

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
January 12, 2022**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, January 12, 2022.

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, Senior Planner Sandy Cross and Deputy Town Clerk Kay Nickens.

Others Present: Dave Klebitz of Bissell Professional Group, Walter Hancock of Barrier Island Station, Justin Smith of Barrier Island Station, Mike Strader from Quible and Associates, Tom Perkins, with the Ships Watch Homeowners Association

Chair Blakaitis called to order the Regular Meeting of the Planning Board for January 12, 2022 at 6:30 p.m.

**PUBLIC COMMENTS**

Jay Blose of 105 Waxwing Court was recognized to speak before the board. Mr. Blose stated that there were over 25,000 new COVID cases throughout North Carolina and over 400 new COVID cases in Dare County. Despite those numbers, the only way for someone to participate in Planning Board meeting was to be present in the room as meetings are no longer available for livestreaming. Mr. Blose requested that the Board consider livestreaming meetings once more to encourage community engagement. Chair Blakaitis thanked Mr. Blose for his comments.

**NEW BUSINESS**

***Special Use Permit 21-001: Application for a special use permit at 1245 Duck Road (Barrier Island Station) to allow as much as six feet (6') of fill in certain areas of the property to accommodate construction of a new recreation center, which exceeds the maximum of three feet (3') of fill permitted in Subsection 156.128(A)(12)(a) of the Duck Town Code***

Director Heard advised that the applicant is looking to add more than three feet of fill in certain areas, however most of the project area would comply with Town standards. Director Heard stated that notice of the special use permit application was provided through an advertisement in the Coastland Times, posted at Town Hall and the Town's website, and sent to neighboring property owners and property owners associations.

Director Heard stated that the subject property at 1245 Duck Road is approximately 21.76 acres in size and zoned Medium Density Residential R-2). The property contains the Barrier Island Station oceanfront resort, one of Duck's only gated neighborhoods. The multi-family residential buildings, constructed between 1985-89, contain a mixture of condominiums and time share units, that share common amenities. The site does have a management company that is responsible for upkeep and maintenance of buildings and properties as well as working with rental programs for the units.

Director Heard explained that the property is predominantly surrounded by fully developed single-family residential neighborhoods zoned Single-Family Residential (RS-1). The adjoining neighborhood to the north is Ships Watch. The Olde Duck Beach neighborhood adjoins the subject property to the south.

Director Heard noted that Barrier Island Station was developed in the mid-80s and has since been updated and renovated however the existing recreational facilities had significant structural issues. That facility was condemned and demolished in 2020. The applicant is looking to replace the recreation center. Director Heard reminded the Board that there are criteria in which the Board will need to consider to make their recommendation to Council for the Special Use Permit.

The first standard with which the project would need to comply is the site for the proposed fill is otherwise adequate in size, shape and other characteristics to accommodate the proposed project. Director Heard explained that the site is nearly 22 acres in size and has adequate dimensions to comply with basic development standards. The proposed project will fit into the same area in which it previously existed. Staff found that the application complies with this finding.

The second standard states that 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. Director Heard explained that the challenge with this site is that the applicant wishes to construct a large structure on a site with rolling topography. The structure is going to require some fill and grading regardless of where it is constructed. Director Heard pointed out areas of the topographic map in which stormwater ponds would be created to accommodate some of the stormwater runoff. With all those elements in consideration, the Town's limitation of three feet (3') of fill is impractical to allow construction of the new recreation center. Staff found that the application complies with this finding.

The third standard states that the amount of fill proposed is the minimum necessary to accommodate the proposed project. Director Heard stated that the design of the fill/grading lowers the elevation in some areas and raises the elevation in others to create a level building pad. The proposed amount of fill appears to provide a reasonable elevation for the building pad as it involves cutting, filling, and grading to minimize the amount of fill needed for the project and provide a level building pad, while maintaining necessary elevation differences for the stormwater management system. Staff found that the application complies with this finding.

The fourth standard in which the proposed project needs to comply is that the proposed fill will not negatively impact adjacent properties or the surrounding area. Much of the site surrounding the project area contains large multi-family residential buildings that will block stormwater runoff.

Additionally, the project area is surrounded by internal roadways separating it from adjoining properties. The nearest residences in the Ships Watch neighborhood are approximately 170 feet away from the proposed building, 135 feet away from the SUP fill/grading, and 90 feet away from any fill/grading activity. The nearest residences in the Olde Duck Beach neighborhood are approximately 200 feet away from the proposed building, 220 feet away the SUP fill/grading, and 115 feet away from lower fill/grading activity for the septic system. The applicant is proposing to construct three stormwater ponds to capture the stormwater runoff generated by the proposed impervious surfaces (building, parking, etc.). Therefore, it is unlikely that the proposed fill/grading will have negative impacts by causing stormwater runoff to adjoining neighborhoods. Staff found that the application complies with this finding.

The fifth standard is that 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. The Town's CLUP does not address this specific type of special use permit request. Director Heard summarized the points in which the Land Use Plan is generally applicable to the proposed project and concluded that it is staff's opinion that the proposed special use permit for fill and associated site improvements will improve on-site stormwater management, not negatively impact adjoining properties, and allow the subject property owner to replace the previous recreation center with a similar facility. Therefore, the proposal appears to comply with the noted goal and policy objectives from the Comprehensive & Land Use Plan.

The sixth standard is that the applicant has submitted a drainage plan. The applicants retained local engineer Michael Strader, Director of Engineering with Quible & Associates, to prepare a grading and drainage plan. Staff found that the submitted grading and drainage plan is thorough and complies with this standard.

As the required findings are met in staff's opinion, Director Heard recommended approval of this special exception application and asked the Board members to consider the following conditions:

1. The applicant must submit required application materials and obtain a land disturbance permit prior to commencing fill and grading work.
2. A separate development permit must be reviewed and approved by staff prior to construction of structures on-site.

Chair Blakaitis pointed out the project area as indicated by the aerial photo provided to the Board as it includes two live oaks and questioned the potential removal of the oak trees. Director Heard advised that the applicant had considered vegetation removal in the plans and could better explain any tree preservation efforts on the site. Member Murray clarified that the removal of those trees would be subject to an administrative review by staff, not the Board.

Member Cofield asked how many units are in Barrier Island Station. Walter Hancock, General Manager of Barrier Island Station, stated that there are 179 units.

Mike Strader, engineer with Quible and Associates, summarized the application by stating that they are not proposing any more fill or disturbance than what is necessary to provide grading for

the project and that not all vegetation is going to be preserved. The building pad is not going to be any higher than it needs to be to meet all Town standards for development and to provide for stormwater drainage and management. Mr. Strader pointed out that to create a level building pad the six feet of fill will occur in the required parking lot which is the lowest lying area on the site. Mr. Strader stated that the existing septic field must be preserved in addition to an existing parking area. The parking lot entry is coming from the high point of the property and slopes downward to the lowest area as indicated by the grading plan. Mr. Strader explained that the parking area is graded to be as low as possible. Mr. Strader then stated that to collect stormwater runoff from the building, it must be situated just slightly above elevation to divert runoff. He also explained that the project meets 100% of the stormwater storage/volume requirements with stormwater basins. With those measures in place, the project not only meets the minimal requirements for stormwater management but also provides more practical stormwater management than what the state permits. Mr. Strader stated that additional survey grades have been obtained and they may be able to further decrease the amount of proposed grading in an effort to disturb as little amount of area as possible, decrease the amount of fill, and preserve more vegetation.

Vice Chair Cofield questioned the project impacts to stormwater issues from building 600 as it is the closest in proximity to the project area. Mr. Strader explained that there is no current stormwater facility in place at this time so as a result of the project, stormwater from building 600 would also be collected and managed in the stormwater facility that will be installed.

Vice Chair Cofield pointed out the two live oak trees as they fall within the project area as indicated by the provided aerial photo. Mr. Strader stated that it is necessary to remove those trees, however part of the application packet includes a landscaping plan in which they will mitigate the loss of those trees by planting additional trees.

Mr. Hancock stated that they are trying to eliminate the same problem that existed with the previous building. This project will include adding offices to the facility which will be used for visitors checking in and out, therefor directing traffic into the property and off Duck Road. Mr. Hancock emphasized that they did their best to save the two oak trees but it was not possible.

Tom Perkins, President of the Ships Watch Board of Directors, was recognized to speak. Mr. Perkins stated that he is concerned with the additional water that would accumulate onto Ships Watch property via the culvert located in the back of Barrier Island. Chair Blakaitis questioned if this was something being considered by the engineers when developing site layout. Mr. Strader stated that the culvert in question is located away from the project area and none of the proposed improvements would cause any new nor contribute to existing stormwater issues on Ships Watch properties. Director Heard added that this is a historical problem that has existed, and that the drainage issue is not solely from Barrier Island Station. Chair Blakaitis stated that the drainage issue in question is not something being discussed by the Board. Vice Chair Cofield asked if the Board could implement conditions on the project approval that would impact the drainage issue. Director Heard explained that they cannot place any conditions that Barrier Island Station resolve drainage issue elsewhere else on property unrelated to the project or project area.

Member Murray stated that all the stormwater generated in the project area, including the road and the parking lot, are going to be handled in stormwater management installations inside the

indicated project area. Mr. Strader said that this is correct. Chair Blakaitis stated to Mr. Perkins that the Board does not identify any element of the proposed improvements that would contribute to the existing drainage issue in Ships Watch. Since it is not part of the current project, Chair Blakaitis stated that therefore they cannot do anything about the drainage issue.

Member McKeithan questioned if there was any feedback from the southern neighbors in Olde Duck Beach. Director Heard stated that he had not received any individual comments nor any comments from the association as a whole.

Member Murray stated that he felt confident in the stormwater management and fill proposal emphasizing that all requirements have been met. Chair Blakaitis agreed and called for a motion. Vice Chair Cofield mentioned that the proposed project encompasses quite well what the applicants want to do. While he understands Mr. Perkin's concerns, he stated that the proposed project area deals very well with the issues as presented. Chair Blakaitis agrees.

Member Morton agrees with all other Board comments and that the additional fill will not contribute to additional runoff and acknowledged that, in fact, the proposed improvements would improve the runoff issues.

Member McKeithan proposed that the Board recommend approval of the Special Use Permit with the two conditions as recommended by Staff. Member Murray seconded the motion. With no discussion, the Board voted in favor. Motion carried 5-0. Director Heard stated that this matter would proceed at the Public Hearing with Duck Town Council on February 2, 2022 at 6:00 p.m.

## **OLD BUSINESS**

### ***Text Amendment: Indoor Entertainment Facilities in Village Commercial District - Presentation of public comments and discussion***

Chair Blakaitis opened the discussion of this matter by calling for any public comments. There were none. Chair Blakaitis stated that the public survey was conducted, and the Board reviewed the results which should be taken into consideration with a new vote. Director Heard stated that Council asked Staff to solicit comments from the public at the January 5<sup>th</sup> meeting and compile the comments to be presented to Planning Board.

Council Liaison Whitman explained that Council wanted to hear from the people as this was a significant decision to be made that was approved with a split-vote from the Planning Board. Vice Chair Cofield made a motion for the Board to reconsider and rescind the proposed text amendment that was approved on November 10.

Member Murray stated that the Board is an appointed Board tasked to answer technical questions and that Council has the responsibility of Council to utilize the input received. Member Murray commented that while he understands that a large amount of the comments received are not in favor of the amendment as written without an actual definition in the ordinance, the Board voted on the matter, and the constituents have spoken to their elected officials. Council Liaison Whitman stated that Council wanted those comments to be heard by the Planning Board as well. Chair

Blakaitis stated that the previous decision could be rescinded and rediscussed as wanted by Council.

Member McKeithan stated that he felt it was very appropriate for Council to ask the Board to reconsider the vote on something this significant and that the Board is being presented with an opportunity to vote on the request with additional information in hand.

Chair Blakaitis seconded Vice Chair Cofield's motion. Vice Chair Cofield commented that the Planning Board has a responsibility to the Town and people of Duck to consider information as presented and to turn a blind eye to the substantial opposition would be irresponsible.

Member Morton stated that he agreed with Vice Chair Cofield's comments but questioned whether or not this matter would come before the Board in the future since there is nothing being identified as prohibited uses. Vice Chair Cofield clarified that the Board made a specific decision and his motion only pertains to what the Board made a decision on and nothing beyond that. Chair Blakaitis reminded the Board that the Board is an advisory committee and cannot make rules, only recommendations.

Chair Blakaitis called for a vote for the motion to reconsider and rescind. All members vote in favor. Motion carried 5-0.

Vice Chair Cofield made a motion to deny the applicants' request for amendments to several sections of the Duck Town Code to accommodate the addition of indoor entertainment facilities as a permitted use in the village commercial zoning district and associated changes as presented to the Board on November 10<sup>th</sup>. In response to a question, Director Heard clarified that the Board has rescinded the decision that was made previously and the Board is currently considering a new recommendation. Member McKeithan seconded the motion. There was no discussion by the Board. Chair Blakaitis called for a vote. Chair Blakaitis, Vice Chair Cofield, Member Morton, and Member McKeithan voted in favor of the motion. Member Murray abstained. Motion carried 4-0. Director Heard stated that this matter will be heard at the next Town Council meeting on February 2<sup>nd</sup>.

## **APPROVAL OF MINUTES**

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

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

Motion carried 5-0.

## **STAFF COMMENTS**

### **Summary of December 1, 2021 Regular Town Council Meeting**

Director Heard gave a short summary of the December 1, 2021 Town Council meeting.

**Summary of January 5, 2022 Regular Town Council Meeting**

Director Heard gave a short summary of the January 5, 2022 Town Council meeting.

**Project Updates**

Director Heard and 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 McKeithan seconded.

The meeting was adjourned by consensus of the Board members.

The time was 8:15 p.m.

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