

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
September 7, 2022**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, September 7, 2022.

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

**COUNCIL MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Town Manager Drew Havens; Police Lieutenant Melissa Clark; Fire Chief Donna Black; Town Attorney Robert Hobbs; Public Information and Events Director Christian Legner; Finance and Human Resources Administrator Jessica Barnes; Donna Creef of Creef Consulting; Senior Planner Sandy Cross; and Deputy Town Kristiana Nickens.

**OTHERS ABSENT:** Director of Community Development Joseph Heard; Police Chief Jeffrey Ackerman, and Town Clerk Lori Ackerman.

Mayor Kingston called the meeting to order at 6:02 p.m.

Mayor Kingston asked Fire Chief Donna Black to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

**PUBLIC COMMENTS**

Mayor Kingston opened the floor for public comments. He noted that comments will be limited to three minutes as there was a timer for the time limit. He asked that any comments related to the public hearings be held off.

Reid Carter of 153 Speckle Trout Drive was recognized to speak. Mr. Carter stated that Dune Road opens up on Route 12 where the applicant was planning a major reconstruction of the road in that section, but he was not sure when it would take place. He asked Council to support and consider a review of possibly adding a third lane in that area because it was difficult to get in and out of his neighborhood, especially in the summer, as well as the fact that the applicant was proposing to extend the retail area that ends near Dune Road. He thought the center lane was very important and hoped Council would support an investigation into what could be done there.

William Gray of 107 Speckle Trout Drive was recognized to speak. Mr. Gray noted that Dennis Wojcik and Richard Allebach were not able to attend the meeting but have spoken frequently about the application. He thought everyone realized the

redevelopment would be effective and there needs to be trust and confidence among the constituents that they represent including staff and members appointed to various boards. He stated that he has witnessed over the last couple of years an erosion of the trust and confidence by many people in the community. He recommended that Council consider forming a task force that would have three areas of responsibility:

- (1) Look at the ordinances and try to clarify things.
- (2) Look at procedures and policies the Town has in place to communicate applications that were coming forward to the Planning Board and Council.
- (3) Follow up to see the effects of an approval.

William Gray stated that he would volunteer to be on the task force if Council decided to form one, adding that he wanted to be a part of the solution and not the problem.

Robert Lotze of 117 Dune Road was recognized to speak. Mr. Lotze stated that he had emailed Council concerning the need to seriously consider the possibility of moving some of the buildings or the parking lot. Mayor Kingston stated that Mr. Lotze would have to make his comments under oath during the public hearing.

Maryann Beard of 114 Dune Road was recognized to speak. Ms. Beard stated that she has lived in her home since 1986, which was before the Resort Realty building was constructed as well as before Tommy's Market and the Waterfront Shops. She stated that she was against what was a caveat for passing forward to the Council from the Planning Board about the boardwalk extension to the north of the building being proposed. She stated that the boardwalk for that building was a "boardwalk to nowhere". Mayor Kingston stated that Ms. Beard would have to make her comments under oath during the public hearing.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that if anyone wished to make a comment about the proposal that would be for the first public hearing, one would need to do so at the public hearing while under oath.

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

### CONSENT AGENDA

Minutes from the August 3, 2022, Regular Meeting; Resolution 22-12, a Resolution of the Town Council of the Town of Duck, North Carolina, in Support of Legislation Concerning Digging Dangerous Holes on the Beach; Resolution 22-13, a Resolution of the Town Council of the Town of Duck, North Carolina, Proclaiming the Week of September 24-October 2, 2022 as Diaper Need Awareness Week; Resolution 22-14, a Resolution of the Town Council of the Town of Duck, North Carolina, Supporting Construction of a New Bridge over the Alligator River Connecting Dare County to Tyrrell County and its Funding through the US Department of Transportation's Bridge Investment Program; Government Access Channel Proposed Attendance

**Policy; Contract with Axon Enterprises for Police In-Car Cameras; and Budget Amendment**

Mayor Pro Tempore Thibodeau understood the idea of renewing the contract with Axon Enterprises with the new equipment and the reason Council was voting on it was because it will encumber the Town for future years with the additional money for the new equipment. She asked if the dollars were similar to what the Town was paying currently or not. She pointed out that there was a \$33,000 differential per year. Town Manager Drew Havens was recognized to speak. Town Manager Havens explained that there was a small amount that was done in Fiscal 2023 that was not part of the Fiscal 2023 budget.

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

Motion carried 5-0.

**SPECIAL PRESENTATIONS**

**Introduction of Firefighter Brandon Molenda**

Fire Chief Donna Black was recognized to speak. Fire Chief Black went on to introduce Brandon Molenda as the Duck Volunteer Fire Department's newest firefighter, replacing Erin Thomas who left to accept another job. Mayor Kingston and Council welcomed Firefighter Molenda to the Town.

**PUBLIC HEARINGS**

**Public Hearing/Discussion/Consideration of SUP22-002, an Application by Bissell Professional Group, on Behalf of The Promenade at Duck, LLC for a Special Use Permit to Redevelop the Existing Property in the Village Commercial District at 1248 Duck Road as a Group Development to Include a 49-Seat Restaurant with 2 Two Story Buildings**

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

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

Mayor Kingston stated that he and Council received multiple emails regarding the subject and responded to several of them. Town Attorney Hobbs asked if he would be able to make a decision on the case based solely on the evidence that would be presented at the hearing. Mayor Kingston stated that he would.

Councilor Whitman stated that he was the Council Liaison for the Planning Board and attended two public hearings on the matter. He added that he received emails as well. Town Attorney Hobbs asked if he would be able to make a decision based solely on the evidence that would be presented at the hearing. Councilor Whitman stated that he would.

Mayor Pro Tempore Thibodeau stated that she received emails but had not had any conversations with anyone. She stated that she has not made a decision and would be basing her decision on the evidence that is heard at this meeting.

Councilor Mooney stated that he also received emails regarding the public hearing. He added that he had conversations with people, but none were substantive and his participation would be based on the evidence presented.

Councilor Schiano stated that he received the same emails and had non-substantive conversations with people regarding the property. He stated that he has not come to any conclusion and understood the process and what the roles and responsibilities were.

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

Deputy Town Clerk Kristiana Nickens was recognized to speak. Deputy Town Clerk Nickens proceeded to swear in the applicants and staff for the public hearing.

**The following persons were sworn to provide testimony during the hearing: Donna Creef, Sandy Cross, Crouse Gray, David Klebitz, William Gray, James Cofield, Maryann Beard, Paul Henriques, Robert Lotze, and Richard Hutson.**

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

Donna Creef was recognized to speak. Ms. Creef stated that she was a consultant for the Town of Duck and was filling in for Director of Community Development Joe Heard. She stated that the Promenade at Duck, LLC owns 1248 Duck Road, which features a commercial structure on the property that was used for real estate offices for Resort Realty and was zoned Village Commercial. She pointed out that earlier this year a site plan was reviewed by the Planning Board and Town Council and was not approved. She added that the project has been revised in response to the concerns expressed by the Council and Planning Board members with the main concern expressed by Council being the applicant's request to reduce the number of parking spaces.

Donna Creef stated that the existing structure was proposed for demolition and will be replaced with three commercial structures, which will consist of retail space, a 42-seat restaurant and second-floor residential uses in two of the structures. She stated that decks and walkways will connect the three structures. She added that under the Village Commercial zoning regulations, Section 156.036, special use review was required for the restaurant and the multiple buildings on the site and that Section 156.059 Group Developments, special use review was also triggered by the request to reduce the rear yard setback as allowed in Section 156.065. She noted that there was no requested exemption for the number of required parking spaces.

Donna Creef stated that several revisions have been made to the proposed project: the residential units were now proposed as two-bedroom units versus three bedrooms, resulting in a decrease in parking spaces; the proposed buildings were now two-story structures versus three story, reducing the height of the buildings and the retail square footage has been decreased as follows:

- Building A: 1<sup>st</sup> floor retail space has been decreased by 118 square feet  
2<sup>nd</sup> floor two-bedroom apartment has one less bedroom  
Total square feet has been decreased by 461 square feet
- Building B: 1<sup>st</sup> floor retail space has been decreased by 252 square feet  
2<sup>nd</sup> floor two-bedroom apartment has one less bedroom  
Total square feet has been decreased by 933 square feet
- Building C: 1<sup>st</sup> floor – no change to square feet of restaurant area  
2<sup>nd</sup> floor – no change to restaurant area  
Total square feet has been decreased by 61 square feet with no change in the number of seats

Donna Creef stated that all of the proposed structures were consistent with the maximum 5,000 square feet of gross floor area of Section 156.036(C)(4). She stated that a total of 42 restaurant seats was proposed with seven additional seasonal seats as established in Section 156.094 of the Zoning Ordinance. She pointed out that this section allows for a seating capacity increase of 25% or 18 people, whichever is less. She noted that the proposal was consistent with this standard. She added that the three buildings were subject to the Group Development standards of Section 156.059 of the Zoning Ordinance and the separation between the buildings may be reduced to 10 feet as allowed in Section 156.059 of the Zoning Ordinance because a fire suppression system was proposed. She stated that the Village Commercial District establishes a 50% residential square footage limitation for accessory apartments located above commercial uses and the accessory apartment size limitation has been applied to the total amount of commercial square footage instead of each building individually.

Donna Creef stated that building renderings have been submitted with the site plan and the proposed structures were consistent with the commercial design standards of Section

156.111. She pointed out that front facades were emphasized and offer shelter to patrons with varying roof line designs. She noted that the door and window placements reflect the 100-foot distance of separation referenced in the guidelines. She added that an issue with the roof overhangs were identified during the Planning Board review at their August 10, 2022 meeting, adding that the eaves, as depicted on the site plan, encroach into the rear yard setback beyond the 12 inches of roof overhang permitted in the Zoning Ordinance. She stated that Section 156.051 of the Zoning code states that roof eaves shall not extend more than 12 inches in any required setback area. She noted that this has been included as a condition of the draft Special Use Permit and the architect has submitted a letter acknowledging the need for compliance with this section of the code.

Donna Creef stated that the lot coverage table on the site plan indicates that there will be a decrease of impervious coverage of 1,033 square feet resulting in a total lot coverage of 47.3%. She explained that the lot coverage limitation of the Village Commercial District was 60%. She added that pervious pavement will be used for the parking spaces and Section 156.112 requires that no more than 80% of parking areas and drive aisles be constructed with impervious surfaces. She stated that the use of pervious pavement will be consistent with this requirement as noted in the lot coverage table. She added that coverage amounts in the CAMA area are also decreasing as detailed in the site plan.

Donna Creef stated that the Village Commercial zoning district establishes a rear yard setback of 20 feet and Section 156.065(B)(1) provides for a reduction if such reduction is not more than 50% of the required setback distance. She stated that a reduction of 10 feet in the rear yard setback was requested by the applicant for Buildings A and B. She added that the proposed rear yard setback for Building A was 10.2 feet and for Building B it was 10.3 feet. She pointed out that these setbacks do not exceed the 50% reduction threshold established in the zoning code and the existing building, which was proposed for demolition, was only located 5.3 feet from the rear property line.

Donna Creef explained that the site plan included a parking calculation table indicating the required number of spaces to be 30 spaces, with the applicant not requesting any reduction in parking spaces. She stated that the existing conditions plan depict the two existing ingress/egress drives and existing parking lots, with the existing parking areas proposed to be reconfigured and pervious pavement installed. She noted that the northern parking area proposes nine parking spaces with a turnaround area and the southern parking area proposes 21 parking spaces with a loading zone and turnaround area. She added that the parking areas were consistent with Section 156.112, parking standards for commercial development.

Donna Creef pointed out that the site plan has been preliminarily reviewed by the NC Department of Transportation, adding that a condition for the issuance of the NCDOT driveway permit was included in the special use permit as Condition #8. She noted that David Otts, the NCDOT District Director had submitted an email regarding the project that read as follows: "Good evening, Ms. Cross. Thank you for forwarding the Duck Ridge Shores Civic League's letter to Town Council members regarding the proposed redevelopment of the former Resort Realty site in Duck. As discussed over the phone, I

would like to stress that I never stated that the northern driveway to the site “is not compliant with NCDOT regulations” as inferred on Page 1. As you know, many factors must be taken into account in order to “balance the needs and rights of property owners and roadway users” as directed by our Policy on Street and Driveway Access. While the attached reply to Mr. Wojcik does not go into a great amount of detail, his safety concerns prompted us to forward the proposed site plan to Congestion Management in Raleigh for another opinion. These professionals analyze traffic patterns daily throughout the State and took no exception to continued use of both access points. Furthermore, the five-year crash data was obtained which detailed no accidents resulting from turning conflicts in to or out of this driveway. For this reason, we take no exceptions to the developer’s current plan, and will approve the driveway permits accordingly. If you have any questions or concerns, please do not hesitate to contact me at any time. Sincerely,  
David Otts”

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

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

Donna Creef stated that the Planning Board reviewed the revised site plan at their August 10, 2022 meeting with several property owners – mostly residents from Duck Ridge Shores – that spoke at the meeting. She stated that they had expressed concerns about the traffic impacts from the project, lack of a turn lane along the entire frontage of the Promenade site, and the need to widen NC 12 near the northern entrance of the Promenade site. She explained that in discussing the project, the concern about traffic safety was acknowledged by the Planning Board members but it was also acknowledged that NCDOT would need to approve the site plan, including ingress/egress from the site. She noted that it was consensus of the Planning Board that the project was consistent with the zoning ordinance and the Comprehensive Land Use Plan. She added that the Planning Board voted 3-2 to approve the site plan and special use permit with Marc Murray, Tim McKeithan, and Randy Morton voting for the approval. She stated that

Planning Board Chair James Cofield and Vice Chair Joe Blakaitis voted against the approval. She stated that four additional conditions were added to the draft Special Use Permit as part of the Planning Board's motion.

Donna Creef stated that the applicant revised the project by decreasing the amount of retail space, decreasing the residential uses from three bedrooms per unit to two, and modifying the structures to be two-story instead of three. She added that as a result of these revisions, no reduction in parking was requested, noting that a reduction in the rear yard setback of 10 feet was requested since it was allowed under the Village Commercial Development Option.

Donna Creef stated that it was staff's opinion that the proposal was consistent with the 2027 Duck Vision statement, the Duck Comprehensive & Land Use Plan, and meets the technical requirements of the Duck Zoning Ordinance for the issuance of a special use permit and approval of a special exception for a reduction in the rear yard setback with the following findings and conditions:

1. The applicant must obtain a land disturbance permit from the Community Development Department prior to engaging in any fill or grading activity on the site.
2. A site lighting plan must be submitted and approved by the Community Development Department to ensure compliance with the Town's lighting standards.
3. A landscaping plan must be submitted and approved by the Community Development Department and necessary plantings installed prior to the issuance of a Certificate of Occupancy.
4. Signs must be reviewed and approved under a separate permit by the Community Development Department.
5. The applicant must obtain a permit from Dare County Environmental Health for the design and installation of the proposed wastewater treatment system improvements prior to the issuance of a land disturbance permit.
6. The applicant must submit a utility plan to Dare County Water Department for final approval.
7. The applicant must obtain a CAMA minor permit for all work and improvements within the Area of Environmental Concern prior to the issuance of a land disturbance or building permit.
8. The applicant must secure approval from the NC Department of Transportation before issuance of Duck construction permits can be secured.
9. The buildings must be constructed in substantial conformance with the elevation drawings and floor plans submitted with the SUP application, as prepared by Cahoon and Kasten Architects, dated June 21, 2022.
10. The applicant must submit the final site plan and site plan review fees as provided for in the Town's adopted fee schedule concurrent with final engineer-stamped site plan drawings, as may be revised through the approval and condition process, with all required information referenced in the SUP conditions, prior to issuance of a building permit for the project.



11. The applicant, for public purposes, shall grant to the Town of Duck, an easement as shown in Exhibit E, being generally described as an eight foot wide access easement for public boardwalk extension by Town of Duck and sidewalk connection to match access to the boardwalk along the northern property line running from west to east, and an easement for possible future boardwalk extension to connect with the existing boardwalk at the Waterfront Shops along the western portion of the property north of the coastal wetlands. Such easement shall be shown on the final site plan for the proposed development of the property, a deed of easement to the benefit of the Town shall be prepared and accepted concurrent with final site plan approval and such easement shall be duly recorded in the Dare County land records prior to issuance of a building permit for the development of the property.
12. The eight-foot-wide access boardwalk connection must be designed by an engineer to comply with the standards and specifications of the Town's boardwalk and applicable codes.
13. This special use permit will expire in 18 months from the date of approval unless construction of the proposed development has commenced.
14. A fence be constructed as proposed on the site plan on the north boundary of the property adjacent to the Duck Ridge Shores Civic League property.
15. The applicant agrees to fund and build the proposed walkway on the north and west portion of the property labeled "eight-foot-wide access easement for public boardwalk extension by Town of Duck or alternate access way by developer".
16. Roof overhangs be limited per Duck Zoning Ordinance Section 156.051.
17. Two easements noted for possible future public extension to connect with the existing boardwalk at the Waterfront Shops by Town of Duck labeled in the wetland area and the southwest corner of the property be a condition of approval of the site plan.

Town Attorney Hobbs asked Council if they had questions for Donna Creef.

Mayor Kingston asked if the three major revisions would be the apartments changing from three to two bedrooms, two story structures instead of three, and reduced lot coverage. He asked if they were the major changes. Donna Creef stated that the major changes were the reduction in the number of bedrooms, the change from three story to two story, and as a result of the changes in the retail square footage and the bedrooms, a reduction in the number of parking. She pointed out that it alleviates the applicant's request to have to have the reduction in parking that is allowed under the Village Commercial Development Option.

Councilor Schiano pointed out that there has been a lot of discussion around the NCDOT issue and whether it was allowable or not. He clarified that NCDOT had stated that they would approve the project as is in terms of the way the driveways intersect with the road. Donna Creef stated he was correct, adding that it has been communicated to staff via email and what David Otts had previously told staff was they get so many requests that they do not like to issue their approval until after it was locally approved because

sometimes there were changes at the local level. She stated that there was every indication that NCDOT will approve as currently designed.

Councilor Mooney pointed out that Donna Creef had stated during her testimony that the plan was consistent with the Land Use Plan and Vision Statement. He thought that it was not because throughout both documents, there were references to safety. He noted that there was not a turning lane in front of the property, which he thought would create a huge safety issue as well as the biggest problem which was traffic congestion. He stated that the ability for people to turn left while heading north to go into the parking lot or exit the parking lot directly opposite in the road would exacerbate the traffic issue. He did not see how that could be consistent without citing the safety issues that were listed in both the Land Use Plan and Vision Statement. Donna Creef stated that it was her opinion that it was consistent, adding that she was basing it on her review of it. She stated that she was not a traffic engineer and the Town will rely on NCDOT for their approval of the site plan. She stated that their review was of the safety of the site and ingress/egress. She added that the Town was relying on them to be that approval agency. She noted that Councilor Mooney was entitled to his opinion but it was her opinion in reading the Land Use Plan and the Vision Statement that it was consistent and the recommendation of the Planning Board was also that it was consistent.

Councilor Mooney stated that there will be people turning in and out of the site which further exacerbated traffic issues as well as a lack of a turning lane. He added that other businesses further south in Town have a turning lane which delivery trucks use for staging while they unload. He pointed out that it would not be an available option for delivery trucks at this site. He added that the plan showed that deliveries would be made in the southern parking lot. He asked how the trucks would get into the parking lot without exacerbating traffic. Donna Creef thought traffic in Duck will be traffic in Duck regardless of whether the site was developed or not. Councilor Mooney agreed. He stated that anyone that lives or travels through Duck knows what the problems were. He added that Council did not need to pay someone \$75,000 to tell them that there were too many cars going through Duck as it was already known. He pointed out that the problem he was referencing was why anyone thought it was safe to have an 18-wheeler backing into a parking lot that could barely fit. He added that the delivery drivers do not always get into the parking lot correctly the first time and would need multiple times to get into the parking lot. He reiterated that it would exacerbate an untenable situation with regard to the traffic. Donna Creef explained that the site plan included a loading zone. She added that throughout her tenure as a planning official, she always struggled with delivery drivers choosing to ignore where the loading zone was located and using the turning lane instead. She noted that some of those things were beyond the control of the local government in making the drivers not using the turning lane. She stated that if the ordinance states that there has to be a loading zone and it has one, then it was her determination that it was consistent. She stated that there will be some potential unsafe maneuvers, but based upon what David Otts stated in his email, crash data showed no accidents at that location.

Councilor Mooney thought the crash data was an invalid application of it. He pointed out that there has not been an active business in that lot for a number of years and when it was the realty office, it did not have nearly as much traffic as it will have with the new development. He stated that he had a lot less concern about trucks stopping in the turning lane to make a delivery because he thought it was safer than backing into a parking lot. He felt it was a huge problem. Donna Creef stated that the reason she brought up the trucks in the turning lane was because there were some concerns expressed by some of the Planning Board members.

Councilor Mooney agreed it was a concern, but thought it was less of a concern than having someone try to back a truck into the parking lot. He understood that this was all falling within the statutes of the ordinances, but what was being ignored was the safety factor of the traffic issue that will be created by this addition. He noted that he was not opposed to the idea but thought perhaps there could be a better plan and it if included widening Duck Road to create a turning lane in front of the development, then so be it. He thought the way it was proposed was not a viable alternative.

Mayor Pro Tempore Thibodeau stated that the site plan showed trash receptacles with a dumpster and recycling container on the southern end, adding that the northern side showed two roll out carts. She asked if the trash and recycling could be rolled out to the street. Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross explained that the toters on the north side would function as receptacles for the apartments and would be rolled to the curb. She added that the dumpster and recycling would serve the retail businesses and the restaurant on the south side of the property.

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

Crouse Gray of Gray and Lloyd was recognized to speak. Mr. Gray stated that he was the attorney for the applicant. He stated that Donna Creef had given her credentials. He asked Council to designate her as an expert in planning and interpretation of ordinances. It was *consensus* of Council to designate Donna Creef as an expert.

Crouse Gray understood that Donna Creef's testimony was that, with regard to existing ordinances, other than the request for the 10-foot setback, the proposal that has been submitted complies with all Town ordinances. He asked if that was an accurate statement. Donna Creef stated that it was.

Crouse Gray stated that in addition to the email that was introduced into evidence earlier, there was an email from David Otts to Dennis Wojcik dated September 1, 2022. He asked Donna Creef if she was familiar with the email. Donna Creef stated that she was. Mr. Gray asked if it was part of the package that has been submitted to Council. Ms. Creef did not believe it was. Mr. Gray noted there was an email from David Otts to Town staff dated April 13, 2022. He asked if that was submitted to the Council as part of their package. Ms. Creef believed it was submitted earlier for the May 4, 2022 meeting packet. Mr. Gray clarified it was not part of the packet for this meeting. Ms. Creef did

not believe so as she thought they received a copy of the September 1, 2022 email as she was reading it.

Crouse Gray clarified that the parking lot with the north and south ends were similar to other parking lots that have been installed in Town. Donna Creef stated he was correct. Mr. Gray asked if the project as designed was originally started with conversations with Director of Community Development Joe Heard, which Donna Creef was not a party to those conversations. Donna Creef stated he was correct. Mr. Gray understood that Donna Creef had spoken to Director Heard about the project. Ms. Creef stated that she had not spoken to him directly but reviewed his notes. Mr. Gray clarified that the notes indicated that there was a give and take during the initial process of what the project would look like. Ms. Creef stated that they were the technical review notes. Mr. Gray asked if 156.065(B)(1) were the requirements for reducing the setback. Ms. Creef stated he was correct. Mr. Gray clarified that this application meets the standards for those requirements. Ms. Creef explained that the Village Commercial Development Option requires a 20-foot rear yard setback and the applicant was asking for a reduction of 10 feet, which was within the 50% threshold allowed in that section of the zoning ordinance.

Town Attorney Hobbs asked the applicant to make a presentation.

David Klebitz of Bissell Professional Group was recognized to speak. Mr. Klebitz stated that he was a licensed professional engineer in the state of North Carolina and has worked for Bissell Professional Group. He thanked Town staff for the detailed presentation regarding the project. He pointed out that, included in Council's packet was the evidence that the applicant submitted which included the site plans and redevelopment summary that goes over, in detail, the proposal of the project and how his opinion of the project was consistent with the CAMA Land Use Plan and the Town's 2027 Vision. He stated that for those reasons and because Council had already reviewed the project, he was not going to go over the details of the plan, but wanted to review the changes that have been made since Council's May 4, 2022 meeting as well as some additional information that he felt was important

David Klebitz stated that he listened to what the Planning Board, Council and the public had to say at the May 4, 2022 meeting and made the following changes to the site plan:

- Reduced the three-story buildings to two-story buildings, resulting in a 33% reduction in the number of stories of the two buildings.
- Reduced the total number of bedrooms from six bedrooms to four bedrooms, resulting in a 33% reduction in the total number of bedrooms.
- Reduced the residential floor space from 3,360 square feet to 2,336 square feet, resulting in a 30% reduction in residential floor area.
- Reduced the retail space from 2,450 square feet to 2,080 square feet, resulting in a 15% reduction in the proposed retail space.

David Klebitz noted that the residential and retail reductions he described resulted in only 30 parking spaces being required according to the Town's ordinance. He added that the

plan, as proposed, provides 30 parking spaces, which was the number of parking spaces in the original proposal. He noted that for that reason, they were no longer requesting a parking reduction. He pointed out that in addition to the reduction in the size of the buildings and the use in addition to the reduction of parking, they added an additional change by providing a dedicated turnaround space in the northern parking lot. He stated that it was not previously proposed, but with the changes they were able to add the dedicated turnaround spot.

David Klebitz stated that additional changes included the amount of pervious pavement as it was increased from 1,887 square feet to 4,356 square feet, which was 130% increase in the pervious pavement and was more than twice the requirement of the Town's ordinance. He stated that a note was added giving the proposed public boardwalk extension from the Waterfront Shops the option to connect near the southwest corner of the proposed restaurant. He noted that it was added to offer a possible alternative connection rather than having to come in over the sound, which was shown on the previous plan as the only option. He stated that it was completed as a recommendation from Town staff. He stated that the recycling can previously proposed in the northern parking area will be relocated adjacent to the dumpster in the southern parking area and a set of rollout trash cans were added adjacent to the northern building for use by the residential occupants.

David Klebitz stated that he wanted to review the four conditions that were recommended at the Planning Board level and have been added to the Council packet as follows:

1. *"The applicant will construct a fence as shown on the concept plan along the northern common property line with the Duck Ridge Shores Civic League property."* David Klebitz noted that previously they showed the fence on the plan and since then it has been added as a condition that the developer build what was shown on the concept plan.
2. *"The applicant will construct the additional length of pedestrian accessway needed to connect the proposed soundside boardwalk to the future sidewalk along the west side of NC 12."* David Klebitz noted that the previous application as well as the new application proposed to provide an easement that would allow the Town to construct that and continue with the boardwalk as well as making the connection back to the sidewalk on NC 12. He added that the applicant has agreed to do that on their own.

Mayor Pro Tempore Thibodeau asked what the proposed surface would be. She asked if it would consist of decking along the easement on the north side or if it would be concrete on the ground. She further asked what would be proposed for the sidewalk material. David Klebitz explained that he did not have any details, adding that he knows it has to be ADA compliant. He pointed out that the boardwalk along the sound was elevated and the sidewalk along NC 12 will not be elevated, causing an elevation difference. He stated that he was not sure what the elevation difference was, but it was significant. He stated that the plan will include a continuation of an elevated portion of

the boardwalk to the point that they could and then they would slope it down to meet the ADA requirements until it gets to the existing grade so it could then become the sidewalk that would tie into the sidewalk on NC 12. He pointed out that it was something the applicant was agreeing to and would be something that would be designed with the final design of the project if it was approved. He explained that it would be an elevated timber boardwalk as it needs to meet ADA requirements before becoming a sidewalk.

Mayor Pro Tempore Thibodeau stated that on the southern side of the front of the property there was an existing sidewalk. She stated that there has been discussion on the plan to eventually connect to a possible extension of the Town's existing boardwalk on the west side. She asked if the east side was drawn to suggest that people would be walking along the sidewalk and walk into the parking area to access the restaurant. She further asked what the connectivity would be for the sidewalk on the south side. David Klebitz explained that there was no sidewalk connection on the south side from the sidewalk along NC 12. He added that people would have to access it through the parking lot or continue north and utilize the connection on the north side.

David Klebitz continued with his review of the four conditions:

3. *"The applicant will be sure to construct the eaves or roof overhangs on the building in compliance with the ordinance."* David Klebitz noted that this was found during the Planning Board meeting and was unintentional. He explained that architectural renderings prepared as this point were conceptual in nature and were not intended to be misleading. He added that it was noted and has been agreed upon that the buildings would be built according to Town code. He stated that there was a letter included in Council's packet from the architect acknowledging it and ensuring that it will be completed.
4. *"The applicant will provide the easements necessary to accommodate the two alternative boardwalk connections at the south end of the site for connection to the Waterfront Shops."* David Klebitz noted that, previously, the plan showed that those connections would be provided, adding that the applicant has agreed to provide the easements that allow that connection to occur.

David Klebitz explained that the rear setback reduction that was discussed was still being requested as allowed by the Village Commercial Development Option and was within the 50% percent limit prescribed in the ordinance. He noted that during the previous plan review, three Council members stated that they had no objection to the setback reduction, adding that they were not changing anything on the new plan from what was previously proposed. He stated that in addition to the three Council members stating that they had no issue with the proposal, none of Council expressed an actual issue with the proposal. He added that they were keeping with that request for a 50% reduction in the rear setback to the sound.

David Klebitz stated that he wanted to outline the primary concerns expressed by Council, the Planning Board, and the public as well as how they have been addressed.

He pointed out that the greatest concern previously was the request for the parking reduction and in an effort to address the concern, the development plan has been revised so that a reduction in parking was no longer being asked for or needed. He stated that a second concern was vehicles backing onto Duck Road from the northern parking area. He explained that in an effort to address the concern, the plan has been revised to add a dedicated vehicular turnaround in the northern parking area. He stated that the third concern was that the development plan was “too much” or “too dense” for the space. He explained that in an effort to address this concern, the scale and use of the residential and retail buildings have been reduced between 15% and 33%. He reiterated that the proposed lot coverage of the plan was 47.3%, which was considerably less than what currently exists on the site, which was 56%. He added that it was less than the 60% as allowed by Town ordinance.

Town Attorney Hobbs asked Council if they had questions for David Klebitz.

Councilor Whitman clarified that the developer would be installing the eight-foot-wide public access easement in the north parking lot. He further clarified that the small section David Klebitz was referencing was eight or nine feet from the end of that to the new sidewalk that will be put in. David Klebitz explained that the plan still showed the access easement, but the intent was that the entire length from where the boardwalk was currently shown ending on the north side of the northern building, the agreement and the plan was that the developer will continue that connection from there all the way to the connection to the sidewalk on Duck Road. He added that it coincided with the easement that was shown on the plan previously.

Councilor Mooney stated that he was pleased with all of the changes that have been made in reducing the density of the property. He asked David Klebitz, as an engineer working on the project, if he had any responsibility about what goes on with regard to the safety issues that he described earlier in the meeting. David Klebitz stated that he has a responsibility. Councilor Mooney pointed out that it did not appear to be addressed at all. He stated that it was great that everything was within the guidelines and ordinances, but the safety issue was a huge factor and would add to problems that were beyond the Town’s control. Mr. Klebitz stated that he understood and reiterated that he was not a traffic engineer and would not be providing an opinion, adding that he could rely on what NCDOT traffic engineers have shared as a result of their review of the project. He noted that they have stated that they have no issues with the driveway connections regarding pedestrian safety, traffic safety or any of those matters.

Councilor Mooney asked if Bissell Professional Group had a traffic engineer on staff. David Klebitz stated that they do not. Councilor Mooney felt that the data that was looked at by NCDOT and the traffic engineers was invalid, old, and did not pertain to what was happening now. Mr. Klebitz understood and did not disagree with the fact that they looked at the five-year crash record as that was not the only information that was looked at since it went all the way to Congestion Management in Raleigh. He noted that it was not the only thing that was considered when making their decision on the safety and connectivity of the project.

Councilor Mooney stated that Council was only considering information that was offered as evidence during the hearing. He added that the only thing he had heard was the five-year crash study, which he felt was invalid data. He thought Council had a responsibility and David Klebitz as the engineer for the applicant had a responsibility to figure out how this would be accomplished.

Town Attorney Hobbs asked David Klebitz if he had reviewed the draft special use permit that was in the agenda package labeled Attachment K. David Klebitz stated that he had not reviewed it in great detail. Town Attorney Hobbs noted that the draft contained the wording of the permit as well as 17 conditions that Donna Creef had referred to in her presentation. He asked David Klebitz if he or the applicant had looked at them. Mr. Klebitz stated that he read through the conditions of the previous application and outlined the additional conditions that were added by the Planning Board to make the total 17. He added that he had not completely reread through all of the conditions as they currently exist. Town Attorney Hobbs clarified that the 17 conditions included the four during his presentation. David Klebitz stated he was correct. Town Attorney Hobbs asked Donna Creef if that was her understanding. Donna Creef stated that it was, adding that there were 17 total conditions – 13 originally and four added by the Planning Board which David Klebitz reviewed during his presentation. Town Attorney Hobbs requested that someone with the applicant go on record to state that they have reviewed and were in favor of the draft permit that Council will consider as well as agreeing with the 17 proposed conditions listed in the permit. David Klebitz stated that he would.

Town Attorney Hobbs asked if there were other presentations from the applicant.

Crouse Gray stated that the applicant has reviewed 17 conditions as set forth in the Attachment K and was in agreement with each of the 17 conditions. Mr. Gray went on to distribute an email from David Otts of NCDOT to Council, noting that he had asked Donna Creef about it as well as pointing out that he had asked if it was included in Council's packet. He noted that in the email - part of the safety issue, not all of the safety issue – specifically stated the following: "...while the minor change of use to the property will likely generate a few more trips per day, it is my opinion that the impact on NC 12 will actually be lessened due to the widening of the driveways..."

Crouse Gray distributed a page of a study that the Town completed on November 17, 2021 that showed traffic study information to Council. He noted that he did not print out the entire study as he assumed Council had copies. He stated that the second page was tube counts that showed the amount of traffic coming through Duck was horrendous and did not matter what day of the week someone traveled through Duck. He pointed out that it could be as low as 10,000 or as high as 20,000 vehicles in a day. He added that the third page determined what was causing the sources of the congestion, noting that the largest number were pedestrians crossing within a crosswalk. He stated that left-turning vehicles was the second cause. He pointed out that he was not stating that there was not a



traffic problem, but that the evidence in front of Council was that the biggest cause of the problem was pedestrians.

Crouse Gray stated that safety was a concern to the Town as well as everyone in Duck. He added that the problem from his perspective in representing his client was that there was an existing structure that could be used, noting that it has two entranceways. He stated that the applicant would be creating problems because any time people would drive in and out of the site there would be issues. He pointed out that the volume of people coming in and out of the site was insignificant compared to the total volume of traffic in Duck. He stated that if there were 20,000 vehicles traveling through Duck in one day with 100 vehicles coming onto the site, it was minimal.

Crouse Gray stated that, with regard to a truck turning into the premises, they would turn in the same way trucks turn into the other premises in Duck. He added that the driver would have to make a left hand turn in almost all circumstances. He added that the question Council needed to address was if they could treat the applicant differently from all of the other applicants that were approved for a special use permit on a commercial site. He thought they could not and should not. He pointed out that the evidence before Council was pretty clear that there would be, just like at every commercial facility, some interjecting of flow, but the site itself was as safe as they could make it. He added that a turnaround was added on the northern end so vehicles will not back out onto NC 12 and the loading ramp on the south side was reconfigured so vehicles can enter and exit properly. He stated that as far as everything on the site itself, the applicant has completed everything that could be done to have Council approve the project.

Councilor Mooney pointed out that one issue Crouse Gray asked was if Council was going to treat this applicant different from prior applicants. He stated that he could not speak to that since he was not on Council with previous applicants and could only speak about what he knows today and how he feels. He stated that the issue about safety was important and it did not matter to him that the applicant satisfied all of the requirements that were asked for in the ordinances if the safety issue would still be in play. He stated that Mr. Gray had just stated trucks would always go onto the site and come out face first. He thought that was great but pointed out that the trucks could not go in face first as well as exit face first since there is not enough room for a truck to turn around in the parking lot.

Councilor Mooney stated that the other issue was that the applicant expanded some things where there would be dedicated turnaround spaces in both lots. He asked who would enforce that. He stated that the reason that police departments have statutes where they write parking tickets was because people park illegally. He felt it was his responsibility to point out potential problems that existed and not whether or not the lot coverage was correct or the easement in the back is reduced 10 feet. He stated that he did not have a problem with it, but his problem was the safety issue. He asked if the applicant made any kind of appeal to NCDOT regarding widening the road or creating a turning lane in front of the business. Crouse Gray understood that the Town itself was looking into an expansion with NCDOT in the general area, adding that he has not seen the final

plan for it so he could not elaborate on exactly where it will be. He stated that the Town's legal counsel had sent him a proposed temporary easement agreement so that the Town through NCDOT could construct what needed to be constructed. He reiterated that he has not seen what it would be so he could not answer Councilor Mooney because he did not know what the Town was doing with NCDOT in that area. He understood that the Town was looking at putting in a center turning lane further north than where it currently stopped, but he did not know how far north it would go.

Councilor Mooney stated that he was not aware that there was any intention of installing a turning lane. He stated that he knew there were plans to raise the road to mitigate flooding a little north of the site. He pointed out that this was the first he heard about the turning lane. Town Attorney Hobbs stated that he did not know the answer. He suggested asking Donna Creef or Senior Planner Sandy Cross if there was a specific question. Senior Planner Cross stated that there was no plan to install a center turning lane at this time.

Councilor Mooney asked if the applicant had at any time or expressed at any time an interest in speaking to or appealing to NCDOT to install a turning lane going north of the location. Crouse Gray stated that the applicant had not. Councilor Mooney thought it needed to be explored thoroughly. He pointed out that in other parts of the country, businesses that were presented with the same safety issues are required by the township or municipality to make an application to the Department of Transportation. He stated that if there was a business that would be creating a problem with traffic and safety, there was a responsibility on the part of the applicant to try to fix the problem and if that was the only way to do it, then it should be discussed.

Crouse Gray stated that if the applicant went to NCDOT and they acknowledged that there would still be the issue of left-hand turns, it would not change things. Councilor Mooney asked why there would still be an issue with the left-hand turn if there was a turning lane. Mr. Gray asked where the truck would park, adding that it would be in the turning lane. Councilor Mooney agreed, adding that the Town already has that problem. He reiterated that he was less concerned about the truck sitting in the turning lane to make a delivery than he was having the truck back into the parking lot. He noted that there was not a pedestrian access on the south end of the project, so people will have to walk through the parking lot to gain access to the property all while there were cars and trucks going in and out. He stated that it exacerbates the safety issue. He thought these were issues that needed to be looked at more carefully. Crouse Gray stated that he did not have an answer as Councilor Mooney was indicating that every property should have access to the sidewalk along the applicant's north and south boundary. He thought there were not very many commercial places in Duck that have that kind of an access. Councilor Mooney disagreed, noting that he did not state that every property had that access.

Councilor Mooney reiterated that he did not know what the decision-making process was for earlier permits for the different businesses since this was the first time participating in a hearing such as this since he's been on Council. He stated that perhaps there were

mistakes made in the past and Council should not repeat them. He added that one learns lessons by making mistakes, noting that he did not want to make a mistake that may end up with someone being seriously injured. Crouse Gray understood Councilor Mooney's comments, adding that Council sets the rules and the ordinances. He stated that engineers drafted a plan in consultation with the Town's experts and Town staff and as mentioned by Donna Creef, the applicant was in compliance with the Town's ordinances. He stated that the applicant agreed to take some steps that were not in the ordinance, but the applicant was not going to solve the traffic problem in Duck. Councilor Mooney stated that Council was not asking the application to do that but was asking them to not make it worse. Mr. Gray reiterated that any commercial use of the property would make it worse. He further reiterated that the applicant was in compliance with the ordinance.

Town Attorney Hobbs asked if any of the sworn witnesses wished to make a presentation. He explained that only one person would be allowed at the podium at a time; a person must be at the podium to speak during the hearing; presentations by witnesses who were not a party with standing in this case should limit their presentation to three minutes; only the parties who have standing as defined in Chapter 160D of the General Statutes would be allowed to ask questions or raise objections; and those wishing to speak should make sure that their comments were relevant and not repetitive of what others have already said.

William Gray of 107 Speckle Trout Drive was recognized to speak. Mr. Gray stated that he was the president of the Duck Ridge Shores Civic League. He asked for clarification of "standing", further asking how he would know whether he could ask questions. Town Attorney Hobbs explained that it was in the statutes under Chapter 160D. He went on to provide Mr. Gray with a copy of the statute to review. Mr. Gray clarified that ownership entrance in a property was considered standing. Town Attorney Hobbs stated that he would not be answering questions. Mr. Gray stated that he would assume that he has standing.

William Gray stated that he wanted to apologize to the Council and Planning Board for encouraging members of the community to send emails expressing their thoughts about the application. He stated that they thought, as citizens, that Council and the Planning Board would want to hear what had to be said about the application. He added that he did not realize until earlier in the day when he received an email from Town Manager Havens thanking him for submitting an email and letting him know that his email and others kept attempting to subvert the legal process by inserting an opinion and not evidence. He stated that it was never their intent to subvert the legal process, adding that they were trying to convey their thoughts and feelings of a community that was being impacted by the application. He reiterated his apology if it had put people in a bind.

William Gray stated that he wanted to provide Council with some documents, noting that they were also in Council's agenda packets, and proceeded to hand them out, pointing out that the first page was the plan that was submitted to Council back in May for approval; the second page was what was currently proposed for this meeting; the third page was a site plan that was approved; and the fourth page was the existing condition of the

property. Mr. Gray clarified that he could ask questions of the applicant as well as Donna Creef at the same time.

Town Attorney Hobbs asked Crouse Gray if he had any objections. Crouse Gray stated that he had an objection unless William Gray had standing for the association. He explained that having standing required Mr. Gray to prove that he will incur special damages not generally by the public. He stated that unless Mr. Gray could prove that, then he would object to the questions. He noted that he was not objecting to William Gray being able to speak and testify. William Gray asked if he could provide his driver's license that shows his address on Speckle Trout Drive. He added that he had members of the public present that were part of the Duck Ridge Shores Civic League that could attest to the fact that he was the president of the civic league which owns the property immediately to the north of the applicant's property.

Crouse Gray submitted that William Gray was the president of the association, adding that he was not related to Mr. Gray. He added that he was still objecting because Mr. Gray had to have standing in order to ask questions. He pointed out that Mr. Gray did not have standing as standing required him to demonstrate that he or some member of his association will incur special damages. He pointed out that he would not be the one that made the decision on the issue of standing.

William Gray stated that he spoke early on regarding the trust and confidence in the government and doing what was right.

Town Attorney Hobbs explained that it would be Mayor Kingston's decision as far as the question of the objection on standing. He stated that he had not heard any statements that told him that William Gray has met the requirements of the statute dealing with standing. He added that it would be Mayor Kingston's decision as far as whether he would allow questions from Mr. Gray. Mayor Kingston clarified that there were no identified damages. Town Attorney Hobbs stated that he had not heard of any that deal with the property that William Gray owns vis-à-vis the property that is the subject of the public hearing.

William Gray clarified that the property he owns at 107 Speckle Trout Drive, when he drives down the street to get onto Duck Road would not give him standing. Town Attorney Hobbs asked William Gray if his property that he owned was different from other properties on the street or in the neighborhood that would cause him to have a different perspective than his neighbor's. Mr. Gray asked why it would need to be different. Town Attorney Hobbs explained that that was what standing was about. Mr. Gray asked about the president of the association owning the land that was adjacent to the property being developed. Town Attorney Hobbs thought the statute referred to associations, but the way he read it was that associations that the subject property was included as far as jurisdiction over the property that was the subject of the hearing versus owning property adjacent to the property that was the subject of the hearing.

Mayor Kingston stated that, based upon advice of counsel, no standing has been identified, no damages have been identified, and the objection was sustained. Town Attorney Hobbs noted that William Gray could still give a presentation, adding that the objection had to do with questions versus a presentation.

William Gray directed Council to look at the first page he handed out, adding that it was the site plan that was originally submitted to the Town back in April/May. He further directed Council to look at the northern parking lot that showed no turn lane or turnaround. He pointed out that at Council's May 4, 2022 meeting, there was a lot of back-and-forth conversation between Dennis Wojcik and Town staff regarding whether or not the drive aisle met the Town's ordinance. He added that Town staff had stated that it had as well as made statements that NCDOT thought the layout was fine, adding that the statements were made by the engineer and Town staff. He stated that he received a telephone call on September 2, 2022 with David Otts who specifically told him that he had spoken to Senior Planner Cross and told her that no permit would be issued for the northern parking lot the way it was presented at Council's May 4, 2022 meeting because there was no turnaround and NCDOT would not allow any vehicles to back out onto NC 12.

William Gray pointed out that at the time of the presentation at Council's May 4, 2022 meeting, there was no approval for the drive aisle the way it was configured today. He stated that he spoke to David Otts regarding the most recent email in order to understand how he got to that point. He added that they discussed at length what they were looking for and what they were trying to do and Mr. Otts told him that, normally in a situation such as this with a change of use from an office to something that was higher density, a traffic impact study would be completed. He stated that Mr. Otts sees these studies come to his office with applications that he is asked to review. He pointed out that there was not any for this project. He stated that it was a question why the Town does not require traffic impact studies of applicants. He added that Town staff have admitted they are not traffic engineers, engineers admitted that they were not traffic engineers, and David Otts who sent an email to let everyone know what he thinks about how safe it was. He stated that he asked David Otts about the five-year crash data that he obtained, pointing out to Mr. Otts realized that for the past two to three years Resort Realty has been vacant so there would not be anyone driving in and out of the site. He stated that Mr. Otts did not have any idea that that was the case. He thought David Otts was acting on incomplete information.

William Gray stated that he had other questions about the Town ordinance. He stated that the Town ordinance specifically states the following: "...no new driveway on a development shall be within 80 feet from a street intersection..." He stated that one could argue about whether or not the proposed driveway was new. He added that if it was a new development with undeveloped land being developed, the Town would not permit the driveway because it did not meet the ordinance. He added that the ordinance states that two parking lots on a development need to be connected. He directed Council to look at the third page he had handed out, it originally showed a north and south parking lot that were connected. He added that it was going from a situation where there

were connected parking lots to allow for the flow of traffic to the present plan where the parking lots were separated. He noted that the applicant would try to convince Council that these were not new parking areas, but existing ones. He asked Council to look at the diagram between what existed on the fourth page he had handed out with what was being proposed. He pointed out that the parking lot to the north had 13 parking spaces with no turnaround and was configured differently than the current parking lot. He noted that the applicant had stated that they would be removing the parking lot to put in pervious material, which was building a brand-new parking lot. He added that under the Town's regulations, new parking lots need to be connected and the applicant will not be doing that. He stated that he has not been able to locate anyone that could tell him why the Town is allowing an intersection and a new driveway within 80 feet to Duck Road when the ordinance states that it was prohibited. He stated that the argument will be whether or not it was a new driveway or an old one. He asked Council to compare what currently existed as the driveway was 15-20 feet wide and would be much wider. He stated that the current driveway was coming out with a new driveway being installed.

William Gray stated that when he spoke earlier in the meeting regarding the ambiguity in the ordinance, all of the issues could be cleared up if the Town had someone looking at it and making it clear so there were no interpretations. He noted that he knew what the intent was for the ordinance, which was to be safe. He added that no one wanted a driveway that close to an intersection, and that Council wanted two parking lots connected. He stated that Crouse Gray had stated the following: "...we made this site plan as safe as we can make it. We have done everything we can do..." Mr. Gray stated that he would ask Town staff if they have seen any alternative layouts or plans where the applicant could get rid of the northern entrance and put all the parking down below and move the buildings up to the north into the parking lot. He asked how Council knew that the applicant had completed everything they could possibly do to make it a safer development and one that would comply with the intent of the ordinance. He encouraged Council to think about what the ordinance really states, what the intent of the ordinance was, and look at the drawings to find out if the driveways were new, if the parking areas were new and if the site plan, the way it was presented, really met the intent of the ordinance.

Councilor Mooney stated that he looked at the ordinance 160D-1402, paragraph C regarding standing, subparagraph 3. He thought it pertained to William Gray as well as others present as having standing. He moved to allow people that if they demonstrate that have standing by virtue of what was stated in subparagraph 3, that Council allow them to ask questions. Town Attorney Hobbs asked if Councilor Mooney was stating that any person who was a member of an association can ask questions or only one representative could. Councilor Mooney stated that the ordinance did not state any person. He read the following: "...an incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area or an association otherwise organized to protect and foster the interests of a particular group, particular neighborhood or local area so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed and the association was not created in response to the

particular development or issue that is the subject of the appeal...” Councilor Mooney thought it was one person. Mayor Pro Tempore Thibodeau agreed. Councilor Mooney pointed out that William Gray was the president of the association and thought it gave him standing.

Town Attorney Hobbs asked Crouse Gray to address Councilor Mooney’s statement. William Gray stated that he did not need to ask questions, adding that he made his point. He asked Council to find a plan that works for the community and put something together that the community would support that was safe and better.

James Cofield of 101 Bias Lane East was recognized to speak. Mr. Cofield noted that he was the chairman of the Planning Board as well as a resident of the Town. He stated that if there were any questions, he was happy to speak in his official capacity as chairman of the Planning Board, representing the Planning Board, and to step out of that role and speak as a resident.

James Cofield stated that the Planning Board voted after the second hearing 3-2 to recommend approval of the application. Mr. Cofield noted that there were various concerns raised by the Planning Board, with the scale of the project as an issue along with the issue of safety and the non-compliance with the Duck Land Use Plan. He stated that there were also issues that were discussed and swayed the majority vote which was that the applicant had addressed parking concerns, had reduced the number of bedrooms, and the applicant was working with the Town in addressing various issues. He stated that he wanted to make it clear regarding the recommendation and the vote of the Planning Board. He thought there had been some representation, without going into any specifics, which had misrepresented the action and discussion before the Planning Board. He pointed out that in the instance where that occurred, he suggested that Council look at his comments as the chairman of the Planning Board and representing the discussion before the Planning Board.

James Cofield stated that he wanted to step out of his position as chairman of the Planning Board and address what he thought was an ongoing concern that should not be in Duck or any community, not specifically with this project, but it bore on this project. Mr. Cofield explained that the function of the Planning Board was to help a community in planning ahead, in addressing issues that relate to the concerns, the forward movement, and the development of a town or city, as well as addressing issues. He stated that he had stated early on that he thought that Duck as a community should be looking to ameliorate the problems that were well recognized in the Town and not exacerbate those problems. He stated that it was his opinion that the current project exacerbated the problems. He pointed out that the Duck Land Use Plan spoke to some of those issues, with safety being one of them. He added that the project was not in compliance with the Town’s ordinance.

Mayor Pro Tempore Thibodeau asked James Cofield if he was speaking as the chairman of the Planning Board or as a citizen. James Cofield stated that he was speaking as a citizen of Duck.

James Cofield thought that the project was not in compliance with the Duck zoning code. He noted that the application was a group development project, which was Section 156.059, and the project as a group development gives the applicant certain privileges and concessions that benefit the project. He added that there were also some provisions of the statute that were not in compliance with Section 156.059. He stated that in his opinion the project as proposed was not in compliance with the statute and was contrary to the discussion Council has heard to date. He pointed out that, specifically, Section 156.059, Section B, Paragraph 2 states the following: "...off-street parking and loading facilities established in connection with a group development project shall be of a design, location, and arrangement as will not interfere with the efficient flow of traffic through an area and as will not interfere with access of emergency or service vehicles..." Mr. Cofield did not think anyone could argue that the lack of a turning lane in front of the proposed project will not interfere with the efficient flow of traffic. He pointed out that that was what the Duck zoning ordinance states. He noted that the applicant chose to apply for the project as a group development because it gives them certain concessions that they desire, but there were provisions of the code that relate specifically to group development that the applicant was not in compliance.

Councilor Mooney asked James Cofield, as Planning Board Chair, if the project was not in compliance with the Land Use Plan or the Town Vision. He asked what he meant. James Cofield explained that the Planning Board did not come to that conclusion. Mayor Pro Tempore Thibodeau clarified that James Cofield was not speaking as the Planning Board chairman. Councilor Mooney asked James Cofield to speak as a private citizen and answer the question. Mr. Cofield stated that he addressed before the Planning Board approximately 10-12 issues that were specifically spelled out that the applicant was not in compliance with the Land Use Plan. He pointed out that safety was one of the issues. He added that the Land Use Plan addresses specifically the need for safety and traffic congestion and not just traffic. He agreed that there is considerable traffic in Duck that the project would have little impact on the traffic, but in his opinion, it clearly has an impact on traffic congestion. He reiterated that the Land Use Plan speaks to traffic congestion in addition to traffic. He added that when traffic is stopped due to the lack of a turning lane in order to wait for vehicles to travel south to turn left into the parking lot, it would impact congestion. He stated that these were two of the areas, adding that it also spoke of scale of development in the Land Use Plan.

Mayor Kingston asked if the Planning Board discussed other properties that have two lanes where there were left-hand turns such as what currently exists in the Village area, the Sanderling, Paper Canoe Restaurant and North Duck Watersports. He pointed out that all of these businesses have two lanes that were also delayed by left hand turns. He asked if there was any discussion from the Planning Board regarding other locations where it was allowed. James Cofield stated that he did not remember those other locations being discussed. He thought the focus was on the Village Commercial District, adding that several businesses that Mayor Kingston mentioned were not in the Village Commercial District. He stated that the Planning Board's focus was on the Village Commercial District.



Mayor Kingston asked if there was any consideration given that the applicant dedicate the northern parking lot to staff and renters only, which would cut down on the congestion from the northern entrance. James Cofield stated that there was not any discussion at the second hearing before the Planning Board. He thought with the first hearing there was some discussion about residents only parking in the northern lot, but not in the second hearing.

Maryann Beard of 114 Dune Road was recognized to speak. Ms. Beard stated that she has owned her home for 36 years and loved the street due to the views of the sound when one travels west from Dune Road. She stated that she was concerned that if Council allowed the applicant to extend the boardwalk north of the building toward the fence where they would build a sidewalk over to the sidewalk that was on the west side of NC 12, it would block the view of the sound. She preferred there not be a boardwalk constructed on the north side of the building and just have it as a low board fence barrier that currently exists. She stated that it has been implied that the boardwalk at the site would be a continuation of the boardwalk from the Waterfront Shops, adding that it would not connect at any time soon because the Blue Point Restaurant was on the south side of the building and there was no boardwalk currently there. She hoped there would never be a boardwalk constructed from the property north to Sunset Grille. She pointed out that there was currently a sidewalk on the east side of NC 12 that runs all the way to the Sanderling Inn, adding that a sidewalk on the west side of NC 12 would be constructed that ends at Sunset Grille. She reiterated that she hoped that a boardwalk would never be built. She stated that the boardwalk at the applicant's property would be a stand-alone boardwalk and if they want to put steps in the parking lot or something from the sidewalk on the south side of the shops or a sidewalk along the fence from the sidewalk, that was fine. She asked that the applicant not extend the boardwalk to the north of the building. She also hoped the applicant would not consider putting a building on the north side of the parking lot as she wanted the view of the sound to remain.

Maryann Beard stated that the two lanes in front of the Sanderling, Village Table restaurant, and Paper Canoe restaurant also have very large parking lots for people and trucks to come in and out. She added that they do not need to park on NC 12. She stated that people that park at the applicant's property currently do it to watch the sunset, adding that there was no commercial traffic at the site, but the traffic was quite heavy in that area. She stated that having businesses on the site would make the traffic worse. She worried that the five-year crash data would not stand with regard to no accidents on NC 12.

Paul Henriques of Premier Contracting was recognized to speak. Mr. Henriques stated that Resort Realty initially hired him for the project, adding that his company is a design-build firm and qualified himself by stating that he has been in construction for 37 years with an unlimited building license in the state of North Carolina which allows him to operate and build commercial structures of any scale as well as residential of any scale. He stated that he holds a civil engineering degree with a structural emphasis that he did for 10 years before becoming a contractor.

Paul Henriques stated that Resort Realty hired him and he formulated the design-build team and they started to engage the Town. He pointed out that, initially, the meetings were with him and Senior Planner Cross and Director of Community Development Joe Heard where he provided some sketches. He stated that as the project started, the initial plan was one huge three-story building in the middle of the lot on the sound. He added that he started meeting with Senior Planner Cross and Director Heard and it migrated from there, adding that it was approximately six months before the design team was formulated and then they really started working with the Town to create the plan that Council had viewed at both public hearings.

Paul Henriques stated that part of the meeting was where they were being guided by the Town and being told that one large building would not work as it would not meet the vision of the Town and would not pass and they let them know what needed to be done. He noted that Director Heard took Mark Kasten, the architect of record for the project, for a walk around the Town to show him the different buildings and architectural styles and asked him to mimic and come back with something similar for a plan and propose it to the Town. He stated that through that migration, they developed the plan that was in front of Council. He pointed out that Council had a developer present that was willing to incur the cost of a boardwalk with the plan of the Town connecting to that boardwalk. He noted that this was the intent of the developer in this plan for it to be a plan for the community to better it and to bookmark the end of the Town and connect the boardwalk through shops and in small buildings. He added that that was what the plan does and they felt it achieved the vision of the Town. He stated that staff has supported the project and that it achieved the plan of the Town all the way to 2027 and the Land Use Plan.

Paul Henriques stated that he has sat through four meetings – two with the Planning Board and two with Council – as an observer and felt that it was being muddled by what the developer is trying to achieve. He pointed out that the developer has made provisions to reduce density, which will make it less profitable. He added that the developer has incurred the cost of the boardwalk and has engaged Duck Ridge Village and William Gray in meetings as well as engaging the Town through the process. He thought the Town has an opportunity for what he thought was a great project as well as with a developer that was willing to work with the Town on the project. He noted that the Town may not have that opportunity if the developer sells the property or if another developer comes in and wants to put a large building in the middle of the property. He added that they consciously put all the buildings to the south so as not to impede the views of the sound. He reiterated that it was a great project, adding that there were safety issues brought up that were not substantiated by any data. He stated that there has been no data brought forward, pointing out that NCDOT went all the way to the top with multiple engineers and professionals that have testified and come up with summaries stating that they do not have any issue with the project. He stated that opinions were opinions; facts were facts; engineers should be respected for their input, knowledge, years of experience, and the seal they hold. He added that they were not just stating opinions but were stating facts.

Councilor Mooney stated that he respected people's education and experience; however, when they are given invalid data and looking at the last five years of crashes as well as other items on a property that has not been used for a period time. He asked how that comports with being accurate. Paul Henriques thought this was a matter of fact, adding that Councilor Mooney was giving an opinion. Councilor Mooney disagreed, stating that he did not give his opinion. He stated that NCDOT gave the Town their decision and process and were given data that was old and not relevant to what would be going on at the site. Paul Henriques stated that Councilor Mooney was giving his opinion. Councilor Mooney asked Mr. Henriques if he thought there would be the same amount of traffic on the site that is currently there. He further asked if there would be the same amount of traffic and density of use that currently existed if the project was completed. He asked if it would be less or more, pointing out that Mr. Henriques was a professional and he respected his opinion. Paul Henriques stated that he did not hold an engineering license and was not in front of Council to testify as a professional since he had not been qualified as such.

Robert Lotze of 117 Dune Road was recognized to speak. Mr. Lotze stated that he appreciated all of the input as well as what Council was doing. He stated that he was in favor of the development of the property and thought what will develop for the Town will be good. He stated that he appreciated Councilor Mooney's hesitance because of the safety issue. He noted that he had sent an email to Council but wanted to go on record with what he had sent. He urged all of Council to go to the intersection of Dune Road and NC 12 and try to make a left turn. He stated that in his email to Council, he had mentioned that he made a left turn at the intersection. He stated that he was concerned about the curve in that area and when one looks to the north and eases out into traffic, they have to take into account pedestrians and bicyclists as well as vehicles speeding. He added that he made a left turn at the intersection and did not see the vehicle coming from the north, to which the vehicle beeped their horn and passed him by going in excess of the speed limit. He pointed out that it was a road rage issue and stated that the intersection was not safe. He stated that anything the Town does would be like the straw that broke the camel's back in terms of adding to the traffic.

Robert Lotze stated unless the Town could take something that was beyond what has been proposed at this point, noting that Crouse Gray had stated that they have done everything they could do, but he did not think that was the case. He thought the Town could do better and challenged Council to do the best they could in this situation.

Councilor Schiano stated that he was trying to understand the traffic concern. He clarified that if he was driving south on NC 12 and this development is there, it would be a right in, right out with no traffic issues. Robert Lotze agreed. Councilor Schiano stated that if he was driving north on NC 12, Dune Road would intersect there. He appreciated making a left turn out of Dune Road must be hard any time there is traffic or any time on that side of the road when one wants to make a left turn. Mr. Lotze agreed, adding that it was also hard with the curve there. Councilor Schiano asked if one could argue that if someone stopped to turn left, the traffic would stop which would allow the vehicle to make the turn easier. Mr. Lotze thought it would make things worse because it would be

a misinterpretation or an assumption regarding whether the traffic was moving or not in the other direction. He did not think going north on NC 12 and taking a left across traffic into where the proposed development was, the traffic would not take into account a vehicle coming out of Dune Road as they would assume that the vehicle had turned so they could move forward. He disagreed with Councilor Schiano's thought, adding that if there was a turn lane there, it would be a different situation.

Councilor Schiano asked how a turn lane would mean a different situation. He pointed out that people would be stopped in the turn lane and everyone would go past the vehicle. Robert Lotze agreed, adding that he thought it would be much different because he would be able to pull out of Dune Road without having to worry about the opposing traffic since he would just have to look at the traffic to the left, drive into the turn lane and move into the driving lane, which was a safer situation.

Councilor Whitman clarified that Dune Road was connected to Cook Drive, adding that at one time there was a barricade between the two streets on Speckle Trout Drive. Mayor Pro Tempore Thibodeau disagreed. Robert Lotze stated that he was correct. Councilor Whitman asked if there was any reason why, during high traffic times, that people could use that way instead of Dune Road. Mr. Lotze stated that he was only five homes away from NC 12. Councilor Whitman pointed out that everyone was concerned about there not being a turning lane, adding that there was one at the intersection of Cook Drive and NC 12. Mr. Lotze agreed, adding that some residents do use Cook Drive. He noted that Cook Drive has speed bumps on the road and Dune Road was a state road and did not have them. He stated that people come from Cook Drive onto Dune Road to avoid the speed bumps. Councilor Whitman clarified that at one time there was a barricade on Speckle Trout Drive. Mr. Lotze stated that there was. Councilor Whitman clarified that it was an interconnecting road. Mr. Lotze stated he was correct. Councilor Whitman clarified that people had access to the turning lane by using Cook Drive. Mr. Lotze stated he was correct.

Robert Lotze stated that someone had mentioned to him that the Town would be continuing the boardwalk all the way to Sunset Grille, but he did not understand that happening. He pointed out that people in the community were thinking that the boardwalk extension would be happening. He did not think there was any way that Duck Ridge Shores Civic League would allow a boardwalk across their property on the sound. Mayor Pro Tempore Thibodeau stated that it was hard for her to understand that people do not avail themselves of all of the minutes of the meetings as well as the ability to see exactly what was being planned with the BRIC grant. She noted that there was no plan for a boardwalk as it was a misinterpretation.

Mayor Pro Tempore Thibodeau clarified that traffic was a problem for people trying to exit Dune Road onto NC 12 and anything that happens at the project site would exacerbate it. Robert Lotze stated that it would as it would be increasing the traffic at that property. He pointed out that he was in favor of the development and loved the fact that the applicant would be putting something there, but thought they needed to do the best thing they could and nothing less.

Richard Hutson of 112 Dune Road was recognized to speak. Mr. Hutson stated that he loved living in Duck due to the hard work of Council, the Planning Board and Town staff, and all of the services that make Duck awesome. He stated that the Town was great due in part to the ordinances. He added that he had sent an email prior to the last Council meeting when the application first came up, adding that he appreciated all of the responses he received. He stated that, at the time, he was against the project because it was overbuilt. He thought it was overbuilt for most of the same reasons others have stated – parking, traffic issues, and safety. He understood the special use permit for the parking, lack of a turning lane, and lack of a turnaround in the parking lots. He stated that Council did not originally approve that with the May 4, 2022 meeting and sent it back to the Planning Board where changes were made. He stated that the applicant now has amended the plan and made considerations, which he thought was great. He noted that he was in favor of something on the site, but thought it still needed to be tweaked.

Richard Hutson stated that the applicant amended the proposal but he still felt it was still overbuilt because there would still be parking and traffic issues. He pointed out that part of the reason Duck was great was due to the ordinances. He added that Section 156.112(b)(d) stated the following: “...new parking areas and commercial lots shall be connected...” He noted that William Gray had spoke earlier in the meeting about how the connection had suddenly disappeared resulting in two separate lots. He stated that Section 156.112(a)(2) stated the following: “...no new driveway shall be connected less than 80 feet from a straight intersection...” He noted that William Gray spoke to this as well. He stated that Section 156.135 stated the following: “...it is the intent of this chapter to keep driveways and intersections on NC 12 to a minimum...” He did not think the plan as it was presented met the ordinances and was evidence that it was not quite right.

Susan Beaulieu of 105 Skimmer Way was recognized to speak. Ms. Beaulieu stated that she had not been sworn in.

Town Clerk Nickens proceeded to swear in the member of the audience for the public hearing.

**The following person was sworn to provide testimony during the hearing: Susan Beaulieu.**

Susan Beaulieu stated that the site was different from other businesses in Duck, primarily because there was not a turning lane to enter the business which was problematic for large tractor trailers since they park in the turning lane to unload. She noted that this was a different project because there was no way for a tractor trailer to turn around in the loading zone on the proposed project. She stated that her husband worked in the food industry where a project was put in on a major highway down the street from where she lived. She stated that they were required to put a turning lane in as part of the project and the company subsidized and paid for the turning lane. She pointed out that no one has asked the question to the developer if they would be willing to put in a boardwalk on the

sound side, if they would consider subsidizing extending the turning lane all the way past their property so that the loading and unloading would not be an issue for the community or contribute to the traffic congestion. She added that the northern lot that was being proposed has a double yellow line and according to the State of North Carolina, it was illegal to make a left hand turn into that parking lot given the way it was currently designed. She stated that she and her husband live in Duck year-round and welcome the visitors and share stories about safety issues they see in Town during the summer. She pointed out that safety was a huge issue to the residents in Duck.

Town Attorney Hobbs stated that Town staff would read the public comments that came in. Town Clerk Nickens read the public comments that had been received.

Tom Basile of 1474 Duck Road was recognized. Mr. Basile wrote the following: "Council Members, I am a full-time resident of Duck and have been living at 1474 Duck Road for 4+ years. My understanding is an out of the area developer wants to put three separate buildings consisting of a two-story restaurant and two additional buildings with retail space on the first floor and apartments on the second floor!!! What an outrageous idea, replacing one building with three on a lot in a highly congested, flood prone area. I have owned property in Duck for over 30 years and can say the Village of Duck has slowly been losing its charm. Overcrowding and overdevelopment will be the death of Duck as we know it. This 'development' will only accelerate it. I believe the Town Council should vote NO on this project and the Planning Board members who voted 'yes' for this project should explain why they voted for it in the first place. Please feel free to contact me with any comments."

Patricia Oliver of 122 Skimmer Way was recognized. Ms. Oliver wrote the following: "I could send you a long letter listing numerous reasons why it would be in extremely poor judgement and showing a complete lack of interest in the residents of Duck and the surrounding area to proceed with the Resort Realty project. Instead, I have just one question. How do we get rid of the incompetent members of the Planning Commission who apparently have no regard for our community? Please use a little common sense with regard to this issue. Thank you."

Kevin Wright of 112 Quail Way was recognized. Mr. Wright wrote the following: "My name is Kevin Wright. I live at 112 Quail Way in Duck. My comment is regarding the proposed development of the Resort Realty property at the north end of the village. While I welcome continued commercial use of the property, and have no issue with including two residential apartments, I am very concerned with the traffic impact of this proposal. NC 12 traffic flow is already a major problem in the summer. During peak season, at meal hours or on 'non-beach' days, southbound traffic backs up as far as the Sanderling Inn due to activity at Sunset Grille and pedestrian/turning vehicles in the village. Similar back-ups occur with northbound traffic at the south end of Town. The Town has yet to implement many of the recommended changes from the most recent traffic study. That study was based on the current situation. Yet another restaurant on the north end of Town will only add to the already miserable traffic congestion and delays. The NC 12 turning lane does not extend to the Resort Realty lot's northernmost

driveway. Any development should include extending the turning lane. The cost to extend the turning lane should be born by the developer, not the Town and its citizens. The proposed development should be tabled until the traffic study can be updated professionally to assess the impact of the proposal.”

Kathy Keogh of 104 Gannet Cove was recognized. Ms. Keogh wrote the following: “As a resident of Duck for more than 20 years I am totally opposed to the development proposed for the Resort Realty property. The traffic issues which already exist and safety concerns will increase significantly if that project goes forward. I believe my opinion has already been voiced by many others including two on the Planning Board.”

Amy Stocker of 111 Sandpiper Cove was recognized. Ms. Stocker wrote the following: “I have been a resident of Duck for 20 years full-time and a property owner here since 1991. I am just appalled that this project would even be considered with the problem that Duck has with traffic every summer. This year was the worst yet. When this project was approved by the Planning Board, the only reason I could find that those three members that voted for it is that they have a financial interest in this project. They certainly did not have Duck’s welfare in mind but pure greed. I sincerely hope that the Council does what is right for Duck at this time and turns down the project.”

Mark Collins of 107 Bayberry Drive was recognized. Mr. Collins wrote the following: “I thought this project was turned down but saw that another vote occurred and passed 3-2. I do not know what ‘tweaks’ were made to make this a viable project but the continued lack of parking and no center turn lane for left turns makes this a dangerous proposition. I hope you reconsider and vote this project no.”

Robert Hasteadt of 112 Jasmine Court was recognized. Mr. Hasteadt wrote the following: “As the owner of a home in Duck I want to express my opinion that this project should not be allowed. It is too big for that location; the roads are not adequately set up for a project of this design and it will contribute further to an already very bad traffic issue in Duck.”

Mark Steimer of 103 Skimmer Way was recognized. Mr. Steimer wrote the following: “To whom it may concern: It is great news to hear that the Planning Board recently approved the redevelop of the Resort Realty property on the north end of the Town of Duck. Having a new restaurant to visit...a couple of new retail establishments...as well as adding affordable housing in the vicinity of the Town all seem to be projects that will enhance the Town. I am aware that the architecture is in keeping with the coastal Nags Head ‘look’ and that is a definite plus! Thanks to the Planning Board for working with the property owners/developers to make this needed improvement to that parcel of land.”

Anthony Horvath of 104 Flight Drive was recognized. Mr. Horvath wrote the following: “All, I do agree the Resort Realty property has to be redeveloped. With that said, it cannot be approved without the below considerations: (1) Since the usage of the property will be different and create additional traffic, the developer should be required to pay for all road improvements. Putting this burden on taxpayers to widen the road is unfair. The

developer is changing the usage of the property, not the residents. (2) The developer will have to address the need for parking. To reduce parking in an area where it is limited is going to create more traffic with pedestrians crossing Highway 12.”

Irene McKenna of 108 Chip Court was recognized. Ms. McKenna wrote the following: “Council members: I am a full-time resident of the Town of Duck residing in the Schooner Ridge development. The proposed development at the Resort Realty property seems to be a less than desirable addition to our Town’s landscape. I am very concerned about the traffic situation in this very busy area of our town. Is this the best we can do with that special piece of property on the edge of the sound? How does the developer proceed with construction without the Town having a recourse when the inevitable traffic congestion causes further gridlock in an already bad situation? I will be attending the next Council meeting on the 7<sup>th</sup> looking for some resolution to these questions. Thank you for your service to our community!”

Carolyn Drost of 107 Pelican Way was recognized. Ms. Drost wrote the following: “The lot is small. The load is huge. Each of us has our perspective. Personally, I agree with Patti.”

Dorothy Donat of 1402A Duck Road was recognized. Ms. Donat wrote the following: “This message is to express my concern over the 49-seat restaurant being considered for the former Resort Realty property. The number of cars that capacity will generate is quite troublesome. The traffic jams, in both directions on Duck Road will be such a trial. Not to mention, a safety hazard for walkers, bikers, and vehicles. Please consider if this meshes with your efforts for a pleasant, safe pedestrian plan and safe traffic flow through the village. As an owner of property in Port Trinitie, I fear the traffic congestion will demand that we drive north for groceries, shops, and entertainment. We love the Duck park and village shops, restaurants, etc. What a disappointment if we become limited in our welcoming accessibility to these amenities. I understand that if a turning lane becomes necessary, this will be at the Town of Duck expense. That would certainly be a negative. Agreeing to adjustments in the rear setback code requirements, would likewise be a negative. This version of the proposal passed only narrowly by the Planning Board. That is cause for added pause and attention. They obviously have concerns. I believe their decision warrants added consideration about whether this proposal is the right fit for our village. I think it is too much with retail space, restaurant space AND residential apartments. Thank you for listening. I appreciate your time and effort to make Duck a wonderful place to live.”

Dennis Wojcik of 103 Dune Road was recognized. Mr. Wojcik wrote the following: “To Mayor of Duck and Town Council regarding the Promenade at Duck. The proposal before Town Council requires Special Use Permits to be issued. A special use development plan should not only meet ordinance requirements but provide enhancements for the Town. This is evident as Section 156.155 allows the Town Council to proscribe appropriate conditions and safeguards beyond the standard ordinance requirements. This can even include requiring the developer to provide the left turn lane in Duck Road that this development sorely needs. Many individuals, as well as myself,



do not believe that the subject project plan meets numerous requirements of the Town ordinance. These requirements are set forth in Sections 156.112(A)(2)(b), 156.112(A)(2)(d), 156.112(A)(2)(e), 156.112(B)(2) and 156.112(D)(4). It is understood that the Town staff does not agree with this assessment. I hope that the members of the Town Council have researched these issues and will make an appropriate decision in regard to these matters. Whether or not it is decided that the plan adheres to the minimum requirements of the ordinance I think it is important to recognize the intent of the ordinance is not being met. The ordinance states 'The intent of these standards is to promote safe, convenient and sufficient access to all properties by vehicles, pedestrians and bicyclists.' This development proposal does not promote any of these items. The reason these ordinance requirements are in question is due to the fact that the developer is attempting to construct more on the site than an appropriate design will support. Why are the two parking lots not connected? Why is there inadequate on-site vehicle circulation? Why are multiple driveways proposed? The answer to these questions is the fact that it is necessary to use the entire area between these parking lots for the septic system. This fact alone should clearly illustrate that what is being proposed is an overuse of the property. I do not believe that the exiting vacant building is in the best interests of the Town; however, I do believe that the size and scale of the proposal is excessive and will negatively impact the area in many ways. I ask that the Town Council take these issues under consideration and make a thoughtful vote to deny the approval."

Roselyn Zator of 103 Dune Road was recognized. Ms. Zator wrote the following: "The Town Council should not approve the proposal. My recommendation to deny approval is based upon the following reasons: (1) The proposal does not meet the requirements of the Town ordinances, specifically Section 156.112(A)(2)(b) and 156.112(A)(2)(d) and 156.112(A)(2)(e) and 156.112(B)(2) and 156.112(D)(4). (2) The proposal is overdeveloping the property that will result in an increase in parking problems and an increase in traffic congestion on Duck Road. My recommendation would be to downsize the proposal that will allow the following to solve the parking, traffic congestion, and safety problems: (1) Elimination of two disconnected parking lots and replace with one large parking lot. (2) Elimination of north entrance and only have one entrance/exit. (3) Addition of left turn lane on Duck Road to allow better access into south parking entrance. Thank you for your consideration."

Town Attorney Hobbs reminded Council that the emails that were just read was unsworn and the individuals were not present to be cross-examined, so they could not base their decision solely on what was just read in the emails.

Town Attorney Hobbs asked if the applicant had any closing remarks.

Crouse Gray stated that he wanted to add two pieces of information as evidence – the first was the date of closing of the existing facility's use which was November 2020 since there was a question regarding the five-year timeframe. He stated that there has been some discussion regarding the Land Use Plan. He asked Senior Planner Cross to describe what the Land Use Plan does and how it leads to ordinances. Senior Planner Cross explained that the Land Use Plan does not lead to ordinances, adding that the Land Use

Plan had the following language: “This Plan is a guidance and policy document and is not intended to be used as a direct regulatory tool.”

Crouse Gray stated that the applicant thanked Council for the time and consideration of the application, adding that Council has spent a lot of time with the previous meeting and this one. He reminded Council that this was a quasi-judicial hearing, which was important because in a quasi-judicial hearing, only what Council heard at this hearing could be used for the purposes of making their decision. He stated that when looking at the ordinance, one of the reasons he had questioned the standing of anyone and it was determined there was no standing, was because in testimony of what constituted competent evidence was one of the requirements. He added that Section 160D-1402(J)(3) defines competent evidence as the following: “...shall regardless of lack of timely objection, not be deemed to include opinion testimony by lay witnesses to any of the following...the increase in vehicular traffic resulting from a proposed development poses a danger to public safety...” He stated that his point was that a lot of people had testified, but none were qualified as experts and therefore there was no competent evidence submitted to Council at the hearing. He added that what he indicated to Council through the admitted expert was that the applicant met the ordinance requirements. He stated that the competent evidence that was before Council was that it met the safety requirements and there was no contrary evidence before Council.

Crouse Gray stated that he was up front with Council, adding that there would be traffic at the site. He added that he had also pointed out that the volume of traffic that this new project would create was minimal. He noted that if they went back and redid the project as an office building, there would still be traffic issues. He stated that the plan, as designed, meets the Town’s ordinances as testified by the experts that were present. He added that no one else qualified as an expert and as such, the experts had stated that what the applicant had was in compliance with the Town’s ordinances. He pointed out that Council set the terms of what an applicant could and could not do. He added that the applicant designed the project accordingly, they listened to what Council had discussed at their May 4, 2022 meeting, and they revised the project. He stated that they met all of the Town’s ordinances as testified by the Town’s experts, there will be some traffic issues no matter what and even with a turning lane, and there was a fairness issue. He understood that Council could not keep doing bad things, but the question was if Council had done any bad things. He stated that there were other parking lots that were similar to what was being proposed, including the parking lot at Town Hall.

Crouse Gray stated that the Waterfront Shops, Village Table & Tavern, and NC Coast Restaurant all have singular parking lots, which was just like what was being proposed. He stated that nowhere in the ordinances does it state that an existing business should be favored over a new one. He added that to deny the project, Council would be doing that. He asked Council to approve the project knowing it would be unpopular, but when Council ran for office, they knew they would have to make some unpopular decisions and it would not be the first time that people may not be happy with the decision. He pointed out that at the end of the day, the right thing to do given the Town’s ordinances and given the fact that this application met every one of the ordinances, was to approve the project.

Town Attorney Hobbs asked Council if they had any final questions.

Mayor Kingston asked if the applicant would consider the northern lot to be for staff only or residents only. He pointed out that the whole issue was with the northern entrance with reserved parking for the apartments as well as staff, which would cut down traffic in that parking lot. He asked if the applicant would consider that as a condition, noting that it would only be signage. He stated that the southern parking lot could handle the restaurant traffic. Crouse Gray stated that they would put up whatever signage that the Town deemed appropriate to restrict the northern parking lot to parking for the residences and employees. He added that the applicant has tried to be a good corporate citizen and they did listen to Council from the May 4, 2022 meeting and made a lot of changes. He stated that if Council wanted this latest change, they would be willing to do it. Mayor Kingston noted that if he was a renter, he would want a parking spot for his vehicle to get to his apartment. He added that it will also cut down on the traffic congestion on the northern parking lot. Crouse Gray agreed.

Councilor Whitman asked if the Town ever asked anyone to complete a traffic study for any development or redevelopment of the Town. Senior Planner Cross stated that Town staff never asked for a full-blown traffic study for redevelopment. She added that a traffic study was completed for the Town. Councilor Whitman asked if one was completed for individual lots. Senior Planner Cross stated that none were completed for individual lots.

Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. He noted that a vote of the majority of Council would be required to approve the application. He added that as part of Council's deliberation and if there was a motion to approve the application, there were various findings that would need to be made and it would be helpful if the motion referenced the findings as well as the 17 proposed conditions including the proposed 18<sup>th</sup> condition that was just discussed.

Mayor Kingston stated that the application came before Council and they spent a lot of time then as well as at this meeting with the major concern being overdevelopment of the property. He stated that Council originally turned the project down with the key issue being parking where the applicant needed 44 parking spaces and were above what the ordinance allowed. He stated that the applicant came back with a revised plan and thought they were responsible with the revision by lowering the height of the building and taking out one apartment, He noted that they solved a lot of the parking issues. He agreed that there was a safety issue and agreed with Councilor Mooney's comments regarding deliveries with tractor trailers. He thought the applicant would be responsible and based upon what Donna Creef and Senior Planner Cross had presented, the applicant met the ordinances and the majority of the Planning Board had thought the applicant accomplished what Council wanted them to achieve.

Mayor Kingston thought this property could not be the solution to traffic in Duck. He pointed out that there were at least two homes being built in Corolla which will add more

vehicles through Duck than the proposed development would. He noted that thousands of vehicles pass through Duck every day, adding that he lives on the south end of Town and cannot make a left-hand turn out of his development. He stated that Duck was a resort community and traffic was an issue two months of the year and everyone learns to live with it. He agreed that there were things that the Town could do such as work on the road between the proposed property and Sunset Grille and the fact that the project has been delayed could give the Town the opportunity to readdress a third lane expansion. He stated that there would not be a boardwalk built, but a sidewalk and a living shoreline.

Mayor Kingston thought the applicant has been responsible with their revised plan, adding that he would like to see the property be developed and thought it was currently an eyesore with it being an empty building. He stated that he had suggested the condition that they take the north parking lot and reserve that for parking for the apartments and retail staff as he thought it would cut down on the traffic coming in and out of the property. He understood the public's comments and that there have always been safety issues throughout Town, adding that he would support the application with the added condition of signage.

Mayor Pro Tempore Thibodeau appreciated all the time and energy everyone has put into the project – the developers, the staff, and the residents that have been following the project. She knew there was a lot of traffic in Duck, adding that a new subdivision was being built in Corolla. She pointed out that every time anyone does anything on any private property, it increases traffic. She stated that it was heard at this meeting that traffic was already an issue and there was nothing at the site which resonated with her.

Mayor Pro Tempore Thibodeau stated that, as a Town Council member as well as a resident of Duck, she appreciated the fact that everyone wants to maintain a safe environment. She thought everyone focuses on safety and the pedestrian/bicycle/traffic improvements that have been completed were in that vein. She noted that it would not stop with the approval or disapproval of this development or the approval of new home construction. She stated that the Town will continue to work on traffic safety, adding that Duck was not thought of well by some of the neighboring towns because they do not think Duck does enough, but the Town was stuck between a very popular northern beach area and its own popularity as a great destination.

Mayor Pro Tempore Thibodeau agreed that the development looked like Duck in that it was a low-profile with smaller buildings, it blends in when you approach coming from the north heading south and would be a lovely addition. She thought Council had to rely on the professionals that were trained in these areas and took their endorsement of the property very seriously. She pointed out that the Town has developed and modified rules last time there was a Village Commercial Development project. She stated that they were always looking at doing more and better things for the Town. She did not think Council could penalize the development for the traffic issues, adding that she liked the idea of adding a turning lane with respect to the BRIC grant project to help people get in and out of developments as well as helping with deliveries. She stated that she would be in favor of Duck studying that possibility and incorporating it into the BRIC grant. She added

that she would be voting in favor of the project with the conditions and agreed that the signage was a welcome addition to the conditions.

Councilor Schiano stated that there were some comments earlier in the meeting regarding whether the Town's process works, whether the structure works, and whether people were listening. He thought that the situation specifically showed that the process worked. He explained that the Town started out with something that was very far away from where it was at this meeting. He reminded Council that this was almost an as of right project and what was required of Council was to determine whether or not the project met the codes and standards. He pointed out that the only thing the applicant was asking for was a five-foot variation of the setback. He added that the applicant has been through multiple iterations, based on input from citizens, residents, the Planning Board and Council. He thought Mayor Kingston's suggestion was excellent with regard to limiting the northern parking lot with signage as he thought it will help.

Councilor Schiano noted that the Planning Board approved the project and have been very cooperative. He agreed that traffic is an issue and thought the concept of looking at a turning lane with the BRIC grant might be a good opportunity for the Town and thought it should be pursued. He thought everyone did a good job with a lot of hard work. He pointed out that there have been a lot of opinions and emotions with regard to the concerns over safety, but he thought it will be managed and that there may be some opportunities for Council to address it with the new roadwork that will be completed.

Councilor Whitman agreed with the comments from Council members, adding that the applicant met all of the requirements and the Town could not punish one person for everything else. He stated that he would be voting in favor of the project.

Councilor Mooney did not disagree that the ordinances have been met and the changes that have been made in the plan make it much more palatable. He stated that he could not ignore the standards that Councilor Schiano had described which involve the safety aspect. He stated that if the turning lane could be placed in front of the property, he would not have a problem with the application, but there was not one and because of that he would not be voting in favor of the project.

Mayor Kingston moved to approve SUP22-002 as presented with the findings as well as the 17 conditions, including the 18<sup>th</sup> condition of adding signage for residents and staff in the northern parking lot.

Motion carried 4-1 with Councilor Mooney dissenting.

Mayor Kingston called for a 10-minute recess. The time was 9:09 p.m.

Mayor Kingston reconvened the meeting.

**Public Hearing/Discussion/Consideration of Ordinance 22-07, an Ordinance of the Town Council of the Town of Duck, North Carolina, Amending Subsections**

**156.030(D)(6), 156.031(D)(6), and 156.032(D)(6) of the Town Code to Clarify and Enhance the Standards under Which Residential Properties Can be Granted an Allowance of up to 35% Maximum Lot Coverage**

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs opened the public hearing, noting that the Council would be sitting as a legislative body. He stated that Senior Planner Cross would give a presentation.

Senior Planner Cross stated at Council's August 3, 2022 meeting, she had presented a text amendment regarding the 35% lot coverage allowance for the installation of stormwater management improvements. She explained that in most of the residential districts, the Town allows up to 35% lot coverage, adding that the Town's current requirements in the ordinance require an approved plan to meet a 1.5 inch design storm and should be designed in accordance with the state Best Management Practices Manual as well as being designed to utilize low-impact principles with Best Management Practices as a primary method of treating stormwater. She noted that the Town's current ordinance requires stormwater plans to be prepared by a state licensed engineer.

Senior Planner Cross pointed out that some of the problems staff have run into was that the regulations in the current ordinance were very general and do not state any specific criteria for the stormwater management plan, adding that there was no requirement for calculations or a design. She stated that they have had some engineers that do a great job of doing all of it, and some that state that if a property sits on top of a hill, then nothing would need to be done and the property should be given 35% lot coverage. She noted that they were claiming interstitial storage which were the voids between the grains of the sand as the stormwater source.

Senior Planner Cross stated that Council had before them a request for a text amendment to make an amendment to clarify some of the standards that staff was looking for when they see a proposal for 30+% lot coverage allowance for new construction or even for additions or substantial improvements. She pointed out that it did not matter what kind of work was being done when she receives a site plan for a new house, an addition or a renovation, it would be something that would be required if the applicant was going to exceed the 30% lot coverage. She added that the ordinance that was drafted was done with the assistance of Mike Robinson, the Town's engineer, as well as Building Inspector Steve McMurray to make sure that they did not have any objections. She noted that, aside from the recommendations that staff proposed to the Planning Board, during the Planning Board meeting there was one addition that allows for surveyors to provide these stormwater management plans because surveyors are licensed to complete these kind of plans. She stated that rather than limit it just to engineers, a homeowner could save money by using a survey or having the stormwater plan instead.

Senior Planner Cross pointed out that a member of the Outer Banks Homebuilders Association was present and wished to have the public hearing postponed.

Councilor Schiano clarified that the concept was that the Town was allowing 35% but to do so, the homeowner would have to show specifically what they were doing that was making an improvement over what would normally be there. Senior Planner Cross stated he was correct.

Mayor Pro Tempore Thibodeau clarified that a surveyor or professional engineer could be used, adding that the Planning Board added the surveyor to the draft language. Senior Planner Cross stated that it was due to a recommendation from the Town's engineer. Mayor Pro Tempore Thibodeau pointed out that the language included the following: "...shall include volumetric calculations..." She asked if that was standard language. Senior Planner Cross stated that it was standard for some engineers while there were others that use a survey that showed if a home was at an elevation of 25 feet, stormwater basins were not needed because it will all infiltrate through the sand. She noted that it was not the intent when staff put this allowance in place because when the modification to the ordinance was made, she was certain it was not intended to allow a homeowner at a high elevation to do whatever they wanted. Mayor Pro Tempore Thibodeau clarified that it would have to be identified, the volumetric calculations were something that can be done, and it was for a 1.5-inch design storm. Senior Planner Cross stated she was correct.

Mayor Kingston asked how a baseline was established for putting one of these in and receiving the 5%. He pointed out that it would have to be able to handle the 1.5 inch. He asked what the baseline was. Senior Planner Cross stated that the Town engineer would handle that. She explained that when she receives a plan that has basins with no calculations, she does not know what to do. She added that if there were calculations on a plan, staff can send it to the Town engineer and he can run the numbers to make sure they work. She reminded Council that this was for something extra, to go beyond the 30% limitation.

Mike Robinson of 104 Jester Court, Kill Devil Hills, was recognized to speak. Mr. Robinson explained that 30% was considered to be low density according to the state stormwater management. He stated that a standard based design storm from the state was 1.5 inches because that was the most frequent rainfall. He added that that was the target in order to obtain the nutrient reduction to get overflow. He noted that that was the baseline, adding that 30% or less was considered low density and over 30% was considered high density. He added that if there was a state project that was at 35% more stormwater BMPs would need to be built into the plan. He pointed out that some of the newer subdivisions already have the 30% built in.

Senior Planner Cross pointed out there have been a lot of houses that were recently permitted with a lot of them being redevelopment and some were going back with 33% lot coverage and were showing a stormwater plan with a calculated volumetric design for a 1.5-inch storm. Mayor Pro Tempore Thibodeau thought it was reasonable.

Councilor Schiano asked if he had a lot and wanted to build a house that would have 30% coverage and meets the needs for the 1.5-inch storm what would need to be done if he wanted to cover 35% of the lot. Senior Planner Cross stated that the Town engineer

would deal with it. Councilor Schiano asked what the Town engineer would tell the homeowner to do. Senior Planner Cross explained that it would have to keep the stormwater on the property and not the neighbor's. Mike Robinson agreed, adding that it would involve swales. Senior Planner Cross stated that it would involve landscape swales, infiltration basins, bioretention rain gardens, rainwater harvesting cisterns, or rain barrels. Councilor Schiano asked what would happen if he did not indicate that he wanted to go from 30% to 35% but wanted to cover 35% of the lot. Senior Planner Cross stated that he would need to provide a plan that shows how it will be accomplished with stormwater management. Councilor Schiano asked if it was measurable. Senior Planner Cross stated that it was. Mike Robinson explained that it was a volumetric calculation.

Mayor Kingston stated that he did not understand the whole basis of how it was measured and what the base point was. He pointed out that a homeowner could use a rain barrel. He asked if the rain barrel would be enough to give the homeowner 5% more on their lot. Mike Robinson stated that a rain barrel would be an option for a portion of it. He added that a rain barrel would not get a full 1.5 inches storage, but if someone wanted to use that in conjunction with other stormwater management techniques, they could as it was a source of irrigation water as long as they provide some method to get the rain out of the barrel.

Councilor Whitman clarified that a rain barrel can count as retention for stormwater runoff. Mike Robinson stated he was correct. Senior Planner Cross clarified that the water needed to capture was determined by a formula. Mr. Robinson stated she was correct, explaining that it was 1.5 inches times the area that the rain falls on. Councilor Whitman asked if there was a 1,000 square foot roof, it needs to capture 1,500 square inches of water. Mr. Robinson explained that it would have to be divided by 12 to correct for units. He added that it would 1.5 inches divided by 12 times the impervious area. He noted that this was not an onerous ordinance, it was fine. He added that he completes a lot of stormwater plans in Dare County and all of the towns.

Mayor Pro Tempore Thibodeau clarified that the Town has been allowing this to happen and the rules were loose and easy to misinterpret. She further clarified that this would be tightening things up. Senior Planner Cross stated that it was giving staff back up to let contractors know that they need to provide more detail.

Mayor Kingston stated that he was still having trouble figuring out what the baseline was. He asked if there was a house with a pool that had decks and concrete, how the baseline was calculated in order to capture 1.5 inches of rain. Senior Planner Cross explained that it was based upon the impervious coverage. Mike Robinson explained that it was based on the square footage of the roof, the concrete pool decking, the driveway, and then 1.5-inch storm was applied to the square footage to give the cubic volume, which was what was needed to be captured.

Mayor Kingston asked how it was determined how much water would need to be captured. Mayor Pro Tempore Thibodeau explained that the baseline was the fact that it did not have to be done at all if it was at 30% lot coverage. Mayor Kingston asked what



would need to be done if someone wanted to go to 35% lot coverage. Mayor Pro Tempore Thibodeau explained that a calculation would need to be completed that showed how the stormwater would be captured. Mayor Kingston asked if it would be explained in the ordinance. Senior Planner Cross stated that the contractors redeveloping properties would know how to do it. She added that she would have to go back to the original ordinance when the Town implemented the 35% allowance to see how it was written. She noted that staff was looking for clarification to add some language to the ordinance so that the engineers and surveyors provide the proper documentation to show they could meet the 1.5-inch design storm.

Mayor Kingston clarified that a certain amount of water would need to be captured. Senior Planner Cross stated he was correct. Mayor Kingston asked how it was determined. Senior Planner Cross explained that it was based on a formula that the engineers would provide to the Town. Mayor Kingston thought it was confusing, adding that the Town was telling engineers and surveyors what they can do, but he was not sure how they would get from Point A to Point B. He asked how much water would need to be captured. Mayor Pro Tempore Thibodeau stated that an engineer would be needed to make the determination. Mayor Kingston asked if in the ordinance it stated where it started and where it ended. He further asked if people would need to be told how to get to the baseline. Senior Planner Cross stated that the ordinance has a definition for lot coverage and what was included in that. Mike Robinson explained that he looks at everything on the site that water would runoff of, which would be the roof, the swimming pool decking, and the driveway. He noted that an open wood deck did not generate stormwater and neither did the surface area of a swimming pool, adding that there would be a little bit of a difference between the built upon area and what the Town would define as lot coverage. He was sure the Town included surface area swimming pools in the lot coverage since it was more of an intensity development concept than a stormwater management concept. He explained that he would take the total area that water would run off of and multiply it by 1.5 inches and divide it by 12 to correct for feet as opposed to inches, which would give him a cubic foot volume that will demonstrate how the water would be stored.

Mayor Kingston clarified that the baseline would mean the lot would be broken down to see where water would be absorbed. He pointed out that it would never be absorbed on a roof. Mike Robinson agreed, adding that something would need to be done with the water that comes off the roof which is what the ordinance intends to do by clarifying what should be done with it.

Councilor Schiano asked what would have to be done if the homeowner wanted to stay at 30% lot coverage. He clarified that an engineering study would not be needed. Senior Planner Cross stated he was correct. Town Manager Havens stated that they would need to have a plan to capture the stormwater. Councilor Schiano clarified that the Town was assuming that if a homeowner was at 30% or less lot coverage, that the ground would be able to handle whatever happens. Mike Robinson stated he was correct, adding that it mirrored the state stormwater ordinances. Senior Planner Cross pointed out that the Planning Board recommended approval of the draft ordinance with a 5-0 vote.

Town Attorney Hobbs asked James Cofield if he wished to make a presentation on behalf of the Planning Board.

James Cofield stated that the baseline came before the Planning Board. He explained that if it was 30% lot coverage there was no issue and nothing else needed to be done. He stated that if a homeowner wanted to go from 30% to 35% lot coverage, and the state has determined that the amount of stormwater that needs to be measured and remediation has to be completed, then a calculation of 1.5 inches was required. He added that if he understood things, one would look at the square footage of a lot, adding that if the homeowner wanted to add an additional 1,000 square feet, it would need to be added into the formula at 1.5 inches. He stated that the remediation would have to cover that amount only. Mike Robinson stated he was correct, adding that he does not worry about the sandy area of a lot that is left in a natural state or a grassy area because there are high permeability rates. He added that, typically, water does not run off sand very readily. He noted that the ability of the soil to absorb the normal rainfall easily takes care of it.

James Cofield stated that, in answer to Mayor Kingston's question, there was not a baseline, and only the delta needed to be covered. He added that it was the way the Planning Board understood it. Mayor Kingston asked if it would enhance if it was explained how 1.5 inches was achieved as well as how much stormwater has to be captured. He wondered if the formula should be included or if it should explain how to get from Point A to Point B. Mayor Pro Tempore Thibodeau thought it was understood. Mike Robinson pointed out that most surveyors and engineers would understand the ordinance because it was not unique. Mayor Kingston pointed out that the normal lay person would not understand the ordinance.

Councilor Whitman asked what the ordinance currently stated. Senior Planner Cross stated that it read as follows: "...maximum allowable lot coverage by principal use and all accessory structures 30%. Lot coverage may be increased to 35% provided that stormwater improvements meeting the following criteria are provided on the development site: (A) stormwater runoff from the built upon area of the site must be directed into an approved stormwater management system designed to accommodate the volume of runoff generated by a 1.5 inch designed storm; (B) the stormwater management system shall be designed in accordance with the standard methodology procedures prescribed by the state stormwater best management practices manual, NCDENR BMP manual. The project designs shall utilize low impact development principles and best management practices as the primary method for the treatment of stormwater; and (D) stormwater plans shall be prepared by a state licensed professional prior to the issuances of a certificate of completion, a state licensed professional engineer shall certify that the proposed improvements have been constructed in accordance with the project design..."

Councilor Whitman pointed out that it required the use of the state standard for the calculations, which was how the baseline was established. Senior Planner Cross stated

that he was correct, adding that it has been removed and could be returned to the ordinance.

Town Attorney Hobbs asked if any members of the public wished to address the proposal.

Duke Geraghty of the Outer Banks Homebuilders Association was recognized to speak. Mr. Geraghty stated that he had sent the proposal out to the building community for their input. He felt there should be a working group that helps to write the ordinances like there was for the Town of Nags Head and Currituck County. He stated that they took the Town of Nags Head stormwater manual and worked on it for a few months to decrease the number of pages in the manual. He asked Council to postpone consideration of the ordinance so the Association could give their input to see what their engineers come up with. He further suggested putting a committee together to work on the ordinance for a month.

Town Attorney Hobbs stated that if there will be considerable substantive changes to the ordinance, he recommended sending it back to the Planning Board after staff has had an opportunity to work with the Outer Banks Homebuilders Association, adding that it would not be a one-month process.

Town Attorney Hobbs asked if Council had any remaining questions.

Mayor Kingston asked if Council delayed passing the ordinance for a month or six weeks, it would harm the Town from the standpoint of control in this area. Senior Planner Cross noted that the Town recently issued permits for four new homes with two that exceed the lot coverage. She added that she had four more permits that still need to be issued. She did not think there would be harm, but there would be potential impacts. She added that there has been some pushback from some engineers that looked at the current ordinance and pointed out that the volumetric calculations were not required. She added that Director of Community Development Joe Heard has been pretty strong at keeping that at bay and requiring it. She noted that most of the homes that recently received permits were all from one developer and he used volumetric calculations on all four homes. She did not believe the ordinance was onerous, adding that if the Outer Banks Homebuilders Association wanted to add their thoughts, she would be fine with it. She stated that if this ordinance was going to be a large document, then she agreed with Duke Geraghty's comments; however, Council was discussing six items that were pretty basic. She stated that Town staff could work with the Outer Banks Homebuilders Association and it would have to go back to the Planning Board. She pointed out that there will be some engineers that do not want to do this, adding that Director Heard had looked at the Town of Nags Head's standards and Mike Robinson and Building Inspector Steve McMurray were consulted and all felt like this was a reasonable ask. She stated that the Town of Nags Head's ordinance had a lot more items in it that were more complex, which Duck was not asking for.

Councilor Schiano thought people could still build at 30% of the lot, adding that if a homeowner wanted to go to 35%, they would have to do something extra. He did not think it was unreasonable. He appreciated Duke Geraghty's concern.

Councilor Mooney clarified that Section C where it listed the options such as landscape swales and infiltration basins, #6 mentions other methods. He thought it should address Duke Geraghty's concern as there was no one telling him that he must complete #1 through #5 since he could do something else if it was reasonable and meets the volumetric calculation. He did not see any reason why Council should delay the ordinance.

Councilor Whitman asked if there was any reason that the ordinance could be voted on at this meeting and if the Homebuilders Association wished to discuss it with the Planning Board to come up with their ideas, that the Planning Board could send something to Council. Senior Planner Cross stated that it could be done that way. Councilor Whitman thought the ordinance should be passed at this meeting due to the number of applications received.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and reminded Council that they were sitting as a legislative body and in order to adopt the ordinance on the first read, it would require a two-thirds vote of all members, which was four members. He turned the meeting over to Mayor Kingston for deliberation.

Councilor Mooney moved to approve Ordinance 22-07 as presented.

Mayor Pro Tempore Thibodeau agreed that the Outer Banks Homebuilders Association should be welcomed to offer any suggestions they have to improve the ordinance, adding that Council would be receptive to it. Mayor Kingston thought it was a good suggestion.

Senior Planner Cross asked Council if they wanted the motion to include item B that was currently in the ordinance regarding the state stormwater best management practices.

Councilor Mooney amended his motion to add item B.

Motion carried 5-0.

**Public Hearing/Discussion/Consideration of Ordinance 22-08, an Ordinance of the Town Council of the Town of Duck, North Carolina, Amending Subsections 156.051(E) and 156.051(F) of the Town Code to Clarify the Elevation of Dune Walkover Structures in All Situations (Minimum 18 Inches) and Under What Circumstances Minimum Setback Exemptions May be Granted**

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs opened the public hearing, noting that the Council would be sitting as a legislative body. He stated that Senior Planner Cross would give a presentation.

Senior Planner Cross stated that the proposed text amendments were intended to establish clear, consistent standards for appropriate elevation for dune walkover structures in circumstances where exceptions related to minimum setback requirements are permitted. She noted that the Town has standards for different types of walkway structures in different sections of the Zoning Ordinance and which standard applies to dune walkover structures has been called into question in certain circumstances. She added that the Planning Board completed their review of the subsections and voted unanimously to recommend approval of the proposed ordinance.

Mayor Pro Tempore Thibodeau clarified that if the walkway was on private property, was shared and not tied into the dune, it would have to be 12 inches. Senior Planner Cross stated she was correct, adding that if it was a private walkway on the dune that was not tied to a community access or shared access, the homeowner would not be entitled to the exemption. Mayor Pro Tempore Thibodeau clarified that it would be 18 inches. Senior Planner Cross explained that the homeowner was not exempt from the minimum yard requirements unless they were in compliance with 156.051, which means they would have to be at 12 inches.

Mayor Pro Tempore Thibodeau stated that dune walkways that were currently in existence were grandfathered. She asked if a community wanted to build a concrete walkway, they be permitted to do so. Senior Planner Cross stated that concrete walkways were permitted up to within 60 feet of the first line of stable natural vegetation.

Councilor Schiano stated that he lives in a subdivision with a homeowners association that has a shared walkway that goes over the dune and it needs to be replaced. He asked if they build a new walkway, it will have to be 18 inches above the dune. Senior Planner Cross explained that if they were going to reconstruct the walkway in its entirety or more than 50%, it would need to be 18 inches. Councilor Schiano asked what would be required if the walkway was repaired instead of replaced. Senior Planner Cross stated that it could be repaired in place. She added that if it was a small section that was buried and needed to be elevated, it would not have to meet the 18-inch requirement; however, if it was buried and it needs to be built over, staff will encourage meeting the 18-inch requirement. Councilor Schiano asked if it was 18 inches above the top of the dune or from the walkway. Senior Planner Cross stated that it was not clear in the ordinance, adding that she expected it may be something that will be discussed at the Planning Board level.

Councilor Schiano asked if he was a private resident and wanted to build a boardwalk over the dunes, he would have to build it 18 inches above the dune line. Senior Planner Cross stated that if there was not one in existence, he would. Councilor Schiano stated that he did not understand where the 12 inches came from. Senior Planner Cross explained that in the ordinance there were exemptions from the setbacks provided that they were no more than 12 inches above grade.

Town Attorney Hobbs asked James Cofield if he wished to make a presentation on behalf of the Planning Board.

James Cofield stated that the Planning Board discussed the issue and approved it unanimously.

Town Attorney Hobbs asked if any members of the public wished to address the proposal. There were none.

Town Attorney Hobbs asked if Council had any remaining questions. There were none.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and reminded Council that they were sitting as a legislative body and in order to adopt the ordinance on the first read, it would require a two-thirds vote of all members, which was four members. He turned the meeting over to Mayor Kingston for deliberation.

Mayor Pro Tempore Thibodeau moved to approve Ordinance 22-08 as presented.

Motion carried 5-0.

#### **OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS**

There was no Old Business to discuss.

#### **NEW BUSINESS**

There was no New Business to discuss.

#### **ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY**

Town Attorney Hobbs stated that he had nothing to report.

#### **ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER**

#### **Departmental Updates**

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

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

Police Lieutenant Melissa Clark was recognized to speak. Police Lieutenant Clark gave a brief overview of the past month's police activities to Council and the audience.

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

### **August FY 2023 Financial Presentation**

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

### **MAYOR'S AGENDA**

Mayor Kingston stated that the mayors/chairmen meeting scheduled for August was canceled and has not been rescheduled for September. He stated that the Albemarle Commission will be holding a meeting on September 8, 2022 via Zoom regarding the grant that came to all of the counties for broadband access. He was not sure how Duck will play into that as the Albemarle Commission would be controlling the grant. He stated that Town Manager Havens would be representing him on a meeting with CSI and the Town of Nags Head regarding wastewater. He thanked Director Legner and Public Relations Assistant Betsy Trimble for a great summer event season.

### **COUNCIL MEMBER'S AGENDA**

Mayor Pro Tempore Thibodeau thanked everyone for their hard work on all of the events the Town holds. She congratulated Fire Chief Black for representing Duck nationally with the International Association of Fire Chiefs. She gave a short update on the Outer Banks Tourism Board meeting to Council and the audience.

Councilor Mooney stated he had nothing to report.

Councilor Whitman thanked Director Legner and Assistant Trimble for their work with the summer programs.

Councilor Schiano stated he had nothing to report.

### **OTHER BUSINESS**

#### **Additional Public Comments**

Mayor Kingston opened the floor for public comments.

Robert Wetzel of 141 Betsy Court was recognized to speak. Mr. Wetzel stated that he was surprised and disappointed earlier in the meeting with regard to some of the negative comments that were directed at members of the Council and Planning Board for some

actions that had been taken or not taken. He felt that the comments were unfounded with regard to transparency. He pointed out that over the last few years he had tried to pay attention to what happens in Town and found that if someone reads what is available on the Town's website, called Town staff or volunteered, that transparency was not an issue. He added that integrity was also not an issue with regard to Town activities that are conducted. He thanked Council for their service to the Town.

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

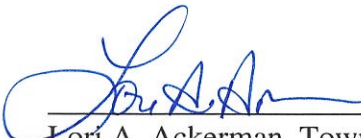
Mayor Kingston noted that the next meeting would be the Regular Meeting on Wednesday, October 5, 2022 at 6:00 p.m.

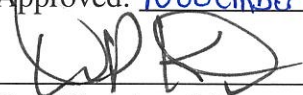
**ADJOURNMENT**

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0.

The time was 10:57 p.m.

  
\_\_\_\_\_  
Lori A. Ackerman, Town Clerk

Approved: NOVEMBER 2, 2022  
  
\_\_\_\_\_  
Don Kingston, Mayor

