

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
March 10, 2021**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, March 10, 2021.

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

Absent: None.

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

Absent: None.

Others Present: Suzanne Proctor via Zoom; Gail Healy via Zoom; Robin Kokolis via Zoom; Dwight Emory via Zoom; Douglas Kraus; Robert Kraus; and Director of Marketing and Events Christian Legner.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for March 10, 2021 at 6:31 p.m. He noted that this was a virtual meeting and those watching remotely are muted. He stated that if anyone watching remotely wants to make a comment, they can indicate by raising their hand and/or submitting comments through the chat feature in Zoom.

**PUBLIC COMMENTS**

None.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**Special Exception 21-002:Application for a Special Exception at 111 & 113 Bayberry Drive to Allow as Much as Ten Feet of Fill in Certain Areas of the Property, Which Exceeds the Maximum of Three Feet Permitted by the Town's Land Disturbance Standards, Subsection 156.128(A)(12)(a) of the Duck Town Code**

Director Heard stated that the applicant is seeking a special exception to add a significant amount of off-site fill material to raise the elevation of the subject property by approximately 10 feet in certain areas of the property. He explained that the applicant intends to add a substantial amount of fill over a majority of the property to create a mostly level lot with an elevation of 28 feet above mean sea level in the center of the parcel. He added that the western edge of the property

will taper down at a 3:1 slope to where it adjoins the property at 109 Bayberry Drive. He noted that the elevation is equal to the building pad elevation of the adjoining property to the east and slightly lower than the adjoining properties to the west and south. He stated that a small portion of the area would be filled higher to accommodate a driveway from the adjoining road.

Vice Chair Cofield asked if the work has been completed at 111 Bayberry Drive. He pointed out that the topographical map showed it. Member Morton pointed out that it has been filled in but not measured yet. Chair Blakaitis agreed.

Vice Chair Cofield asked about the dip on the left of the subject lot. Director Heard stated that the applicant's engineer could speak to it. He noted that the dip is located on the adjoining property to the west. He explained that part of the area that was used for the fill in the past stretches slightly onto a third property containing a residence and the owners and applicant do not have the authority to fill on that property. He stated that it would be a benefit to the property to tie it in, which would not be at the same depth and would entail obtaining permission from the homeowner to make that happen. Vice Chair Cofield asked if there is a house on the property. Director Heard stated that there is an existing house at 109 Bayberry Drive.

Chair Blakaitis asked if it went all the way to the back. Director Heard stated that it does not completely, adding that the cross-section in the packet shows the middle of the property.

Director Heard reminded the Board that following a public hearing and discussion at their May 6, 2020 meeting, the Town Council voted unanimously to grant approval of a special exception to add a significant amount of off-site fill material to raise the elevation of the adjoining property at 113 Bayberry Drive by nearly five feet in certain areas of the property. He pointed out that this application and property share many of the same characteristics as the subject property at 111 Bayberry Drive. Due to the great similarity between the two properties and situations, the precedent of approving the prior application takes on additional importance; however, the Planning Board may identify other issues that differentiate the subject property from the adjoining property at 113 Bayberry Drive.

Director Heard stated that the property owners at 113 Bayberry Drive obtained a land disturbance permit to add fill and grade the property consistent with the approved special exception. He stated that the fill was only recently added and as part of its final review, Town staff requested survey information documenting the graded elevations for consistency with the approved plan. He noted that the fill/grading project is not final and may not represent the proper final elevations.

Director Heard reminded the Board that during their review of the prior special exception application, there was a discussion about the relationship of fill and grading on 113 Bayberry Drive to have future fill and grading completed at 111 Bayberry Drive. He stated that at the time, submitted elevation drawings showed a potential swale between the properties; however, the current fill cross section submitted by the applicant shows the elevation being raised straight across the property line to match the house pad elevation of the adjoining lot, with no swale in between. He added that this proposal will require a substantial amount of fill within the five-foot setback on both lots and additional fill on the adjoining property. He stated that after consulting with the Town Attorney, it was determined that the property owners at 113 Bayberry Drive

needed to join this application as fill that was not previously approved would be added to their property.

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 stated 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 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 of 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 as the required findings were met in staff's opinion, staff was recommending approval of the special exception application and asks that the Board members consider the following condition:

1. The applicant must submit required application materials and obtain a land disturbance permit prior to commencing fill and grading work.

Director Heard stated that staff was requesting that the Planning Board give careful consideration to the proposed design of the fill and grading to ensure that any granted special exception will minimize impacts on the surrounding properties and roadway.

Dwight Emory was recognized to speak. Mr. Emory inquired if a topographical survey will be required once the fill is approved and completed. He asked if a visual inspection will be sufficient, noting that the fill will be lower than the adjacent properties. He asked if this is something for the Planning Board to consider. Director Heard stated that he will consider appropriate ways of documenting the fill. He added that he cannot promise that it will be granted and some documentation will be needed to show that the fill is at the approved height. Chair Blakaitis asked if it would be something that staff would deal with once the project finished. Director Heard stated that it would. Vice Chair Cofield stated that it would unless the Board made it a condition of the application.

Vice Chair Cofield asked about the approximate elevation of the street. Dwight Emory stated that there would be some transition from the street to the final pad elevation. He added that there

would be some fill going in as required to install a driveway. He noted that there would be an area of transition from the street elevation to the pad height.

Member Murray asked if a building permit has been issued or if there is an open land disturbance permit at 113 Bayberry Drive. Director Heard stated that there is an open land disturbance permit. Member Murray clarified that in order to close that permit, the applicant will have to satisfy staff that they have gotten to the correct level. Director Heard stated he is correct.

Member Murray clarified that there was additional consideration with regard to the cross-section after the application as it is inconsistent with the attachments in the Board's packets. He pointed out that it appeared to show a swale going back down and back up towards lot 1. He asked what the applicant was applying for in this instance. Dwight Emory explained that the 3D attachment illustrates why the Town's requirements would not apply in this situation because the fill has to be maintained so many feet from the property line. He added that if it were going up as well as maintaining the side slopes, the lot would end up looking like a pyramid. He stated that it was intended to illustrate not what they wanted to do, but to show what current Town standards would require.

Member McKeithan asked if the requirement is that fill could not be brought in within five feet of the property line, the Planning Board needed to have both parties – whether they are related or not – have something in writing that they both want this to happen. He stated that it seems to him that it was another exception they were requiring in order to go within five feet of the property line. Chair Blakaitis clarified that Member McKeithan was talking about the property line on either end of both lots and not between the two. Member McKeithan pointed out that fill cannot be brought in within five feet of the property line. Chair Blakaitis understood, adding that both lots are represented by the same owner. He thought they would be at the same level. Director Heard stated that there are two applications signed by all three property owners at 113 Bayberry Drive as well as the one property owner at 111 Bayberry Drive. He explained that all four property owners have already signed the applications requesting this which confirms that they are all on board for the proposal with regard to how it is being presented.

Member McKeithan pointed out that Attachment F in the Board's packet shows one thing and Attachment E shows it a different way. He stated that he did not see in the request that the applicants wanted to go across and deviate from the five feet within the property line. Director Heard stated that Attachment F is something that staff added from the prior special exception at 113 Bayberry Drive, not something that the applicants submitted this time. He apologized for the confusion. He explained that the reason it is in the Board's packets is to show how the previously discussed design would work if the applicant has to comply with the Town's standards. He noted that it was part of the discussion that the Planning Board had with the applicant in 2020 with regard to the timing of when 111 Bayberry Drive would be filled and whether it made sense to tie them together. He stated that the document relates to that discussion and was put in the Board's packets to show what the applicants were looking at previously. He pointed out that the Board now had the cross-section in Attachment E that shows the elevation as being level across both lots.

Council Liaison Sandy Whitman was recognized to speak. Council Liaison Whitman asked how the first application would be affected since the two properties are combined in the new

application. Director Heard stated that the application was approved over a year ago, adding that the only item that is open was a grading application and it has not been closed out since there is still work that needed to be completed. He noted that the applicant has not requested a final inspection or approval at this point. He added that there is nothing preventing the applicant from going in the adjoining lot and pulling another, separate permit in this case. He stated that it would tie in with the grading and Town staff would issue a new land disturbance permit that includes what is being proposed in the new application. He stated that both land disturbance permits would be active at the same time and would be finalized at the same time.

Member Murray moved to approve Special Exception 21-002 with the staff recommended condition. Vice Chair Cofield seconded.

Motion carried 5-0 via roll call.

**Conditional Use Permit 21-001: Application for a Conditional Use Permit to Add a 28-Seat Eating Establishment in the Scarborough Lane Shopping Center at 1171 Duck Road, a Conditional Use in the Village Commercial District**

Director Heard stated that the applicant is requesting a conditional use permit to convert an existing retail space into a 28-seat restaurant in Units C4 and C9 of the Scarborough Lane Shopping Center at 1171 Duck Road. He noted that due to time constraints, the applicant obtained permits to proceed with interior improvements relating to the restaurant. He added that the applicant is aware that he is proceeding with the improvements at his own risk and will be limited to retail use only if the conditional use permit is denied.

Director Heard stated that the subject unit is a double unit 30.5 feet in width and 62 feet in depth for a total of approximately 1,890 square feet. He stated that although the space within the unit will be distributed differently, the size of the unit will remain the same under the proposed change of use. He stated that the proposed change of use from retail to restaurant will alter the parking calculations. He explained that the prior retail use required a minimum of 9.5 parking spaces and the proposed eating establishment will require a minimum of 11.3 parking spaces. He noted that since the shopping center presently contains 176 parking spaces, the amount of parking on the site exceeds the minimum parking requirement and is sufficient to meet the needs of the existing and proposed uses in the shopping center.

Director Heard explained that in order to approve a conditional use permit, the Town Council will need to find that the applicant has provided substantial evidence that the following criteria have been met:

1. The use meets all required conditions and specifications of the ordinance
2. The use does not materially endanger the public health or safety
3. The use will not substantially injure the value of the adjoining property, unless the use is a public necessity
4. The use will be in harmony with the area in which it is located and be in general conformity with the Comprehensive & Land use Plan

Director Heard stated that staff was recommending approval of the conditional use permit, subject to the following conditions:

1. The Building Inspector and Fire Department must review and approve the proposed improvements for compliance with applicable codes.
2. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
3. This conditional use permit will expire in 12 months from the date of approval if the approved change of use has not been initiated.

Chair Blakaitis asked if there will be any interior renovations. He further asked if there was anything that should have the Board's attention. He understood the applicant was doing the work already. Director Heard stated that the biggest change is that the applicant is adding seating, so there would be a different layout with seven tables and four seats at each table.

Doug Kraus thanked Director Heard for his hard work in fast tracking the project. He stated that he will be happy to answer any questions the Planning Board had.

Chair Blakaitis asked Doug Kraus if he had anything pertinent to offer with regard to what the facility will be. Mr. Kraus stated that they have the same business currently in Corolla, which offers healthy, nutritional food as well as trying to get customers in and out as quickly as possible. Chair Blakaitis clarified that the menu will be what is in the Board's packets. Mr. Kraus stated he is correct.

Rob Kraus stated that with regard to the renovations that will be done, no ovens or fryers would be used at their business. He added that they use hoodless technology like what is at a Starbucks or Wawa. He stated that all food will be fresh and ready to eat.

Member Morton thought the facility would fit in nicely in Duck. Member McKeithan did not see any issues with putting the café in.

Member Murray moved to recommend approval of the conditional use permit with the staff recommended conditions. Member McKeithan seconded.

Motion carried 5-0 via roll call.

## **APPROVAL OF MINUTES**

### **Minutes from the February 10, 2021, Regular Meeting**

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

There was no vote.

## **OTHER BUSINESS**

None.

## **STAFF COMMENTS**

### **Summary of March 3, 2021 Town Council Meeting**

Director Heard gave a short update on the March 3, 2021 Council meeting.

### **Project Updates**

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

### **Update on NCGS Chapter 160D Amendments**

Director Heard stated that since the last Planning Board meeting, he had an opportunity to meet with Town Manager Drew Havens and talk about another opportunity that had come up from the N.C. League of Municipalities. He noted that they had entered into a contract with Stewart Engineering on assisting the community with the updates per Chapter 160D of the General Statutes. He added that Stewart will be doing much of the legwork as Town staff has not had the time to sit down and go through page by page to where the updates need to be. He stated that he once the draft is received and reviewed, he will get it to the Board as soon as possible. He noted that he plans to have a very thorough staff report that will outline the changes at the Board's April 14, 2021 meeting. He added that it will include both the Town's zoning ordinance and the subdivision ordinance in the proposal.

Chair Blakaitis asked when the information would be presented. Director Heard stated that it will be presented at the Board's April 14, 2021 meeting. He added that if he can get it to the Board sooner, that would help to give the Board time to review it.

Vice Chair Cofield asked, in addition to the Board understanding what was in the amendment, the Board would have to take some action to recommend it to the Town Council. Director Heard stated that the Board will as it is a large text amendment.

## **BOARD COMMENTS**

None.

## **ADJOURNMENT**

Member McKeithan moved to adjourn the meeting. Member Morton seconded.

There was no vote.

The time was 7:37 p.m.

Approved: \_\_\_\_\_  
/s/ Joe Blakaitis, Chairman