

APPROVED

TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
April 13, 2022

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, April 13, 2022.

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

Absent: None.

Also present were: Council Liaison Sandy Whitman, Planning Consultant Donna Creef, Senior Planner Sandy Cross and Deputy Town Clerk Kay Nickens.

Others Present: Dave Klebitz of Bissell Professional Group, Paul Henriques of PCI Construction, Tom Stewart, COO of Resort Realty and Mark Kasten of Cahoon & Kasten Architects

Chair Blakaitis called to order the Regular Meeting of the Planning Board for April 13, 2022 at 6:29 p.m.

PUBLIC COMMENTS

Reid Carter of 153 Speckle Trout Drive thanked the Board for listening to the public. Mr. Carter stated that he has reviewed the proposed plans and said that the proposal is over-built and that the applicant is looking for exceptions which the Board should not grant. Mr. Carter pointed out that parking is the most easily identifiable problem and described how his former business faced challenges with parking and seating. He said that there are only two access points onto the property and those access points are dead ends which will inevitably lead to traffic flow challenges. Mr. Carter also noted that there is not enough vegetation and re-emphasized that the plan is over-building the size of the lot, in which case the Board should not recommend approval of the project.

Dennis Wojcik of 103 Dune Road thanked Senior Planner Sandy Cross and Community Planner Jim Gould for taking the time to explain the plan and project and that he has submitted correspondence to the Board regarding the specific issues that are problematic. Mr. Wojcik explained that his concerns lie with the ingress and egress points as well as the on-site traffic circulation. He noted that based on his review of the project plans, a left turn lane seems feasible, and he would like the Board to approach Council with that addition into the project.

NEW BUSINESS

SUP-22-001: Application by Bissell Professional Group, on behalf of property owner Phantom Enterprises, LP for a special use permit to redevelop the existing property in the Village Commercial (V-C) district at 1248 Duck Road, PIN 985911761927, as a group development to include a 49-seat restaurant with two (2), three story buildings each with

1,250 sf 1st floor retail space and 3-bedroom accessory dwelling units on the 2nd and 3rd floors. Application of the Village Commercial Development option is requested to reduce the number of on-site parking spaces, and a reduction of required rear setback requirements.

Planning Consultant Creef stated that Phantom Enterprises owns 1248 Duck Road, which features one commercial structure on the property that was used for real estate offices for Resort Realty. This property has been vacant for a year and a half and the property owner is seeking approval to demolish the existing structure and redevelop the site with three commercial structures. The new structures will be dedicated to retail and restaurant uses with residential uses on the second and third floors of two of the structures. Walkways and decks will connect the buildings and extend over the Currituck Sound. A site plan depicting the proposed improvements is included with the staff report. The proposed development is subject to special use permit review because of the restaurant and the proposed multiple buildings on the site. Multiple structures on the site are considered a group development. Both trigger special use review under the Village Commercial District (VC) zoning regulations. Additionally, the applicant is seeking special use approval under Section 156.065 for parking reductions and reductions of the rear yard setback requirements of the Village Commercial (VC) zoning district.

Planning Consultant Creef continued by explaining that the subject property is 30,145 square feet in total area with 1,030 square feet of coastal marsh and 2,289 square feet of 404 wetlands resulting in a net non-wetland area of 26,827 square feet. The site is zoned Village Commercial (VC). The existing structure was constructed in 1985 and contains approximately 6,000 square feet of heated space. She noted that the adjoining property to the north is owned by Duck Ridge Shores Civic League and used for sound access by Duck Ridge Shores Subdivision property owners and residents. This property is also zoned VC. The adjoining property to the south is developed commercially as Duck Waterfront Shops and zoned VC. Across NC 12 to the east of the site is lot 13 of the Duck Ridge Shores Subdivision which is zoned RS-1 residential.

Planning Consultant Creef stated that there are several sections of the ordinance which apply to the proposal including:

Section 156.036 VC Village Commercial

(B) (2) Retail

(C) (4) Eating Establishments

(C) (5) Group Developments

Section 156.059 Group Developments

Section 156.065 Special Use Permit VC Development Option

(B) (1) and (B) (3) Parking Reduction

Section 156.110-117 Commercial Development and Design Standards

Section 156.129 Eating Establishments

She stated that other standards for off-street parking and loading; signs, outdoor lighting, and land disturbance will also apply to the redevelopment activities as well.

Planning Consultant Creef stated that the existing real estate office building will be demolished and that three new mixed-use structures with associated parking, wastewater system, decks and boardwalks, landscaping and other site improvements are proposed. Section 156.036 (C)(4) establishes a maximum gross floor area of 5,000 square feet of heated space for commercial structures. Building C will be two-story with 1,936 square feet of space on the first floor and 864 square feet on the second floor for a total of 2,800 square feet. Building B features 1,250 retail space on the first floor with a 3-bedroom residential apartment on the second and third floors for a total of 3,083 square feet. Building A features a first-floor retail area of 1,250 square feet with a 3-bedroom residential unit on the second and third floors for a total of 2,771 square feet. All the structures are consistent with the gross floor area limitation. Section 156.059, Group Developments, requires a separation distance of 20 feet between each structure unless a fire suppression system is used; if a fire suppression system is used then the separation can be decreased to ten feet. She pointed out that the site plan indicates ten feet of separation. A fire suppression system will be needed in the structures to comply with this 10-feet of separation and will be confirmed during the building plan review process.

Planning Consultant Creef explained that the restaurant is proposed for 42 indoor seats with 7 additional seasonal seats provided. Section 156.094 allows for an increase of 25% of seating capacity or 18 persons, whichever is less without additional parking. The number of proposed seasonal seats is consistent with this requirement. Planning Consultant Creef pointed out that a building rendering of the east and west elevations of the structures has been submitted with the site plan and these renderings of the buildings have been revised based on comments provided during the technical review process and noted that the revised architectural drawings in the renderings are more consistent with the commercial design standards of Section 156.111. Front facades are emphasized and offer shelter to patrons; there are varying roof line designs and front facades; and window placement appears to be consistent with the threshold established in the guidelines.

Planning Consultant Creef continued by explaining Section 156.065 (B) (1) which states that structural setbacks cannot be reduced by more than 50%. The VC district establishes a rear yard setback of 20 feet. A reduction of 10 feet in the rear yard setback is requested by the applicant for Buildings A and B. The site plan depicts the normal water line (NWL) adjacent to the public boardwalk to be 10.1 feet from the northern corner of Building B and 11.8 feet from the front of Building A. She stated that these setbacks do not exceed the 50% reduction threshold established in the zoning codes.

Planning Consultant Creef pointed out that a total of 34.5 spaces is required for all the proposed uses and that the applicant is requesting a reduction of five spaces for a total of 30 on-site parking spaces. Section 156.065 (B) (3) of the zoning code allows for a reduction in parking of 5 spaces or 20% of the total parking. This reduction is consistent with the criteria set forth in the zoning code and may be authorized as a special exception.

Planning Consultant Creef stated that additional plans for outdoor lighting consistent with Section 156.116 and 156.133, a landscaping and buffer plan consistent with Section 156.114 and 156.115, and additional details on proposed signage will be needed. Submission of these supplemental plans should be included as a condition of the special use approval.

Planning Consultant Creef pointed out that other reports were obtained from the Town engineer, fire, police, water service and waste water systems as well as other governmental agencies. She stated that Section 156.065 of the Code, a special use can be granted by the Town Council making findings that substantial evidence has been provided to document the development proposal complies with the following criteria:

1. The development proposal is consistent with the adopted vision and comprehensive 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 modifications will not negatively impact adjacent properties or the surrounding area.

Planning Consultant Creef stated that this also must be reviewed for consistency with the 2027 Duck Vision Statement. There are nine policies outlined that are applicable to this particular special use:

2.2.1 Explore opportunities to extend the pedestrian connection northward to the next commercial cluster.

2.2.2 Explore opportunities to increase the number of pedestrian access points between Duck Road sidewalk and the boardwalk.

2.2.3 Add new connections between adjacent businesses and the Duck Boardwalk.

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

4.3 Enhance the character and success of Duck Village and commercial areas.

4.3.1 Support the development of small, specialty-type shops and the vitality of existing, local businesses.

5.2: Enhance the town's reputation as a multi-generational, travel-and-recreate tourist destination, with a unique, small-town, neighborhood feel.

6.4: Reduce runoff through minimizing impervious surface coverage, encouraging tree preservation, and accommodating low impact development solutions to stormwater management.

8.1 Maintain existing improvements and enhance opportunities for pedestrian, bicycle, and other forms of transportation in Duck.

Planning Consultant Creef explained that the proposed redevelopment plans incorporate bike and pedestrian improvements into the site and provide for future connections to adjoining properties and NC 12. The boardwalks will also provide connections to the adjoining property to the south. The existing improvements were constructed in 1986. The amount of impervious coverage will decrease with the redevelopment activities. The proposed three new structures will feature building designs, lighting improvements, and landscaping consistent with the zoning regulations

of the VC district for commercial development. The scale of the buildings and architecture are consistent with the commercial building guidelines and will replace an older structure with newer structures that are visually-pleasing. There will be space for new retail shops and food service, adding more opportunities for visitor experiences along the public boardwalk and will contribute to the Duck Village vibrancy and ambience. Although not mentioned in any of the policies above, the inclusion of residential units may provide opportunities for employee housing, which assists with the vitality of local businesses. The proposed redevelopment will not introduce any negative impacts on the surrounding properties but will enhance connectivity for the public along the boardwalk. The requested reductions in parking and rear yard setbacks are consistent with the thresholds set forth in the Village Commercial Development Option and are consistent with other commercial development in the area.

Planning Consultant Creef concluded by saying that it is staff's recommendation that this plan is consistent with the 2027 Duck Vision Statement, the Duck Comprehensive Land Use Plan, and the Duck Zoning Ordinance, therefore a special use permit for the development is recommended for approval. She stated that there are twelve conditions that are recommended to be included in recommendation that goes to Town Council:

1. The applicant must obtain a land disturbance permit from the Community Development Department prior to engaging in any fill or grading activity on 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 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 the Dare County Environmental Health Department for the design and installation of the proposed wastewater treatment system improvements prior to the issuance of a land disturbance or building 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 Environment Concern (AEC) prior to the issuance of a land disturbance or building permit.
8. The buildings must be constructed in substantial conformance with the elevation drawings and floor plans submitted with the SUP application, as prepared by Cahoon and Kasten Architects dated 3-15-2022.
9. The applicant must submit the final site plan and site plan review fees as provided for in the Town's adopted fee schedule concurrent with final engineer-stamped site plan drawings, as may be revised through the approval and condition process, with all required information referenced in the SUP conditions, prior to issuance of a building permit for the project.

10. That the applicant, for public purposes, shall grant to the Town of Duck an easement as shown on the attached Exhibit E, being generally described as "8' wide access easement for public boardwalk extension by Town of Duck and sidewalk connection to match access to boardwalk" along the northern property line running from west to east, and an easement for possible future boardwalk extension to connect with existing boardwalk at Waterfront Shoppes along the western portion of the property north of the coastal wetlands. Such easement shall be shown on the final site plan for the proposed development of the property, a deed of easement to the benefit of the Town shall be prepared and accepted concurrent with final site plan approval and such easement shall be duly recorded in the Dare County land records prior to issuance of a building permit for the development of the property.
11. The 8' wide access boardwalk connection must be designed by an engineer to comply with the standards and specifications of the Town's boardwalk and applicable codes.
12. This special use permit will expire in 18 months from the date of approval unless construction of the proposed development has commenced.

Planning Consultant Creef noted that some public comments she heard regarded the dead-end parking lot and she would let Engineer Mike Robinson address those concerns. She pointed out there have been other modifications that the town has allowed for commercial development and the fact that the zoning ordinance establishes the sections that may be modified reflects the intent of the ordinance.

Engineer Mike Robinson stated that in his review of the parking lot, the drive- aisle width is sufficient and though there are not many parking spaces particularly in the North lot, he does not have any issue with the configuration. He pointed out that a turn- out would be nice, but it is not necessary and stated that the parking lot at Town Hall is similar to what is proposed and it works well. He explained that the proposed parking area is not an ideal situation, but it is also not unreasonable. Mr. Robinson stated that the South lot has the benefit of a handicap access with a van- accessible space next to it which could serve as a functional turn around if needed. Mr. Robinson stated that NC Department of Transportation tentatively has no issue with the plan as proposed and that they are comfortable with the curb cuts and pointed out that the way the driveway is configured in the proposal is an improvement to what exists currently. Mr. Robinson concluded by stating that he is comfortable with the parking plan as designed.

Vice Chair Cofield questioned if the driveway complies with Town Code. Mr. Robinson stated that this is a redevelopment which is utilizing the existing parking lot which he would assume is compliant with Town Code. Planning Consultant Creef added that the key word in this discussion is that this proposal is a redevelopment of an existing commercial site, not a new development. She explained that the concerns heard regarding the parking area cite sections in the zoning ordinance that pertain to new developments, which are not applicable to this proposal.

Planning Consultant Creef stated that comments were received from David Otts, NC DOT District Engineer for District 1 regarding the site plan. Mr. Otts stated that the proposed ingress and egress are an improvement of what is on site currently. Planning Consultant Creef stated that a left- turn lane was not addressed but it is something that can be followed up on. She also noted that the

engineer who is involved with the BRC Grant, VHB, has reviewed the site plan as well and does not have any issue with the proposal.

Member McKeithan pointed out that while this proposal is a redevelopment, this proposal is entirely different due to the scope of the change of use and there would be increased traffic from the site. He asked if Mr. Otts was aware of the change of use of this property when he conducted his review. Planning Consultant Creef stated that Mr. Otts was provided a copy of the site plan for review, and though she couldn't say for certain that he was aware of the intended use, one would have to assume that he would acknowledge that traffic would be increased. She emphasized that this redevelopment of the site does upgrade the parking lot and intensifies the use of the property, but the project does meet impervious lot coverage and CAMA coverage as well. She stated that it is important to note that the current impervious coverage and CAMA coverage will decrease because of the redevelopment, not increase.

Chair Blakaitis asked if there have been any attempts to change the roadway situation. Mr. Robinson stated that in a Zoom conference with a representative with VHB, extending the turn lane was discussed and that is being studied by them at this time. He pointed out that while the turn lane would be nice to have, he is not sure that it is entirely necessary due to super elevation and good visibility from the lot. Senior Planner Cross added that VHB is actively reviewing this and they have been working with DOT regarding the crosswalk location as well and they hope to have definitive answers soon.

Chair Blakaitis called for public comment on a matter that has not been addressed.

Rick Fagersten of 101 Dune Road stated that he lives directly across from the project site. He is concerned with garbage trucks collecting trash at early hours in the morning backing into the road and the noise associated with that collection. Mr. Fagersten questioned if while the parking spaces were being reviewed, what size vehicle was being used in parking space measurement because some individuals may have a difficult time getting out or into their car if they cannot fully open the door. He stated that the term "redevelopment" is a cover and this is a new development: they are starting with a clean slate and constructing three buildings in a space that previously only had one. Mr. Fagersten noted that he is deeply concerned with this project and giving exceptions to policies for building within the Town.

Dennis Wojcik of 103 Dune Road read an excerpt from the NC DOT Policy on Street and Driveway Access. He read that the location of street intersections and driveways is critical for minimizing potential impact to vehicular and pedestrian traffic and in the interest of public safety and mobility, the NCDOT may prohibit, restrict, or modify the placement of a driveway or street along the property owner's frontage. Every effort shall be taken to prevent access connections and median breaks within the functional area of an intersection. He stated that the northern driveway is in a functional area of the Duck Road and Dune Road intersection and that the changes shown on the plan are bringing it more into the functional area which is not a good design. He added that this proposal is not a redevelopment as the entire site is going to be demolished, including the parking because the site plan shows new parking, not reused. Mr. Wojcik noted that even if this project is looked at as a redevelopment, turning is still problematic and that using a handicapped aisle as a turnaround is inappropriate. He quoted a section from ADA standards that states, "access

aisles should not overlap vehicular way” and that vehicular way is defined as route intended for vehicular traffic such as street, driveway, or parking lot. If it is meant to turn around cars, it’s a vehicular way, against ADA standards.

Planning Consultant Creef clarified that the size of the parking spaces permitted by the Town per the Town Code is 9’ x 18’ and all the spaces on the site plan meet that standard.

Reid Carter of 153 Speckle Trout Drive pointed out that the parking regulations do not account for the additional parking that may be needed for boardwalk and while the boardwalk has not yet been extended, it is indicated as such on the site plan. People regularly go to the Waterfront Shops and park there to view sunset and the Board needs to acknowledge this amenity has a parking demand as well. Mr. Carter noted that the six bedrooms in the apartments will also have a parking demand as those will be residents, not people coming and going, and if those residents are employees of the retail spaces, those parking spots would be taken for much longer. He emphasized that the property is being over-built and the Board needs to understand that they are setting a precedent by granting exceptions to standards that are set in place. Mr. Carter suggested that the applicant could consider modifying the building from a three-story to a two-story building, have one bedroom apartments instead of three bedroom apartments, or have two buildings instead of three buildings. He stated that the bottom line is that this is an over-building of this particular lot, and he is against the exceptions of standards in place.

Jay Blose of 105 Waxwing Court asked for clarification on the connectivity to the waterfront shops as he did not see that reflected on the submitted drawings and it is something that should be explored as part of the development proposal. Senior Planner Cross stated that there is an easement on the drawing that shows future, proposed connection but there are no actual plans at this time. She added that both property owners have authorized the connectivity via a public boardwalk extension but there are no concepts for that extension at this time. Mr. Blose asked if that extension would be a Town responsibility or that of this project to which Senior Planner Cross stated it is a matter to be determined.

Dave Klebitz of Bissell Professional Group introduced Tom Stewart, COO of Resort Realty, Paul Henriquez, owner of PCI Construction and licensed commercial contractor, and Mark Kasten, licensed architect of Cahoon and Kasten Architecture Firm in Nags Head. Mr. Klebitz stated that they have a combined 75 years of local design build experience in the Outer Banks and that they have been working with Town staff to get the plan to the point of being presented to the Board including site visits, two technical reviews with staff and Town Public Safety, CAMA and DOT. Mr. Klebitz reiterated that DOT has no issue with the plan. He stated that they put a great deal of time and effort into making sure that the proposal meets the required standards to comply with the ordinance, CAMA, Comprehensive Land Use Plan, and the 2027 Vision.

Mr. Klebitz noted that the exceptions being requested are permissible within the Town’s Ordinance and justification can be made for allowing the respective exception. He pointed out that no exception can be made for building separation and indicated that the site plan shows where fire suppression systems will be installed for all buildings which meets the requirements of the ordinance and state building code if a sprinkler system is in place. Mr. Klebitz indicated that the site plan also reflects the footprint of the current structure and that two of the three proposed

buildings mostly fit into the current footprint and that in a way, the plan is only proposing one additional building.

Mr. Klebitz reiterated that the State and CAMA have stated that the project is in compliance with code and requirements and added that the intensity of lot coverage is a reduction of what is already in place by reducing runoff, providing stormwater measures and an engineered pre-treatment septic system which treats effluent from the site to much higher standards before it goes into the ground making it environmentally beneficial.

Mr. Klebitz pointed out that there are 33 parking spaces in the current parking lots and the applicant is asking for 30 parking spaces which is below the requirement but also within the limits allowed by the ordinance. He noted that it is important to recognize the intensity of the plan as they are only requesting 30 parking spaces for the space. They are not creating a space which would require 60 parking spaces which would consequently double the traffic flow. Mr. Klebitz explained that they are using the two existing curb-cuts that currently don't connect as well as using the two existing parking lots and their current location. The current 6,000 square foot building is proposed to be two buildings and adding one extra building. The mixed use of residential, retail, and restaurant, location, and building design are consistent with the character of the Duck Village and there are many sites along the boardwalk that are like this proposal. Mr. Klebitz added that this project also has a proposal for a boardwalk extension which would allow for great walking circulation which is a great justification for a reduction in the number of parking spaces required. If the ordinance allows a reduction in parking, this is the most appropriate scenario as there is development at the end and at the juncture of the Town's boardwalk and sidewalk, promoting pedestrian activity.

Mr. Klebitz stated that should this project move forward and be approved by Council, they would then begin the process of final design including stormwater systems, wastewater systems, and sprinkler and water systems. Once in the permitting stage, they would obtain all required permits including NCDOT for the driveway connections and any encroachments. Mr. Klebitz explained that the District Engineer reviewed the plans and is not concerned as there are two existing driveway connections on a 25 mph road nor was the quantity of parking spaces a cause for concern. Mr. Klebitz added that he does see the benefit of having a turn lane. The southern parking lot has a center taper of about 8 feet wide whereas the VHB plan reflects a full width, 10 foot wide center lane and that there is the possibility to extend the full width left turn lane to the southern lot but it would not be worthwhile to do so for the north lot as there are only nine parking spaces. Mr. Klebitz stated that he has had conversations with the local health and water department and both entities have been accepting of the proposal.

Vice Chair Cofield asked if the project owner is present. Mr. Klebitz stated that the representative for the project owner is present. Tom Stewart of 214 W Lost Colony Drive in Nags Head stated that he is the Chief Operating Officer for Resort Realty and that the owner is not present, but Resort Realty is responsible for the property and it's use and development.

Vice Chair Cofield questioned the number of apartments with three bedrooms along the boardwalk. Senior Planner Cross stated that there are apartments along the boardwalk but she is

not sure about the number of bedrooms in each. The old Town Hall office is an apartment; there is an apartment above Amity, and Wings has an apartment as well.

Vice Chair Cofield stated that a fair amount of the project analysis has been based on the project being considered a redevelopment however the parking and use is different; the building is being demolished with a new building being constructed. He questioned how a redevelopment project is defined when the site being used is not a virgin site.

Planning Consultant Creef explained that a new development is a vacant piece of property that has never had any structure on it; it is not a site that has an already existing 6,000 square-foot building that will be demolished and replaced with other structures. She added that there will be new buildings, but the property is an improved property and has been taxed as such and even if the project was considered a new development as opposed to a redevelopment, it would still be consistent with the ordinance requirements. The exceptions that are requested are anticipated in the ordinance as well. Planning Consultant Creef explained that the fire suppression and ten-foot separation exception is not an exception but a blanket allowance consistent with the fire code.

Vice Chair Cofield restated his question by asking if there is any building or development on a site that is not virgin land that you would not consider redevelopment. Planning Consultant Creef stated that she did not understand Vice Chair Cofield's question but, in her mind, if there is a piece of property that has a structure on it, it is a redevelopment.

Member Murray addressed a comment regarding the development up to the North property line. He stated that on the rendering, an easement is indicated but it is hatched so one might consider it as an extension of the decking. Mr. Klebitz clarified that this may be the case. Member Murray questioned the developer's plan for that area to which Mr. Klebitz stated that the plan is to develop the plan as indicated on the drawings; the area is hatched as it is intended to be set aside as an easement to be granted to the Town so the Town may extend the boardwalk through the indicated area to connect to the sidewalk. Member Murray stated that he wanted to point out that the hatching was an easement, and that no development is proposed at this point since there was a concern expressed by an individual at the meeting.

Mr. Reid Carter addressed his concerns with the foliage on the site and the neighboring property as well as his concerns with the parking including employee parking as well as the potential need for parking for the viewing tower with accompanying informational displays that had once been mentioned. Mr. Carter stated that the tower is an amenity that should have parking as well. Mr. Carter added that he is not against the project, but he is against the fact that it is over-built; the applicant can reduce the number of buildings from three to two; they could change the number of stories and number of bedrooms. Mr. Carter questioned if the apartments would be an Airbnb since that is the most lucrative use and if so, how would those families access the beach?

Mr. Stewart clarified that he has heard and read all of the comments received and they are taken to heart. He explained that in the history of working with the Town, generally if the Town suggests something, he will move forward with that suggestion. Mr. Stewart stated that he wants this to be a quality project that the Town can be proud of and something that would mesh with the current architecture of the boardwalk. He added that the existing Resort Realty structure was built in the

1980s and does not match with the current aesthetics of the Town. When the facility was a full-scale property management office, there were ten agents working in the facility, five property managers, two maintenance technicians and work vans. Resort Realty oversaw 150 properties in Duck and Southern Shores. Mr. Stewart pointed out that this was prior to keyless entry so the site was extremely busy and at this time, that is not the case since it is a vacant piece of property and an eyesore. Mr. Stewart stated that he hopes to obtain all necessary permits and approvals to turn the property into something to be proud of and while the process can be bumpy, he intends to be a good neighbor and make something everyone is proud of. Mr. Stewart added that he had also spoken with Mark Sullivan and William Gray from the community across the street from the project site and discussed blocking off the community's soundfront amenity as this is something Mr. Stewart is willing to accommodate since he wants to work with the HOA and do what needs to be done within reason to make the project work for everyone.

Vice Chair Cofield asked for the rationale for not making the entire parking lot and driveway entirely of pervious material. Mr. Klebitz explained that while this may be something they have to do in the end, what is currently proposed is what is required by the Town's Ordinance since the ordinance requires a certain amount of pervious surface and a certain amount of impervious surface to be installed. Mr. Klebitz added that what is being proposed is what the Town requires as a minimum but once they start the final design of the project and once they start obtaining stormwater and runoff calculations, they may need more storage or reduce runoff in which case the first thing the applicant would do is expand the amount of pervious concrete that is being proposed.

Vice Chair Cofield asked Mr. Klebitz if he was aware of the Town and resident's thoughts regarding stormwater and runoff. He pointed out that some properties have utilized pervious surface parking areas such as Town Hall and The Village Table and Tavern since it is the best thinking environmentally. Vice Chair Cofield added that he is struck by Mr. Klebitz's answer of simply meeting the minimum requirements.

Mr. Klebitz stated that cost is also a factor because there is a substantial difference in the cost between regular concrete and permeable concrete; he would not be doing his client any justice by flat out specifying twice as much pervious concrete that costs three-times as much when it is not required for any reason. Vice Chair Cofield clarified that his statements regarded pervious material, not concrete and questioned if the applicant was doing the Town justice. Mr. Klebitz responded by stating that they are doing the Town justice because they are meeting all of the Town requirements.

Vice Chair Cofield questioned why the project wasn't made to have one bedroom as opposed to three bedrooms and added that he does not believe that there are any three- bedroom units along the boardwalk. He stated that there is only one building along the main boardwalk that is an office and asked if there was a reason why the project is not two one-bedroom apartments. Mr. Stewart answered that it is the highest and best use of the land since this is something that is going to be an investment, they want to see the project that provides the greatest return. He stated that he wasn't sure how the number of bedrooms in the apartment affected the project, but it is something they would like to offer.

Vice Chair Cofield stated that the number of bedrooms affects the number of parking spaces needed, building height, and intensity of the site. Mr. Stewart stated that they considered the best way to take advantage of the redevelopment and they would like to see three bedrooms and in upon reviewing the prior use of the property, he believes that what is being proposed can be accommodated and added that three bedrooms doesn't necessarily mean three vehicles.

Member McKeithan stated that his biggest concern is that the project is overbuilt and whoever ends up in the restaurant and retail space will have parking issues. He added that if the regulations call for 35 spaces, then he believes they will need every parking space that the formula calls for.

Member Morton addressed Section 156.036 (B)(8) in the Town Code and stated that dwellings that exist overtop of commercial buildings cannot exceed 50% floor space of the commercial building floor space. He stated that both apartments are over 1250 square feet each and assuming that this is viewed as a group development, then the entire space of the group development was considered in making the size of the apartments compliant. Member Morton explained that Building A has a floor area of 2172 square feet; Building B has a floor area of 3083 square feet; and Building C is 2800 square feet, creating a total of 8654 square feet of commercial floor space. He stated that the apartment above Building A is 1521 square feet and the apartment over building B is 1521 square feet, creating a total of 3354 square feet. Member Morton said that he assumed that in reviewing gross space for the group development project, the total square footage was divided by two.

Mr. Klebitz stated that the section of the ordinance cited is specific to the village commercial section in the permitted uses table. Senior Planner Cross added that this was correct. Mr. Klebitz continued by explaining that his interpretation of the ordinance is that the table is for an individual who does not require a special use permit or a Board review because the use is already permitted. The applicant would be able to submit a permit to the zoning department and the Board would not be involved in the review. Mr. Klebitz clarified that the reason that this is before the Board is because this project is considered a group development which does require a special use permit.

Planning Consultant Creef clarified that the ordinance states that an accessory structure above a commercial structure, that accessory structure can only be 50% of the floor area of the commercial floor area. She added that based on the numbers and calculations, this has been applied to the entirety of this group development. Senior Planner Cross confirmed that she has had discussions with Planning Director Joe Heard in regard to the square footage and he has confirmed the application of the accessory square footage based on the square footage of the entire project.

Chair Blakatis asked if the apartments would be for employees or if there would be a reduction for employees since there is a housing shortage. Mr. Stewart stated that they purposefully have not designated the apartments as anything other than employee housing and added that employee housing would be ideal for those apartments. Chair Blakaitis questioned if employee housing is something Mr. Stewart would consider to which Mr. Stewart stated that they would absolutely consider employee housing. Chair Blakaitis followed up by asking if Mr. Stewart would attest to that at this time. Mr. Stewart clarified Chair Blakaitis's question of attesting to consider employee housing to which Mr. Stewart attested that they would consider employee housing. He added that

employee housing is something actively being reviewed. Member Morton added that employee housing would be good for merchants in Duck.

Chair Blakaitis called for Board discussion as there were no other questions.

Mr. Robinson added that when this project goes for full- engineering, the project will use much more permeable paving. He explained that there are ways to manage stormwater runoff and store stormwater in the gravel below permeable pavers. Mr. Robinson stated that he is comfortable with coming up with a solution to keep the sidewalk from flooding.

Member Morton stated that the applicant has worked with the town and technical reviews to address issues to bring the project into compliance. He pointed out that the contingencies as listed by Town Staff need to be met in order for this project to be finalized. Member Morton stated that he is fine with moving forward with the project.

Chair Blakaitis asked Senior Planner Cross if she thought that any part of this project is a problem with the 2027 vision. Senior Planner Cross responded by stating that she did not think so.

Vice Chair Cofield stated that this project is a creative use of the site and that it is headed in the right direction, but it is not quite there. The intensity of the site is too dense and the applicant is trying to maximize too much and has negative impacts. The project as proposed is moving in the opposite direction of what the citizens of Duck want; it adds to parking issues and it increases traffic problems. Vice Chair Cofield stated that there are things the applicant can do to make this a better project such as reducing the number of bedrooms from three to two, subsequently reducing the number of parking spaces required. He stated that the citizens of Duck have been very outspoken about parking and traffic problems and this project increases those concerns and added that this is an attractive project, but the applicant is trying to do too much on site. Vice Chair Cofield stated that most developers intend to maximize income from a project and in doing so, there are negative impacts for the Town and citizens so as the project is proposed, he is not in favor of the proposed project.

Member Murray stated that he agrees with Member Morton and that this project clearly meets the requirements of the ordinance. He added that he is open to a condition regarding the treatment of the easement to give privacy to the association area to the north, which could then be granted to the Town in the future if needed if the applicant was open to adding that condition. Member Murray pointed out that the ordinance is designed in such a way that these exceptions are written into the ordinance, enabling the applicant to make the case for the requested exceptions and that it is not the developer's responsibility to ameliorate the issues. He explained that that responsibility falls on the Planning Board and changing the ordinance. Member Murray stated that with the application and ordinance that the Board has, he is comfortable with the project as presented.

Member McKeithan stated that he likes the project, but it is overbuilt. The project is going to increase the parking problem and the traffic problem on Duck Road. He explained that he is not in favor of the project as designed and would prefer to see the project smaller in size that would create a requirement for less parking.

Chair Blakaitis stated that he likes the project, but he thinks it is over-done and not ideal for the Town. He added that there are some loose ends that can be addressed to give people a better reason to like the project, but with the current configuration, he cannot support the project. Chair Blakaitis said that he does agree with Vice Chair Cofield and Member Murray, but more work needs to be done before it is approved.

Member Murray pointed out that the parking is the main issue for the Board and that the Board is permitted under the ordinance to make conditions that Staff hasn't already added to the proposal. He asked if considering any reduction in the number of bedrooms or removing a floor from a building would satisfy the Board, and if it does, then it is in the applicant's interest to consider doing so as well. Mr. Stewart stated that he was open to hearing suggestions if it would help the applicant as well as hearing specifically what the Board would advise.

Member Murray asked the Board if they were open to reducing the number of bedrooms as this would reduce the parking exception that is being requested. Member McKeithan added another option of potentially reducing the retail square footage. Member Murray reminded the Board that when the Village Commercial Development Option was modified, the Board eliminated the ability to reduce the rear yard setback by 50%. If the Board had not done that, the building would likely be 10 feet closer to the sound which would yield more parking spaces. He added that the Board is in this situation partly because of the decisions made by the Board.

Vice Chair Cofield stated that he did not want to redevelop the project as it is not the job of the Board. He added that there are too many loose ends and the only project he is speaking to is what is currently being presented.

Mr. Klebitz stated that regardless of how parking is being reduced, the issue is the number of parking spaces. If the Board imposes a condition or requirement for the parking, then the applicant wouldn't be requesting an exception but instead working to meet conditions of the ordinance exactly.

Member McKeithan questioned the exact number of parking spaces that are being discussed. Senior Planner Cross stated that the number of spaces is 34.5, but it rounds up to a total of 35.

Planning Consultant Creef stated that it appears to be that the consensus of the Board is that a reduction in parking is not agreeable and asked the Board to give the developer specific instructions or direction and advise what exactly the Board finds distasteful about the site plan.

Vice Chair Cofield pointed out that there were many issues discussed tonight and reiterated that it is not the Planning Board's job to tell an applicant what to do to obtain approval.

Chair Blakaitis added that the size of the development is a concern as well and agreed that there are too many little pieces to be discussed.

Mr. Carter commented that individuals from the neighborhood have attempted to meet with Resort Realty to have advanced conversations regarding the project. He stated that he agrees with Vice Chair Cofield that the proposal needs more work to address other issues.

Chair Blakaitis called for a motion. Vice Chair Cofield motioned to recommend denial of the application by Bissell Professional Group, on behalf of property owner Phantom Enterprises, LP for a special use permit to redevelop the existing property in the Village Commercial (V-C) district at 1248 Duck Road, PIN 985911761927, as a group development to include a 49-seat restaurant with two (2), three story buildings each with 1,250 sf 1st floor retail space and 3-bedroom accessory dwelling units on the 2nd and 3rd floors. Chair Blakaitis seconded the motion.

Member McKeithan commented that he is not opposed to the setback exception, but he cannot make an exception for the parking requirement.

Chair Blakaitis called for the vote. Chair Blakaitis, Vice Chair Cofield, and Member McKeithan voted in favor. Member Murray and Member Morton voted against the motion.

Motion passes 3-2.

Text Amendment Consideration: Subsection 150.26(C)(1) – Elevation Certificate Requirements

Planning Consultant Creef said presently, the Flood Damage Prevention Ordinance (FDPO) requires that elevation certificates be provided to document the compliance of structures in Shaded X and Unshaded X flood zones at the completion of the development process. A local contractor has questioned the necessity for an elevation certificate (provided by a surveyor) in situations where the structure or lot elevation can be established by other means. Staff felt this proposal had enough merit to study the ramifications of such a change and propose an amendment if deemed beneficial. Council agreed, and Community Development staff brings this discussion for further consideration by the Planning Board. Other jurisdictions in Dare County including Dare County vary in their requirements but most waive the requirement for an elevation certificate for a property that is in a Shaded X or Unshaded X zone if it can be demonstrated during the construction process that it meets the local elevation standard.

Chair Blakaitis asked if this was something that had already been done. Member Murray explained that this was initially discussed but no action was taken as they were waiting for Risk Rating 2.0 to come into effect. Planning Consultant Creef explained Risk Rating 2.0 and reminded the Board that it is a new rating system used by the National Flood Insurance Program.

Senior Planner Cross clarified that for properties in a flood zone, a proposed elevation certificate is required. An under-construction elevation certificate is encouraged but not required. A final-construction elevation certificate is required. She added that for any property outside of a flood zone in a Shaded X or Unshaded X zone, a proposed construction elevation certificate is not required if it can be shown on a survey that the elevation is above the local elevation standard of 10 feet but at the completion of a project, a finished- construction elevation certificate is required. Senior Planner Cross stated that this process has been followed since the new FDPO was enacted and is similar to Kitty Hawk and Nags Head's ordinance requirements.

Vice Chair Cofield questioned if the elevation certificate is an extra cost incurred by the homeowner. Senior Planner Cross stated that it is an added cost and based on the information obtained from four different surveyors, the cost can be anywhere from \$350 to \$600 depending on the property. Vice Chair Cofield clarified that one option is to save the homeowner the cost of doing the elevation certificate. Senior Planner Cross added that this only applies to properties in Shaded X or Unshaded X zones where the survey shows that they are above ten feet.

Member Morton clarified that elevation certificates are not required up front for Shaded X and Unshaded X zones but required at the end. Senior Planner stated that was correct.

Vice Chair Cofield stated that he was unsure of what was being given up by the Board. Member Murray clarified that the Board is not giving anything up. He explained that the Board is making it so that the elevation of a property can be verified through another route as opposed to an elevation certificate. Member Morton added that a homeowner can still obtain an elevation certificate if they choose to.

Member Murray made a motion to adopt the draft ordinance language as presented under option 3 to amend the Duck Flood Damage Prevention Ordinance 22-04:

In Shaded X and X zones, the proposed and under construction elevation certificates are not needed if a current survey of the parcel is submitted that demonstrates the natural grade of the structure footprint is above the RFPE of ten feet. In lieu of the finished construction elevation certificate, an as-built survey of the parcel shall be submitted to certify the finished grade of the parcel is compliant with the RFPE or 10 feet NAVD or above.

Member Morton seconded the motion. There was no discussion. All members voted in favor of the motion.

Motion carried 5-0.

APPROVAL OF MINUTES

Minutes from the February, 2022, Regular Meeting

Vice Chair Cofield made a motion to approve the minutes as presented. Member McKeithan seconded the motion. A roll call vote was taken, and all members voted in favor.

Motion carried 5-0.

STAFF COMMENTS

Summary of February 2, 2022 Regular Town Council Meeting

Senior Planner Cross gave a short summary of the recent March and April Town Council meetings.

Project Updates

Senior Planner Cross gave a short overview on various projects going on in Town.

BOARD COMMENTS

None.

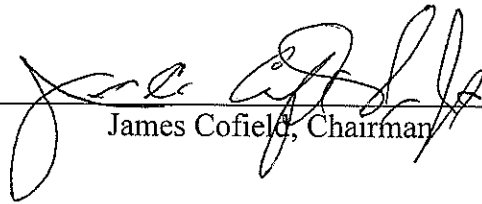
ADJOURNMENT

Vice Chair Cofield moved to adjourn the meeting. Member Morton seconded.

The meeting was adjourned by consensus of the Board members.

The time was 8:34 p.m.

Approved:


James Cofield, Chairman