Meredith

Mailing Address: 423 W. Bridge Lane, Nags Head, NC 27959

Telephone #: (252) 202-2095 Email: drewmeredith10@yahoo.com

Representative (if different from applicant): Martin Barnette, PLS

Mailing Address: PO Box 7159, Kill Devil Hills, NC 27948

Representative Telephone #: (252) 441-5154 Email: bildsurvey@embarqmail.com

Property Information:

Property Address/Location: 1448 Duck Road, Duck, NC 27949

Dare County PIN #: 995006388784 Zoning District: C-1

Existing Use of Property: Commercial

Proposed Development Information:

Proposed Use(s) of the Property: Change of use to the existing retail and residential building to a duplex dwelling, (as shown on attached site plan).

Project Description: No changes are proposed to the site.

Total Acreage: 48,455 SF (34,613 SF Land Area) Total Building Area (s.f.): 1,800 SF

Total # Units: 2 Lot Coverage (s.f. & %): 4,890 SF (14%)

Building Height: # Parking Spaces: 24

The Duck Town Council, with a vote of a majority of the membership, may grant a special use permit. Consistent with the N.C. General Statutes, Section 156.155 of the Zoning Ordinance states that the Town Council is required to make certain findings as a prerequisite to granting a special use permit. The following section is intended to offer the applicant an opportunity to address these criteria for the Council members. Please answer each request as thoroughly as possible.



1. Describe how the proposed use meets all required conditions and specifications of the Zoning Ordinance.

The proposed commercial & duplex residential uses as permitted in Section 156.033 Duck, NC
Code of Ordinances.

2. Describe how the proposed use would not materially endanger public health or safety.

This change of use will reduce the activity intensity at the site.

3. State if the proposed use would substantially injure the value of adjoining properties. Describe any potential impacts.

N/A

4. Explain how the proposed use is in harmony with the area in which it is located and in general conformity with the Town's Comprehensive & Land Use Plan.

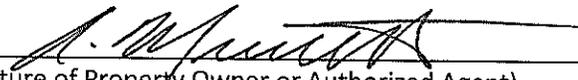
The site retains its principle commercial use with an appurtenant residential use.

.....

I understand that the Planning Board will first review the application and submit its recommendation to the Duck Town Council prior to the public hearing. The owner of the property for which the permit is sought, his/her agent, and adjoining property owners will be notified by mail. Notice of such hearing will be advertised and posted on the property within the required legal timeframe prior to the hearing. Any party may appear at such hearing, in person or by agent. As part of its decision, the Duck Town Council may impose reasonable and appropriate conditions and safeguards to ensure that the spirit and intent of this ordinance is preserved and that an approved special use permit will not adversely affect the public interest.

The Following MUST Be Completed by the Property Owner

I/We Andrew Meredith hereby certify that the applicant named above has the authority vested by me to make this application.


(Signature of Property Owner or Authorized Agent)

(Title or Relationship)

Andrew Meredith
(Printed Name)

A complete application can be submitted in person to the Town of Duck Community Development Department at Duck Town Hall, 1200 Duck Road or mailed to Town of Duck, P.O. Box 8369, Duck, NC 27949. Checks should be made payable to the Town of Duck. A complete application consists of:

- Complete, signed special use permit application form
- Special use permit application fee
- Cover letter describing and supporting the proposal
- Site plans and/or building plans drawn to scale showing the existing and proposed improvements
- Other exhibits or information necessary to describe and support the proposal
- Any other information in support of the special use permit request

Fees are published in the Town's adopted Fee Schedule and are subject to change.

Special Use Permit	\$400.00
Special Use Permit - Home Occupation	\$200.00
Special Use Permit - Amendment	\$250.00

FOR OFFICE USE ONLY	
Application Received <u>8/12/2022</u>	Received By <u></u>
Fee Paid <u>\$250-</u>	Receipt # <u>OK # 2437</u>

Rec'd 8/12/2022

me

Andrew Meredith Special Use Permit**1448 Duck Road****APPLICATION NARRATIVE**

In 2014, the Town approved an amendment to the special use permit for the Applicant, Andrew Meredith's, watersports business to add a structure to be used with 1,200 square feet of commercial space on the first floor and a 600- square foot accessory apartment on the second floor. Both uses were permitted in the C-1 zoning district. Mr. Meredith continues to operate the water sports business at the property, but has been unsuccessful in securing successful tenants/occupants of the first-floor commercial space over the years. As a result, Mr. Meredith seeks a modification of the SUP for the property to allow the first-floor space to be used as a residential unit, in addition to the already-approved residential use of the second-floor area.

Mr. Meredith is requesting an amendment to his Special Use Permit for a change of use for his commercial/residential building on the property to a 3-bedroom (first floor) and 1-bedroom (second floor) duplex dwelling. Basically, Mr. Meredith seeks approval to convert the allowed use of the first-floor space from commercial to residential. This amendment is requested to adjust for changes in market conditions where the highest and best use for this property/structure is residential due to the coastal environment, scenic views and proximity to the ocean and sound waterfront and associated watersport amenities.

Mr. Meredith does not anticipate any changes to the layout of the property as a result of the requested SUP amendment. There is already sufficient parking available on the property, and if the SUP amendment is granted, that will remain unchanged.

Residential duplex uses were recently added to permitted uses in the C-1 district and adopted by Town Council at its August 3, 2022 meeting. Residential uses are considered to be less intensive uses than commercial uses, and applicant would request approval of this requested change. Mr. Meredith's property – 1448 Duck Road – complies with the requirements of the zoning regulations as amended on August 3rd.

NOTES

-THIS SITE PLAN DEPICTS A CHANGE OF USE TO THE COMMERCIAL/RESIDENTIAL BUILDING, TO A 3 BEDROOM & 1 BEDROOM DUPLEX DWELLING

-PROPERTY BOUNDARY LINES & SITE IMPROVEMENTS FROM SURVEY BY B.I.L.D. 6/8/16

-PROPERTY IS LOCATED IN A F.I.R.M. ZONE AE(4') & AE(5') (SUBJECT TO CHANGE BY F.E.M.A.)

-DARE CO. PIN# 9950(06) 38 8784 #1446-#1448 DUCK ROAD

-LAND AREA -34,613sq.ft.(COORD.) COVERED AREA - 4,890sq.ft. BUILDING- 2,160sq.ft. PAVEMENT- 2,730sq.ft.

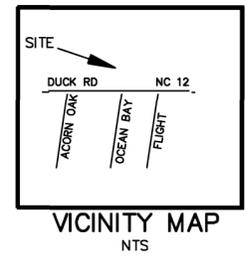
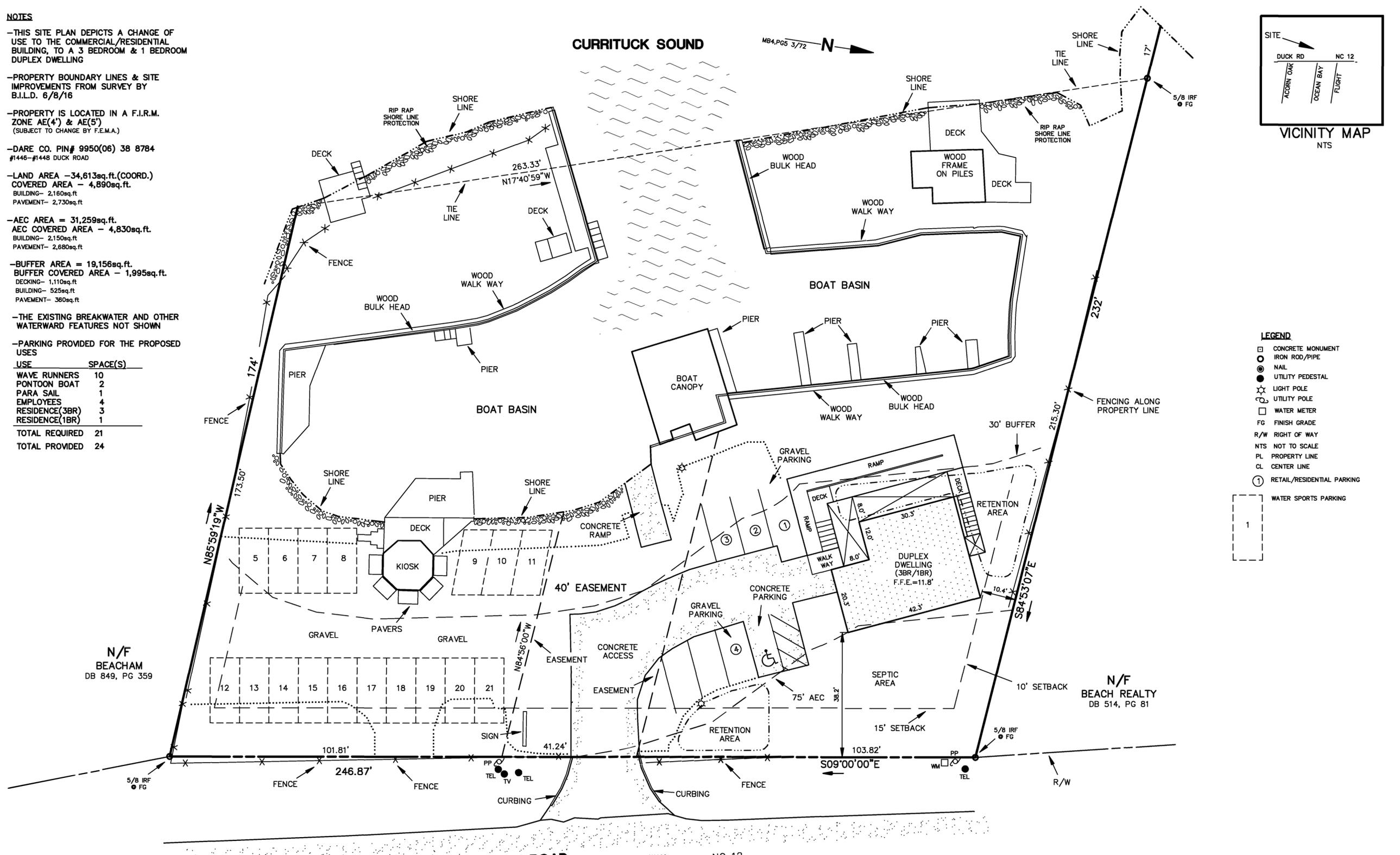
-AEC AREA = 31,259sq.ft. AEC COVERED AREA - 4,830sq.ft. BUILDING- 2,150sq.ft. PAVEMENT- 2,680sq.ft.

-BUFFER AREA = 19,156sq.ft. BUFFER COVERED AREA - 1,995sq.ft. DECKING- 1,110sq.ft. BUILDING- 525sq.ft. PAVEMENT- 360sq.ft.

-THE EXISTING BREAKWATER AND OTHER WATERWARD FEATURES NOT SHOWN

-PARKING PROVIDED FOR THE PROPOSED USES

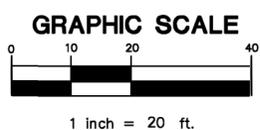
USE	SPACE(S)
WAVE RUNNERS	10
PONTOON BOAT	2
PARA SAIL	1
EMPLOYEES	4
RESIDENCE(3BR)	3
RESIDENCE(1BR)	1
TOTAL REQUIRED	21
TOTAL PROVIDED	24



- LEGEND**
- CONCRETE MONUMENT
 - IRON ROD/PIPE
 - NAIL
 - ★ UTILITY PEDESTAL
 - ☆ LIGHT POLE
 - UTILITY POLE
 - WATER METER
 - FG FINISH GRADE
 - R/W RIGHT OF WAY
 - NTS NOT TO SCALE
 - PL PROPERTY LINE
 - CL CENTER LINE
 - ① RETAIL/RESIDENTIAL PARKING
 - ② WATER SPORTS PARKING

N/F BEACHAM DB 849, PG 359

N/F BEACH REALTY DB 514, PG 81



PRELIMINARY
(UNCERTIFIED COPY)



SITE PLAN FOR: **ANDREW MEREDITH**

NORTH DUCK WATERSPORTS

DUCK	ATLANTIC TWSP.	DARE CO.	N. CAROLINA
SCALE 1"=20'	FILE NO. 3415	CADD FILE 3415L	DATE 8/11/22

B. I. L. D.
BARNETTE INTEGRATED LAND DEVELOPMENT
POB 7159 KDH, NC 27948 (252)441-5154 F-0594

Sandy Cross

From: Lori Ackerman
Sent: Wednesday, September 7, 2022 10:42 AM
To: Sandy Cross
Subject: Fwd: SUP-22-003, for 9/14/22 meeting

Sent from my iPhone

Begin forwarded message:

From: Deanna Beacham <d.beacham@comcast.net>
Date: September 7, 2022 at 10:40:58 AM EDT
To: Info Account <info@townofduck.com>
Subject: SUP-22-003, for 9/14/22 meeting

Greetings to the Duck Planning Board:

My family has owned the property adjacent to 1448 Duck Road since my parents bought it from Walter Perry in the 1950s. Uncle Walter taught my dad (Ray Beacham, a Kitty Hawk cousin) to hunt, and my dad taught me. Now I own the house adjacent, built for my parents by another Kitty Hawk cousin in the 1980s.

We are pleased to see that Drew Meredith hopes to convert the first floor of his building at 1448 Duck Road to residential use, as Duck needs more housing for residents. I am writing to inform the Duck planning board that we fully support this plan.

We hope to attend the Town Council Public Hearing on October 5 in support as well.

You can contact me at

Deanna Beacham

804.677.8642

9275 Feather Lane

Mechanicsville, VA 23116

d.beacham@comcast.net

(Hard copy preferred, as we have very limited office equipment.)

Thank you for your attention to this matter.

Deanna Beacham

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Return to: Town of Duck
P.O. Box 8369
Duck, NC 27949

Document Prepared by: Town of Duck
P.O. Box 8369
Duck, NC 27949



TOWN OF DUCK, NORTH CAROLINA

ORDER GRANTING A SPECIAL USE PERMIT

The Town Council for the Town of Duck, having held a public hearing on October 5, 2022 to consider application number SUP 22-003 submitted by Andrew Meredith, a request for a special use permit to establish a duplex at the property located at 1448 Duck Road, also known as North Duck Watersports in Duck, North Carolina, in a manner prescribed under Subsection 156.155 of the Zoning Ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS and draws the following CONCLUSIONS:

1. It is the Town Council's CONCLUSION that the site for the proposed use meets all required conditions and specifications of the ordinance. This conclusion is based on the following FINDINGS OF FACT:

- a) The subject property is 34,613 square feet in size, greater than the minimum of 25,000 square feet necessary to establish a duplex on the property.
- b) The removal of several prior buildings and construction of the two-story, mixed-use building received conditional use permit approval in 2014 (CUP 14-001). An as-built

survey completed in 2016 shows the property in compliance with the approved site plan and conditions of CUP 14-001.

- c) As the proposed change of use does not require any site improvements, the existing, compliant site improvements are sufficient to accommodate the proposed duplex.
2. It is the Town Council's CONCLUSION that the use does not materially endanger the public health or safety. This conclusion is based on the following FINDINGS OF FACT:
 - a) The proposed change of use would not create any issues or involve any site improvements that would change the function of the site or endanger the public health or safety.
 - b) The Dare County Environmental Health Department must grant approval of the change of use and note that the current septic system is sufficient to accommodate the proposed three-bedroom apartment.
 - c) The conversion of the first-floor unit to residential use is expected to lower the amount of vehicular traffic entering and exiting the site. This reduction will create a safer situation for those traveling past the property.
 3. It is the Town Council's CONCLUSION that the use will not substantially injure the value of adjoining property, unless the use is a public necessity. This conclusion is based on the following FINDINGS OF FACT:
 - a) As the proposed change is relatively minor in nature, it is unlikely that it would have any significant impact on the value of adjoining properties.
 - b) The conversion of the first-floor unit to residential use is expected to lower the amount of vehicular traffic entering and exiting the site. This change would seem to be positive, particularly for the residential properties in close proximity to the subject property.
 4. It is the Town Council's CONCLUSION that the use will be in harmony with the area in which it is located and be in general conformity with the Comprehensive & CAMA Land Use Plan. This conclusion is based on the following FINDINGS OF FACT:
 - a) The residential duplex is appropriately designed and scaled, does not involve additional site development, and will not negatively impact the surrounding area. Therefore, the proposal complies with applicable goal and policy objectives from the Comprehensive & Land Use Plan.

b) The proposed change to a residential use is compatible with the surrounding area as most of the area is zoned and used residentially.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a SPECIAL USE PERMIT be GRANTED, SUBJECT to the following CONDITIONS:

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

ORDERED this 5th day of October, 2022

SEAL:

ATTEST:

TOWN OF DUCK

By: _____
Lori A. Ackerman, Town Clerk

By: _____
Don Kingston, Mayor

I, _____, a Notary Public of _____ County and State of _____, certify that _____

personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this _____ day of _____, 20__.

My Commission Expires: _____ Notary Public

STATE OF _____

COUNTY OF _____

THIS PERMIT AND THE CONDITIONS ARE ACCEPTED:

By: _____

Andrew Meredith

DRAFT



TO: Chairman Cofield and Members of the Town of Duck Planning Board
FROM: Sandy Cross, Senior Planner
Joe Heard, AICP, Director of Community Development
DATE: September 9, 2022
RE: Text Amendment: Regulatory Standards for Dune Walkover structures

Notification

Public Meeting Advertised: August 28 and September 11, 2022 (Coastland Times)
Public Meeting Town Website: September 2, 2022
Public Meeting Town Hall Posted: September 2, 2022

Proposal

The Planning Board and Town Council recently approved a zoning text amendment that clarified the elevation of dune walkover structures in all situations (minimum 18 inches) and under what circumstances minimum setback exemptions can be granted. During that discussion, the Planning Board questioned the need for the minimum 18-inch elevation, as noted in Chapter 94 and Subsection 156.124 of the Town Code, and suggested that one size does not fit all. A request was made that Town Council consider this for further consideration and discussion by the Planning Board. Town Council voted to send it back for further review.

Following Council’s directive, the Planning Board held a special meeting on August 19, 2022 to drive the beach and view various conditions and situations where the 18-inch elevation may or may not be ideal. The meeting was not recorded but draft summary minutes from that meeting were prepared and are attached for reference.

Town Code references the elevation of dune walkover structures in two sections, and these sections are the proposed subject of discussion this evening.

Chapter 94 of the Town Code is entitled *Beach and Dune Management*.

Under this chapter, the definition of *Improved Dune Walkover Access* in Section 94.04 states, “A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system. Improved walkover structures shall be no more than 4 feet in width for single-family dwellings and 6 feet in width for commercial or publicly owned structures. Dune walkover structures shall be constructed without a roof or walls, shall be elevated at least 18 inches above the dune, and shall extend east of the seaward vegetation line.”

Subsection 156.124 of the Town Zoning Ordinance speaks to Structures within the primary and frontal dunes and regulatory standards for dune walkovers. Subsection 156.124(C)(1)(b) states,



“The underside of the dune walkover structure across the frontal or primary dune shall be a minimum of 18 inches and a maximum of 30 inches above grade.”

Background Information

Hurricane Sandy hit the Outer Banks in October of 2012. This hurricane resulted in the loss of approximately 10 oceanfront pools, countless beach stairs and walkovers and some accessory structures. Shortly after the storm had passed, requests were being made to replace pools and dune walkovers and other accessory structures in their previous locations and on a now compromised dune system. Town Council discussed the concerns of staff and other stakeholders following Hurricane Sandy at their Council Retreat in February 2013. Staff explained to Council that if it was the Town’s objective to permit appropriate development along the oceanfront that preserved the integrity of the dune system, staff would suggest a stronger setback for accessory structures and regulatory standards that exceed the requirements of the Coastal Area Management Act (CAMA) and the Division of Coastal Management and Coastal Resource Commission regulations. It was during these discussions that section 156.124, of the Town Zoning Ordinance, was developed and Chapter 94 was modified. Both complete code references are attached for your review.

Aside from the Town Code, Town staff administers the requirements of the CAMA through a cooperative agreement with the State. The Town has exercised this option since 2006, and town staff receive regular training from the State. Dune walkways are covered in three sections of the Coastal Resource Regulations which are included for reference. Relevant sections have been highlighted for your ease in reading. It is important to note that CAMA regulations do not specify a required elevation for walkovers, but rather state in varying degrees that no alteration (0309), negligible alteration (0308) or only alterations that are necessary to construct an accessway (0207) be permitted. These regulations can quite often be subjective, serving more as a guide for town staff administering the CAMA and as a result, many of our regulatory standards intentionally exceed their limitations.

During the development of Section 156.124, Town staff, looked at recently implemented regulations from Pine Island. They were also awaiting decisions from Town Council as to whether the Town would move forward with nourishment. They discussed the fact that the loss of pools and walkways primarily occurred in the “hot spot” as it was called in 2013, but to which we now know as the “nourishment area”. At the end of the Planning Board and Town Council discussions, a standard setback for pools and other accessory structures as well as regulatory standards were put in place for the entire town without any deviation based on location or dune size, health or propensity for erosion or accretion.

Once nourishment was completed in 2017, revisions to the ordinance were put in place prohibiting any dune walkover structures east of the Static Vegetation Line (SVL) which is a snapshot of the First Line of Stable Natural Vegetation just prior to the start of nourishment project. Subsection 156.124(e) speaks to those restrictions. The distinction between the nourishment area and other areas of oceanfront in Duck is very discernable.



Since the completion of the 2017 nourishment project, we have seen a fair number of storms. Winter storms quite often carry more impacts to the beach and the dune system than Hurricanes. Thinking back to a few of the most notable storms in recent years, Winter storms Grayson and Riley in January and March 2018 come to mind. We had severe erosion occur not only in the nourishment area, but areas outside of the nourishment area, as a result of these two storms occurring within months of each other. Attached is a PowerPoint presentation that was provided to Town Council in March 2018. The beach and its dune system are very dynamic and change occurs daily, sometimes noticeable to the bystander and other times not. This presentation is offered to show the dynamic nature of the beach and the tendency for change, whether it be erosion or accretion.

Staff Analysis

To minimize impacts to the dune systems and to encourage vegetation growth below dunes structures, Town staff encourages the continued elevation of new dune walkovers at 18 inches above grade. One of the main reasons for the minimum 18-inch elevation of dune walkover structures is that the additional elevation allows more sunlight to penetrate below the walkway, thus enhancing the potential for dune vegetation to grow in these areas and help stabilize the dune system. This modest elevation also provides space for the dune to build.

We usually only see the need for this 18-inch elevation with new construction and complete walkway reconstructions on the east side of the dune. Repair and maintenance projects equaling less than 50% of the value of the entire structure, are not required to be elevated to the 18-inch standard. We often see situations where portions of a walkway have been overcome by sand higher than the middle rail or 18 inches. In these instances, if only a small portion is to be rebuilt, the walkway does not need to meet the 18-inch requirement, however staff often encourages it for reasons already stated.

Recognizing the value and thought process put into the regulatory standards developed in 2013, Community Development staff does not recommend changes to the current standards. When working with development on the oceanfront, a one size does not fit all approach is accurate, however implementation of varying degrees of regulation will likely result in subjectivity that will inevitably be questioned. If a change is to be made to the elevation standard, staff would encourage it be applied to all areas, aside from the nourishment area where walkovers are not currently permitted on the east side of the dune. Staff welcomes further discussion regarding an acceptable elevation requirement.

Consistency w/ Land Use Plan

The Town of Duck's adopted CAMA Land Use Plan does not contain recommendations relating to the specific amendment being proposed but contains the following goals, policies, and objectives that address the general development intensity and stormwater management issues:



Land Use Compatibility Management Goal:

Ensure that development and use of resources or preservation of land balance protection of natural resources and fragile areas with economic development, and avoids risks to public health, safety, and welfare.

Natural Hazard Areas Management Goal:

Conserve and maintain the barrier dune system, beaches, flood plains, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.

Public Access Management Goal:

Maximize access to the beaches and the public trust waters of the coastal region.

Policy 1: Preserve, protect, and enhance the Atlantic Ocean Shoreline and ensure future generations are able to enjoy its beauty and bounty and can continue to use the beach and water for active and passive recreation and leisure activities.

1.3: Preserve the natural value and ecosystem services of the beach and dunes.

1.3.1: Conserve and maintain barrier dunes, beaches, and other coastal features for their natural storm protection functions and their innate beauty and recreational value.

As part of its recommendation, the Planning Board is asked to make a recommendation whether the proposed text amendment is or is not consistent with the adopted CAMA Land Use Plan.

Staff Recommendation

Staff defers to the recommendation of Planning Board regarding the appropriate elevation for dune walkover structures.

ATTACHMENT

- A. Chapter 94, Beach and Dune Management.
- B. Subsection 156.124, Structures within the Primary and Frontal Dunes.
- C. CAMA regulations, section 07H.0308, 07H.0309 & 07K.0209
- D. April 2018 Town Council Power Point Presentation
- E. Draft Ordinance 22-09

CHAPTER 94: BEACH AND DUNE MANAGEMENT

Section

- 94.01 Purpose
- 94.02 Conflicts with state rules
- 94.03 Territorial applicability
- 94.04 Definitions
- 94.05 Beach and dune protection
- 94.06 Beach driving regulations
- 94.07 Protection of wildlife and marine life
- 94.08 Protection of cultural resources

- 94.99 Penalty

§ 94.01 PURPOSE.

The purpose of this chapter is to preserve and enhance the natural function, aesthetic value, and protective qualities of the town's barrier beach and dune system. This chapter hereby establishes regulations to permit reasonable uses and intrusions into the dune system and the ocean beach, consistent with sound beach and dune conservation practices. This chapter also restricts or prohibits activities which are known to be detrimental to the structural integrity of the primary and frontal dunes, the profile of the ocean beach, and the biological and cultural resources that are present in these areas. Furthermore, this chapter establishes regulations to improve the safety of the general public on the town's ocean beaches and facilitates ocean rescue and emergency response operations.

(Ord. 09-04, passed 4-8-2009)

§ 94.02 CONFLICTS WITH STATE RULES.

If any provision of this chapter is in conflict with a rule adopted by the State Coastal Resources Commission dealing with oceanfront erosion control or regulation of development as contained in 15A NCAC 07H.300, then the rule or regulation shall control and apply in lieu of the provision of this chapter in conflict therewith.

(Ord. 09-04, passed 4-8-2009)

§ 94.03 TERRITORIAL APPLICABILITY.

This chapter shall apply to the primary and frontal dune systems as defined in § 94.04 and to the ocean beaches located within the corporate limits of the town.

(Ord. 09-04, passed 4-8-2009)

§ 94.04 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADVERSE IMPACT. Anything that would destroy, harm, impair, diminish, or degrade the value or integrity of a sand dune for storm protection or wildlife habitat.

BARRIER DUNE. The easternmost sand dune or system of sand dunes which lies just west of the mean high water mark of the Atlantic Ocean and forms a protective barrier from the actions of the Atlantic Ocean.

BEACH. The lands consisting of unconsolidated soil materials that extend for a distance of 100 yards east of the mean low water mark into the Atlantic Ocean landward to a point where either the growth of stable natural vegetation occurs or a distinct change in slope or elevation alters the configuration, whichever is farther landward.

DUNE SYSTEM, FRONTAL DUNE. The first mound of sand located landward of the beach having sufficient vegetation, height, continuity, and configuration to offer protective value.

DUNE SYSTEM, PRIMARY DUNE. The first mounds of sand located landward of the beach having an elevation equal to the mean flood level for the area plus 6 feet. The primary dune extends landward to the lowest elevation in the depression behind the same mound of sand.

DUNE WALKOVER ACCESS, IMPROVED. A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system. Improved walkover structures shall be no more than 4 feet in width for single-family dwellings and 6 feet in width for commercial or publicly owned structures. Dune walkover structures shall be constructed without a roof or walls, shall be elevated at least 18 inches above the dune, and shall extend east of the seaward vegetation line.

DUNE WALKOVER ACCESS, UNIMPROVED. A sand walkway or path used for the purposes of providing pedestrian access to the beach which is no more than 6 feet in width and located in an area where there is no escarpment present between the dune structure and the beach.

ESCARPMENT. The vertical drop or steep slope in the beach profile separating 2 comparatively level or more gentle sloping surfaces caused from high tide or storm tide erosion. ESCARPMENTS for the purposes of this chapter shall only be determined to exist

in areas where the height and slope of the escarpment would preclude reasonable pedestrian access to the beach without causing an adverse impact to the dune structure.

INVASIVE EXOTIC SPECIES. A non-native or invasive vegetation, which, if left undisturbed by manmade forces, will create a landscape comprised of a singular plant species.

SHIPWRECK. The remains of a ship, in whole or in part, which was wrecked or destroyed upon the water and subsequently abandoned, to which title voluntarily has been given up by the owner with the intent of never claiming a right or interest in the future and without vesting ownership in any other person, that is discovered or identified by some archaeological endeavor, natural exposure, or documented archeological site number.

TENTS. A portable shelter supported by a framework of multiple poles (this is not to include umbrellas, which have 1 supporting pole in the center of the shelter).

TOE OF SLOPE. That point between the beach and the dune system where the uniform line of slope from the ocean toward the barrier dune begins an abrupt change upward and becomes the slope of the barrier dune.

VEHICLE. Motor-driven or wind-powered vehicles, including fishing boats and amphibious vehicles, but excluding sailboats used for sport, surfboards and amphibious vehicles which are afloat and no portion of which is beached, aground, or operating on wheels or tracks.

VEHICULAR BEACH ACCESS POINT.

(1) An access for use by vehicles at a designated location on a town street. Vehicle access is permitted at these points and at no other location.

(2) If the vehicular beach access point is not maintained by the town, users must have and possess written permission from the entity that owns or maintains the vehicular beach access point before using the vehicular beach access point.

(Ord. 09-04, passed 4-8-2009; Am. Ord. 13-04, passed 7-17-2013)

§ 94.05 BEACH AND DUNE PROTECTION.

(A) The following activities shall be considered unlawful within the dune system:

(1) Walking or traversing on the dunes outside of an improved or unimproved dune walkover access as defined in § 94.04;

(2) Utilizing an improved dune walkover structure that has been damaged and officially posted by the town's Building Inspector as an unsafe structure;

(3) Removing, damaging, or destroying healthy, non-invasive dune plant species including, but not limited to, Sea Oats (*Uniola paniculata*), Bitter Panicum (*Panicum amarum*), Seashore Elder (*Iva imbricata*), and American Beachgrass (*Ammophila breviligulata*);

(4) Installation of vegetation inconsistent with sand dune systems, such as lawn grasses or sod, or herbaceous varieties that are not commonly known as “salt-tolerant” dune varieties or that may be determined to be “invasive exotic species”;

(5) Degrading, disturbing, or compromising the integrity of the dune structure. These prohibited activities include, but shall not be limited to:

(a) Digging, shelling, mining, or mechanical alteration of the dune topography;

(b) Playing, sliding, climbing, or rappelling on the frontal or primary dune or the dune escarpment; and

(c) Discharging water into the dune where it will cause significant scouring or erosion or otherwise affect the integrity of the dune.

(6) Development activities without a valid building permit, Health Department approval, or CAMA authorization;

(7) Storing objects or construction materials; and

(8) Littering.

(B) The following activities shall be considered unlawful on the beach, as defined in § 94.04:

(1) Erection of a tent, cabana, or sunshade that meets any of the following conditions as determined by Ocean Rescue Personnel:

(a) When, due to beach width, tide levels, crowd conditions, or other factors, placement of tents or similar devices will obstruct the passage of emergency or ocean rescue vehicles or the line of sight from lifeguard stands or other surveillance areas.

1. In such instances, areas may be designated by Ocean Rescue Personnel where the use of tents or similar devices shall be temporarily prohibited.

2. At any time when tents or similar devices are prohibited in designated areas, an identifier shall be placed at each end of the subject area so as to be readily visible to all person within the area.

3. To allow for emergency vehicle access, tents or similar devices shall not be placed within 15 feet of the base of the seaward toe of the primary dune.

(b) Tents, cabanas, and sunshades shall not be greater than 12 feet by 12 feet in area or higher than 9 feet above the surface of the beach when installed.

(c) Tents, cabanas, and sunshades shall not be tied together and shall be placed no closer than 10 feet apart.

(2) Leaving unattended personal articles on the beach between the hours of 5:00 p.m. and 8:00 a.m. These items may include, but shall not be limited to, volleyball, badminton and tennis nets, poles, tents, chairs, cabanas, sunshades, horseshoe stakes, croquet courses,

umbrellas or any other personal property items. Unattended items left on the beach between these hours shall be considered litter and may be subject to removal and disposal.

(3) Beach fires as prohibited in § 91.21.

(4) Substantially altering the contour or shape of the flat beach area by excessive digging or mounding of sand whereby, in the opinion of Public Safety Personnel, such alteration presents a dangerous condition. Persons responsible for altering the contour or shape of the beach to any extent shall restore the beach to its original condition prior to leaving the area unattended for any period of time.

(5) Littering.

(6) Violations of § 90.06 related to mandatory removal of dog feces on the ocean beach.

(C) Beach Vitex (*Vitex rotundifolia*). The plant known as Beach Vitex (*Vitex rotundifolia*) is hereby found and declared to be a public nuisance due to the significant negative impacts this plant will have upon the beaches and dune system, nesting sea turtles, and native vegetation such as Sea Oats, Bitter Panicum, Seashore Elder, and American Beachgrass. It shall be unlawful for any person to plant or cause to be planted Beach Vitex (*Vitex rotundifolia*) on any property located within the corporate limits of the town.

(D) Exemptions: The town hereby encourages responsible dune management activities including proper construction and maintenance of improved dune walkover structures, the use of shared and/or community beach accesses, the proper installation and maintenance of sand fencing, and planting of native, salt-tolerant dune vegetation. Therefore, this section shall not apply to the following activities:

(1) Development activities authorized or permitted by the town, the Dare County Department of Environmental Health, or CAMA;

(2) Dune or property maintenance activities including planting or fertilization of vegetation, sand fence installation, minor dune repairs, and removal of litter or debris;

(3) Activities within the developed portion of the dune system;

(4) Federal, state, and local officials engaged in official regulatory activities; and

(5) Persons engaged in research, conservation, or extension activities as authorized by the Town Manager.

(Ord. 09-04, passed 4-8-2009; Am. Ord. 11-02, passed 3-2-2011; Am. Ord. 13-03, passed 4-3-2013) Penalty, see § 94.99

§ 94.06 BEACH DRIVING REGULATIONS.

(A) General regulations.

(1) Except as hereinafter provided, it shall be unlawful to operate any vehicle on the beaches of the town.

(2) Vehicles may be operated on the beaches of the town between 12:01 a.m. on October 1 until 11:59 p.m. on April 30 of each and every year, subject to the regulations and rules of operation contained in this chapter.

(B) Rules of operation. When permitted by division (A)(2) above, vehicles shall be operated on the beaches of the town in accordance with the following rules:

(1) No vehicle shall be operated on the beach at a speed in excess of 20 mph;

(2) Vehicles shall be operated on the beach only during the period set out in division (A)(2) above;

(3) No vehicle shall be operated west of the toe of slope of the dune except in going to and from the beach area at authorized vehicular beach access points. However, nothing contained herein shall be construed to permit driving on the barrier dunes or driving on private property without the express permission of the owner, even though the toe of slope may be located west of the eastern boundary line of the private property;

(4) Vehicles going to and from the beach area shall use as an entrance and exit only the vehicular beach access points designated by the town;

(5) Vehicles may be operated on the beach only from one-half hour prior to sunrise to one-half hour following sunset daily;

(6) Pedestrians, swimmers, and bathers shall have the right-of-way over all vehicles being operated on the beach;

(7) Any person who drives any vehicle upon the beach area carelessly and heedlessly in willful or wanton disregard of the rights or safety of others or who drives any vehicle upon the beach without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving;

(8) Any person who is under the influence of intoxicating liquor or other drug or who has a blood alcohol level of 0.08% or more by weight, who drives on the beach area or going to and from the beach, shall be guilty of driving while under the influence of intoxicating liquor or other drug; and

(9) Any operator of any vehicle on the beach area or going to and from the beach must have a current and valid motor vehicle operator's license issued by the state of his or her residence.

(C) Exceptions.

(1) The provisions of this chapter shall not apply to municipal employees, municipal vehicles, or emergency vehicles or the drivers thereof, which may be required to enter upon the beach in the performance of their duties nor shall this division apply to a

governmental agency, its employees, agents, contractors, and subcontractors and their vehicles when engaged in beach restoration or protection work or scientific research.

(2) The date and time limitation provided in division (A)(2) above shall not apply to commercial fishermen holding a valid state commercial fishermen's license when engaged in commercial fishing activities.

(3) The Town Manager shall have the authority to close any portion of the beach or the entire beach at the times and places where extensive beach erosion occurs. This authority may be exercised by the Town Manager when, as a result of inspections by the Town Manager or the town employees subject to the Town Manager's authority, it is determined that the width of the beach between the toe of the slope of the dune and the area affected by ocean wash and waves is such that driving would either be dangerous or increase the effects of erosion, or the beach is not sufficiently wide or stable to support vehicular traffic.

(4) At any time that the ocean wave wash is less than 40 feet eastward of the toe of the slope that portion of the beach shall be closed. The closure area shall extend to the next beach access point in each direction. Any person operating a vehicle on the beach in a closed area shall be subject to the penalties provided in this chapter.

(5) The provisions of this section shall not apply to persons engaged in research, conservation, or extension activities as authorized by the Town Manager.

(Ord. 09-04, passed 4-8-2009) Penalty, see § 94.99

§ 94.07 PROTECTION OF WILDLIFE AND MARINE LIFE.

It shall be unlawful for any person to willfully harm, harass, or otherwise disturb any sea turtles, sea turtle nests or eggs; or beached or stranded whales, dolphins, seals, sharks, or other wildlife or marine life. Violations shall be reported immediately to the town.

(Ord. 09-04, passed 4-8-2009) Penalty, see § 94.99

§ 94.08 PROTECTION OF CULTURAL RESOURCES.

(A) It shall be unlawful to disturb, destroy, or remove in whole or in part any exposed or unburied shipwreck.

(B) Any authority to disturb, collect, or remove such artifacts shall be obtained in writing from the North Carolina Office of State Archeology (G.S. Ch. 121, Art. 3; Abandoned Shipwreck Act of 1987 [P.L. 100-298]).

(Ord. 09-04, passed 4-8-2009) Penalty, see § 94.99

§ 94.99 PENALTY.

Any person violating the provisions of this chapter shall be subject to a civil penalty in the amount of \$50 per violation. The person cited for the violation must pay the civil penalty within five day of being cited for the violation. In the event that the person cited for the violation does not pay the civil penalty within the prescribed time, the town may bring a civil action to recover the penalty and the associated court costs.

(Ord. 09-04, passed 4-8-2009; Am. Ord. 19-06, passed 11-6-2019)

§ 156.124 STRUCTURES WITHIN THE PRIMARY AND FRONTAL DUNES.

(A) Purpose. It is the purpose of this section to develop regulatory standards which will assist with the preservation of a continuous dune system within the town, acknowledging the protective and aesthetic values that this feature provides. Regulations are hereby established to limit structures within the dune system that are known to weaken its structural integrity. Further, construction standards are established for dune walkover structures to minimize their impact on the dune, recognizing that these structures provide a safe and responsible mechanism to access the ocean beach.

(B) Definitions.

DUNE SYSTEM, FRONTAL DUNE. The first mound of sand located landward of the beach having sufficient vegetation, height, continuity, and configuration to offer protective value.

DUNE SYSTEM, PRIMARY DUNE. The first mounds of sand located landward of the beach having an elevation equal to the mean flood level for the area plus 6 feet. The primary dune extends landward to the lowest elevation in the depression behind the same mound of sand.

DUNE WALKOVER STRUCTURE. A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system.

ESCARPMENT. The vertical drop or steep slope in the beach profile separating 2 comparatively level or more gentle sloping surfaces caused from high tide or storm tide erosion.

FIRST LINE OF STABLE NATURAL VEGETATION. This line represents the boundary between the normal dry sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line, based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes, rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on-ground observations or by aerial photographic interpretation.

POST-AND-RAIL STRUCTURE. A single top rail mounted on imbedded posts. To minimize the impact of the structure, a POST-AND-RAIL STRUCTURE shall not include additional structural or decorative elements such as cross-bracing, other horizontal railing,

or balusters. For structural support, posts must be embedded at least 4 feet in the ground. The rails shall have a span no less than 6 feet and no greater than 10 feet.

POST-AND-ROPE STRUCTURE. A structure consisting of a single strand of rope strung between imbedded posts typically serving to guide people to a certain location traversing a dune. The span between posts shall be no less than 6 feet and no greater than 10 feet.

STATIC VEGETATION LINE. In areas within boundaries of a large-scale beach fill project, the first line of stable natural vegetation that existed prior to the onset of project construction shall be defined as the **STATIC VEGETATION LINE**. The "onset of project construction" shall be defined as the date sediment placement begins. A **STATIC VEGETATION LINE** shall be established in coordination with the N.C. Division of Coastal Management using on-ground observation and surveys of existing conditions for all areas of the oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the first line of stable natural vegetation. In all locations where the first line of stable natural vegetation is landward of the static vegetation line, the first line of stable natural vegetation shall be used as the reference point for measuring oceanfront setbacks.

TOE OF SLOPE. That point between the beach and the dune system where the uniform line of slope from the ocean toward the barrier dune begins an abrupt change upward and becomes the slope of the barrier dune.

(C) Regulatory standards.

(1) Dune walkover structures. Dune walkover structures shall be constructed to entail negligible alteration of the dune. The following construction standards shall apply:

(a) Dune walkover structures for residential use shall be no wider than 4 feet and shall be constructed on raised posts or pilings embedded no less than 4 feet and no greater than 5 feet below grade. Walkover structures for commercial or public use may be constructed up to 6 feet in width and shall utilize piling embedment criteria consistent with the North Carolina Building Code.

(b) The underside of the dune walkover structure across the frontal or primary dune shall be a minimum of 18 inches and a maximum of 30 inches above grade.

(c) Dune walkover structures shall be located such that the first step down to the beach is placed no farther seaward than the beginning of the downward slope of the dune.

(d) Dune walkover structures shall be constructed so that the staircase turns parallel to the dune if there is more than a 12-foot-vertical rise in the staircase required to provide access to the surface of the beach. The requirement to turn the stairs shall not apply in instances where it would preclude the placement of the stairs entirely within the subject property.

(e) Within the beach nourishment project area, dune walkover structures must be constructed to meet the following standards:

1. A dune walkover structure on the western side of the dune may consist of a hardened structure (ramp/stairway), beach access matting, or any material consistent with the standards of this chapter.

2. A dune walkover extending over the top of a dune or on the eastern side of a dune may include the installation of beach access matting.

3. A dune walkover may include the installation of a single post-and-rail structure over the top and on the eastern side of the dune. A second post-and-rail structure will be permitted at a common dune walkover owned and maintained by a neighborhood association or similar entity. The post-and-rail structure(s) may extend down the eastern side of the dune from the top of the dune to the toe of the dune.

4. A dune walkover may include the installation of post-and-rope structures over the top and on the eastern side of a dune. The post-and-rope structures may extend down the eastern side of the dune from the top of the dune to the toe of the dune.

5. If erosion, migration of the dune, or other forces cause any portion of a post-and-rail or post-and-rope structure to extend eastward of the toe of the dune or expose the supporting posts, that section of the structure must be removed by the owner.

6. Any portion of a post-and-rail or post-and-rope structure within the area of a beach renourishment or dune maintenance project must be removed by the owner upon notice from the town prior to initiation of the project.

(f) Where a lawful dune walkover structure exists on July 5, 2017 within the beach nourishment project area that could not be built under the terms of division (e) above, the structure may be continued so long as it remains lawful, subject to the following provisions.

1. The non-conforming dune walkover structure may not be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.

2. Should the non-conforming portion of a dune walkover structure be destroyed by any means to an extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed, except in conformity with the provisions of this chapter.

3. If located at an elevation higher than the top of the dune, an extension of the non-conforming dune walkover structure, not exceeding 5 feet in length, may be added to lower the walkover structure to the elevation at the top of the dune.

(2) Setbacks established for dune protection.

(a) Development shall be regulated in accordance with the setback criteria established by the Coastal Area Management Act (CAMA) as defined in 15A NCAC 07H .0306.

(b) Accessory structures that are exempt from the CAMA setback criteria shall not be located within 30 feet of the first line of stable natural vegetation or static vegetation line. This shall include decks, gazebos, pools and any other structure which meets the exception

criteria establish by the Coastal Area Management Act (CAMA) in 15A NCAC 07H.0309. This setback shall not apply to dune walkover structures as defined in this section. Additionally, one dune deck per lot may be allowed no closer than 15 feet to the first line of stable natural vegetation or static vegetation line provided that the dune deck does not exceed 8 feet measured in any dimension, including the area that is combined with or adjacent to any dune walkover structure that may be present, and also provided that the dune deck is no higher than 30 inches above grade. In cases where the first line of stable natural vegetation is not evident on the subject property, this line shall be determined by interpolating a straight line between nearest identifiable first line of stable natural vegetation on the adjacent properties directly to the north and south of the subject property (this clause does not apply to properties subject to the static vegetation line).

(c) Existing structures which do not meet the setback criteria established by this section shall be regulated in accordance with the standards applicable to nonconforming structures established in § 156.073. For the purposes of determining replacement cost, the value of each accessory structure shall be considered individually and shall not be combined with the value of any other structure.

(d) Pools within the OCEAN HAZARD SETBACK (as defined by 15A NCAC 07H.0306) shall be constructed such that the top of the pool structure is flush with the adjacent grade and shall not be supported on a piling foundation. In addition, pools within the OCEAN ERODIBLE AREA (as defined by CAMA in 15A NCAC 07H.0304) and where the pre-disturbance grade elevation is below the regulatory flood protection elevation shall be constructed such that the top of the pool structure is flush with the adjacent grade and shall not be supported on a piling foundation.

(3) Nothing in this section shall preclude the removal of any structure which violates § 156.063, Encroachment of Structures on the Ocean Beach.

(Ord. 13-04, passed 7-17-2013; Am. Ord. 17-05, passed 7-5-2017; Am. Ord. 17-06, passed 7-5-2017; Am. Ord. 19-10, passed 2-5-2020; Am. Ord. 21-01, passed 6-2-2021; Am. Ord. 21-03, passed 6-2-2021)

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS**(a) Ocean Shoreline Erosion Control Activities:**

- (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
 - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
 - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by State or federal natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(h) of this Section.
 - (E) Project construction shall be timed to minimize adverse effects on biological activity.
 - (F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
 - (G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a bridge that provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
 - (H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.
 - (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and
 - (v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for

mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.

- (J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
 - (i) the structure will not be enlarged beyond the dimensions set out in the permit;
 - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
 - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
 - (K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
- (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
 - (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.
 - (D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
 - (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet waterward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.
 - (F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.
 - (G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion

control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:

- (i) a building and its septic system shall be considered separate structures,
 - (ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.
- (H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:
- (i) has been issued an active CAMA permit, where necessary, approving such project; or
 - (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
 - (iii) has received a favorable economic evaluation report on a federal project; or
 - (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

If beach nourishment, inlet relocation, or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

- (I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.
- (K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the

temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.

(M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

(3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.

(4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the vegetation line to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:

(A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;

(B) The activity shall not exceed the lateral bounds of the applicant's property unless permission is obtained from the adjoining land owner(s);

(C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;

(D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;

(E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Protection, Establishment, Restoration and Stabilization.

(1) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by this Rule.

(2) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.

(3) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.

(4) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.

(5) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.

(6) No new dunes shall be created in inlet hazard areas. Reconstruction or repair of existing dune systems as defined in Rule .0305 of this Section and within the Inlet Hazard Area may be permitted.

(7) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.

(8) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.

(c) Structural Accessways:

(1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.

(2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:

- (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is a maximum of six feet in width;
 - (C) Except in the case of beach matting for a local, State, or federal government's public access, the accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the dune, in accordance with any more restrictive local, State, or federal building requirements. Beach matting for a local, State, or federal government's public access shall be installed at grade and not involve any excavation or fill of the dune; and
 - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers are allowed provided all other applicable standards of this Rule are met.
 - (4) In order to preserve the protective nature of primary and frontal dunes, a structural accessway (such as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.
 - (5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the First Line of Stable and Natural Vegetation as described in Rule .0309(a) of this Section.
- (d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of this Section and 15A NCAC 07J .0210 shall comply with the following standards:
- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
 - (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
 - (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
 - (4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124; Eff. June 1, 1979; Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989; Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989; RRC Objection Eff. November 19, 1992 due to ambiguity; RRC Objection Eff. January 21, 1993 due to ambiguity; Amended Eff. March 1, 1993; December 28, 1992; RRC Objection Eff. March 16, 1995 due to ambiguity; Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995; Temporary Amendment Eff. July 3, 2000; May 22, 2000; Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1, 2002;

Readopted Eff. December 1, 2020;
Amended Eff. August 1, 2022; December 1, 2021.

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) driveways and parking areas with clay, packed sand, or gravel;
- (3) elevated decks not exceeding a footprint of 500 square feet. Existing decks exceeding a footprint of 500 square feet may be replaced with no enlargement beyond their original dimensions;
- (4) beach accessways consistent with Rule .0308(c) of this Section;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands consistent with Section .1900 of this Subchapter;
- (8) sand fences;
- (9) swimming pools; and
- (10) fill not associated with dune creation that is obtained from an upland source and is of the same general characteristics as the sand in the area in which it is to be placed.

In all cases, this development shall be permitted only if it is landward of the vegetation line or pre-project vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; is not essential to the continued existence or use of an associated principal development; and meets all other non-setback requirements of this Subchapter.

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude placement of a structure on a lot existing as of June 1, 1979, the structure shall be permitted seaward of the applicable setback line in Ocean Erodible Areas, State Ports Inlet Management Areas, and Inlet Hazard Areas, but not Unvegetated Beach Areas if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation line, measurement line, or pre-project vegetation line, whichever is applicable;
- (3) The development is not located on or oceanward of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Section:
 - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
 - (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;
 - (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases, other material may be used; and
 - (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most habitable building or structure. The alignment shall be measured from the most oceanward point of the adjacent building or structure's roof line, including roofed decks. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent building or structure exists, or the geometry or orientation of a lot or shoreline precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Director of the Division of Coastal Management based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline, extending 500 feet in either direction. If no structures exist within this distance, the proposed structure shall meet the applicable setback from the Vegetation Line but

shall not be held to the landward-most adjacent structure or an average line of structures. The ocean hazard setback shall extend landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.
- (c) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:
- (1) piers providing public access; and
 - (2) maintenance and replacement of existing state-owned bridges, and causeways and accessways to such bridges.
- (d) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:
- (1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;
 - (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
 - (3) The pier house shall be limited to a maximum of two stories;
 - (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
 - (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
 - (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
 - (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.
- (e) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted in the Ocean Hazard Area along those portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200, and 15A NCAC 07K .0203.
- (f) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:
- (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule .0305 of this Section, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
 - (2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.
- (g) Existing stormwater outfalls as of the last amended date of this rule within the Ocean Hazard AEC that are owned or maintained by a State agency or local government, may be extended oceanward subject to the provisions contained within 15A NCAC 07J .0200. Outfalls may be extended below mean low water and may be maintained in accordance with 15A NCAC 07K .0103. Shortening or lengthening of outfall structures within the authorized dimensions, in response to changes in beach width, is considered maintenance under 15A NCAC 07K .0103. Outfall extensions may be marked with signage and shall not prevent pedestrian or vehicular access along the beach. This Paragraph does not apply to existing stormwater outfalls that are not owned or maintained by a State agency or local government.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124; Eff. February 2, 1981;

Amended Eff. April 1, 2020; June 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987;
Readopted Eff. December 1, 2020;
Amended Eff. August 1, 2022.

15A NCAC 07K .0207 STRUCTURAL ACCESSWAYS OVER FRONTAL DUNES EXEMPTED

(a) The North Carolina Coastal Resources Commission exempts from the CAMA permit requirement all structural pedestrian accessways, including beach matting installed by a local, State, or federal government to provide public access over primary and frontal dunes when such accessways can be shown to meet the following criteria:

- (1) The accessway shall not exceed six feet in width and shall be for private residential or for public access to an ocean beach. This exemption does not apply to accessways for commercial use or for motor-powered vehicular use.
- (2) The accessway shall be constructed so as to make no alterations to the frontal dunes that are not necessary to construct the accessway. This means that the accessway shall be constructed over the frontal dune without any alteration of the dunes. In no case shall the dune be altered so as to diminish its capacity as a protective barrier against flooding and by not reducing the volume of the dune. Driving of pilings into the dune or a local, State, or federal government's use of beach matting for public access that is installed at grade and involves no excavation or fill shall not be considered alteration of a frontal dune for the purposes of this Rule.
- (3) The accessway shall conform with any applicable local or State building code standards.
- (4) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the First Line of Stable and Natural Vegetation as described in 15A NCAC 07H .0309(a).
- (5) Damaged, non-functioning, or portions of accessways that become non-compliant with Subparagraph (4) of this Paragraph shall be removed by the property owner.

(b) Before beginning any work under this exemption the CAMA local permit officer or Department of Environmental Quality representative shall be notified of the proposed activity to allow on-site review of the proposed accessway. Notification can be by telephone, in person, or in writing and must include:

- (1) name, address, and telephone number of landowner and location of work including county and nearest community; and
- (2) the dimensions of the proposed structural accessway.

*History Note: Authority G.S. 113A-103(5)c;
Eff. November 1, 1984;
Amended Eff. December 1, 1991; May 1, 1990;
Readopted Eff. August 1, 2021;
Amended Eff. December 1, 2021.*

WINTER STORM IMPACTS

- Nourished area
- Beach Stairs
- Sand Fencing
- Erosion and Escarpments
- Debris

TIDES/TUCKAHOE

December 14, 2017



January 25, 2018

TIDES/TUCKAHOE

March 5, 2018



January 25, 2018



March 5, 2018



OCEAN DUNES

SANDERLING RESORT/SALTHOUSES

December 14, 2017



January 25, 2018



SANDERLING RESORT/SALTHOUSES

March 5, 2018



SANDY RIDGE

December 14, 2017



January 25, 2018



SANDY RIDGE

March 5, 2018



WAXWING LANE

December 14, 2017



January 25, 2018



WAXWING LANE

March 5, 2018



COROLLA



**AN ORDINANCE AMENDING THE REGULATORY STANDARDS
FOR DUNE WALKOVER STRUCTURES**

Ordinance 22-09

WHEREAS, the Duck Town Council has found it to be in the Town’s interest to amend the regulatory standards related to dune walkover construction standards; and

WHEREAS, these amendments are intended to amend the construction standards established for dune walkover structures to minimize their impact on the dune; and

WHEREAS, the Duck Planning Board thoroughly reviewed these standards and voted to recommend approval of this ordinance at its public meeting on September 14, 2022; and

WHEREAS, the Duck Town Council found these amendments to be consistent with the goals and objectives of the Town of Duck Comprehensive & CAMA Land Use Plan.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Duck, North Carolina:

PART I. Chapter 94.04 of the Duck Town Code shall be amended to read as follows:

Option 1 – no change

DUNE WALKOVER ACCESS, IMPROVED. A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system. Improved walkover structures shall be no more than 4 feet in width for single-family dwellings and 6 feet in width for commercial or publicly owned structures. Dune walkover structures shall be constructed without a roof or walls, shall be elevated at least 18 inches above the dune, and shall extend east of the seaward vegetation line.

Option 2

DUNE WALKOVER ACCESS, IMPROVED. A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system. Improved walkover structures shall be no more than 4 feet in width for single-family dwellings and 6 feet in width for commercial or publicly owned structures. Dune walkover structures shall be constructed without a roof or walls, shall be elevated at least (x) inches above the dune, and shall extend east of the seaward vegetation line.

Option 3

DUNE WALKOVER ACCESS, IMPROVED. A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system. Improved walkover structures shall be no more than 4 feet in width for single-family dwellings and 6 feet in width for commercial or publicly owned structures. Dune walkover structures shall be constructed without a roof or walls, ~~shall be elevated at least 18 inches above the dune,~~ and shall extend east of the seaward vegetation line.

PART II. Subsection 156.124(C)(1)(b) of the Duck Town Code shall be amended to read as follows:

Option 1

(b) The underside of the dune walkover structure across the frontal or primary dune shall be a minimum of 18 inches and a maximum of 30 inches above grade.

Option 2

(b) The underside of the dune walkover structure across the frontal or primary dune shall be a minimum of (x) inches and a maximum of 30 inches above grade.

Option 3

(b) The underside of the dune walkover structure across the frontal or primary dune shall be a ~~minimum of 18 inches and~~ a maximum of 30 inches above grade.

Option 4

Remove item (b) entirely

PART II. This ordinance shall be effective upon its adoption.

Don Kingston, Mayor

ATTEST:

Lori Ackerman, Town Clerk

Date adopted: _____

Motion to adopt by: _____

Vote: _____AYES _____NAYS

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
August 10, 2022**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, August 10, 2022.

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

Absent: None.

Also present: Town Engineer Michael Robinson, Council Liaison Sandy Whitman, Senior Planner Sandy Cross, Planning Consultant Donna Creef, Town Attorney John Leidy and Deputy Town Clerk Kay Nickens.

Others Present: David Klebitz of Bissell Professional Group, Crouse Gray of Gray and Lloyd PC, Tom Steward of Resort Realty, Mark Casten of OBX Architects, and Paul Henriques of PCI Construction.

Chair Cofield called to order the Regular Meeting of the Planning Board for August 10, 2022 at 6:30 p.m.

PUBLIC COMMENTS

Chair Cofield opened the floor for public comments and advised that if any member of the public wishes to speak, they must approach the podium and state their full name and address prior to making their comments. Chair Cofield asked that speakers limit their comments to no more than three minutes and to not approach staff or other speakers while they are speaking at the podium. He also pointed out that comments will be permitted during the meeting, but when making comments, do not make the same comments that have already been stated.

William Gray of 107 Speckle Trout Dr stated that he has been a member of the community for 15 years and holds a background in commercial and residential real estate development. He stated that he would be offering some perspective that he has seen from being involved in the last two years regarding matters concerning the Route 12 shoreline improvement project as well as the application that is being presented to the Planning Board. Mr. Gray encouraged the Planning Board and Town Council to embark on a comprehensive review of the zoning ordinance as there are several vague items that are left up to interpretation which leads to debate. He provided the example of The Promenade being referred to as a “redevelopment”, however “redevelopment” is not in the ordinance and if “redevelopment” is to be used and referenced in any application, it needs to be included in the ordinance to prevent future debate. Mr. Gray pointed out another item that led to debate referenced the dead ends on a drive aisle and the number of parking spaces. He noted that dead ends nor turnarounds are also not defined in the ordinance and is left for staff to interpret. Mr. Gray reemphasized the importance of reviewing the ordinance for clarity. Mr. Gray

went on to address enforcement as what is reviewed by the Planning Board, Town Staff, and the Town Engineer is not what is being constructed. He provided the example of NC Coast as that was a Special Use Permit that featured a ramp that connected the Town boardwalk to the deck on the back of the restaurant. He noted that the as-built survey does not show a ramp and does not know why however currently, there is a tent with tables for seating 24 to 40 people. Mr. Gray stated that the entire site plan for the restaurant showing a total of 38 seats and there are currently 48 total. Additionally, there was a kayak storage area indicated on the site plan but that is not there either. Mr. Gray stated that the current table count exceeds what was approved but there are no provisions or procedures in place for the Town to enforce, and that in the parking calculations for NC Coast, six employees were included in the parking calculations, meaning one parking space for every three employees. He counted ten employees working one evening and asked if having ten employees in the restaurant is a violation of the Special Use Application.

Dick Allebach of 100 Dune Road stated that he has owned his property since 1988 and he has been here since before Duck was incorporated. He stated that he is concerned with some things that have taken place in the Town that are not written in the zoning ordinance and that while there are some cases where exceptions can be made, the Town is making too many exceptions. Mr. Allebach stated that if the Town needs to review the zoning ordinances, that should be done, and suggested that exceptions shouldn't be made for every instance. Mr. Allebach pointed out that his property is cattycornered to Resort Realty and he is amenable to having part of the right-of-way taken to widen Route 12. He stated that he spoke to David Ott from NCDOT and he advised that the Town has the responsibility to do something about Route 12 in that area, not the state. Mr. Allebach said that there should be some discussion about widening the road at least out to and past where it is now, not including the property that belongs to Resort Realty. He noted that he understood that it is possible and might involve taking some property from Resort Realty but it can be done so if it is necessary, it should be done. He pointed out that the road in that area is not the safest and the road should be widened to three lanes so there can be some remediation for the traffic situation and that as a fallback, at the minimum, there should be three lanes that extend to the first parking lot that Resort Realty has asked for in the redevelopment which, he noted, is not a good choice but it is better than the way it is currently.

Dennis Wojcik of 103 Dune Rd stated that he reviewed the submittal and found several issues that needed to be addressed. He stated that the proposal notes that the existing office building will be demolished and added that everything on the site is being demolished and that both the structure and parking areas will be new constructions. Mr. Wojcik pointed out that the proposal indicates that parking will be on the side of the building but 70% of the parking is in the front of the building. He explained that there is a proposal to connect the project to the existing boardwalk and sidewalk but there are no proposed construction plans indicated on the site plan and the plan is considered pedestrian and bicycle friendly however this is not the case as there are no connections proposed for construction to existing pedestrian and cycling walkways. Mr. Wojcik pointed out that there are multiple ingress and egress locations that are proposed which would cause safety hazards for pedestrians and cyclists. He pointed out that an application for a driveway permit has been submitted to NCDOT and is anticipated to be approved as shown however the plan that is submitted violates NCDOT for the location of driveways; if NCDOT approved this plan, NCDOT would be violating their own policy. Mr. Wojcik also noted that the plan proposed to keep the existing parking layout and provide improvements to keep with Town parking standards however

the entire parking lot is revised, and the Northern parking lot is dramatically different. He pointed out that the proposed parking does not conform to Sections 156.112 D(4) and 156.112 B(2). Mr. Wojcik stated that there are handicapped accessible spaces with dedicated routes to the access ramp however that is not the case because to reach the access ramp, one must cross the loading zone. He explained that the loading zone is to provide an open area for safer pedestrian and ADA access but is not true when the loading zone is being utilized. He pointed out that there are two other instances in which the plan references connections to boardwalks and sidewalks, but he does not see this indicated on the site plan. Mr. Wojcik began to comment on the installation of the wastewater system when Chair Cofield advised Mr. Wojcik that his three minutes were up, and he would have an opportunity to comment on this project during the presentation of the proposal.

Maryanne Beard of 114 Dune Road stated that she has been at her residence since 1986 before most all commercial and residential buildings had been constructed. She explained that one the most important things to her is the natural view of the sound as Dune Road has one of the last remaining natural sound views. She is also concerned that the existing building will be demolished and will not be using the existing septic system. Ms. Beard noted that it seems like this is a brand-new build, not a redevelopment, and it should be considered a new build. She pointed out that perhaps a variance is needed for the difference between her adding a back deck to her house or completely redoing what is there in the existing footprint. She also explained that traffic in that area is atrocious; in the afternoon or evening, it is difficult to get out of the street and she often has to travel North to make a U-turn to travel South. Ms. Beard said that a turn lane should be considered and reemphasized that this project is a new build, not a redevelopment, and that there are certain Town and State building codes that are being overlooked.

Chair Cofield called for additional public comments and there were none.

NEW BUSINESS

SUP-22-002 Application by Bissell Professional Group, on behalf of property owner The Promenade at Duck, LLC for a special use permit to redevelop the existing property in the Village Commercial (V-C) district at 1248 Duck Road, PIN 985911761927, as a group development to include a 49-seat restaurant with two (2), two story buildings. Building A will include 1,082 sf of 1st floor retail space and a 2-bedroom accessory dwelling unit on the 2nd floor. Building B will include 998 sf of 1st floor retail space and a 2-bedroom accessory dwelling unit on the 2nd floor. Application of the Village Commercial Development option is requested to reduce the required rear setback requirements.

Planning Consultant Creef stated that this is a Special Use Permit that has been submitted for 1248 Duck Road, also known as The Promenade where the former Resort Realty office is located. She noted that this property is zoned in the Village- Commercial district and it was reviewed under the section of ordinance that pertains to group developments since there is more than one principal-use structure proposed for the site. Additionally, a restaurant is proposed as part of the development, so it is subject to Section 156.128 for eating establishments. Planning Consultant Creef pointed out that Community Development Standards apply, as do the Village Commercial

Development Options apply as the applicant is seeking a reduction in setback which is an option offered under that section of the zoning ordinance.

Planning Consultant Creef advised that this is a Special Use Permit because it is a restaurant and because of that, it triggers certain requirements, but it also makes this project a group development. She stated that the existing structure will be demolished, and three new structures will be going back on the site. She also noted that the site plan that was previously reviewed was not approved by Council however the developer has since made modifications to the site plan to reflect many of the concerns primarily focusing on parking. Planning Consultant Creef explained that at that time, the property owner was seeking a reduction in the parking requirements which is no longer a feature of the new proposal and is an important distinction from the prior plan. She noted that the previous plan had two (2) three-story structures and that has been reduced to a two (2) two-story structures and the three-bedrooms units have been reduced to two-bedroom units; this reduction in the number of bedrooms reduces the number of parking spaces associated with those units. Additionally, the retail space has been decreased in size whereas the restaurant seating count has not changed. She noted that the restaurant is allowed a seasonal increase in seating which is consistent with the zoning ordinance.

Planning Consultant Creef pointed out that the site plan has been submitted to NCDOT and stated that NCDOT is responsible for approving the driveway permit before there is a construction permit. She reminded the Board that if the Special Use Permit and site plan is approved by Council, there will be subsequent review for construction plans regarding specifics of the building.

Planning Consultant Creef also noted that the project has been reviewed by the Town engineer, the fire department, the police department, the water department, and the environmental health department, and has also been approved by CAMA. She stated that the lot coverage is consistent with the standards that are allowed in the V-C zoning district which allows 60% lot coverage; this project proposes 47.3% lot coverage. She stated that they are seeking a rear yard setback reduction which is allowed under the Village Commercial Development Option which establishes a 20-foot rear yard setback. She stated that the applicant is seeking a reduction of ten feet in the rear yard setback which is consistent with the reduction of up to 50% that is allowed in the Village Commercial Development Option. Planning Consultant Creef reiterated that the parking requirement is now 30 parking spaces and there are 30 spaces indicated on the site plan.

Planning Consultant Creef explained that in order to be granted approval for a Special Use Permit under the Village Commercial Development Option has to meet five criteria:

1. The development proposal is consistent with the adopted vision and comprehensive plan for Duck Village;

Staff Response: A detailed analysis of the Land Use Plan and vision is included as Attachment J. It is staff's opinion that the proposal is consistent with the vision statement and the land use plan.

2. The development proposal is consistent with the desired scale, character, and function of Duck Village;

Staff Response: The scale of the proposed buildings are consistent with the gross floor area limitations, the proposed uses are consistent with other uses permitted in the VC district and the development plan is reflects similar characteristics of other commercial group developments along the Currituck Sound on the adjoining site and elsewhere in the VC district.

3. The property and development proposal contain many of the characteristics established in the 156.065 (E) guidelines;

Staff Response: The proposed three structures will feature building designs, lighting improvements, and landscaping that will be consistent with the VC zoning regulations for commercial development. The architectural plans have been designed to reflect the Town's commercial building guidelines. The new structures will meet the building height. The retail shops and eating establishment will contribute to the Duck Village vibrancy and ambience.

4. The requested modifications are the least necessary to accommodate the proposed development and meet the intent of the Village Commercial Development Option;

Staff response: The requested reductions in the rear yard setback meet the parameters established in 156.065 VCDO.

5. The requested modifications will not negatively impact adjacent properties or the surrounding area.

Staff response: The proposal will not introduce any negative impacts on the surrounding properties and provide for future connectivity along the soundfront boardwalk.

Planning Consultant Creef pointed out the comments regarding traffic impacts. There have been lots of comments about traffic impacts. She stated that there may be room for improvement, but she is not sure if that is within the purview of the Town to require those improvements. She stated that there is a pending grant that may help with road improvements and that Senior Planner Cross could better advise on that grant. Planning Consultant Cross stated that it is important to note that NCDOT has reviewed the site plan so NCDOT will have to approve a driveway permit before the final construction permits are issued and the comments from NCDOT are included in staff packets.

Planning Consultant Creef reminded the Board that the developer has revised the project based on concerns expressed by the Planning Board and Council; they reduced retail size, decreased residential apartments, and the number of stories in the structure and no parking reduction is requested. She advised that it is her opinion that this is consistent with the Land Use Plan and there are thirteen draft conditions that Staff has identified.

Chair Cofield pointed out that the Staff Report notes that Town Council rejected the proposal previously, but he wanted to clarify that Planning Board also voted against the proposal. Chair

Cofield also indicated that page three of the Staff Report details the use of pervious pavement used in parking areas, which is not consistent with the site-plan and it should be changed to reflect that the pervious material will be used for parking spaces, not the parking area that would include the driveway. He asked if Staff has met with NCDOT to discuss this proposal specifically. Planning Consultant Creef stated that she had not had direct conversation with David Ott but Senior Planner Cross has included her on email conversations. Senior Planner Cross clarified that there has not been an in-person meeting with NCDOT but they have completed the preliminary review and NCDOT is reluctant to issue a permit in advance of official plans. She stated that their engineers and traffic engineers have reviewed the proposal and she understands that Mr. Klebitz has submitted the application to NCDOT. Senior Planner Cross stated that NCDOT is waiting for final plans and if there are revisions that are requested by Council or with the stormwater review, that is what NCDOT wants to see.

Chair Cofield pointed out the extensive discussion for the lack of and need for a turning lane; he asked if this has been discussed with NCDOT. Senior Planner Cross said that they have not directly inquired with NCDOT but they have consulted with the Town Engineers. She stated that it is possible that the Town can extend the turning lane, but that would be a Town and Council decision accompanied by an associated cost and added that they just received a preliminary cost estimate just for the redesign to make that happen. Senior Planner Cross advised that VHB has also reached out to NCDOT and discussed shifting the crosswalks south to take advantage of the turn- lane taper as a refuge space but they did not recommend that because currently, the proposed crosswalk location has better spacing distance from the next crosswalk to the south at Cook Drive. She explained that the currently proposed location is closer to the Dune Road intersection is a more expected location that would help minimize driver and pedestrian confusion.

Senior Planner Cross stated that there are many factors that go into making decisions regarding the addition of turn lanes. She stated that she talked to the engineers prior to the Planning Board meeting in April about this as it was a concern brought up by Mr. Wojcik. The engineers advised that it is possible to add a turn lane, but it would cost money to do so in which case the applicant would not be responsible for since it is in the right-of-way. Senior Planner Cross reiterated that it is possible, but Council would be the deciding factor on whether or not they chose to move forward with the process.

Chair Cofield asked that even though Duck Road is a state road, the Town has the ability to make a turning lane. Senior Planner Cross advised that the Town would have to get approval from NCDOT and reminded the Board that they are already in the process of elevating the road from Resort Realty to Sunset Grille; there is a permit in the works with NCDOT and the Division of Coastal Management. Chair Cofield asked if FEMA was aware that Staff is recommending a project that is so close to the beginning of the BRC project. Senior Planner Cross advised that she did not know if that had any overall bearing on the project, so FEMA is probably not aware.

Chair Cofield pointed out the comments regarding safety and noted that the comments from the Police Chief mentioned that the project does not have any issues from a fire perspective. Chair Cofield asked about the comment made by the Police Chief referring to fire. Senior Planner Cross advised that that was a copy and paste error in the packet and that both Chief Ackerman and Deputy

Chief Batschelet did not have any further comments as this proposal is a reduction from the previous proposal.

Member Morton asked if widening the road would require land to be acquired or is it already wide enough to have it take place? Senior Planner Cross read an email from Chris DeWitt at VHB:

We've taken a look at the existing right-of-way width along with the width required for the proposed improvements, and it appears there is room to shift the sidewalks and other improvements to extend the left turn lane north as we discussed to allow access to the proposed southern entrance to the redeveloped Resort Realty site. It will be a tight fit (likely within inches) but it appears to be workable. Temporary construction easements would need to be adjusted/expanded, and at this stage we can't rule out the potential that additional permanent easements would be required, but that does not appear to be the case on initial review. Most of the "shift" and additional width would need to occur on the east side of the road, where there is more right-of-way width outside of the currently-proposed sidewalk alignment.

Senior Planner Cross advised that they have to shift east to get additional space to expand the turn lane.

Chair Cofield clarified that the preliminary discussion of extending the turn lane was only to the first driveway, not the second. Senior Planner Cross stated that this was correct, and she does not know if there is room for the second driveway. She added that she did not recall that this was not a cause for concern when they met with Mr. Wojcik, and that they did bring up the possibility of relocating the crosswalk but they did not think that was a good idea.

Chair Cofield called for other questions or comments. Vice Chair Blakaitis pointed out that the applicant wrote a summary on the consistency with the Land Use Plan and Town of Duck Vision. He stated that the summary mentions the boardwalk and sidewalk but he was not clear where the boardwalk is mentioned in the Vision Statement. Planning Consultant Creef explained that the Vision Statement refers to pedestrian access, but the applicant would need to specify what he intended by the use of those words. Vice Chair Blakaitis reiterated that the project summary mentioned the boardwalk being consistent with this principle, but he did not know where it is consistent because they made the principle. He asked why the boardwalk is included in the project summary and asked if the applicant would be putting the boardwalk in. Planning Consultant Creef advised that there are conditions for easements for future expansions of the boardwalk but the intent of those easements is not because the applicant will be installing the boardwalk. She advised that the Town has not planned to do construction at this point.

Senior Planner Cross addressed the Duck Vision and pointed out that one of the six criteria is enhanced movability. She read from the statement that Duck is a pedestrian first community that is safe and easy to navigate by walking and cycling. The multi-use trail, sidewalks, soundside boardwalk, and beach provide a variety of ways to explore and discover Duck. Collaboration with various organizations enables us to optimize our traffic flow in our unique seasonal environment. Senior Planner Cross stated that the boardwalk is important in this regard and the easement that

Staff has conditioned in this proposed conditional use permit is for a future connection between where the boardwalk terminates at the Waterfront Shops to Resort Realty and then again from the north side of Resort Realty connecting back to the sidewalks that will be constructed when the road is raised. She explained that this is all intertwined in an effort to make the community and the Village much more walkable and to connect Aqua all the way to Sunset Grille; someone should be able to walk whether its via the sidewalk along NC 12 or the boardwalk as a means to get off the roadway.

Planning Consultant Creef also read from the Vision Statement: “Surrounded by our residential neighborhoods, Duck Village is the heart of Duck. Our collection of small shops, restaurants, offices, parks and boardwalks combine to shape the Duck experience.” She suggested that perhaps this is where Mr. Klebitz got the word “boardwalk” and she would let the applicant speak to those specifics.

Vice Chair Blakaitis clarified that the boardwalk is a future plan. Senior Planner Cross advised that it is a future plan but the Town has to have money to add boardwalk sections. She explained that these are often coordinated with grant money and currently, the Town is in the process of obtaining a grant opportunity for raising the road and for the living shoreline at the Town park. She added that by raising the road and adding a sidewalk to the west side of Duck Road, it makes sense to have that connectivity along the soundside.

Member Murray sought clarification for the Staff condition in which regardless of the Board’s approval, NCDOT will do a full review of the final plan and make their decision based on that review. Planning Consultant Creef stated that was correct and explained that state agencies are hesitant to approve a site plan before the local government approves it and project engineers are hesitant to have the state approve a project before the local government approves it because changes can occur at the state level. She added that NCDOT receives numerous applications that never obtain local approval so NCDOT is trying to make their process more efficient.

Member McKiethan reiterated that Section 156.065 gives up to a 50% reduction in the rear yard setback but the roof eaves project out almost 2.8 feet. He pointed out that Section 156.051 allows roof eaves and overhangs to project out only 12 inches and that if a 12 inch reduction is given on this plan, the applicant still needs an extra 1.5 feet, so they would need over a ten- foot reduction in the rear yard setback and they would be looking at an 11 or 11.5 foot reduction. Planning Consultant Creef stated that she would let Mr. Klebitz speak to this but if this is the case, the building would need to be redesigned. She also pointed out that the existing building is only five feet from the rear property line, so there is an existing setback issue.

James called for any other questions or comments regarding the staff report. He called for the applicant to make their presentation and reminded speakers to state their name and address prior to speaking.

David Klebitz, civil engineer for Bissell Professional Group at 3512 North Croatan Highway in Kitty Hawk stated that the applicants listened to the concerns from the Planning Board, Council, and public and made changes to the proposal. He stated that the three-story structures have been reduced to two-stories, which is a 33% reduction in the number of stories of those two buildings.

Mr. Klebitz added that the total number of bedrooms has been reduced from six to four bedrooms which is a 33% reduction in the number of bedrooms. They have also reduced the residential floor area from 3,360 square feet to 2,336 square feet, which is a 30% reduction and they have reduced the retail floor area from 2,450 square feet to 2,080 square feet which is a 15% reduction in retail space that was previously proposed. Mr. Klebitz pointed out that the residential and retail reductions bring the required parking requirement down to thirty parking spaces which is reflected on the plan and that the previous request for the parking exception is no longer needed. He stated that a dedicated turnaround space has been added to the northern parking area which alleviates the need for vehicles having to back out onto NC- 12 from the northern parking area. Mr. Klebitz explained that the amount of pervious pavement on the proposed site plan has increased from 1,867 square feet to 4,356 square feet which is a 130% increase from the previous plan and more than two times the minimum requirement of the ordinance. He stated that a note has been added giving the public boardwalk extension from the waterfront shops the option to connect near the southwest corner of the proposed restaurant which offers a possible alternative to having to come in over the sound as previously proposed. Mr. Klebitz advised that this is still on the plan, but they have added an additional option for the future boardwalk connection per recommendation from the Town. He noted that the recycling bin previously proposed in the northern parking area has been relocated adjacent to the refuse area dumpster in the southern parking area and a set of roll out trash bins have been added adjacent to the northern building for use by the residential occupant.

Mr. Klebitz stated that the rear setback reduction is still being requested and is allowed by the Village Commercial Development Option and is also within 50% limit prescribed. He stated that during the previous plan review, three members of Town Council specifically stated that they had no issue with the requested setback reduction and no members of Council nor Planning Board expressed concern with the setback reduction.

Mr. Klebitz stated that the greatest concern was the parking reduction which has since been addressed by making changes to the development plan as a whole. The plan requires thirty parking spaces, and thirty spaces are provided so no parking reduction is being requested. Mr. Klebitz added that the second concern pertained to vehicles having to back out onto Duck Road from the northern parking area and in effort to address this concern, the plan has been revised to add a dedicated vehicular turnaround in the northern parking area. He added that the third concern was that the development plan was too dense for the site. Mr. Klebitz stated that in an effort to address this concern, the scale and use of the residential and retail buildings have been reduced by between 15% to 33%. He pointed out that the proposed lot coverage is 47.3% which is considerably less than the 56% lot coverage that currently exists on that site and significantly lower than the 60% lot coverage that is allowed in the Town's ordinance.

Mr. Klebitz stated that this latest plan is consistent with the Town's ordinance with one exception being the rear setback and that the request setback reduction is allowable under the Village Commercial Development Option, and this is also within the 50% prescribed limit. He noted that the reduction was supported by Council and there was no opposition expressed. The plan is consistent with the Town's adopted Land Use Plan as well as the Town of Duck 2027 Vision. He stated that the plan is consistent with other applicable state and county rules as confirmed through

correspondence with related agencies including NC Division of Coastal Management, CAMA, NCDOT, and the Dare County Department of Public Health.

Mr. Klebitz addressed the setback issue and said that his understanding is that historically, the setback is measured to the outer walls of the building. He also stated that he understands that there are allowances for eaves as well and noted that this is a conceptual development plan intended to get an overall approval for the project. He reminded the Board that the plans being presented are not the final plans and the final building plans have to be reviewed by Town Staff and the Building Inspector so if there is an issue with the eaves, it would be addressed at that time. Mr. Klebitz also noted that it was not the intent of the plans to show that the roof eaves are non-compliant; the intent was to illustrate that the building walls and setbacks to those building walls do meet the requested setback reduction. He also clarified that the building setbacks are normally measured to the wall and then there is an exception to the eaves. Senior Planner Cross confirmed that and stated that there would be an exception that measures to the building, and you can have up to a 12- inch eave into the setback. She explained that if you have an eave greater than 12- inches, then the additional eave would be counted as part of the required setback.

Mr. Klebitz stated that the client and architect would not have any issue reducing the eaves to meet the 12- inch provision of the ordinance. He reiterated that the dimensions provided on the plan were to the outside walls and the plans are purely conceptual.

Member Murray clarified that the boardwalk that is labeled “Elevated Public Boardwalk” is the boardwalk and decking that is being proposed as part of this current project; Mr. Klebitz confirmed that is correct. Member Murray pointed out the language used for the easement and extension areas and also noted that the eight-foot easement on north side of the property shows an alternate access way by the developer. He asked if the developer would be open to installing that and if the road project would need to happen prior to any connection in that area. Mr. Klebitz stated that this was correct and the discussion between the applicant and Town Staff has included the premise that the Town would extend the boardwalks to each end of what is being proposed on the current plan. He explained that the reason the plans indicated “or by the developer” is so that if for some reason the Town is not able to extend the boardwalk, then the property owner can do so.

Chair Cofield called for any other questions and comments. Chair Cofield pointed out page two of the proposal that details the Village Commercial Development Option Criteria and the consistency with the Land Use Plan and adopted Vision. He stated that there were several concerns regarding safety and asked how the safety concerns in the proposal are consistent with Land Use Plan and the Town’s adopted Vision. Mr. Klebitz explained that the safety issues he recalled surrounded the northern parking area and vehicles having to possibly back out onto Duck Road. He stated that this issue has been resolved by providing a designated turnaround space.

Chair Cofield asked how the lack of a turning lane fits into the concept of a safe egress. Mr. Klebitz stated that he is not able to speak to that and that is an issue for traffic engineers, NCDOT, and maybe engineers already hired by the Town of Duck. Chair Cofield stated that based on that, Mr. Klebitz could not state with certainty that the safety concern has been met by the proposal. Mr. Klebitz requested that Chair Cofield presented the specific statement in the Land Use Plan that

talks to safety and how the proposal is not compliant; Chair Cofield stated that he will do that later in the discussion.

Chair Cofield pointed out page three of the proposal that states the proposal is consistent with the desired scale, character, and function of Duck Village and asked how many apartments exist above retail establishments in Duck Village. Mr. Klebitz stated that he did not know the number, but he was aware that there are apartments. Chair Cofield asked about the number of bedrooms in each unit. Senior Planner Cross stated that Staff conducted this research following the last meeting and can provide that information and noted that there are some three-bedroom apartments.

Chair Cofield pointed out the requested modification being the least necessary to accommodate the proposed development and meet the intent of the Commercial Development Option. He asked Mr. Klebitz if he thought that by reducing the number of apartments that the proposal would meet the intent of the Village Commercial Development Option. Mr. Klebitz stated that they are efficiently utilizing the site as a whole to meet the developers needs and stay within the Village Commercial Development Option.

Chair Cofield pointed out that the requested modification will not negatively impact adjacent properties or the surrounding area but there have been numerous comments made in regard to the negative impact on surrounding properties. He asked if Mr. Klebitz was certain that this proposal would not negatively impact adjacent properties. Mr. Klebitz stated that this was correct.

Chair Cofield pointed out the setback reduction and the facts to be considered including the sound front nature of the development and the consistency with existing developments within the Town Commercial Boardwalk District. He asked if that was a key aspect, why hasn't the developer proposed paying for the boardwalk extension. Mr. Klebitz stated that this was discussed in the beginning of the project that this would be an agreement between the developer and the Town. Chair Cofield clarified that this is being presented for the recommendation of approval by the Planning Board and asked that if the boardwalk is a key aspect, why hasn't the developer committed to extending the boardwalk. Mr. Klebitz stated that the developer has committed to the extension, thus the provided easements. He added that the developer is committed to making the boardwalk happen through the provision of the easements that are being provided. Chair Cofield noted that he has not seen it in this proposal and he does not see that indicated on the plan.

Chair Cofield called for any other comments from the proposal team.

Crouse Gray, attorney for the applicant of Gray and Lloyd at 3120 N Croatan Hwy spoke regarding the roof overhang encroachment. He said that this was not intended, and the architect has stated that they will meet the ten-foot requirement with no more than 12- inches of overhang. Attorney Gray pointed out that the plan clearly shows that the developer is proposing to construct the boardwalk to the west of the site and the boardwalk that is to the north will be discussed with the Town at a later date, but an easement will be dedicated, and the plan shows that there will be an easement, however the exact location and configuration has to be determined by the Town. Attorney Gray pointed out how the connection to the boardwalk that is in front of the Waterfront Shops ends before the applicant's property line. He emphasized that if and when there is some agreement that would allow the boardwalk to extend, the applicant is willing to grant and will grant

easements either along the edge of the right-of-way, the sound, or other mechanisms to get to it. He stated that the applicant has committed to the boardwalk, and it is indicated on the plan. Attorney Gray stated that they have no issue if that agreement is included in the approval, but he cannot draft an easement until he has specific information.

Attorney Gray stated that the Town has submitted a proposed temporary easement so that the construction can occur to raise the road and he had requested a copy of the plat showing where the easement is located. Attorney Gray noted that he has prepared a revised draft of the proposed easement and provided it to the Town attorneys for review. He said that this shows that the applicant is willing to grant the Town what it needs for the shoreline project and will do so with dedicating easements for the boardwalk. Attorney Gray explained that the granting of the easements is a good thing for the applicant because he has a retail space and a restaurant, so the applicants want people to be able to walk around.

Chair Cofield questioned why doesn't the applicant commit to building the boardwalk? Attorney Gray stated that the applicant has committed to building the boardwalk that is on the west side. Chair Cofield sought clarification on whether or not the applicant is committing to build the boardwalk extension. Attorney Gray stated that they are not committing at this time to build a boardwalk from where their boardwalk will end to where the one presently ends in front of the Waterfront Shops because that is someone else's property and more importantly, they do not know how the boardwalk is going to be designed.

Chair Cofield pointed out Member McKeithan's question and what would be changed in order to make the accommodation for the easements and setback requirements. Attorney Gray stated that the building setbacks would not change but they could change the roof overhang and also pointed out that the architect is present to answer any questions. Chair Cofield pointed out that the applicant is requesting something that is not allowed in the setback and if a change is being made, that change is not being looked at by the Board.

Senior Planner Cross stated that this change is a minor revision that could easily be agreed upon and revised prior to going to Council. She added that this is a two-foot overhang versus a 12-inch overhang which is permissible in the ordinance. Senior Planner Cross noted that the applicants have expressed that they would be able to make that revision without any hesitation.

Attorney Gray stated that he understood the question being asked by Chair Cofield and requested that the architect respond to the question. Chair Cofield stated that this is Attorney Gray's proposal. Member Murray asked if Member McKeithan would like for the architect to answer his question. Member McKeithan stated that he did not; he understands that if the proposal is approved, a modification to reduce the 2.8 foot overhang eave will occur.

Attorney Gray expressed that they do not have any problem adding that condition and approval that specifies the overhang may not exceed what is contained within the ordinance and they must present a plan showing this correction. Member McKeithan stated that this was an acceptable solution.

Chair Cofield called for any other questions or comments. Hearing none, he opened the floor for public comments.

William Gray of 107 Speckle Trout stated that he was speaking as the President of the Duck Ridge Shores Civic League. He provided a letter prepared by the Board of Directors and approved by the Homeowners Association outlining the reasons that they oppose the proposed application. Mr. Gray stated that they are happy with the revisions made to the project and they want to see the site be developed, but it needs to be a smart development. He pointed out that the applicants are asking the Board to approve a plan that NCDOT Engineer David Ott has said the driveway entrance to the north does not meet the North Carolina regulations as it interferes with the functional area of an intersection; this also violates Section 156.112 of the Town Ordinance by being within 80 feet of the intersection with Dune Road. Mr. Gray said that they are asking the Board to not approve the application or at least ask the applicant to remove the northern driveway. He noted that the Zoning Ordinance also states that all parking areas on commercial lots shall be connected unless the Town determines that topography of other natural features prevents it. Mr. Gray pointed out that he visited the site and reviewed the site plan and there are no natural features that prevent the two parking lots being connected; this is a violation of the ordinance. He stated that the large drain field and drain field reserve are keeping the parking lot from being connected which is being requested for the special use of the restaurant. Mr. Gray reminded the Board that in addition to the setback request, there is also a special use request for a group-development. Mr. Gray pointed out that the applicant is asking for two driveway entrances whereas the ordinance states to minimize the number of driveways accessing Route 12. He states that the Board should require the applicants to revisit the engineering and only have one driveway entrance at the south. Mr. Gray requested the addition of the turn lane as this will be the only development in this stretch of town that does not have a center turn lane which will lead to traffic congestion and explained that the Town has the ability to impose conditions as such on Special Use Permits. Mr. Gray stated that their concern with the boardwalk extension that is being proposed to the west side will not be built, similar to what happened with the ramp that was proposed but not built at NC Coast. He noted that it is important that with the widening of the road and the sidewalks being constructed on the west side of Route 12, that pedestrians coming from the north can come and use that boardwalk to connect back to the shops otherwise those pedestrians will be walking through the parking lot. Mr. Gray stated that he does not think the Town should be building the boardwalk for the benefit of the developer. He addressed the fencing and screening to keep people from trespassing onto the Duck Ridge property which is immediately to the north and he encouraged that this be a condition built at the time in which development is occurring.

Chair Cofield called for any other comments.

Dick Allebach of 100 Dune Road stated that the area immediately adjacent to Resort Realty was once used for jet skis. He stated that he is concerned with the use of the property because once you allow two retail spaces, the Town will allow what they allow to have in those spaces. He stated that there needs to be a screen between the site property and their area at because he sees people accessing that area from the parking lot on the north part of the Resort Realty property. Mr. Allebach expressed that if something is not done, once that property is developed, and the Town

works on the Shoreline Project, people will know that the area is accessible. He pointed out that the Town is doing a good job as far as proposing what they are going to be putting in as far as screening is concerned but once people see that property with a kayak rack, they are going to be using it. He stated that he has seen people pull catamarans out of the sound at that location so in his opinion, there are going to be people who try to access the sound from that area. Mr. Allebach noted that he is asking to have something put in place to discourage people from accessing that property. He is not aware of any parking concern and noted that the Town and property owner can discuss signage and enforcement, but people are going to be made aware of this property and use it to access the sound. Mr. Allebach requested that conditions be included into the project prior to approval.

Chair Cofield called for any other comments.

Dennis Wojcik of 103 Dune Road clarified that when he met with Senior Planner Cross and Community Planner Gould, they reviewed his concerns to go through the plan. He clarified that he reviewed the plans and looked at the plans that have been put together for the Town project along Duck Road and it was his opinion that a left- turn lane could fit at the southern entrance and that it would be too problematic to fit it into the northern lot. He specified that his analysis of the plans led him to believe that it was not possible to add the turn lane and expressed the importance of having the turn lane at the southern entrance. Mr. Wojcik pointed out the situation being created throughout Town regarding driveways and backups and the Town Ordinance states that parking lots should be connected to provide circulation within a site to prevent backups. He stated that he rides his bike throughout Town and notices many instances where cars are stopped and blocking the bike lane because they cannot get in and have nowhere to go. Mr. Wojcik expressed that the layout was poorly done, and he agrees with everything as stated by Mr. Gray.

Chair Cofield called for any other comments.

Scott Dayton of 110 Dune Road stated that he supported everything as said by Mr. Gray. Mr. Dayton pointed out that some of the questions and comments made during the presentation leads him to believe that this project has not fully been thought through with the words “smart” and “safe” in mind. He requested that the applicant go back to address the issues relative to safety that have been brought up during the meeting.

Chair Cofield called for any other comments.

Dennis Wojcik of 103 Dune Road stated that David Ott from NCDOT has indicated that the driveway is in the functional area as confirmed to him by David Ott in a telephone conversation. Mr. Wojcik noted that David Ott confirmed that the northern driveway is in the functional area and their policy states that measures should be taken to keep a driveway from being in the functional area. He stated that when asked why tentative approval was given by NCDOT, David Ott explained that approval is not that significant, and a more detailed review would be completed in the future.

MaryAnn Beard of 114 Dune Road pointed out the setback variance for this proposal and if it is consistent with what was done with the other shops along the waterfront and what is the specific

reason for the requested variance. She is concerned with sound-front erosion in relation to the setback since storm events cause trees, bushes, and land to be washed away resulting in less land.

Crouse Gray, applicant Attorney from 102 Victoria Court Point Harbor, NC, reiterated that this proposal is a redevelopment and while that word is not defined in the ordinance, he sought definitions from four different dictionaries. Attorney Gray stated that the term “redeveloped” means the action or process of developing something again or differently with the point being that if it is a redevelopment, then the standards of what has to be done are slightly different. Attorney Gray stated that the client will agree to add a fence to the northern property line as part of the approval conditions and reiterated the fact that the configuration of the parking spaces are the only things changing. He reminded the Board that the project cannot get approval from NCDOT until they receive approval from the Town.

Chair Cofield stated that this project is not a redevelopment and pointed out that delivery trucks utilize turning lanes to make deliveries to Duck businesses. He asked where deliveries for the proposed development would park given the lack of the turning lane and pointed out the safety concern of not having a turning lane.

Attorney Gray stated that trucks will have to use the parking lot entrance. Mr. Klebitz pointed out the comprehensive traffic and pedestrian study conducted by VHB and explained that the study determined that center turn lanes are problematic with pedestrian safety.

Chair Cofield pointed out that Sunset Grille has two means of ingress and egress which allows for trucks to enter and exit the lot. He reiterated that large trucks are parked in turning lanes throughout Duck Village because they are unable to enter parking lots via the driveways. He asked how deliveries from large trucks can occur if they cannot use the turn lane.

Member Murray asked Chair Cofield if those locations in which deliveries are being made by trucks using the center turn lane have compliant loading zones. Chair Cofield stated that he did not know. Member Murray clarified that if a property has a compliant loading zone, trucks will not have to park in the center of the road.

Mr. Klebitz stated that he had two conversations with NCDOT engineer David Ott in which David Ott stated that there were no concerns from him nor the Division Traffic Engineer with both the prior project proposal as well as the new project proposal. Mr. Klebitz stated that he has emails documenting what David Ott stated to the Town.

Chair Cofield called for other comments.

Rick Fagerston of 101 Dune Road stated that the original parking lots constructed in 1986 had a connector between the two lots.

Ron Forlano of 1221 Duck Road stated that he is in favor of the project but not as it is currently being proposed. He expressed that he has faith in staff and the Planning Board and commended the Board on the changes that have occurred within the town over the last 20 years. He commented that traffic comes along with the growth of the Town, and it only occurs 90 days out of the year and afterwards, Duck Road is empty. Mr. Forlano stated that all concerns with the proposal are

valid except for that of the traffic and that something needs to be done with the eyesore which would ultimately benefit the Town with sales tax and building permit revenue.

Chair Cofield called for other comments. Hearing none, public comments were closed.

Member Murray stated that he was relatively satisfied with the changes made and that a condition should be added to the approval for the proposed fence on the northern property line. He noted that it makes sense to have the walkway being constructed on their property tie into the eventual raised-road and that the easements are sufficient for the areas off of the applicant's property. Member Murray stated that he had no issues with any of the proposed staff conditions, especially the eighth condition which covers the extent to which the Board can address the safety issue of the northern driveway. Member Murray also stated that this proposal is consistent with the Land Use Plan.

Member McKeithan noted that he agrees with Member Murray. He explained that his biggest concern has been the traffic and expressed his understanding of not being able to obtain NCDOT approval prior to Board approval. Member McKeithan reiterated that the Town of Duck and NCDOT will reach an agreement before the project is finally approved and if that is the case, then he approves the project as it stands.

Vice Chair Blakaitis stated that he agrees with Mr. Forlano's comments and agrees with members of the Board but he does not agree with approving the proposal as there are too many things that need to be addressed. He pointed out that he felt that this proposal would not be approved by Council as there are things that they will need to address. Vice Chair Blakaitis noted that NCDOT is a problem, but it can be addressed. He stated that he does not like the uncertainties with the walkway plans. He stated that the proposal is not consistent with the Land Use Plan and expressed that he would like to see the project finish but as it is proposed currently, it is too large for the Town and he cannot support the proposal.

Member Morton reminded the Board that this is a conceptual proposal to move forward and not the final product. He stated that he agrees with the conditions laid out by Staff as well as Member Murray's comments regarding the fence condition. Member Morton pointed out that in order to access the boardwalk at the Waterfront Shops, people have to start in a parking lot and noted that trucks making deliveries to Tommy's Market will back in to the lot and then pull out to leave and the proposal has a designated area for trucks to use for deliveries on site. He explained that building in Duck is tight and parking is tight, and as long as there is ongoing development in Corolla, there will be cars that pass through Duck and the Board should not keep Duck from growing since Corolla is growing. He emphasized that the project would be a benefit to the Town and he is in favor of it moving forward.

Chair Cofield stated that he has concerns with the fact that the proposal does not meet the Land Use Plan. He pointed out the section of the Land Use Plan that discusses Land Use Accountability and stated that this project does not do that as it does not look at public safety risks. Chair Cofield stated that Duck Road is a real problem for the project and the solution is not there whether it is a NCDOT problem or a Town problem. Chair Cofield pointed out the section regarding Infrastructure Carrying Capacity and stated that this proposal increases impacts instead of minimizing them. Chair Cofield pointed out the section of the Land Use Plan that details

minimizing environmental impacts and noted that this does not minimize environmental impacts as it increases the risk of public health, safety, and welfare making it not consistent with the carrying capacity of the land. Chair Cofield noted the section that speaks to supporting legislation that provides the local government with tools to protect and enhance the scale and character of Development in Duck and stated that this proposal is not of the scale that protects development in Duck. Chair Cofield pointed out that the Land Use Plan details an efficient transportation system along NC-12 as a two-lane facility with turn lanes as needed. He noted that in the Board discussion, it was the consensus that a turn lane is needed and therefore the proposed development is not consistent with the Land Use Plan. Chair Cofield stated that the Land Use Plan details the implementation of best practices in public safety, beach safety, and risk management and noted that this project does not lead to the implementation of best practices for public safety. Chair Corfield read the section pertaining to the interpretation of transportation maps and noted that transportation in Duck is congested due to through traffic on NC-12 which is heaviest during tourist season and that this proposal will increase traffic congestion due to the ingress and egress issues as well as not having a turn lane. He stated that this does not meet the Land Use Plan. Chair Cofield pointed out the section of the Land Use Plan detailing balancing the needs of the community and explained that the nearest homeowners association and residents have voiced their concerns over the proposal. He pointed out the section speaking to threats for the Town and noted that traffic congestion is listed as a threat to the Town. He added that this proposed development increases the threat of traffic congestion. Chair Cofield pointed out that one of the challenges for Duck is traffic congestion and lack of planning could complicate the future. He noted that in addition to the various questions he asked about the proposal he wanted to be very specific in detailing how this proposal does not address the needs and issues for the Town that are clearly defined in the Land Use Plan and stated that this project is not consistent with the Land Use Plan.

Chair Cofield called for any other questions or comments.

Member Murray agreed that traffic is a serious issue and agreed that they do not want to create traffic policy and traffic decisions that exacerbate the issue, but the Board cannot hold each applicant for a new project this is extremely consistent with the Land Use Plan with the responsibility for solving the Town's ongoing traffic problems. He added that to say that the proposal is inconsistent with the Land Use Plan because of the traffic issue would require data, decisions, or recommendations from VHB. Member Murray stated that the Board is dealing with that issue by conditioning that they require NCDOT and for each inconsistency pointed out, Staff and the applicant have provided a thorough analysis providing a logical perspective. Member Murray reiterated that the proposal is consistent with the Land Use Plan.

Member Morton stated that there is already a traffic problem in Duck; this proposal does not create a problem. He noted that three lanes will not solve the traffic problem and it is going to exist as long as Corolla is developing. Member Morton stated that what the applicant has put together is an enhancement for the Town.

Member McKeithan reiterated that this is a good proposal, and the applicant has made changes that were requested at the prior hearing. He added that most concerns are with traffic, but the Board cannot penalize the applicant because of the existing traffic problem in Duck. Member McKeithan

stated that the applicant is willing to work with the Town and they have complied with everything that was requested. He stated that he is not happy with the traffic, but the proposal is sound and will contribute positively to life in Duck.

Chair Cofield requested a motion after hearing discussion.

Mr. Allebach questioned the voting procedure and if the motion would include conditions. Chair Cofield stated that Member Murray would make the appropriate motion.

Vice Chair Blakaitis pointed out that he agrees with Chair Cofield and stated that traffic was not the only concern discussed by Chair Cofield. He added that there are too many items left for Council to resolve and it would be a mistake to send it to Council.

Member Murray made a motion to approve the Special Use Permit as proposed with the following conditions: Staff conditions 1-13 and the additional conditions:

1. A fence to be constructed as proposed on the site plan on the Northern border of the property adjacent to the Duck Ridge Village Shores Civic League Property.
2. The applicant agrees to fund and build the proposed walkway on the north and west end of property currently labeled as "Proposed 8-foot wide access easement for public boardwalk extension by Town of Duck or alternate access way by developer".
3. The roof overhangs be limited per the Town of Duck Ordinance Section 156.051.
4. The two easements noted for the possible future extension to connect to the boardwalk at the Waterfront Shops as labeled in the wetland area and labeled at the southwest corner of the property be included in the proposal.

Vice Chair Blakaitis asked Member Murray to clarify if he wanted the applicant to build the boardwalk in an area where they do not want to build it. Member Murray stated that the conditions are very clear and reiterated that they will build the boardwalk on their property and easements will be conditioned. Chair Blakaitis clarified that the boardwalk will not connect to Blue Point; Member Murray stated that this was correct.

Member Morton seconded the motion.

Chair Cofield stated that the motion has been made and properly seconded and called for questions on the motion. Hearing none, Chair Cofield called for a vote. Member Murray, Member Morton, and Member McKeithan voted in favor. Chair Cofield and Vice Chair Blakaitis voted against the motion.

Motion carried 3-2.

Discussion/consideration of a Special Planning Board meeting to tour the beach in preparation for zoning text amendment discussions related to Chapter 94 and Section 156.124 concerning dune walkover regulations.

Senior Planner Cross stated that Council did take into consideration the Planning Board Transmittal Letter and it was sent back to the Planning Board. She stated that she would like to

schedule a Special Meeting with the Board to tour the beach to look at revisiting the regulatory standards. Senior Planner Cross stated that she would like to have the Staff Report for the September 14th meeting. The Board agreed to meet at the Public Safety building on August 19 at 7:30 a.m. Town Attorney John Leidy reminded the board that this will be a Special Meeting and pointed out that while there is a quorum, no action can be taken as this is an informational gathering.

APPROVAL OF MINUTES

Minutes from the July 13, 2022, Regular Meeting

Member Murray moved to approve the minutes as presented. Vice Chair Cofield seconded.

Motion carried 5-0.

STAFF COMMENTS

Summary of August 3, 2022 Regular Town Council Meeting

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

BOARD COMMENTS

None.

ADJOURNMENT

Chair Cofield declared the meeting adjourned.

The time was 9:06 p.m.

Approved: _____
/s/ James Cofield, Chairman

**TOWN OF DUCK
PLANNING BOARD
SPECIAL MEETING
AUGUST 19, 2022**

The Planning Board for the Town of Duck convened at the Town of Duck Public Safety Building on August 19, 2022.

Present were: Chair James Cofield, Vice Chair Joe Blakaitis, Marc Murray, Randy Morton, Tim McKeithan

Absent: None.

Also present were: Council Liaison Sandy Whitman, Senior Planner Sandy Cross and Duck Surf Rescue Director Mirek Dabrowski

Chair Cofield called to order the Special Meeting of the Planning Board for August 19, 2022 at 7:30 a.m.

PUBLIC COMMENTS

None.

NEW BUSINESS

None.

APPROVAL OF MINUTES

None.

STAFF COMMENTS

Senior Planner Cross gave a quick overview as to the purpose of this special meeting. She advised that the Board would begin near the north end of town and drive beach stopping as needed for comments and/or discussion regarding the elevation of dune walkways. Senior Planner Cross asked Chair Cofield to provide any additional comments he wished to add regarding the purpose for this field trip.

Chair Cofield analyzed the differences between the beach and dunes in the nourishment area to the other areas of the Town's beaches. He stated that the dunes and walkways on the north side of town are very different than those on the south side and explained in the south side of Town at Bias Shores, the dunes have not changed in 20 years.

The Board entered the beach from the North at Station Bay and were driven south the length of Duck to Ocean Crest. Senior Planner Cross noted several relatively new community access ways

in Sanderling at the beginning of the trip. The nourishment area was noted as the Board passed Oyster Catcher down through to the USACE FRF property. The Board made stops at Olde Duck, Sea Colony, Tuckahoe, Bias Shores and Ocean Crest and had a discussion regarding the height of the walkways. At Bias Shores, it was noted by Chair Cofield that the walkway on the west side was at grade. Other members noted that the east side of the walkway/gazebo was elevated. There was also discussion regarding the elevation on the east side versus the west side of the dune, new construction and complete reconstruction versus repairs.

The last property noted was at 101 Ocean Crest Way. Senior Planner Cross noted that this house was a little more than a year old and the walkway met the 18” requirement at the time of construction and pointed out that the dune was already building around it. Chair Cofield commented that it would continue to do so.

Senior Planner Cross advised the Board that a SUP application will be presented at their September meeting in addition to discussion regarding the requirement for elevation of dune walkways which was the basis for this particular Special Meeting.

Project Updates

None.

BOARD COMMENTS

None.

ADJOURNMENT

Chair Cofield adjourned the meeting at 8:30 a.m.

Approved: _____
/s/ James Cofield, Chairman