



APPROVED

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
March 8, 2023**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, March 8, 2023.

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

Absent: Randy Morton.

Also present: Council Liaison Sandy Whitman, Senior Planner Sandy Cross, Director of Community Development Joe Heard, Community Planner Jim Gould and Deputy Town Clerk Melissa Felthousen.

Others Present: Matt Price and Jim Braithwaite, of Allis Holdings, LLC and Savage Lane, LLC, Dave Klebitz of Bissell Professional Group.

Chair Cofield called to order the Regular Meeting of the Planning Board for March 8, 2023 at 6:30 p.m.

PUBLIC COMMENTS

No public comments.

AWARD

Member Tim McKeithan was recognized by the board for 10 years of outstanding service on the Planning Board.

ANNOUNCEMENT

Chair Cofield announced that Randy Morton has resigned from the Planning Board.

NEW BUSINESS

SUP 23-003: Application by Savage Land, LLC for a special use permit to expand the Scarborough Lane Shoppes at 1171 Duck Road by establishing an outdoor dining/entertainment area in the Village Commercial (V-C) district.

Director of Community Development Joe Heard stated there are two permits being sought:

- (1) Amendment to the previously approved conditional use permits for the Scarborough Lane Shoppes group development by expanding the existing shopping center with an outdoor dining/entertainment area.
- (2) Addition of an eating establishment including an outdoor dining/entertainment area.

Heard explained the role of the Planning Board as a technical review to determine if the SUP complies with the standards of the town's ordinance and based on that review, they would make a recommendation. He noted the final, official decision is made by the Town Council.

Heard stated public notice was sent out to adjoining property owners and the meeting was properly advertised and posted with signs in the appropriate time frame.

Heard described the property at 1171 Duck Road as presently zoned Village Commercial (V-C) and containing the Scarborough Lane Shoppes shopping center, technically two properties, totaling just over (4) acres, functioning together as a single group development containing over 30,000 square feet of space, including 34 commercial units in four retail buildings connected by elevated, covered walkways. He explained the areas nearby as a residence, a mixed-use building with studio/showroom, office, and two-bedroom apartment at 102 Scarborough Lane and an abutting property to the east as two properties located in the Town's Special (S-1) zoning district.

Heard pointed out that further south across Scarborough Lane are several properties containing a mixture of commercial and residential uses in the V-C district, one of these properties containing a single-family residence, while the other containing common amenities (swimming pool/tennis court) for the Seapines neighborhood. Heard clarified much of the adjoining property to the north contains Scarborough Faire, another large multi-building, multi-tenant shopping center zoned V-C. He also noted the adjoining properties on the northern edge of the project area are (2) parcels with frontage on Pamela Court in the Ocean Dunes neighborhood that each contain a single-family residence and are zoned Single-Family Residential (RS-1). Heard added the proposed site improvements are at the rear of the property and are not visible from Duck Road.

Heard stated the proposed expansion includes 385 square feet of covered space (253 s.f. enclosed food preparation area, 132 s.f. customer service porch), 385 square feet of open rooftop deck dining area, a 225 square foot (15' x 15') wooden stage and additional outdoor dining/entertainment area totaling 1,800 square feet and these proposed improvements comply with the building size parameters of the Zoning Ordinance.

Heard outlined the specifics as to how the proposed bar/restaurant building and entertainment stage also comply with minimum Town setback standards.

Heard noted the development is not losing parking. They are only shifting spaces around and reducing the size of existing spaces that are oversized. He stated the shopping center presently contains 176. The site requires parking spaces, so the amount of parking on site exceeds the minimum parking requirement and is sufficient to meet the needs of the existing and proposed uses in the shopping center. Heard commented the applicant complies with ADA requirements and is proposing to provide an additional (8th) ADA parking space adjoining the ADA accessible pathway into the outdoor dining/entertainment area.

Heard stated the project complies with and meets requirements specified in the Town ordinance, does not endanger public health or safety, does not change traffic flow and food service will comply with and follow all town standards and the septic is sufficient.

Heard explained the change of use would not injure the value of adjoining properties. He noted there are limited impacts on adjoining property and the use is in harmony with the area and conforms with Town's CAMA and Comprehensive Land Use Plan.

Heard stated that staff is recommending approval of the special use permit with 10 conditions for the board's consideration.

1. The Building Inspector and Fire Department must review and approve the proposed improvements for compliance with applicable codes.
2. The applicant is required to obtain approval from the Dare County Environmental Health Department and a State food service permit for the food stand.
3. The applicant is required to obtain a septic permit for a change of use and the proposed grinder station from the Dare County Environmental Health Department.
4. The applicant must obtain a stormwater management permit from the N.C. Department of Environmental Quality and provide confirmation to the Town that their stormwater management plan for the site has been updated and approved.
5. The building must be constructed in substantial conformance with the elevation drawings and floor plans submitted with the SUP application, as prepared by Coastal Cottages dated February 3, 2023.
6. 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 special use process, with all required information referenced in the SUP conditions, prior to issuance of a building permit for the project.
7. Operation of the outdoor entertainment area must comply with all standards of the Town's noise ordinance including limitations on the volume of sound. Music and other performances must cease by 10:00 p.m.
8. The applicant must submit and obtain approval of a lighting plan prior to the installation of any lighting. Light fixtures must be recessed or fully shielded and directed downward to avoid any light spillover onto adjoining properties. Lighting intensity is limited to a maximum of five foot-candles.
9. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
10. This special use permit will expire in 12 months from the date of approval if the approved change of use has not been initiated.

Heard stated that this concluded the staff report.

Member Murray questioned if the applicant was applying for any exceptions.

Heard indicated the applicant was not applying for any exceptions and complies with all Town standards without special waivers.

Chair Cofield inquired if it was the staff's position that the application follows the town ordinances specifically with respect to group development.

Heard stated yes.

Chair Cofield questioned if the SUP was compliant with egress and traffic flow requirements.

Heard indicated there were no issues and it complies with those standards.

McKeithan questioned if staff received any responses from the 20 notifications sent to adjoining property owners.

Senior Planner Sandy Cross indicated that two property owners responded; Clark Twiddy responded favorably and Cindy Brightbill, only inquired as to the context of the application.

Heard noted that the location of the proposed SUP is not visible from Ms. Brightbill's business location in the Soundside Shoppes across Duck Road.

Chair Cofield questioned if the applicant has taken steps to deal with noise associated with outdoor entertainment.

Heard commented he would defer to the applicant to discuss outdoor noise.

McKeithan questioned the lot coverage requirements.

Heard stated the development as a whole is well under the maximum lot coverage requirement.

McKeithan asked if the stage should be calculated as lot coverage.

Heard deferred to David Klebitz to answer.

Chair Cofield recognized the applicant to speak.

David Klebitz, engineer with Bissell Professional Group, 3512 North Croatan Highway Kitty Hawk, explained he was present with the applicant, Jim Braithwaite and Matt Price with Savage Land Company, their legal counsel, Jim Gilreath, tenant Sam Harris and Brad Fitzgerald with Swellsa Brewing in Kill Devil Hills. Klebitz stated the applicant is requesting to add an eating establishment, which would add 385 square feet free standing food and beverage stand to

Scarborough Lane. He stated the site would include a roof top deck; 1800 square feet of outdoor dining consisting mostly of grass, a stage and minor changes to parking for ADA accessibility and compliance. Klebitz indicated the application complies with town ordinance and is not asking for any exceptions. He mentioned the existing trees and shrubs, including live oaks, will be maintained to help buffer and add ambiance to the facility. Klebitz assured the board that the application is consistent with CAMA and land use 2027 plan. He agreed the applicant would adhere to all conditions set forth by the town. He explained the setbacks are appropriate and help provide separation for noise issues as the stage faces away from the residences projecting sound away and the nearby properties are elevated higher than the proposed project creating a buffer for sound. Klebitz noted the facility has a stormwater permit with the State of North Carolina and the State has its own coverage allowance. He stated the project would take the coverage 86 square feet over the State permit allowance and the stage is not counted in that total. He indicated the stormwater permit with the state would be amended should the SUP get approved.

Chair Cofield questioned if there should be a concern with the State regarding lot coverage.

Heard stated the Board can recommend it be a condition of approval.

Chair Cofield recommended that State stormwater permit approval be one of the conditions.

Heard and Kelbitz stated they would support that approach.

Cross noted there would be an additional condition to approve the SUP that would be contingent upon state permit approval.

Braithwaite and Gilreath had no comment.

No public comments.

Member Murray recommended motion for approval of SUP 23-003 adding the condition that state stormwater permit approval be required.

McKeithan seconded the motion.

Motion carried 4-0.

OLD BUSINESS

- a. ORD 23-01: Text amendment to the definition of Lot Coverage found in Section 156.002 of the Zoning Ordinance to permit alternative ground cover materials such as pervious pavers and artificial turf, subject to certification by an engineer or documentation of manufacturer's specifications*

Chair Cofield questioned if both ORD 23-01 and 23-02 should be discussed together.

Heard stated they could be discussed together but separate motions must be made for each ordinance.

Cofield stated the Town Council sent ORD 23-01 back to the Planning Board for discussion of proposed amendment.

Heard stated the Town Council's intention for sending ORD 23-01 back to the Planning Board was to be sure the entire Board supported an amendment proposed by the Chairman recommending that section 6) of the ordinance, which would read as follows:

6) Alternative ground cover materials that are entirely permeable, including pervious pavers, artificial turf, and other surfaces, shall not be included in the calculation of **LOT COVERAGE**. However, such materials must either be certified to be 100% permeable by an N.C. licensed engineer or installed according to the manufacturer's specifications for the base and surface. It is the responsibility of the property owner to provide sufficient documentation of installation consistent with manufacturer's standards and to maintain the surface according to the manufacturer's specifications to ensure maximum permeability.

Some discussion followed regarding property ownership changing hands, the certification form from property owners, and whether the certification needed to be recorded or whether we will proceed loosely unless problems develop down the road.

Murray motioned to approve ORD 23-01 as presented.

Vice-Chair Blakaitas seconded.

Motion carried 4-0.

ORD 23-02: Text amendment to Subsections 156.030(D)(6), 156.031(D)(6), and 156.032(D)(6) of the Zoning Ordinance to specify that engineers can use the storage capacity of swimming pools as part of stormwater management calculations and require property owner certification for the installation and maintenance of permeable ground cover materials

Heard outlined the specifics of the additional wording for section d and k of ORD 23-02.

(d) The surface area of swimming pools can be excluded if a state licensed professional engineer certifies that in a 1.5" rainfall event, the pool would not overflow.

(k) If 100% permeable surfaces, such as pervious pavement or artificial turf, are used as part of the lot coverage calculation, then the property owner must provide written certification that the surface material was installed and will be maintained according to the manufacturer's specifications."

Murray motioned to approve ORD 23-02 as amended per Board discussion to strike Part 1/Letter d from the ordinance and to include letter k under the same section but strike 100% permeable so the ordinance reads “permeable surfaces”.

McKeithan seconded.

Motion carried 4-0.

APPROVAL OF MINUTES

Minutes from the February 8, 2023 Meeting

Blakaitas moved to approve the minutes as presented.

Member McKeithan seconded.

Motion carried 4-0.

STAFF COMMENTS

Heard recognized Melissa Felthousen and explained that she is fulfilling an important hybrid position for the Town as the Deputy Town Clerk and Permit Technician and she is responsible for Planning Board minutes.

Heard noted the two SUP for the gazebo and Sea Bags were unanimously approved by the Town Council at its March meeting.

Heard stated the RCCP Grant related to neighborhood stormwater management has an open comment period until March 13, 2023.

Cross noted the Town website has a popup box to prompt individuals to complete the RCCP survey. She stated the goal is to gather information to determine solutions. She stated there will be an open house with a short presentation on March 30. There will be open discussion following the presentation. Following this meeting the draft report related to RCCP Phase III will be presented to the Town Council members at their May meeting.

Cross stated another SUP permit would be presented next month.

Cross stated the Council approved the bid for Duck Trail improvements adjoining the Sanderling neighborhood from H&H Development and work has started.

Cross updated the Board regarding beach nourishment noting the an anticipated start date of April 1, 2023.

BOARD COMMENTS

Chair Cofield thanked Felthousen for her work. Cofield once again thanked McKeithan for his dedication and preparedness over the years.

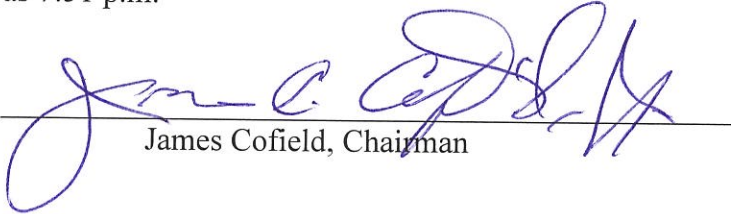
ADJOURNMENT

McKeithan motioned to adjourn. Blakaitas seconded the motion to adjourn.

Chair Cofield adjourned the meeting.

The time was 7:51 p.m.

Approved:


James Cofield, Chairman