

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
January 8, 2020**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, January 8, 2020.

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

Absent: None.

Also present were: Director of Community Development Joe Heard, Council Liaison Sandy Whitman, and Permit Coordinator Sandy Cross.

Absent: None.

Others Present: Teresa Cullen, Jeffrey Beaulieu, Roisin McKeithan, Philip Ruckle, David Wessel, Andy Duck, Greg Shaw, Whit Patterson, Jay Blose, Karen Blose, Olin Finch, Barrett Crook, and Sharon Hart.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for January 8, 2020 at 6:33 p.m.

PUBLIC COMMENTS

None.

ELECTION OF OFFICERS

Chair Blakaitis stated that every other year, the Planning Board elects officers for the Chair and Vice Chair positions. He stated that any Planning Board member can make a motion and then a vote will be held.

Chairman

Member McKeithan moved to nominate Joe Blakaitis to the Chairman position. Vice Chair Murray seconded.

Motion carried 4-0.

Vice- Chairman

Chair Blakaitis moved to nominate Marc Murray to the Vice Chairman position.

Member Cofield stated that he personally did not favor Marc Murray for the position of Vice Chair. He thought Mr. Murray brings an expertise that is helpful to the Board with his

deliberations, but by his own self admission, he indicated that he thought that the Board's job is to approve the recommendations and proposals of Town staff. Member Cofield stated his fundamental disagreement with his understanding of the Board's job.

Vice Chair Murray clarified that if that was the way that Member Cofield understood his comments, then it came across incorrectly. He explained that his position is that when applicants meet the ordinance requirements, the Board has a legal responsibility to approve projects.

Chair Blakaitis asked for a second.

Member McKeithan stated that he would like more discussion regarding whether Member Cofield is interested in running for the Vice Chair position. Member Cofield stated that he is.

There was no second. Motion failed.

Member McKeithan moved to appoint James Cofield to the Vice Chair position. Member Cofield seconded.

Motion carried 3-1 with Vice Chair Murray dissenting.

NEW BUSINESS

Special Exception 19-001: Special Exceptions at 142 Mallard Court to (1) Support and Stabilize a Substantial Amount of Fill Material with a Retaining Wall; and (2) to Add More than Three Feet of Fill in Portions of the Project Area

Member McKeithan asked to be recused from the meeting as he is the adjoining neighbor to the applicant and needs to be recused from participation and voting on the special exception request. It was *consensus* of the Board to recuse Member McKeithan.

Director Heard stated that the applicant is seeking two special exceptions: (1) to support and stabilize a significant amount of fill material with a retaining wall, and (2) to add more than three feet of fill in many areas of the grading project. He stated that the proposed project involves substantial clearing, grading, and relocation of fill from higher areas of the property to accommodate the construction of outdoor amenities including a swimming pool, pool patio, decking, outdoor kitchen, and fireplace to the rear of the existing residence. He noted that in order to be constructed as proposed, the improvements will require approval of the following special exceptions:

- Subsection 156.128(A)(6) requires approval of a special exception permit for retaining walls to be used as a method to stabilize or contain fill. The project proposes to add fill supported by concrete retaining walls along the northern side, rear, and southern sides of the project area.
- Subsection 156.128(A)(12)(a) requires approval of a special exception permit for fill in excess of three feet. The proposed project adds fill material of increasing height to level the property at an elevation of 22 feet in the area supporting the proposed swimming

pool, patio, and decking. The maximum depth of fill reaches eight feet underneath and supports the swimming pool near the westernmost edge of the project area.

Director Heard stated that the property is 14,662 square feet in size, zoned Single-Family Residential and, is generally L-shaped as the front portion of the property heads south off Mallard Court and then bends west toward the Currituck Sound. He added that the property is narrower at the front but widens to approximately 74 feet in the area containing the existing residence and proposed improvements. He added that the property presently contains a four-bedroom, 2,218 square foot single-family residence that was constructed in 1987. The elevation of the property decreases steeply from a knoll at a height of 36 feet located north of the existing residence to a low area adjoining the Currituck Sound less than 100 feet westward.

Vice Chair Cofield asked where the Tuckahoe Homeowner Association walkway is located. Director Heard stated that there is an eight-foot-wide access easement that runs down the south side of the property. Vice Chair Cofield clarified that it is the same walkway that the Board members would have accessed. Director Heard stated he is correct. He added that the plat shows some encroachment of the walkway onto the subject property, but it generally follows the intended easement. Vice Chair Cofield pointed out that a portion of the walkway runs next to the applicant's home. Director Heard noted that the walkway is located on the subject property. Chair Blakaitis pointed out that the encroachment is under agreement between the association and the homeowner.

Vice Chair Cofield asked if the property to the south in the Bias Shores subdivision is on the left side of the lot. Director Heard responded that it is. Vice Chair Cofield stated that he is a resident of Bias Shores and was unaware of the layout and configuration of this lot. He didn't see that it has any impact on his judgment but wants to put it on record that he is a resident of Bias Shores.

Director Heard stated that the applicant is seeking to construct a variety of improvements on the subject property including a swimming pool, 607 square feet of patio, decking, outdoor kitchen, outdoor fireplace, and a golf cart garage. He noted that the improvements proposed at the rear of the residence require a substantial amount of fill to support the proposed pool, patio, and decking at an elevation of approximately 22 feet. According to the applicant, the finished elevation was determined by the height necessary to accommodate the infinity pool and its lower catch basin.

Director Heard stated that the existing retaining wall at the base of the slope toward the rear of the property is planned to be removed and the grade restored to a more natural slope as part of the proposal. This change should improve the flow of stormwater and lessen impacts on adjoining properties. He added that although the proposed improvements are taking place at the rear of a house with frontage on the Currituck Sound, the proposed development is over 50 feet from the sound waters and does not directly impact the sound.

Director Heard stated that Subsection 156.128(C) of the Duck Town Code establishes special exception review criteria for applications involving fill and grading activities. He noted that the following standards must be considered as part of the Planning Board's review:

1. The site for the proposed fill is otherwise adequate in size, shape and other characteristics to accommodate the proposed project.

2. The applicant has demonstrated that the requirements of this chapter are unreasonable or impractical due to the necessity for the fill, lot shape, topographical features, location or mature vegetation, or location and characteristics of existing improvements on the lot.
3. The amount of fill proposed is the minimum necessary to accommodate the proposed project, especially for soundfront properties.
4. The proposed fill will not negatively impact adjacent properties or the surrounding area, especially for soundfront properties.
5. The special exception will be consistent with any applicable goals, policies and objectives specified in the Town's adopted CAMA Land Use Plan and Vision Statement. This review includes the Town of Duck's evaluation of the proposal's consistency with its adopted CAMA Land use Plan, which may be more flexible or more stringent than interpretations by others.
6. The applicant has submitted a drainage plan consistent with the requirements described in Subsection 156.128(A)(4)(c).

Director Heard stated that staff finds that the applicant clearly meets special exception Findings 1, 4 and 6. He stated that Finding 5 requires interpretation of general statements in the Land Use Plan and 2027 Vision, but staff finds the proposal consistent with applicable policies and objectives. He stated that while finding that the grade of the property presents a challenge for further development in the project area consistent with Finding 2, staff questions if the hardship is being created by the preferred design and layout. He added that as the applicant has other viable options for the scale, design, and location of the proposed improvements that will require less fill and lower retaining walls, staff does not find the application consistent with Finding 3.

Director Heard pointed out that at least one of the required findings is not met in staff's opinion. Therefore, staff is recommending denial of the special exception application. He added that if the Planning Board decides to recommend approval of the request, staff asks that the Board members consider the following conditions:

1. All fill must be relocated from elsewhere on the site. No additional fill can be brought from off-site locations.
2. The applicant must obtain a CAMA permit for all work and improvements within the Area of Environmental Concern prior to the issuance of a land disturbance or building permit.
3. The applicant must submit required application materials and obtain a land disturbance and/or building permit prior to commencing work.

Greg Shaw of 144 Whistling Swan Drive was recognized to speak. Mr. Shaw stated that he hired a professional landscaper to look at what can be done on the property. He stated that he is a professional contractor and works for the Navy bases with his main expertise being with piers, bulkheads and dewatering. He stated that there is a challenge to be met and that is why he is before the Board.

Greg Shaw stated that he has been coming to Duck for 25 years and built a home in Carolina Dunes approximately eight years ago. He stated that after a while, the house was too big for him and his wife, so they bought their current house. He stated that his wife is a school-teacher, loves swimming pools and both are intending to make Duck their permanent home after retirement.

Greg Shaw stated that the project can be built without the fill. He stated that he looked at a lot of things from an environmental standpoint when designing it. He noted that the eight-foot area is a very small area. He explained that the infinity edge pool is very much a structural wall and has a bow in it to retain everything. He stated that they originally looked at putting in a pool on the opposite side of the property, but it will not work as there is not enough dirt. He stated that a lot of pilings are going in as it is a self-supported structure with grading and a retention wall. He added that he can haul out the dirt if necessary, but a lot more concrete would need to be brought in.

Chair Blakaitis asked where all the concrete will be located. Greg Shaw answered that the perimeter wall, bearing wall, and infinity pool wall will be concrete. He added that he will be constructing a teak wood deck to match the public walkway. He noted that everything will need to be elevated to protect their privacy from the general public. He stated that he can use multiple grades across the pilings to elevate the walkway so there will not be anything under it. He noted that everything is for the betterment of people in the subdivision. He reiterated that he does not see the need to haul the dirt off the property if it isn't necessary.

Chair Blakaitis asked if the concrete can take the place of any retaining walls. Greg Shaw stated he is correct. Chair Blakaitis inquired if the retaining wall to be built will be permanent. Mr. Shaw stated he is correct. Chair Blakaitis questioned if Greg Shaw is planning to bring in any fill or if it will all come from the property. Mr. Shaw stated that fill will be from the property. Chair Blakaitis stated that the concrete will have to be brought in via concrete trucks, so a roadway will need to be built between the two homes to accommodate the trucks. Greg Shaw stated that no trucks will be coming in as concrete will be pumped from above. Chair Blakaitis asked if the retaining wall is strictly for the soil that will be removed. Mr. Shaw stated he is correct. Chair Blakaitis asked how high it will be. Andy Duck was recognized to speak. Mr. Duck believed the elevation will be six to seven feet tall.

Member Murray asked if the retaining wall will be retaining the existing grade. Greg Shaw stated he was correct. Member Murray clarified that it is permissible under the Town's ordinance. Director Heard stated he was correct.

Andy Duck noted that the pool would be acting as a retaining structure, which will hold the rest of the material from the house. He added that it will happen as part of the pool design independently. Chair Blakaitis clarified that the deck will be next to the pool. Greg Shaw stated he is correct.

Vice Chair Cofield asked where the fill will be coming from. Greg Shaw noted that the area by the retaining wall has a berm containing the dirt that will be coming out. Vice Chair Cofield asked what the distance will be. Mr. Duck thought it is about 50 feet. Vice Chair Cofield asked what will go in where the fill is removed. Andy Duck stated that it is designed as an egress for

the future and will be used for machines or equipment to access the property. Vice Chair Cofield asked if runoff is anticipated after the excavation is completed. Mr. Duck stated that the runoff is part of their stormwater management plan and involves grading down to central points with sand and plants put in.

Vice Chair Cofield pointed out that three very large trees will be impacted by the project. He asked what will happen with them. Greg Shaw stated that there is a 22-inch tree that fell after the last hurricane. He added that there are 12 smaller diameter trees that need to be removed.

Chair Blakaitis asked if there are trees between the houses that will need to be removed. Greg Shaw stated that Tim and Roisin McKeithan had expressed an interest in having some clearing done on their property and it was discussed that one tree on the property line will be removed since it is ugly. He stated that there are some beautiful trees toward the rear of the property that will not be removed. Chair Blakaitis asked if there will be enough coverage left if the 12 trees are removed. Director Heard stated that there will be.

Vice Chair Cofield asked Director Heard if he is comfortable that the setbacks are being met. Director Heard stated he is, adding that the only improvement in the setback is the retaining wall of the cut of the slope, which is permissible. Vice Chair Cofield asked if there is an issue or not with the HOA since they have an easement for the walkway. Greg Shaw stated that the HOA is waiting on the Town's decision before they weigh in.

Andy Duck stated that, with regard to the design choice for the elevation of the pool, Director Heard had mentioned alternatives to step the pool down. He noted that he would have to build a retaining structure to support the foundation of the property as it currently existed. He stated that every step-down moves things further west toward the sound which goes against the intended design concept with the infinity edge.

Vice Chair Cofield pointed out that the two concrete retention walls will have to be structural. He clarified that they will have to be pretty deep in the ground. Andy Duck stated that everything will be supported using concrete grade beams and pile supports.

Roisin McKeithan of 140 Mallard Court was recognized to speak. Ms. McKeithan stated that she reviewed all the plans as well as the Town's report and is grateful to see a retaining wall included in the plans because it is necessary along a significant portion of their lot line. She stated that she is concerned about the impacts to her lot with the project with the removal of fill since it is a major excavation. She stated that fill is to be removed in order to have an access drive that runs next to their property line, which concerns her. She felt that the retaining wall needs to be of the proper size, constructed well, and engineered to prevent any possible undermining or loss of the integrity of the land. She wondered what will be done to maintain the rest of the land on the property, especially since trees will need to be removed not only for the pool but also for the access route.

Roisin McKeithan stated that she wants the project to work but does not want her land and home to be undermined and made more unstable. She pointed out that the access road is right next to their property line. She noted that the staff report from Town staff mentions removal of a retaining wall at the bottom of the property, adding that it is not a retaining wall at all but a

bulkhead which was put in by her and the previous owners in 1999. Greg Shaw clarified that his project does not include touching that retaining wall.

Member Murray asked how far the house was from the property line. Roisin McKeithan stated that it was 10 feet. He stated that he had more concerns about Finding 3 before the applicant made a presentation. He understood Roisin McKeithan's concerns and felt that conditions dealing with that aspect of the project can be imposed if the Board wishes. He stated that he sees using the pool as a bulkhead would be integrated into the slope. He questioned if the plan I to proceed, with or without the fill. Greg Shaw stated he is correct.

Member Murray asked Director Heard if the prohibition in the ordinance is for the bulkhead and the fill. Director Heard stated he is correct, adding that if fill is not a component of the project, the applicant can build it in an elevated fashion as long as it is properly supported. He stated that staff would need engineering plans for the pool and the supporting elements.

Chair Blakaitis asked if there is no fill being proposed to be moved, would the trees remain. Director Heard thought the applicant will be able to answer that. He noted that there will likely be some trees removed as part of the project to accommodate the other improvements on the northern side of the house.

Member Murray pointed out that this is the opportunity to add conditions. He added that if the project moves forward with a permit by right, it will not be before the Board.

Chair Blakaitis pointed out that the photographs show that not all of the trees will need to be removed, but some will. Director Heard agreed. Chair Blakaitis stated that he is concerned that it does not meet all of the criteria and that it is missing Finding 3 and 4. He thought there needs to be more compliance than just one or two items on the list.

Vice Chair Cofield agreed with Chair Blakaitis' comments. He noted that when there is this much disturbance to an existing site, his view is that there should be as little work done as called for so that there will be little disturbance to the existing topography and site. He added that it doesn't look like that is what is going to happen on this project.

Chair Blakaitis asked what additional disturbance will be required because of the infinity pool. He asked what happens when the water flows over the top of the pool. Andy Duck stated that the water goes into a catch basin designed for the appropriate size and volume of the pool and then recirculates it with a pump upward into the pool. Chair Blakaitis asked what happens if the system is designed without that aspect. Andy Duck stated that it would simply be a regular pool. Chair Blakaitis noted that it would involve less disturbance. Mr. Duck stated that it will not be any less disturbance for construction as the construction methodology is the same but is a different design parameter.

Vice Chair Cofield stated that he does not see the rationale for the proposal and recommends denial.

Chair Blakaitis stated that he has some of the same concerns Vice Chair Cofield does. He stated that he is concerned about the disturbance of the land and wished there was another way for the applicant to complete their objectives.

Vice Chair Cofield moved to accept staff's recommendation and recommend denial of the application. Chair Blakaitis seconded.

Motion carried 2-1 with Member Murray dissenting.

Director Heard stated that the application will move forward to Town Council with the Board's recommendation of denial. Chair Blakaitis thought if Greg Shaw comes up with another plan, he can present it to the Board.

Member McKeithan returned to the meeting.

Special Exception 19-002: Special Exception at 1398 Duck Road to Support and Stabilize a Significant Amount of Fill Material with a Soundfront Bulkhead

Director Heard stated that the applicant is seeking a special exception to support and stabilize a significant amount of fill material with a bulkhead. He stated that the proposed project involves grading and the addition of off-site fill to build up the height of the property for a distance of 30-35 feet behind a three-foot high bulkhead at the rear of the property along the Currituck Sound. He noted that in order to be constructed as proposed, the improvements will require approval of a special exception for a bulkhead to be used as a method to stabilize or contain fill. He added that the property owner is seeking to construct a bulkhead and backfill up to 23 feet behind the bulkhead to build up the height of the property, effectively creating a level lawn area approximately 30 feet in width behind the bulkhead. He noted that the proposed bulkhead will be approximately three feet high for much of its length but will taper to a height of 18 inches on higher ground near the northern side of the property.

Vice Chair Cofield asked if the bulkhead is on the actual land or will it encroach into the sound. Director Heard stated that it is on the edge. He noted that the applicant did a nice job of identifying where it would be located with stakes on-site. Chair Blakaitis noted that it is on the beach. Director Heard stated there are times where the area has water and other times it does not.

Director Heard stated that the proposed bulkhead and fill behind it will extend across the entirety of the subject property and tie back into the property with perpendicular bulkhead walls running down the sides of the property. He explained that the bulkhead design has ties that extend 15 feet into the property behind the bulkhead to help support the structure. He stated that part of the justification for the requested special exception is to accommodate the tie-back posts west of the existing swimming pool.

Director Heard stated that the property is approximately 13,671 square feet in size and zoned Single-Family Residential. He stated that the lot is over 240 feet in depth but fairly narrow with a width of approximately 55 feet and contains a seven-bedroom, 3,409 square foot single-family residence constructed in 1997.

Director Heard explained that the Town has permitted many dozens of bulkheads to be constructed along the Currituck Sound and they are generally constructed at a particular height and location to stabilize the existing shoreline but are not built outward to recapture land that is already lost. He added that the Town allows a reasonable amount of fill to be placed behind a bulkhead as part of the construction process but generally the area does not exceed more than a few feet in width.

Director Heard noted that, as with many properties along the Currituck Sound, the subject property has shown evidence of an eroding shoreline due to the forces of wave action and storms and erosion over time has created a short escarpment closer to the swimming pool on the property. He pointed out that the escarpment is approximately seven feet from the pool north of the pier, as close as four feet directly underneath the pier, and widens to 14 feet south of the pier. He added that several trees have roots that have been partially exposed by the erosion.

Director Heard stated that Subsection 156.128(C) of the Duck Town Code establishes special exception review criteria for applications involving fill and grading activities. The following standards must be considered as part of the Planning Board's review:

1. The site for the proposed fill is otherwise adequate in size, shape and other characteristics to accommodate the proposed project.
2. The applicant has demonstrated that the requirements of this chapter are unreasonable or impractical due to the necessity for the fill, lot shape, topographical features, location of mature vegetation, or location and characteristics of existing improvements on the lot.
3. The amount of fill proposed is the minimum necessary to accommodate the proposed project, especially for soundfront properties.
4. The proposed fill will not negatively impact adjacent properties or the surrounding area, especially for soundfront properties.
5. The special exception will be consistent with any applicable goals, policies and objectives specified in the Town's adopted CAMA Land Use Plan and Vision Statement. This review includes the Town of Duck's evaluation of the proposal's consistency with its adopted CAMA Land Use Plan, which may be more flexible or more stringent than interpretations by others.
6. The applicant has submitted a drainage plan consistent with the requirements described in Subsection 146.128(A)(4)(c).

Director Heard stated that the Planning Board and Town Council must decide whether or not the proposed project is consistent with the Town's 2027 Vision and warrants approval of the requested special exception application.

Director Heard stated that staff is recommending denial of the application based on the following:

- Staff finds that the applicant meets special exception Finding 1.
- Finding 5 requires interpretation of general statements in the Land Use Plan and 2027 Vision, but staff finds the general intent of the proposal consistent with applicable goals, policies, and objectives.
- While finding that the applicant has several legitimate concerns regarding the practicality of the standards in Finding 2, staff's opinion is that the proposed project goes beyond the point of addressing the stated issues.
- As the applicant can achieve her stated objectives with a lower bulkhead, lower depth of fill, reduced length of fill area, staff does not find the application consistent with Finding 3.
- The applicant has not provided any information or analysis concerning potential impacts of the proposed fill and bulkhead on adjoining properties per Finding 4.
- The applicant has not provided any information or analysis concerning potential stormwater drainage impacts on adjoining properties or mitigation techniques per Finding 6.

Director Heard stated that if additional information relating to impacts and reduction of height and length of the area to be filled, staff could amend its position and support the proposal. He added that if the Planning Board decides to recommend approval of the special exception request, staff asks that the Board consider the following condition:

1. The applicant must submit required application materials and obtain a land disturbance and/or building permit prior to commencing work.

Sharon Hart of 1398 Duck Road was recognized to speak. Ms. Hart stated that she bought the property in 2018 and was immediately met with Hurricane Florence and Hurricane Michael. She stated that Hurricane Michael took away all the sand on her property and exposed two feet of the roots of trees that are close to the water. She stated that she is very concerned about her property being damaged further and eroded. She noted that the proposed bulkhead is staked out and is in line with properties to the north and south that have bulkheads. She pointed out that she is not going out into the sound and the proposed height is three feet. She stated that there are trees with two feet of roots exposed about 10 feet from the bulkhead and all she wants to do is save her trees and prevent any further damage from storms.

Chair Blakaitis asked Sharon Hart if she had considered other alternatives. Sharon Hart stated that she isn't sure what they are and wants to be consistent with her neighbors and their bulkheads. Chair Blakaitis stated that he has a lot of concerns with the project.

Whit Patterson of Albemarle Bulkheads and House Pilings was recognized to speak. Mr. Patterson stated that he is the contractor for the applicant. He stated that Sharon Hart approached him to look at the situation to see what can be done. He stated that there is a stake on the northern end that CAMA has established their boundary, which is about four feet out towards the west. He stated that Ms. Hart is not going out as far as CAMA will permit but wants to go to the property line to the north. He reiterated that Ms. Hart is staying within the CAMA guidelines and not adding any more land. He added that the elevation on the north side is higher due to the erosion rate on that side.

Member Murray inquired if the depth of fill changed from the initial application. Director Heard stated that when staff initially talked to Whit Patterson, he was looking at a taller wall but lowered it to three feet. Member Murray noted that Requirement 6 is triggered by fill in excess of 36 inches. He asked if it is also triggered by the bulkhead. Director Heard thought it should be both because it is one of the requirements for a special exception involving the land disturbance ordinance. He thought it is more applicable when looking at the greater height of fill.

Vice Chair Cofield thought it is particularly interesting that there is no comment about the impact of the retaining wall. He stated that on the properties to the north and south, the grass areas come out further. He stated that he toured the properties and it is not apparent that there is erosion on the property to the north. He added that it seems that if a bulkhead is built, that there will be some wave action impacting the properties to the north and south. He stated that because there is no analysis and the proposal is on the sound, the Town is leaning toward other ways to mitigate the shoreline erosion. Sharon Hart stated that she is looking at being consistent with her neighbors. She stated that they are protecting their properties with bulkheads and she knew that her neighbor to the south of her eventually wants to install a new bulkhead as well as raising it. She noted that she asked her neighbor if she wants to finish out her bulkhead at the same time her project is being done, but she can't do it financially.

Vice Chair Cofield asked if there is a bulkhead at 1400 Duck Road. Sharon Hart stated that there isn't, but the property north of it has a bulkhead. Vice Chair Cofield stated that with the grassy area at 1400 Duck Road as well as the house to the south, they both had a lot of grassy areas which is one of the mitigating factors that the Town is encouraging as well as other ways to mitigate shoreline erosion. He asked Sharon Hart if she had considered that. Sharon Hart stated that she will have grass and sod installed from the bulkhead to the pool. She added that it will not be flat as it has to have a slope to it. Vice Chair Cofield stated that he is referring to marsh grass and not the grass on the property above the bulkhead.

Member Murray asked what the alternative mitigation that was being suggested. He asked if it is a living shoreline, which the Town could not get permitted through CAMA. He stated that the issue is that the CAMA permit is the first permit that needs to be obtained and they are a little behind on innovative solutions.

Chair Blakaitis thought Vice Chair Cofield was referencing living shorelines and agreed with him. He isn't sure if the Town is that far behind with regard to permitting for living shorelines. He thought the Town's issue was the subaquatic vegetation. Director Heard stated that the Town's project is very specific with regard to subaquatic vegetation and it may not be the case with other properties. He added that the CAMA permitting process has been expedited for living shorelines as a result of many comments and it is now as easy as installing a bulkhead. He noted that they have made changes to address the issue so it will be easier to have a living shoreline.

Chair Blakaitis stated that this project is a perfect example of what a living shoreline can do. He pointed out that when Sharon Hart puts in the bulkhead, she will lose her beach because it will wash out. Sharon Hart noted that it is already washing out. Chair Blakaitis stated that it will not be there at all. He thought one of the things that has happened along the Outer Banks is that municipalities are beginning to frown on bulkheads as they are the worst way to stabilize a

shoreline. Sharon Hart questioned why she is not allowed to be consistent with her neighbors. Chair Blakaitis stated that he is only explaining what is going on. He stated that as far as the project in front of the Planning Board, he doesn't think there is enough information for the Board. Ms. Hart asked what she should do about the area that is already eroded. Chair Blakaitis thought something can be worked out such as putting in less sand. Ms. Hart stated that she is proposing 36 inches of sand. She asked if that is consistent with what the Town requires. Chair Blakaitis stated it is unless supported by a bulkhead.

Member McKeithan asked if any studies were done to show what effect installing a bulkhead would have on the neighboring properties. Sharon Hart stated that she did not have any studies done.

Director Heard responded to Ms. Hart's question about consistency, noting that the difference is mainly a timing issue. He explained that if this proposal came forth two years ago, the applicant likely could have built in that exact spot because the lot was up that high in that spot, but subsequent to the construction of the other bulkheads, there has been some retreat of the shoreline, which is why it requires fill to build it back up. Whereas, other bulkheads may not have required fill when they were built.

Vice Chair Cofield thought there isn't enough information to approve the application. Chair Blakaitis agreed. Vice Chair Cofield thought staff had sufficiently explained why the proposal should be denied. He stated that the Board would like to give Sharon Hart methods to protect her property and stop the erosion, but what is in front of the Board is not enough to approve the application. He thought Ms. Hart could look at other ways to solve the erosion problem, but it needs to be supported better than the application that was submitted. He stated that the Town is moving in the direction of living shorelines and he thought Ms. Hart could consider some of the options.

Whit Patterson stated that he has completed living shorelines and sometimes they work and other times they don't. He stated that when storms come up and push the water into the sound, and if a sill was done, the water can come over it and scour out behind it. He stated that he has completed plantings behind it and when the water comes over the wavebreak, there needs to be slits to allow the subaquatic vegetation to be able to go in and out of the corrugated sheets. He reiterated that living shorelines do not always work. He stated that all Sharon Hart wants to do is protect her property.

Member McKeithan stated that even if Sharon Hart goes with the bulkhead concept, Town staff is recommending that it can be with less length and depth while still accomplishing what the applicant is trying to achieve. He thought her request is greater than the minimum to satisfy the requirement.

Vice Chair Cofield moved to accept Town staff's recommendation for denial. Member McKeithan seconded.

Motion carried 4-0.

Ordinance 19-10: Text Amendment Proposal to Permit the Construction of Elevated Swimming Pools on Oceanfront Lots in Certain Situations

Member Murray asked to be recused from the meeting as he is the applicant for the project. It was *consensus* of the Board to recuse Member Murray.

Director Heard stated that the applicant has proposed to amend Subsection 156.124(C)(2)(d) of the Duck Town Code by further defining the locations and circumstances where swimming pools are required to be constructed flush with the adjacent grade on an oceanfront property. He stated that the proposed ordinance clarifies that all pools within CAMA's Ocean Hazard Setback must be constructed flush with the adjacent grade of the property. He noted that for pools within the broader Ocean Erodible Area, the proposal amends the standards to state that only pools located in an area below the regulatory flood protection elevation must be constructed flush with the adjacent grade of the property. Swimming pools above the regulatory flood protection elevation could be installed at an elevation higher than the adjacent grade.

Director Heard explained that Subsection 156.124(C)(2)(d) of the Town Code currently states: "Pools within the ocean erodible area as defined by CAMA in 15A NCAC 07H.0304 shall be constructed such that the top of the pool structure is flush with the adjacent grade and shall not be supported on a piling foundation."

Director Heard stated that Ordinance 13-04 adopted the subsection as one of many standards for structures located in the primary dunes. He added that the stated intent of the ordinance was to limit the construction of accessory structures such as pools, dune decks and gazebos, within the primary dune system. He stated that the ordinance was developed at the request of the Town Council in response to the reconstruction of damaged swimming pools after Hurricane Sandy that were close to the first line of stable natural vegetation. Because of their proximity to the beach, there was a concern that these structures would be threatened by erosion and encroach on the publicly used portion of the beach.

Director Heard explained that during their review over a period of two meetings, the Planning Board drafted the ordinance which included new construction standards for dune walkovers and a setback of 30 feet for decks, pools, and gazebos from the first line of stable natural vegetation. Most relevant to the current text amendment proposal, the ordinance also included a prohibition on the elevation and construction of oceanfront pile-supported pools in certain situations. He noted that every oceanfront property owner was contacted via email and in writing to offer the opportunity to comment on the proposed ordinance prior to its adoption in 2013. He stated that staff reported to Town Council that most of the responses received were in support of the proposed standards to limit development and preserve the integrity of the primary dune.

Director Heard stated that as the changes in the proposed ordinance hinge on the difference between the Ocean Erodible Area and the Ocean Hazard Setback, staff has provided surveys showing how the measurements differ on two oceanfront parcels in Duck. He pointed out that the measurements shown on the surveys are typical for any oceanfront property in Town.

Director Heard stated that the proposed text amendment will allow elevated swimming pools to be installed above the grade of the property in locations where the elevation of the lot is at or

above the regulatory flood protection elevation in the area between the Ocean Erodible Area and the Ocean Hazard Setback.

Vice Chair Cofield inquired if before the ordinance was adopted, a homeowner could have a pool in the Ocean Erodible Area. Director Heard responded that it could as long as it is on a pile-supported structure. Vice Chair Cofield clarified that nothing has changed from 2013 to the present day. Director Heard stated that CAMA changed how they measure the line. Vice Chair Cofield stated that there is a distinct difference with a property that is in the Board's packets in that they cut into the back of the dune. Permit Coordinator Cross felt that the survey is a better way to show how the text amendment will be applied. Vice Chair Cofield pointed out that the homeowner actually cut into the back of the dune. He added that the fence for the pool on the east side starts within five or six feet from the back of the dune that was cut. Director Heard noted that the ordinance does not address that situation currently and the proposed amendment will not change it one way or the other.

Director Heard noted that after reviewing the applicant's proposal, staff found that the proposed text amendment is consistent with the intent of the standards adopted in Ordinance 13-04. He stated that, as amended, the standards will still prevent the development of elevated swimming pools with substantial supporting structures within the oceanfront dunes but will allow for the placement of such pools behind the dune line in certain, limited situations. He noted that staff is recommending approval of the proposed text amendment.

Marc Murray of 115 West Sea Hawk Drive was recognized to speak. Mr. Murray stated that with regard to Vice Chair Cofield's comment about the pool cutting into the dune, it pointed out why he is asking for the text amendment. He explained that the pool was cut into the dune because it was compliant with the current ordinance. He thought the Board should look at further amendments to the ordinance, but it isn't what is being dealt with in this text amendment. He stated that the reason he is asking for the text amendment is that when the pool is moved west and happens to have a lot that is elevated, the proposed change in the ordinance will allow someone to not have to cut into the dune. He added that the current V-zone requirements for houses on the oceanfront require them to be elevated. So, an elevated pool to the elevation of the floor is a good design convenience factor for a client.

Vice Chair Cofield asked if the east side of the house can be built where Marc Murray is proposing to build an elevated pool. Marc Murray stated that it can. Vice Chair Cofield questioned if a house can be built that close to the ocean. Mr. Murray stated that he can with the way the amendment is proposed because all of it will be pulled back past the 60-foot setback in common usage. He admitted that the text amendment is confusing but what he is trying to do is incentivize moving the pool and the house west.

Vice Chair Cofield asked if there is a height limitation that Marc Murray is suggesting in the text amendment. He pointed out that the amendment will allow elevated pools without knowing how high they could be. Marc Murray stated that the neighboring properties are not taken into account, it was just the pre-disturbance grade in the area where the pool is. Director Heard noted that there would be no limitation on the height of the pool. Vice Chair Cofield asked if there should be. Director Heard stated that there is no limitation anywhere in town, adding that if someone is building a pool elsewhere in town that isn't oceanfront, there is no limitation on it.

Marc Murray explained that the height is generally controlled by the access to the pool so there is no incentive to make the pool any higher than the deck or house.

Chair Blakaitis asked what the advantage is in raising the pool. Marc Murray stated that the way the current ordinance is written, it requires digging into the dune. He stated that he is proposing in situations where the pool is moved west of the 60-foot setback, and the existing grade is above the base flood elevation, then the dune will not need to be cut as there is an option to elevate the pool to be flush with the house. Chair Blakaitis asked how the amenities will be put around the pool. Marc Murray stated that it will be achieved with decking. Director Heard stated that it would be similar to what the Board is looking at with regard to the first special exception application that was heard earlier in the meeting.

Vice Chair Cofield pointed out an oceanfront house on East Bias Lane built around 1987/1988 with an elevated pool connected to the back of the house that is approximately 10 feet high. Marc Murray stated that this was allowed prior to 2013 and is still allowed in any area not in the V flood zone.

Olin Finch of 116 Sandy Ridge Road was recognized to speak. Mr. Finch stated that the text amendment is an incentive to move the pool away from the dune line so there is no contention regarding digging into the dune. He added that the text amendment will encourage people to pull their pools back away from the dune. He noted that elevated pools are currently allowed to be built, adding that no one will build higher than the level of the ground floor of a house. He pointed out that it is not a trap, but an improvement.

Vice Chair Cofield stated that there is an oceanfront house under construction in Southern Shores. He added that recently, they cut the back side of the dune off, graveled up to Duck Road and added pilings. He stated that it is another example of a dune being cut off. He asked if it would serve the interest of the Town if that issue is dealt with as well as the text amendment. Olin Finch stated that the Board is free to make any recommendation and encouraged the Board to remove the language. He stated that the text amendment is encouraging people to get away from what is causing them to dig so much of the dune out. He suggested that the Board take a step toward changing things by accepting Director Heard's recommendation to make the change. Vice Chair Cofield encouraged Olin Finch to incorporate the change into his proposal so that the Town is looking at a comprehensive approach as opposed to just dealing with one issue.

Chair Blakaitis thought there are other things the Board may find out as they move along and if they are to approve the text amendment, it should be thought of as a step forward. Marc Murray explained that the reason they didn't go further with the text amendment is because there are other V-zone concerns from an engineering standpoint of how the elevated pools can be built when they are below base flood elevation. He added that it will involve a lot of moving parts to change it for pools closer and lower. Olin Finch stated that they want to move very slowly and carefully in order to address all of the other components.

Karen Blose of 105 Waxwing Court was recognized to speak. Ms. Blose stated that she listened to the explanation as to what the difference is between the first CAMA line and the second CAMA line. She stated that it seems to her that a lot of thought and analysis had been completed when the ordinance was adopted in 2013. She stated that at this meeting, the Board is taking a

small part and not answering all the questions regarding the moving parts. She stated that Vice Chair Cofield had raised the question about changing something else that may have greater impacts and that the Board is picking one piece that may affect one or two people who are currently in this situation, but she had not heard an analysis, evaluation or study of the other parts of the ordinance that could be affected by this text amendment.

Member McKeithan moved to recommend that the Planning Board approve Ordinance 19-10 as presented. Chair Blakaitis seconded.

Vice Chair Cofield stated that he would rather take a comprehensive approach to the ordinance instead of dealing with each piece of it. Chair Blakaitis pointed out that by the time the Board takes a comprehensive approach, they might lose a lot of time, whereas this amendment can help out in the meantime. He added that if the Board is going to do it at their February meeting, then he will be in agreement with Vice Chair Cofield; otherwise he feels the Board should take this step and move forward.

Member McKeithan felt that this will get the momentum going quicker if the Board approves the text amendment as Olin Finch is anxious to do more research but proceed further. He added that if the Board waits until they have everything together, it will take a long time to work out. Chair Blakaitis agreed. Vice Chair Cofield understood, adding that he thinks changes can help out more than Olin Finch and should be more comprehensive. Chair Blakaitis agreed, adding that it is a timing issue. Member McKeithan stated that he isn't in disagreement but wants to move forward with what was in front of the Board.

Motion carried 2-1 with Vice Chair Cofield dissenting.

Member Murray returned to the meeting.

OLD BUSINESS

Dare County Flood Maps/Flood Damage Prevention Ordinance

Director Heard stated that it was his intent to do a more comprehensive overview of the issue but due to the other applications that were heard earlier in the meeting, he suggested that the Board have a mid-month meeting with review of the flood maps and flood damage prevention ordinance as the only thing on the agenda. He stated that the mid-month meeting would be on Wednesday, January 22, 2020.

Council Liaison Whitman asked if this meeting should be continued. Director Heard stated that it isn't necessary.

It was *consensus* of the Board to hold a mid-month meeting on Wednesday, January 22, 2020.

Director Heard stated that in 2016 the Town was first given the draft copies of the potential new flood maps for Dare County and it has taken all of this time for the State and FEMA to work their way through the comments and appeals that were submitted that resulted in changes to the maps. He stated that that task has been completed and as of December 19, 2019, FEMA issued a

letter of final map determination. He added that Duck has six months from the date of that letter to adopt the flood maps for Dare County and adopt corresponding amendments to the flood damage prevention ordinance. He stated that at the Board's February meeting, they will look at it further and hopes to have a recommendation to the Town Council by March. He noted that there are a lot of competing issues coming up in the spring, including several plans and the annual budget. He added that the Board needs to stay ahead of things in order to get the proposal to Council in March.

Chair Blakaitis asked if the meeting will be held at 12:00 p.m. or 6:30 p.m. Director Heard stated that it is up to the Board. Vice Chair Cofield suggested it be held at 6:30 p.m. Chair Blakaitis agreed. It was *consensus* of the Board to hold the January 22nd meeting at 6:30 p.m.

APPROVAL OF MINUTES

Minutes from November 13, 2019, Regular Meeting

Vice Chair Cofield had a change to Page 6 of the minutes.

Vice Chair Cofield moved to approve the November 13, 2019 minutes as amended. Member Murray seconded.

Motion carried 4-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Project Updates

Director Heard gave a short overview on various projects going on in Town.

BOARD COMMENTS

None.

ADJOURNMENT

Vice Chair Cofield moved to adjourn the meeting. Chair Blakaitis seconded.

There was no vote.

The time was 9:39 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman