Agenda
Town of Duck Planning Board – Regular Meeting
Paul F. Keller Meeting Hall
Wednesday, April 12, 2017 – 6:30 p.m.

1. Call to Order

2. Public Comments

3. New Business
   a. **Conditional Use Permit 17-001:** Application by Andrew Meredith and Sugar Berry Sweets, LLC for a conditional use permit to establish a coffee house/sweet shop (eating establishment) in the recently constructed building at 1448 Duck Road.
   
   b. **Text Amendment Ordinance 17-004:** Proposal to amend Section 156.130 of the Zoning Ordinance to bring the Town’s sign standards into compliance with the sign content restrictions identified during the recent U.S. Supreme Court decision in Reed v. Town of Gilbert.
   
   c. **Text Amendment Ordinance 17-003:** Proposal to amend the Zoning Ordinance with the addition of a new Subsection 156.128(C) outlining standards for the consideration and approval of special exceptions for fill over 36 inches in depth.

4. Approval of Minutes
   a. Minutes from March 8, 2017 Regular Meeting

5. Staff Comments
   a. *Summary of April 5, 2017 Town Council Meeting*
   b. *Project Updates*

6. Board Comments

7. Adjournment
TO: Chairman Blakaitis and Members of the Town of Duck Planning Board
FROM: Joe Heard, AICP, Director of Community Development
DATE: April 12, 2017
RE: Staff Report for CUP 17-001, 1448 Duck Road (Sugar Berry Sweet Shop)

Application Information
Application #: CUP 17-001
Project Location: 1448 Duck Road
Dare County PIN: 995006388784
Zoning: Neighborhood Commercial (C-1)
Property Owner: Andrew Meredith
Applicant/Contact: Frieda Berry, Business Owner

Public Meeting Advertised: April 2, 2017 (Coastland Times)
Public Meeting Notices Sent: March 16, 2017
Public Meeting Sign Posted: April 5, 2017
Public Meeting Town Website: March 16, 2017
Public Meeting Town Hall Posted: March 16, 2017

Proposal
As outlined in the application materials for the proposed project (Attachments B and C), the applicant is requesting approval of a conditional use permit to convert 1,200 square feet of retail space to use as a carry-out eating establishment in the recently constructed mixed use building at North Duck Watersports, 1448 Duck Road.

There are no changes proposed to layout of the site. There are no external improvements proposed to the building. The existing watersports rental business and upper story apartment will remain in the same location and configuration.

NOTE: Although it will not contain any seating, the proposed use is classified as an eating establishment under the following definition in the Town’s Zoning Ordinance:

EATING ESTABLISHMENT.
(1) Any establishment that provides as a principal use the sale of food, frozen desserts or beverages in a ready form for consumption state either within the eating establishment or off-premises.
(2) **EATING ESTABLISHMENTS** may consist of any of the following:

   (a) Establishments where patrons are seated on premises, either inside the building or at an exterior dining area, and provided table service by an employee;

   (b) Establishments where patrons are seated on premises, either inside the building or at an exterior dining area, and are served at a counter by an employee;

   (c) *EATING ESTABLISHMENTS* shall also include carry-out establishments, where food, frozen desserts or beverages are served primarily in disposable or edible containers, and packaged in a manner where customers can readily take the food off-premises. This includes, but is not limited to, delis, snack bars, ice cream shops, coffee shops, pastry shops and yogurt shops.

   (3) Eating establishments shall comply with all applicable requirements of Section 156.129.

**Property Information**

The property at 1448 Duck Road is a soundfront parcel 34,613 square feet (0.79 acre) in size and zoned Neighborhood Commercial (C-1). The property contains the facilities for North Duck Watersports, which include boat and jet ski rentals, customer service kiosk, small marina, boat ramp, and pier. The boat ramp is also available to many property owners in the Sound Sea Village neighborhood.

The subject building is an elevated, two-story structure constructed in 2016. When approved in 2015, the mixed-use building was proposed to contain 1,200 square feet of retail space on the lower floor and an apartment 600 square feet in size on the upper floor.

The adjoining property to the north is zoned Neighborhood Commercial (C-1) and contains offices for Beach Realty & Construction. The adjoining property to the south is also zoned Neighborhood Commercial (C-1), but contains a single-family residence. Two properties zoned Single-Family Residential (RS-1) are located to the east across Duck Road. These properties each contain a single-family residence. The subject property fronts Currituck Sound to the west.

**Prior Approval History**

A conditional use permit for a boat launching and rental facility was originally approved for the subject property in 1992 under the jurisdiction of Dare County.

CUP 14-004: In April 2014, Duck Town Council approved a conditional use permit to remove several older buildings on the northern side of the property and replace them with a 1,200 square foot retail building which also included a 600 square foot accessory apartment on the upper story. The approval also included a new parking area, septic system, lighting, landscaping, and storm water retention serving the new retail building.
Staff Analysis
The proposed project does not involve any changes to the site layout or existing improvements on the property. Therefore, there is no consideration necessary for many of the development standards that might typically be reviewed for a commercial development. Effectively, the only significant issue concerns the amount of parking available to accommodate the proposed change of use. Staff has covered a few of the basic development standards to help outline the status of the existing property, but most of the standards unaffected by this proposal are not addressed in this staff report.

Proposed Use – 156.033(C)(5):
Conversion of 1,200 square feet of retail space to use as a carry-out eating establishment. An eating establishment is a conditional use in the Neighborhood Commercial (C-1) zoning district.

The other, existing uses on the subject property are both permitted and conforming uses. North Duck Watersports boat/equipment rental business was approved in 1992 and is permitted as a conditional use in the C-1 zoning district. The accessory apartment is a permitted use in the C-1 district and was approved in 2014.

Lot Area – 156.033(D)(1):
The parcel at 1448 Duck Road is 34,613 square feet (0.79 acre) in size. Unlike most zoning districts in Duck, the Neighborhood Commercial (C-1) zoning district does not have a minimum lot size standard. It states, “lots shall be of sufficient size to meet the requirements of the County Health Department, to provide adequate siting for structures and to provide parking, loading and maneuvering space for vehicles...”. During review of the conditional use permit in 2014, it was determined that the subject property was large enough to accommodate all the existing and proposed uses.

Lot Coverage – 156.033(D)(5):
The proposed project will not change the existing site layout or lot coverage.

A recent as-built survey shows the following impervious surfaces on the site:

<table>
<thead>
<tr>
<th>Buildings</th>
<th>2,160 s.f.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Driveway/Parking</td>
<td>2,730 s.f.</td>
</tr>
<tr>
<td>TOTAL IMPERVIOUS</td>
<td>4,890 s.f. (14.1%)</td>
</tr>
</tbody>
</table>

As the maximum lot coverage requirement in the Neighborhood Commercial (C-1) zoning district is 50%, the existing development appears to comply with this standard.

Building Setbacks - 156.033(D)(2), (3) & (4):
The proposed project will not expand or change the location of any existing buildings.

The subject building has the following setbacks:

<table>
<thead>
<tr>
<th>Setback Distance</th>
<th>Minimum Setback</th>
</tr>
</thead>
</table>

3
Front (Duck Road) 38 feet 15 feet
Rear 30 feet 20 feet
South Side 189 feet 10 feet
North Side 10 feet 10 feet

The subject building complies with all the Town’s minimum setback standards.

Access – 156.093(G) & 156.112:
The subject property presently gains access from a single ingress and egress drive off Duck Road. This driveway complies with all current standards of the Town Code. The proposed project does not change the existing access in any way.

Parking Spaces (156.093 & 156.094):
The following set of parking standards were established for the subject property as part of the conditional use permit approval in 2014:

<table>
<thead>
<tr>
<th>Use</th>
<th># Required Spaces</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rental (Wave Runners)</td>
<td>10 spaces</td>
</tr>
<tr>
<td>Rental (Pontoon Boats)</td>
<td>2 spaces</td>
</tr>
<tr>
<td>Rental (Parasailing)</td>
<td>1 space</td>
</tr>
<tr>
<td>Employees</td>
<td>4 spaces</td>
</tr>
<tr>
<td>Retail</td>
<td>6 spaces</td>
</tr>
<tr>
<td>Apartment</td>
<td>1 space</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>24 spaces</strong></td>
</tr>
</tbody>
</table>

Consistent with these requirements, the property owner has provided 24 parking spaces on site with the recent improvements.

The only change to the parking standards is that the originally approved retail space is now proposed to be occupied by an eating establishment. The other uses and parking needs will all remain the same.

As outlined above, six (6) parking spaces (1 space/200 square feet) were allotted to the retail use under the conditional use permit approval in 2014.

Parking for an eating establishment is calculated based on seating and employees, but has a minimum requirement of five (5) parking spaces. As the proposed eating establishment has no seating and only 2-3 employees, the minimum parking requirement will default to five (5) parking spaces. So, the revised minimum parking requirements relating to this proposal will be:
Use                              # Required Spaces
Rental (Wave Runners)     10 spaces
Rental (Pontoon Boats)    2 spaces
Rental (Parasailing)      1 space
Employees                  4 spaces
Eating Establishment (carry-out) 5 spaces
Apartment                  1 space
TOTAL                      23 spaces

As the site presently contains 24 parking spaces, the proposed project complies with the Town’s minimum parking standards.

Loading Zone (156.095):
The approved site does not contain a loading zone. The applicant is required to provide a loading zone that is at least 12’ by 25’ in size. As shown on the Existing Conditions (Site Plan Sheet 2), the site currently contains a 12’ by 55’ loading area near the restaurant along the northern side of the northern access drive. The applicant is proposing to reduce the size of this loading zone to a 12’ by 22’ loading area for smaller deliveries in order to accommodate the new location of a dumpster enclosure and walk-in cooler further to the west. The applicant is also proposing to add a new 12’ by 35’ loading area within the existing paved area directly adjoining the restaurant. This loading zone will comply with the Town’s minimum standard.

Signs (156.130):
The applicant plans to install at least one wall sign for the proposed business. Any new signs will be reviewed and approved under a separate permit by the Community Development Department.

Wastewater Disposal (156.125):
The subject property is presently served by an on-site septic system installed to accommodate the needs of the recently constructed building.

Prior to the issuance of a building permit, the applicant must obtain approval from the Dare County Environmental Health Department either noting that the existing septic system can accommodate the proposed eating establishment or can be upgraded to accommodate the proposed use.

Stormwater Management
Consistent with the approved site plan and conditional use permit in 2014, the property owner has constructed two stormwater retention basins, one to the north of the subject building and one to the west of the newly installed parking area. These basins were designed to accommodate stormwater runoff from the recent improvements.

The proposed project will not alter the direction or amount of stormwater runoff.
Waste Management:
North Duck Watersports has used roll carts to accommodate its trash needs in the past. The applicant is working with the property owner to determine if that will be sufficient or if a commercial dumpster will be needed to accommodate trash collection for the site. If a dumpster is necessary, it would require screening around three sides.

Building/Fire Codes:
If this conditional use permit is granted, the applicant will need to obtain a building permit for any necessary interior renovations. The Building Inspector will inspect this work to ensure compliance with the N.C. Building Code and N.C. Fire Code.

Duck CAMA Land Use Plan
The Future Land Use Map in the Town of Duck’s adopted CAMA Land Use Plan designates the subject property as a General Commercial Area. The General Commercial Area is defined as “General commercial areas include areas that primarily encourage the concentration of commercial facilities in clusters or group developments and to provide readily accessible shopping facilities and will provide for the proper grouping and development of commercial facilities to serve permanent and seasonal residents and the general public. Group developments are envisioned and should be encouraged in these areas.”

The proposed coffee house/sweet shop appears to be consistent with the type of uses allowed in a General Commercial Area. As part of its recommendation, the Planning Board is asked to determine if the proposed text amendment is or is not consistent with the Town’s adopted CAMA Land Use Plan.

Staff Recommendation
Staff recommends APPROVAL of the conditional use permit to establish an eating establishment in the lower level of the commercial building at 1448 Duck Road, subject to the following conditions:

1. The applicant must obtain approval from the Dare County Environmental Health Department that the existing septic system can accommodate or be upgraded to accommodate the eating establishment prior to the issuance of a building permit or occupancy of the space.
2. Any new signs or changes to existing signs must be reviewed and approved under a separate permit by the Community Development Department.
3. The applicant must obtain a building permit for any necessary interior renovations. All renovations must comply with the N.C. Building Code and N.C. Fire Code.
4. This conditional use permit will expire in 12 months from the date of approval if the approved use has not been established by that date.
ATTACHMENTS
Attachment A  Location Map and Property Information
Attachment B  Conditional Use Application and Cover Letter
Attachment C  Site Plan
County of Dare, North Carolina

*Owner and Parcel information is based on current data on file and was last updated on March 10 2017

**Primary (100%) Owner Information:**
MEREDITH, ANDREW
313 SPOT LN
VIRGINIA BEACH VA 23456

**Parcel Information:**
Parcel: 009271000 PIN: 995006388784
District: 21- DUCK
Subdivision: SUBDIVISION - NONE
LotBlkSect: LOT: BLK: SEC:
Multiple Lots: -
PlatCabSlide: PL: SL: Units: 1
Deed Date: 04/29/1992
BkPg: 0799/0392
Parcel Status: ACTIVE

**Property Use:** RECREATIONAL

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**BUILDING USE & FEATURES**

<table>
<thead>
<tr>
<th>Building Use:</th>
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<tbody>
<tr>
<td>RETAIL MULTI OCCUP</td>
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| Exterior Walls: |
| Full Baths: |
| Bedrooms: |
| Heat-Fuel: |
| Heat-Type: |
| Air Conditioning: |

| Building Use: |
| Exterior Walls: |
| Full Baths: |
| Bedrooms: |
| Heat-Fuel: |
| Heat-Type: |
| Air Conditioning: |

**Tax Year Bldg Value: $188,600**
**Next Year Bldg Value: $188,600**

**Actual Year Built:** 2015
**Finished sqft for building 1:** 2088
**Total Finished SqFt for all bldgs:** 2088

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**MISCELLANEOUS USE**

| Misc Bldg b: |
| Misc Bldg c: |
| Misc Bldg d: |

| FRAME OR CB BOAT HOUSE |
| BOAT SLIP AVERAGE |
| GAZEBO |

| Year Built: |
| sqft: |
| Year Built: |
| sqft: |
| Year Built: |
| sqft: |

| Frame or CB Boat House Year Built: 1970 |
| Boatslip Average Year Built: 1970 |
| Gazebo Year Built: 1970 |

**Tax Year Misc Value: $33,300**
**Next Year Misc Value: $33,300**

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**LAND USE**

| Tax Year Land Value: $382,800 |
| Next Year Land Value: $382,800 |

**Land Description:** 21-Commercial Sound Front

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**TOTAL LAND AREA:** 33500 square feet

| Tax Year Total Value: $604,700 |
| Next Year Total Value: $604,700 |

*Values shown are on file as of March 10 2017*
Frieda Berry
Sugar Berry Sweets LLC
PO Box 812
Kill Devil Hills, NC 27948
252-207-2623

Town of Duck
1200 Duck Rd
Duck, NC 27949

Re: Conditional Use Permit Review and Approval

Dear Members of the Board and Council,

I would like to introduce you to my new company Sugar Berry Sweets LLC. I am excited to have the opportunity to open this small business in the OBX - Duck area. I have been an Outer Banks resident for 19 years with a passion to participate in this unique local economy by creating my own sweet shop brand.

Twenty-seven years of food service and hospitality experience have positioned me well to establish and manage a specialty shop with distinction such as Sugar Berry Sweets. My most recent employment and management history includes: Black Pelican, manager; Twiddy & Company Realtors, office manager; Inn on Corolla Light, manager; and Coastal Residential Maintenance, owner.

Sugar Berry Sweets will offer a specialty coffee & pick-up sweet shop in the Town of Duck. My business would lease space in a newly constructed building co-located on the North Duck Watersports property. Sugar Berry Sweets would be a perfect complimentary addition to the existing business. Visitors would be able to enjoy beverages and specialty sweet treats while enjoying recreational family fun for all ages.

The menu would offer locally roasted organic specialty coffees, and a wide variety of sweet goods including: funnel cakes, mini-donuts, Belgian waffles, gourmet cotton candy and ice cream. Currently, the North Duck area does not offer a quick-stop for coffee or treats. This would be an ideal location to capture income from guests traveling north and south along the island.

Thank you for your consideration in approving this conditional use permit. I look forward to becoming a part of the business community in the Duck area and participating in all the events the town offers to its visitors.

Sincerely,

Frieda Berry
Sugar Berry Sweets, LLC
252-207-2623

SugarberrySweetsOBX@gmail.com
### CONDITIONAL USE PERMIT APPLICATION

**Date:** 3-1-17  
**Application No.:** CUP17-001

**Property Address:** 1448 Duck Rd

**Zoning Classification:** C-1  
**PIN #:** 995006388784

**Legal Description (Attach additional sheet if necessary):**

<table>
<thead>
<tr>
<th>Lot</th>
<th>Block</th>
<th>Subdivision</th>
<th>Community</th>
</tr>
</thead>
</table>

**Property Owner:** Andrew Meredith

**Mailing Address:** 1448 Duck Rd

**City/State/Zip:** Duck, NC 27949  
**Telephone:**

**Telephone #:** 252-202-2075  
**Email:**

**Representative (if different from applicant):** FLEX BERRY

**Mailing Address:** 807 Colington Dr, KD4 NC 27948

**Representative Telephone #:** 252-207-2023  
**Email:** Sugarberry.sweetsobx@gmail.com

**Proposed Use(s) of the Property:** Take-out Coffee & Sweet Shop

**Project Description:** Open a store that offers specialty coffees and a variety of sweet goods

**Proposed Development Information:**

<table>
<thead>
<tr>
<th>Total Acreage</th>
<th>Total Building Area (s.f.)</th>
</tr>
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<tbody>
<tr>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Total # Units</th>
<th>Lot Coverage (s.f. &amp; %)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Building Height</th>
<th># Parking Spaces</th>
</tr>
</thead>
</table>
Lighting

Signs

Utilities: Water: Well ______ County ______

Sewer: Septic ______ Community ______ Waste Water Facility ______

Is this an amendment to an existing Conditional Use Permit? ______

If yes, permit No. ________________

Fees are published in the Adopted Fee Schedule and are subject to change.

Conditional Use Permit $400.00

Conditional Use Permit—Home Occupation $200.00

Conditional Use Permit—Amendment $250.00

I understand that the Planning Board shall review the application at its regularly scheduled meeting on the second Wednesday of each month, and then submit its recommendation as to approval or disapproval along with conditions as it may deem necessary to the Town of Duck Council. The owner of the property for which the permit is sought, or his agent, shall be notified by mail. Notice of such hearing shall be posted on the property for at least fifteen (15) days prior to the hearing. Any party may appear at such hearing, in person, by agent or by attorney. Any party desiring to speak at the meeting shall include their request by written letter to the Chairman of the Town of Duck Planning Board, P. O. Box 8369, Duck, N.C. 27949.

The Town of Duck Council may impose reasonable and appropriate conditions and safeguards to insure that the spirit and intent of this ordinance is preserved and that an approved conditional use will not adversely affect the public interest.

The Following MUST Be Completed by the Property Owner

I/We ____________________ by ____________________;

hereby certify that the applicant named above has the authority vested by me to make this application.

________________________

(Signature of Property Owner or Authorized Agent)  

________________________

(Title or Relationship)

Address 1446 Duck rd __________________________________________

Phone 252-262-2095

Application Received MAR 2 REC

Fee Paid $250 ________________

FOR OFFICE USE ONLY

Received By ____________________

Receipt # 2/2009 Cash
TO: Chairman Blakaitis and Members of the Town of Duck Planning Board
FROM: Joe Heard, AICP, Director of Community Development
DATE: April 12, 2017
RE: Consideration of Sign Content Standards in Light of the U.S. Supreme Court’s Reed v. Town of Gilbert Decision

Proposal
Proposal to amend the sign standards in Section 156.130 of the Zoning Ordinance to bring the standards into compliance with the U.S. Supreme Court’s content based decision in the Reed v. Town of Gilbert case.

After review of concepts and a preliminary draft ordinance by the Planning Board, the Community Development staff and Town Attorney have prepared the attached draft ordinance for final consideration by the Planning Board.

Background Information
On August 5, 2015, the Duck Town Council authorized the Community Development staff to work with the Planning Board and Town Attorney to review the sign standards in Section 156.130 of the Zoning Ordinance and recommend amendments to bring the standards into compliance with the U.S. Supreme Court’s decision in the Reed v. Town of Gilbert case.

In the wake of Reed v. Town of Gilbert, what can no longer be regulated?
- Sign standards relating to the content/message of a sign
- Differing sign standards depending on the content of a sign

What can still be regulated?
- Number of signs
- Sign location
- Sign height, size, and dimensions
- Sign lighting and other physical characteristics
- Different standards for temporary and permanent signs
- Different standards based on the type of use
- Different standards for signs in different locations or zoning districts
Staff/Town Attorney Analysis
Ben Gallop with the Town’s law firm of Hornthal, Riley, Ellis & Maland will be advising the Planning Board and Town Council throughout the process of developing necessary amendments to the Town of Duck’s sign ordinance.

Following input on concepts from the Planning Board, staff has worked together with Mr. Gallop to prepare a draft ordinance addressing the necessary changes to the Town’s sign standards. Per the direction of the Planning Board, this effort has been completed under the following guiding principles:

- It is the Town’s intent to limit the consideration of the current sign standards to addressing the specific sign content issues from the Reed v. Town of Gilbert case.
- The Town will seek to develop solutions that preserve as many of the existing standards as possible and minimize any changes to existing standards.
- It is not the Town’s intention to consider changes to the current sign standards to make them stricter or more flexible. However, the Town recognizes that some of the potential solutions may result in greater restrictions or greater allowances for certain types of signs in the future.

The following subsections of the Town Code have been proposed for amendment.

Proposed Amendments Prior to 3/8 Meeting
The following amendments (in red in the draft ordinance) were reviewed at the 3/8 Planning Board meeting.

156.002 Definitions
Removed definitions for content-related signs such as Reader Board, Business Sign, Construction Sign, Directional Sign, Identification Sign, Major Home Occupation Sign, Multi-Unit Sign, Noncommercial Sign, Real Estate Sign, and Time & Temperature Sign.

Added definitions for Commercial Sign and Residential Sign based on zoning districts.

Broadened and simplified the definition of Government Sign.

Added traffic/public safety justification into the definition of Residential Identification Sign.

156.130(C)(1)
(i) References ‘advertising” and “business” signs – remove, may be possible to exclude in definition of Sign
156.130(D) Exemptions
(1) Government Signs – simplify
(3) Seasonal Displays & Decorations – remove, may be possible to exclude in definition of Sign
(4) Religious Symbols - remove, changed definition of Sign to exclude
(6) Historical Markers - remove, changed definition of Sign to exclude
(8) Group Development Signs – remove “group development” wording, still covers the concept
NEW (6) – Address exemption for community association signs

156.130(E) Prohibited Signs
(4) Vulgar Words – remove
(8) References “business signs” – remove “business”, allow government signs
(10) Off-Premise Signs – Town Attorney recommends removal, important to maintain
(12) Pennants – remove, add pennant prohibition to list in (E)(4)
(13) Tourist-Oriented Directional Signs – remove, consolidate under government signs
(14) Non-Governmental Signs – remove “nongovernmental”, apply to all signs

156.130(F)(2) Exempt from Permits
(a) & (c) Directional Signs – remove, some consolidated under government signs, others need to be addressed for commercial signs
(b) Construction Signs – remove, add amended version as (F)(2)(f)
(d) Public Notice Signs – remove, consolidate under government signs
(e) Real Estate Signs (Sale) – remove, add amended version as (F)(2)(e)2.
(f) Real Estate Signs (Rent) – remove, add amended version as part of (F)(2)(e)4.
(g) Residential Identification Signs - remove, add amended version as part of (F)(2)(e)4.
(h) Navigational Aids – remove, consolidate under government signs
(j) Temporary Noncommercial Event Signs – remove “noncommercial”, apply to all event signs
(k) Temporary Noncommercial Signs - remove, add amended version as (F)(2)(e)5.
(l) Hunting/Trespassing Signs - content based, justified for public safety
(m) Yard Sale Signs - remove, add amended version as part of (F)(2)(e)3.
(n) Open House Signs - remove, add amended version as part of (F)(2)(e)3.
(o) Civic/Public Service Announcements - remove, consolidate under government signs
(p) Temporary Commercial Signs – remove “commercial”, apply to all window signs
(q) Special Event Balloons/Banners – move under residential sign exemptions in (F)(2)(e)1.
156.130(F)(3) Signs Requiring Permits
(a)1. Subdivision Identification Signs – justified under residential identification sign for traffic direction/public safety, move under residential signs in (F)(3)(a)1.
(a)2. Add provision for home occupation signs
(b) Business Signs - remove “business”, apply to all commercial signs
(b)7.e. Directory Signs – apply to all group developments, remove all content-related wording

156.130(F)(4) Temporary and Special Event Signs
(a) References flags of “United States”, North Carolina, and town/county – place under commercial signs, remove sentence referencing flag content
(a)(6) References “business signs” and content – remove
(b) References “business” and “commercial” signs – apply to all commercial signs

156.130(F)(5) Sign Amortization
Change section title to “Nonconforming signs”.
Remove Amortization Table – amortization is long past and the table is now irrelevant.

Planning Board Comments – 3/8/17 Meeting
At its meeting on March 8th, the Planning Board reviewed potential standards in the draft ordinance and had a thorough discussion about several concepts, specifically:
1. Finding a way to allow seasonal displays/decorations, religious symbols, and historical/historical markers.
   ** These types of signs will be exempted in the proposed definition of “Signs”.
2. Checking the necessity of conflicting/overlapping definitions for “Ground-Mounted Signs” and “Pylon Signs”.
   ** These definitions are not necessary and are proposed for removal.
3. Removal of “morals” from the ordinance intent as the Town cannot regulate content.
   ** This change has been made in the draft ordinance.
4. Limitation on the number of residential signs permitted on a property. After several ideas were discussed, the board members asked the staff and Town Attorney to develop a proposal.
   ** A limit of three residential signs is proposed in the draft ordinance.
5. The Community Development Director and Town Attorney noted several other minor changes that are also proposed in the final draft of the ordinance.
Proposed Amendments Subsequent to 3/8 Meeting
The following amendments (in blue in the draft ordinance) were added to address comments made at the 3/8 meeting or subsequently added after a comprehensive review of the entire Town Code by the Director of Community Development and Town Attorney.

156.002 Definitions
Remove additional definitions for Ground-Mounted Signs and Pylon Signs as both fall under the umbrella category of Freestanding Signs.

Remove reference to sign standards in the definition of Adult Motel.

Rewrite the definition of Signs to clarify the intent and exclude certain noncommercial activities (seasonal displays/decorations, religious/cultural symbols, and historical/memorial markers) from the definition of Signs.

156.130(E) Prohibited Signs
(6) Flashing Signs – amend wording to match the defined term.
(11) Telecommunication Tower – moved from telecommunication standards
(12) Wind/Solar Energy Facilities – moved from wind and solar energy standards
(13) Signs Facing Sound/Ocean – moved from OSO district standards
(14) Air/Gas/Water Supported Signs – moved from OSO district standards
(15) Minor Home Occupation – moved from home occupation standards

156.130(F)(2) Exempt from Permits
(e) Residential Signs – sets maximum of three (3) residential signs per property.
(e)(2) – redefines characteristics of real estate and similar signs.

156.130(F)(3) Signs Requiring Permits
(a)(2) – Home Occupation Signs – sign allowance only for major home occupations.

Elsewhere in Ordinance
91.36(J) – remove subsection referencing signs in noise ordinance (following consultation with the Town Manager, it was determined that this section served no purpose).

155.03(F) – reference sign ordinance for standards

156.029(C)(2) C-PR District – remove sign standards
156.030(C)(3) RS-1 District – remove sign standards
156.031(C)(3) RS-2 District – remove sign standards
156.032(C)(4) R-2 District – remove sign standards
156.030(C)(7)(g) – remove sign standards for Bed & Breakfast Homes, now consolidated under residential signs

156.037 OSO District
156.037(D)(1) Signs Facing Water – remove, add amended version as (E)(13)
156.037(D)(2) Noncommercial Signs – references noncommercial signs - remove
156.037(D)(3) Air/Gas/Water Supported Signs – remove, add amended version as (E)(14)

156.058(F)(7) Wireless Facilities – move under prohibited signs (E)(11)

156.061(D)(8)(c) Formula Businesses – content based – remove

156.117(H) Site Plan Requirements – reference sign ordinance

156.133(F)(5) Outdoor Lighting – remove, standards found elsewhere in lighting and sign ordinances

156.136(A)(4) Home Occupations – reference sign ordinance, major HO now consolidated under residential signs, minor HO moved under prohibited signs (E)(15)

156.138(C)(4)(c) Wind Energy – reference sign ordinance, move amended version under prohibited signs (E)(12)

**Duck CAMA Land Use Plan**

As the Planning Board considers the attached draft ordinance to bring its sign standards into conformity with the U.S. Supreme Court’s *Reed v. Town of Gilbert* decision, the following goal, policy, and objective from the Town’s adopted CAMA Land Use Plan relating to community aesthetics and signs can be used to help guide the Board’s considerations.

**GOAL #5:** Remain aesthetically pleasing while maintaining a coastal village image.

**POLICY #5a:** Duck will adopt and enforce ordinances and procedures to regulate land use, development, redevelopment, and community appearance and explore incentive programs such as grants, group purchases, and recognition programs to enhance community appearance.

**OBJECTIVE #5a:** Enforce, and amend as necessary, the Town zoning ordinance and provisions regarding signs.

As part of its recommendation, the Planning Board is asked to determine if the proposed text amendment is or is not consistent with the Town’s adopted CAMA Land Use Plan.
Staff Recommendation
According to the Town Attorney, the proposed amendments will bring the Town’s sign standards into compliance with the U.S. Supreme Court’s Reed v. Town of Gilbert decision. In addition, the amendments are narrowly tailored to address the necessary content based issues while maintaining as much of the current Town standards as possible. Therefore, staff recommends APPROVAL of the proposed text amendment.

ATTACHMENT
A. Draft Ordinance 17-04
AN ORDINANCE AMENDING THE SIGN ORDINANCE
OF THE TOWN OF DUCK, NORTH CAROLINA

Ordinance No. 17-04

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Duck (the “Town”) may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the “Town’s Zoning Ordinance”) and has codified the same as Chapter 156 of the Town’s Code of Ordinances (the “Town Code”);

WHEREAS, pursuant to N.C.G.S. § 160A-174 the Town may also enact and amend ordinances that define, prohibit, regulate or abate acts, omissions or conditions detrimental to the health, safety or welfare of its citizens and the peace and dignity of the Town;

WHEREAS, the Town has long regulated signage within its jurisdiction pursuant to the above-referenced authority in a manner consistent with many other jurisdictions throughout Dare County, the State of North Carolina and the United States;

WHEREAS, recent case law from the United States Supreme Court has placed significant limitations upon and changed the landscape of signage regulation throughout the United States, including within the Town’s jurisdiction; and

WHEREAS, the Town seeks to modify its existing signage regulations to comply with the mandates of the United States Supreme Court in a manner consistent with the Town’s historical signage regulations and in consideration of the Town’s aesthetic, health, safety and welfare concerns; and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, morals, and general welfare for the Town to amend the Town’s Zoning Ordinance and Town Code of Ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (strikethrough) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipses (“...”) shall remain as they currently exist within the Town Code.
ARTICLE III. Amendment of Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Duck, North Carolina, that the Town Code shall be amended as follows:

PART I. That Town Code Section 156.002 be amended as follows:

ADULT MOTEL. A hotel, motel or similar commercial establishment that:

1. Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions;
2. Offers a sleeping room for rent for a period of time that is less than 12 hours; or
3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 12 hours.

READER BOARD.

1. A permanent sign, affixed either to the wall of a structure or to an existing freestanding sign, which is comprised of a surface to which numerals, symbols and/or letters may be attached on a temporary basis thereby forming messages advertising special sales or services offered.
2. Reader Board signs may be a maximum of 12 square feet for commercial businesses and 32 square feet for civic buildings, churches and similar institutional uses. The area of a Reader Board sign is to be included in the area of wall-mounted or ground-mounted signage permitted.

SIGN.

1. A lettered, numbered, symbolic, pictorial, or illuminated visual display, device, or communication designed or used for the purpose of identifying, announcing, directing, informing, or bringing to the attention of others the subject thereon, that is visible from the public right-of-way of a county, city, or state road. Any object which is used to inform, persuade, advertise or visually attract attention to an object, individual, institution, organization, business, service, commodity, event or location by any means.
2. Signs include words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, trademarks or other pictorial matter designed to convey information and displayed by means of paint, silkscreen, applied lettering or artwork, bills, posters, panels or other devices erected on an open framework or attached or otherwise applied to stakes, posts, poles, windows, buildings or other structures or supports.
3. A SIGN shall include all structural members and sign structures. The term “sign” shall not include seasonal displays and decoration not advertising a business, product, service or entertainment, religious or cultural symbols for noncommercial purposes, or gravestones and historical or memorial plaques, tablets or markers.
SIGN, ANIMATED. Any sign, which uses movement or change of lighting to depict action or to create a special effect or scene.

SIGN AREA.

(1) The entire face of a sign including any nonstructural embellishments, but not including the supporting structure.

(2) In the case of a double-faced sign where the interior angle formed by the faces is 45 degrees or less or where the sign faces are parallel with no more than 24 inches between each sign face, only 1 display face shall be used in calculating the area.

(3) The AREA OF SIGNS, composed in whole or in part of free-standing letters, devices or sculptured matter not mounted on a measurable surface, shall be construed to be the area of the least square, rectangle or circle that will enclose the letters, devices or sculptured matter.

SIGN, ARCADE. Any sign suspended underneath an awning, canopy, marquee, eave, archway or other structure which forms a covered walkway.

SIGN, BUILDING-MOUNTED. Any sign attached to a building, including a wall-mounted sign, projecting sign, canopy sign, porch sign, and window sign, but specifically excluding any roof sign.

SIGN, BUSINESS. Any sign which directs attention to the product, service, business or activity located on the site where the sign is displayed.

SIGN, CANOPY. Any sign which is painted or printed on or attached flat against a canopy or awning.

SIGN, COMMERCIAL. Any sign located on property within a commercial zoning district (C-1, C-2, V-C and S-1).

SIGN, CONSTRUCTION. A temporary sign denoting the contractors, architects or developers responsible for the construction on the site upon which the sign is located.

SIGN, DIRECTIONAL. On-site directional signs for the convenience of the public including but not limited to directional traffic signs indicating entrance and exit, and signs indicating the location of restrooms, public telephones or parking areas.

SIGN, ELECTRONIC MESSAGE BOARD. A sign, or portion of a sign that displays electronically generated text, images, graphics, or video whereby the message is formed using a panel or matrix consisting of light emitting diodes (LED’s), fiber optics, light bulbs or other illumination devices within the display area. ELECTRONIC MESSAGE BOARD SIGNS include, but are not limited to, signs also known as Electronic Reader Boards,

**SIGN FACE.** The area of a sign used for visual communication.

**SIGN, FLASHING.** An illuminated sign of direct or indirect lighting on which the artificial light flashes on and off in regular or irregular sequences.

**SIGN, FREESTANDING.** A sign supported by 1 or more poles or braces set firmly in the ground or in a foundation and not attached to a building.

**SIGN, GOVERNMENT.** A sign or notice erected and maintained by the town, county, state or federal government for traffic direction, direction to public services or facilities, or display of a public message.

**SIGN, GROUND-MOUNTED.** A freestanding sign which has a ground clearance of 8 inches or less and a maximum height of 8 feet.

**SIGN, HANGING.** A sign suspended from braces, beams or other supports which may be either freestanding or building-mounted.

**SIGN HEIGHT.** As applied to a sign, height shall be measured as the vertical distance between the highest part of the sign or its supporting structure, whichever is highest, and the ground.

**SIGN, IDENTIFICATION.** A sign used to identify only the name of the individual, family, organization or enterprise occupying the premises, the profession of the occupant, or the name of the building on which the sign is displayed.

**SIGN, MAJOR HOME OCCUPATION.** A sign displayed in connection with a major home occupation.

**SIGN, MULTI-UNIT.** A freestanding sign that contains 3 or more identification signs for multi-occupancy premises, such as a shopping center.

**SIGN, NONCOMMERCIAL.** A sign designed and intended to promote, support, call attention or give notice to a cause, nonprofit and noncommercial services, or political message of an individual, charitable organization, political group or other similar entity.

**SIGN, NON-CONFORMING.** A lawfully existing sign which becomes non-conforming on the effective date of a new ordinance or amendment thereto because it does not conform fully with all standards and regulations therein.
SIGN, PORCH. A sign that is attached in whole or in part to the fascia of a porch roof.

SIGN, PORTABLE. A sign that is not permanently attached to the ground, a structure or a building and that can be moved from 1 location to another and used for a temporary purpose. This shall include “A”-frame signs, sandwich board signs and signs mounted and displayed on a stationary vehicle.

SIGN, PYLON. A freestanding sign which is mounted on 1 or more supports so that the bottom edge has a ground clearance of greater than 6 inches.

SIGN, REAL ESTATE. A temporary sign advertising the sale, rent or lease of the property on which the sign is located.

SIGN, RESIDENTIAL. Any sign located on property within a residential zoning district (RS-1, RS-2, and R-2).

SIGN, RESIDENTIAL IDENTIFICATION. A sign which denotes the name of a residential subdivision, condominium or apartment complex. Such signs are permitted for the purpose of assisting the local government with traffic flow and public safety.

SIGN, REVOLVING/ROTATING. A sign that revolves 360 degrees.

SIGN, ROOF. A sign erected, constructed or maintained above or on the roof of any building.

SIGN, SANDWICH (also called an A-FRAME SIGN). A portable sign which is constructed of durable materials, which has 2 flat faces, with or without changeable copy, and is designed to be placed on the ground.

SIGN STRUCTURE. Anything built or constructed for the purpose of supporting a sign.

SIGN, TEMPORARY. A sign constructed of cloth, fabric, plywood or other lightweight material, and designed or intended for a period not to exceed 90 days and which does not constitute a structure subject to the North Carolina State Building Code or Town of Duck ordinances.

SIGN, TIME AND TEMPERATURE.
—(1) A sign containing numerals that may be alternately displayed to show the time and/or temperature.
—(2) A TIME AND/OR TEMPERATURE SIGN shall not be considered a flashing or animated sign; time and temperature signs shall not change or alternate messages more frequently than once every 3 seconds.
**SIGN, UNDER-CANOPY.** Any sign suspended underneath an awning, canopy, marquee, eave, archway or other structure which forms a covering for a walkway.

**SIGN, WALL.** A sign painted on or attached parallel to the wall of a building, including any sign attached to a mansard.

**SIGN, WINDOW.** A sign attached to or applied upon the inside or outside face of a window or transparent door or adjacent thereto (placed in a manner within a building so that it is visible from the exterior of the building through a window and intended to be viewed from the outside), not to include window merchandise displays.

**PART II.** That Town Code Section 156.130 be amended as follows:

(A) **Purpose.** This subchapter is established to regulate the area, height, location and structural type of signs in the town to promote the health, safety, morals and general welfare of the community by protecting property values; minimizing visual distractions to motorists; and protecting and enhancing the image, appearance and economic vitality of the town.

(B) **Applicability.** Signs located within the town shall be erected, relocated, refaced or altered only in accordance with the provisions of this chapter and all other applicable laws, ordinances and regulations.

(C) **General provisions.**

(1) **Location.**

(a) All signs are deemed to be accessory to the principal use and shall be located entirely on the same lot as the principal use, except as provided in division (F)(4) below.

(b) Signs and sign structures may not obstruct ingress and egress to any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any room or building as required by law.

(c) Signs shall be set back from the right-of-way as specified herein.

(d) Building-mounted signs shall be flush-mounted against the plane of a building wall and shall not extend beyond the perimeter of any building edge, canopy border or roof line, except as provided for porch signs in division (F)(3)(b)6. below.

(e) Projecting signs shall not project more than 4 feet in a perpendicular fashion from the building face to which they are attached.

(f) Wall signs shall not extend more than 12 inches (12”) in depth from the building face to which they are attached.

(g) No permanent, ground-mounted freestanding sign shall be located within a public right-of-way or within 30 feet of the center-line of any public thoroughfare.

(h) Any sign that obstructs corner visibility or visibility at a driveway between a height of 2 feet and 10 feet is prohibited.

(i) No advertising sign or business sign shall be located within 100 feet of any historical site or monument.

(2) **Sign lighting.**
(a) All lighting must be oriented or shielded so that light and glare reflects away from streets and adjacent property.

(b) External sign lighting shall be directed toward signs and shall be shielded in a manner so as to illuminate the sign face only. Signs with external lighting shall be lit from the top down to avoid the glare and sky illumination characteristics of spot lighting or up lighting. Internally lit or back lit signs must be appropriately shielded to keep glare and light from rising above the top of the sign.

(c) No sign regulated by this chapter may utilize a revolving beacon light, flashing, revolving, changing and/or rotating light.

(d) All signs in which electrical wiring and connections are to be used shall require a permit and shall comply with the North Carolina Electrical Code and be approved by the Building Inspector.

(3) Sign structures. Sign structures shall not be illustrative in nature. Any portion of a sign structure which is intended to inform, persuade, advertise or visually attract attention shall be considered part of the sign.

(4) Anchoring and construction specification.

(a) All freestanding signs shall have self-supporting structures erected on or permanently attached to concrete foundations, concrete footings or concrete embedment.

(b) All signs and sign structures shall be constructed and designed according to generally accepted engineering practices, to withstand wind pressures and load distribution as specified in the North Carolina State Building Code, as adopted and amended by the town.

(c) When a sign or outdoor advertising structure becomes structurally unsafe, the Building Inspector shall give written notice to the owner thereof that the same shall be made safe or removed within 10 days of receipt of the notice.

(5) Maintenance and removal. Should any sign become in danger of falling or is deemed unsafe by the Building Inspector, the owner or the person or firm maintaining the sign, shall upon written notice from the Building Inspector, secure or remove the sign within 10 business days. In the case of immediate danger, the sign shall be secured or removed as specified by the Building Inspector. If the sign is not removed or secured, the Inspector or his or her designated agent may initiate legal procedures to obtain the necessary court orders to remove the signs at the expense of the owner or lessee thereof.

(6) Abandoned signs. Any freestanding sign relating to any business or other use shall be removed by the owner of the sign or property owner within 12 months after the business or activity has been vacated or terminated. All other signs relating to any business or other use shall be removed by the owner of the sign or property owner within 90 days after the business or activity has been vacated or terminated. If the sign has not been removed after the removal time has expired and after proper written notification has been issued, the town may initiate legal procedures to remove the signs at the expense of the owner or lessee thereof.

(7) Sign measurements. For the purpose of this chapter, the area, in square feet, of any sign shall be computed by the smallest square, triangle, rectangle, circle or combination thereof which will encompass the entire sign. In computing the sign area in square feet, standard mathematical formulae for known or common shapes will be used. In the case of irregular shapes, straight lines drawn closest to the extremities of the shape will be used. Where a sign has 2 or more faces, the area of all faces shall be included in determining the
area of the sign, except that where 2 faces are placed back-to-back and are at no point more
than 2 feet from one another. The area of the sign shall be taken as the area of the larger
face if the 2 faces are of unequal area; if the areas of the 2 faces are equal, then the area of
1 of the faces shall be taken as the area of the sign.

(D) Exemptions. The following signs are exempt from the requirements of this division
except for applicable provisions contained in division (C) above:

(1) Government signs Signs and notices posted by or under the direction of an official
of the government of the United States, the State of North Carolina, the County of Dare or
the Town of Duck in the performance of his or her official duties, including signage
indicating areas for handicapped parking;

(2) Product dispensers and point-of-purchase displays;

(3) Seasonal displays and decoration not advertising a business, product, service or
entertainment; displayed for a period not exceeding 60 consecutive days;

(4) Religious symbols for noncommercial purposes;

(5) (3) Indoor signs other than window signs;

(6) Gravestones and historical or memorial plaques, tablets or markers; and

(7) (4) Signs which are less than 1 square foot in area; and

(8) (5) Signs which are visible only to the interior court yard of a group development
complex and which are not visible from road the public rights-of-way, beach, or the
shoreline and/or waters of the Atlantic Ocean and Currituck Sound, are exempt from the
requirements of this division except for the applicable provisions contained in divisions
(C)(2), (C)(4), (C)(5), (C)(6), and (E), but not including the provisions in (E)(2).

(6) Signs and notices posted along privately maintained roads or commonly held
properties by a formally established property owners association for the purpose of traffic
direction, public notice or public safety.

(E) Prohibited signs. In all zoning districts the erection, construction, location or the
use of any sign described below is prohibited as follows, unless otherwise permitted in this
chapter. Prohibited signs, if deemed to create a public safety hazard by the Zoning
Administrator, may be removed immediately by the town; otherwise, prohibited signs shall
be removed within 10 business days following written notification from the town:

(1) No sign shall be permitted on or protrude into a public or private right-of-way,
street or vehicular passageway;

(2) No sign shall be posted on any telegraph, telephone, electric or other utility pole
or structure or any tree;

(3) No sign shall be permitted whereby its location, nature or type constitutes a hazard
to the safe and efficient operation of vehicles upon any public or private right-of-way, street
or passageway. No sign shall be permitted that obstructs the line of sight of motorists or
pedestrians at intersections, driveways, or along any public or private right-of-way, street
or passageway. No sign shall be permitted that obstructs or resembles traffic signs or
signals, or would tend to be confused with a flashing light of an emergency vehicle;

(4) Signs containing “vulgar” words or pictures: no sign shall contain statements,
words or pictures which may be classified as “vulgar,” or contain language that may be
deemed “vulgar slang,” offensive slang or obscene in The New College Edition of the
American Heritage Dictionary of the English Language;
(5) (4) No sign shall be permitted that contains or consists of banners, posters, ribbons, balloons, streamers, pennants, spinning parts or other similarly moving devices or ornamentation, except as specifically provided herein;

(6) (5) No sign shall be permitted which contains or utilizes revolving or rotating beams of light. No flashing sign shall be erected which flashes, except for time and temperature signs as defined in this chapter. Also prohibited are portable spotlights or beacons used as advertising to draw attention to any use;

(7) (6) No signs or lettering shall be displayed on a vehicle or trailer that is parked or located within 80 feet of the centerline of N.C. Highway 12 and on the same property as the business for which the sign is advertising, unless there is no other feasible location to park the vehicle on the property;

(8) (7) No business sign shall be located in any public or private waterbody, canal, ditch or other waterway, including the Atlantic Ocean and the surrounding waters of the town. This prohibition does not apply to government signs official federal, state or local navigational signs;

(9) (8) Temporary, portable signs including sandwich board, A-frame or wind driven signs such as tethered balloons or other inflatable objects, except as otherwise provided in this chapter. A-frame or sandwich board signage may be permitted on decks and landings of commercial buildings, except as otherwise prohibited herein, but may not be ground or roof mounted;

(10) (9) All outdoor advertising structures (billboards or off-premises signage) are prohibited. Any sign or outdoor advertising structure that violates any provision of any law of the state relative to outdoor advertising is prohibited;

(11) (10) Roof signs that extend above the peak of the roof on which they are attached or whose area exceeds individually or in aggregate 25% of the roof area on which they are attached or more than 10% of the total roof area of an individual building. Roof signs shall not be attached to flat roofs. Roof signs shall in no case be taller than 10 feet from the lowest point of attachment to the roof. The height of a roof sign measured from the ground to the top of the sign cannot exceed the maximum height limit for the zoning district in which the sign is permitted;

(12) Any form of signage on a telecommunications tower;

(13) Any form of signage on a wind energy facility or solar energy system;

(14) Signs supported in whole or in part by water, air or gas in the Ocean and Sound Overlay District;

(15) Signs directed toward any public trust area as defined by CAMA;

(16) Signs related to a minor home occupation;

(17) Pennants are prohibited except as navigational aids; or if used by a religious activity or by an educational or charitable organization for which a permit has been granted as temporary signage. Pennants shall not be permitted or controlled as flags;

(18) Tourist oriented directional signs;

(19) Non-governmental Signs imitating or closely resembling official traffic or government signs or signals, excluding actual government signs;

(20) Electronic message board signs as defined in Section 156.002; and

(21) Any other sign not expressly permitted by this division.

(F) Administration and permits.
(1) **Sign permit and building permit.** All signs greater than 3 square feet except window signs permitted by this chapter and exempt signs require a sign permit issued by the Zoning Administrator. No sign or outdoor advertising structure shall be erected or attached to, suspended from or supported on a building or structure, nor shall any existing sign or outdoor advertising structure be structurally altered, remodeled or relocated, until a sign permit has been issued by the Zoning Administrator. The Building Inspector shall issue a building permit for the erection or construction only for a sign which meets the requirements of this chapter and the Building Code of the State of North Carolina. Applications for sign permit to construct, or alter the structure of a sign shall be submitted to the town Zoning Administrator and accompanied by a plan showing the following:

- **Area of the sign;**
- **Size, character, general layout and designs of signs;**
- **The method and type of illumination, if any, and construction specifications if applicable;**
- **The location proposed for the signs in relation to property lines, zoning district boundaries, right-of-way lines, public waterways and existing signs;**
- **A tally of all building and ground-mounted temporary and permanent signage on the premises;**
- **Additional information that will enable the Zoning Administrator to determine if the sign is to be erected in conformance with the requirements of this chapter; and**
- **Payment of fee to obtain sign permit and building permit (if one is required).**

(2) **Exemption from permits.** The following types of signs are exempted from the sign permit requirements, but must comply with all other requirements of this chapter:

- **Directional signs not over 4 square feet in area indicating the location of churches, schools, hospitals, parks, scenic or historic places or other places of general interest. Any like sign and mounting shall not exceed 3 feet in total height under the following provisions:**
  1. These signs are located on private property with written permission from property owner; and
  2. Signs are not located in public or private right-of-way.

- **One, non-illuminated sign for each street frontage of a construction project, not to exceed 12 square feet in sign area in residential zones or 24 square feet in all other zones. This sign shall be used by all general contractors, sub contractors, architects, landscape professionals or other firms or organizations involved in the construction project. The sign may be erected 5 days prior to construction and shall be removed within 10 days following completion of the construction. This sign shall be used in lieu of individual signs for each professional involved in the construction project;**

- **Directional signs. Four directional signs per lot or group development, not to individually exceed 3 square feet in sign area or 20 inches in height;**

- **Public signs or notices or any sign posted at the direction of or with the permission of the Town Manager;**

- **Real estate signs (for sale). One non-illuminated real estate sign per street frontage, not to exceed 6 square feet in sign area. The signs shall be removed within 10 business days following sale of the property;**
(f) Real estate signs (for rent, daily or weekly). One non-illuminated real estate sign per street frontage, not to exceed 3 square feet in sign area. These signs shall be affixed to the structure offered for rent;

(g) Residence signs. Nameplate or street address numbers, not to exceed 10 square feet in sign area. For approved major home occupations, a sign advertising the business may not exceed 1 square foot in area;

(h) Signs used for bona fide navigational aids;

(i) (a) Flags and other wind-driven devices, as defined in Section 156.002 above, provided the standards of division (F)(4)(a) below are met;

(j) (b) Any property for which a special event permit has been approved may install temporary signs or banners for the promotion of noncommercial events or activities provided they do such signs do not exceed 48 square feet in sign area and do not encroach on any public or private right-of-way. These temporary signs or banners may be installed 10 business days before the event or activity and must be removed within 5 business days following the event or activity;

(k) Noncommercial signs. Temporary noncommercial signs less than 8 square feet in area shall be allowed without permits, provided that these signs shall be limited to 90 days duration and do not encroach on any public or private right-of-way;

(l) (c) Signs prohibiting persons from trespassing, hunting, fishing or swimming and warning of dangerous animals, not to exceed 2 square feet in area for each sign;

(m) Non-illuminated yard sale signs not exceeding 2 square feet in area. These signs shall be posted no more than 24 hours in advance of the event; shall be posted for a period not to exceed 3 consecutive days; shall be removed by 9:00 p.m. of the final day of the event; and shall not be located within any public right-of-way. Each like sign placed off-site shall require the permission of the owner of the property on which the placement of the sign is sought;

(n) Open house signs not exceeding 2 square feet in area. The conditions listed above for yard sale signs shall also apply to open house signs.

(o) Civic posters and public service announcements displayed in windows of commercial establishments;

(p) (d) Temporary commercial window signage in conformance with the window signage requirements in division (F)(3)(b)4 below; and

(q) (e) Residential signs. The total number of temporary residential signs shall not exceed three on any individual property. The following residential signs shall not require a permit.

1. Temporary Banners, flags and balloons for private use in celebration of special events in residential districts, limited to 3 consecutive days' duration.

2. One non-illuminated sign per street frontage, not to exceed 6 square feet in sign area. Such signs must be mounted within a substantial wood or metal frame (similar to real estate signs for example, typical signs used in the real estate industry for advertising sales).

3. Temporary, non-illuminated, lightweight signs, not to exceed 2 square feet in sign area (similar to yard sale or open house signs).

4. Non-illuminated signs mounted to the wall of a residence, not to exceed a total of 14 square feet in sign area.
5. Temporary signs less than 8 square feet in area, provided that these signs shall be limited to 90 days duration and do not encroach on any public or private right-of-way.

(f) Any property on which repair or construction work is actively occurring may install one additional, non-illuminated sign for each street frontage, not to exceed 12 square feet in sign area for residential signs or 24 square feet for commercial signs. The right to display this additional sign ceases when the work is completed.

(3) Permanent signs that require a permit.

(a) Residential signs. The following residential signs shall require a permit.

1. Subdivision Residential identification signs. Maximum of 2 subdivision residential identification signs per entrance, not to exceed 32 square feet each in sign area.

2. Home occupation signs. Major home occupations approved per the standards of Section 156.136 are permitted to install a single, nonilluminated sign not exceeding one square foot in area.

(b) Business Commercial signs. For each lot, tract or parcel in business use a commercial zoning district, 2 square feet of business sign area may be allowed for each linear foot of building frontage with a bona fide customer entrance. The sign area may be in a single sign or in a combination of wall-mounted, projecting, under-canopy, roof, porch or permanent window signs, subject to the following additional limitations.

1. Freestanding signs. One freestanding sign per lot not to exceed 64 square feet in area and not to exceed 12 feet in height shall be permitted. A freestanding sign allowance is in addition to the business commercial sign allowance described in division (3)(b) above.

2. Wall-mounted signs. Signs placed against the exterior walls of buildings shall not exceed in area 20% of the exposed finished wall surface area on which they are attached. For multi-unit structures, the wall signage standards may be divided among the businesses per agreement of the businesses and property owner. Wall-mounted signs shall be flush-mounted against the plane of a building wall and shall not extend beyond the perimeter of any building edge, canopy border or roof line. Wall signs may be mounted to porch or deck railings; however, in no instance shall there be more than 10 square feet of signage for each contiguous 12 linear feet section of railing. In cases where there is less than 12 contiguous linear feet of railing present, signage shall be limited to 20% of the area of the railing section to which it is attached.

3. Under-canopy signs. One under-canopy sign per occupancy, not to exceed 4 square feet in sign area.

4. Permanent window signs. Permanent (permitted) and temporary (exempt) window signs may be displayed on or adjacent to the interior windows of business establishments provided that all window signs in aggregate shall compose no more than 25% of the aggregate area of windows. The total area of all window signs shall not exceed 50% of the maximum permitted building or wall-mounted sign area for that business.

5. Roof signs. Roof signs shall not exceed individually or in aggregate 25% of the roof area on which they are attached or more than 10% of the total roof area of an individual building. Roof signs shall not extend above the peak of the roof on which they are attached. Roof signs shall not be attached to flat roofs. Roof signs shall in no case be taller than 10 feet from the lowest point of attachment to the roof. The height of a roof sign measured from the ground to the top of the sign cannot exceed the maximum height limit for the zoning district in which the sign is permitted.
6. **Porch signs.** One porch sign per occupancy, not to exceed 24 inches in height. Porch signs may extend above the edge of the fascia of the porch roof only and must be designed so that the width of the porch sign is at least 4 times its height but no greater than 5 times its height.

7. **Special regulations, allowances for business commercial signs.** Special regulations and allowances for business commercial signs:
   a. Where an occupancy is on a corner or has more than 1 street frontage, 1 additional freestanding sign and wall signs are allowed on the additional frontage, but the total signage permitted is subject to the limitations of § 156.24(F)(3)(b);
   b. All awning, marquee and under-canopy signs shall have a minimum clearance of 80 inches over any pedestrian use area;
   c. Awning signs shall be considered wall signs and subject to the same standards;
   d. Notwithstanding the limit on sign area based on linear frontage of the building as described in division (3)(b) above, any independent retail business may have a minimum of 30 square feet of sign area. Further, in a group development or multi-tenant building, signage may be distributed among the tenants according to the aggregate building frontage and agreement for sign allowance distribution between the tenants and the property owner; and
   e. For group development projects, additional freestanding building directory signs may be installed within the lot in proximity to major internal pedestrian and vehicular travelways to provide directional information to the individual enterprises or services located within the group development. Freestanding building directory signs shall be limited to identifying the names of the building and individual enterprise or services located therein, addresses or any combination thereof. No building directional sign shall be a ground mounted sign for a single tenant. No like such sign shall exceed 20 square feet in area and 8 feet in height for group development projects less than 5 acres in area or 30 square feet in area and 8 feet in height for group development projects 5 acres or more in area, nor be located closer than 50 feet to any street. These signs shall not be placed within 5 feet of the curb line of a service drive or travel lane. No more than 1 freestanding or building mounted building directory one such sign may be permitted for each two (2) buildings in a group development project. Freestanding building directory signs may be permitted for group development projects in addition to the single ground-mounted sign permitted pursuant to division (F)(3)(b)1. The allowance for wall-mounted or freestanding directory signs is in addition to the business sign allowance in division (F)(3)(b) above.

4. **Temporary and special event signs.** The following non-illuminated temporary signs are allowed provided that the standards contained herein are met and that permits, if required, have been obtained.
   a. **Flags and other wind devices.** Ground-mounted and building-mounted flagpoles at business sites are permitted as commercial signs, subject to the following standards: Flagpoles shall not exceed the maximum building height limit of the applicable zoning district in which they are located. Roof-mounted flagpoles are permitted only if the top of the pole is no higher than the building height limit for the district in which it is located and provided all other limitations of this chapter are met. Flags of the United States, North Carolina, town and county flags are exempt from all restrictions of this section, except that No premises may display more than 3 like signs, each flag and pole shall
conform to the height and setback restrictions of the zoning district in which they are located, and no like flag shall exceed 24 square feet in area. In addition, for any commercial use on a parcel, other flags may be permitted according to the following:

1. A maximum of 1 flag pole with no more than 2 flags per pole shall be permitted for each 25 linear feet of road frontage. A nautical flagpole with a yardarm or gaff shall be permitted to display no more than 5 flags per pole. Permits shall not be required for flags and flag poles; however, the standards herein must be met;

2. Wind-driven devices such as windsongs, decorative banners and similar devices (not including balloons and pennants) may be mounted to buildings, decks and porches provided they are not placed above the eave line of the roof on the building. Permits shall not be required for these devices; however, the standards herein must be met;

3. Sails, sailboards, kites or other similar apparatus mounted on the ground affixed to or in a similar fashion as flagpoles shall be considered as flags and subject to these restrictions;

4. All flagpoles shall be located outside of any right-of-way or easement area;

5. Flagpoles shall be located a minimum of 10 feet from all property lines except that this setback shall not apply to property lines abutting the sound; and

6. Flags shall not contain business names, logos, advertising or other representations for that specific business or activity associated with that business, including flags that display the word "Open," except that 1 flag displaying only the word "Open" may be displayed during the period between October 1 and May 1 for any business that is open to the public without counting against the total signage permitted for the business, subject to the other limitations for siting flags and flagpoles. Flags that contain like information shall be considered as wall signage and subject to wall sign regulations as well as the limitation on number of flags and flagpoles; flags that contain like information shall be considered as freestanding signage if attached to a freestanding sign and shall be subject to the area limitations for freestanding signs; and

7. All flags and flag poles shall be maintained in good repair. Flags and flag poles that are worn, torn, faded, tattered or in need of repair shall be removed and repaired or replaced as soon as they reach that condition.

(b) Building-mounted banners at commercial or business properties as commercial signs provided that banners do not exceed 32 square feet in area, are displayed for no more than 10 days at a time no more than 6 times per year with a minimum of 14 days between banner display per business during the tourist season from Memorial Day to Labor Day. These banners may be consecutive displays during the off-season, not to exceed the maximum allowable days per year. These banners may be mounted on the building or on deck railing or similar building features, or may be ground-mounted with posts or affixed to a permitted ground-mounted sign, subject to the location requirements of Section 156.124(C)(1), provided that a permit has been approved by the Zoning Administrator and applicable fees and deposits as established by the Town Council to guarantee removal of those signs have been submitted.


Amortization Table
### Sign Type | Timeframe for Removal or Compliance
---|---
Temporary or portable signs including sandwich boards and A-frame signs | 30 days
On-premises free-standing | 6 years
Off-premises—billboards, outdoor advertising | 3 years
Prohibited signs | 30 days

1. **Loss of non-conforming status.** A non-conforming sign may lose its non-conforming designation if:
   1. The sign is relocated or replaced; or
   2. The structure of the sign is altered in any way except towards compliance with this chapter. This does not refer to change of copy or normal maintenance but shall include sign re-facing.

2. **Maintenance and repair of non-conforming signs.** Non-conforming signs are subject to all requirements of this chapter regarding safety, maintenance and repair. However, if the sign suffers damage or deterioration equal to or in excess of 50% of the replacement value of the sign, it must be removed or brought into conformance with this chapter.

3. **Other standards for non-conforming signs.**
   1. **No replacement.** Another non-conforming sign shall not replace a non-conforming sign.
   2. **Repair.** Minor repairs and maintenance of non-conforming signs such as repainting the existing graphics, electrical repairs and neon tubing repairs shall be permitted.
   3. **Alteration, relocation or replacement.** Nonconforming signs, which are structurally altered, relocated or replaced, shall comply in all respects with the provisions of this chapter, except as specifically excepted herein.

4. **Legally established non-conforming uses.** New signs related to legally established non-conforming uses may be erected provided they comply with the sign requirements of the district in which the use is located.

6. **Signs to be removed by Zoning Administrator.**
   1. Signs unlawfully placed in any street right-of-way or on any public property, including signs affixed to street signs and posts and traffic signs and posts, on any public utility pole, or within 30 feet of the centerline of any public thoroughfare may be removed by the Zoning Administrator or his or her designee without notice.

   2. A sign so removed will be held for a period not to exceed 10 days and retrieval of the sign will incur a fee as prescribed in the adopted schedule of fees. Removal and disposal of illegally placed signs or posting of violation notices thereon shall not preclude the prosecution of any person for illegally placing those signs.
(7) **Sign special exceptions.** Town Council may, by special exception, modify the requirements contained in this section in accordance with the following provisions:

(a) Special exceptions shall be granted only in accordance with the procedures and limitations established for conditional use permits in Section 156.145 below.

(b) Special exceptions shall be granted only if:

1. The applicant has clearly demonstrated that requirements contained in this division will present a unique burden due to unusual topography, vegetation, building design or orientation, or lot shape; and

2. The Town Council has determined that the granting of special exceptions will not be inconsistent with the CAMA land use plan or the purpose of the sign regulations.

**PART III.** That the following amendments be made elsewhere in the Town Code:

Subsection 91.36(J) be eliminated in its entirety.

(J) The creation of any excessive noise on any day of worship on any street adjacent to any church, provided conspicuous signs are displayed in the streets adjacent to churches indicating that the same is a church street;

Renumber all subsequent subsections of Section 91.36 accordingly.

*******************************************************************************

Subsection 155.03(F) be amended as follows:

(F) **Street/road names and signs.** Streets and roads shall be named and those names shall be indicated on signs designed, constructed and placed in accordance with Section 156.130 of the Town Code and existing policy of the Town of Duck.

*******************************************************************************

Subsection 156.029(C)(2) be amended as follows:

(2) Public clubs, including boat launching areas, golf courses, tennis courts, picnic areas, beach clubs and concessions integral thereto; provided, that there is no open commercial activity and that no sign other than a directional sign is allowed;

*******************************************************************************

Subsection 156.030(C)(3) be amended as follows:

(3) Private clubs, including boat launching areas, tennis courts, community centers, libraries, picnic areas, beach clubs and concessions integral to them provided that no sign other than a directional sign is allowed;

*******************************************************************************
Subsection 156.030(C)(7)(g) be amended as follows:

(g) Signage: 1 indirectly lighted name plate or professional sign not over 1 square foot in area and attached flat against the building shall be allowed; a single sign may be permitted consistent with the standards outlined in Section 156.130; and

**********************************************************************

Subsection 156.031(C)(3) be amended as follows:

(3) Private clubs, including boat launching areas, tennis courts, community centers, libraries, picnic areas, beach clubs and concessions integral to them that no sign other than a directional sign is allowed;

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Subsection 156.032(C)(4) be amended as follows:

(4) Private clubs, including boat launching areas, golf courses, tennis courts, community centers, libraries, picnic areas, beach clubs and concessions integral thereto; provided, that there is no open commercial activity and that no sign other than a directional sign is allowed;

**********************************************************************

Subsection 156.034(B)(10)(h) be amended as follows:

(h) Signage. Establishments conducting electronic gaming operations shall prominently post the rules of the electronic gaming operations on the interior of the establishment in a manner that is clearly visible to all patrons and customers. All exterior signs for electronic gaming operations shall meet the sign requirements of this chapter standards outlined in Section 156.130.

**********************************************************************

Subsections 156.037(D)(1), (2), and (3) be eliminated in their entirety:

(1) No real estate sign on property abutting a public trust area shall be directed toward any public trust area as defined by CAMA.
(2) Noncommercial signs shall not be permitted in the Ocean and Sound Overlay District.
(3) Signs supported in whole or in part by water, air or gas are prohibited.

Renumber all subsequent subsections of 156.037(D) accordingly.
Subsection 156.058(F)(7) be amended as follows:

(7) No commercial advertising, company logo, or signage shall be allowed on the tower or its related facilities. However, signs shall be posted that list a telephone number for the owner of the tower and “No Trespassing” information. This sign shall be located on the accessory building or fencing and shall not exceed 4 square feet in area. Signage within a wireless facility is only permitted consistent with the standards outlined in Section 156.130.

Subsection 156.061(D)(8)(c) be eliminated in its entirety.

(c) Advertising or signage with corporate logo may be limited in size or location by condition.

Subsection 156.117(H) be amended as follows:

(H) Sign detail required. Whenever a new sign or change in existing sign would require the issuance of a permit, detailed designs showing all relevant information required to determine compliance with the sign regulations outlined in Section 156.130 shall be required as part of a complete application.

Subsection 156.133(F)(5) be eliminated in its entirety.

(5) Illuminated signs to be addressed separately.

Subsection 156.136(A)(4) be amended as follows:

(4) There shall be no display of goods, tools, equipment, commercial vehicles or advertising other than a single nonilluminated sign not exceeding 1 square foot in area sign subject to the standards outlined in Section 156.130; and

Subsection 156.138(C)(4)(c) be amended as follows:
(c) Signage and lighting. Signs, advertisements, flags, streamers and other decorative items shall be prohibited from a wind energy facility. Signage on a wind energy facility is only permitted consistent with the standards outlined in Section 156.130. No lighting on the wind energy facility shall be permitted unless required by FAA regulations.

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town’s adoption of this ordinance amendment is consistent with the Town’s adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that is applicable. For all of the above-stated reasons and any additional reasons supporting the Town’s adoption of this ordinance amendment, the Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

ARTICLE V. Severability.

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the Town of Duck, North Carolina which shall remain in full force and effect.

ARTICLE VI. This ordinance shall be effective upon its adoption.

_________________
Don Kingston, Mayor

ATTEST:

_________________
Town Clerk

APPROVED AS TO FORM:

_________________
Town Attorney

Date adopted:

_________________
Motion to adopt by Councilmember:
Motion seconded by Councilmember:

Vote: ___AYES___NAYS
TO: Chairman Blakaitis and Members of the Town of Duck Planning Board
FROM: Joe Heard, AICP, Director of Community Development
DATE: April 12, 2017
RE: Text Amendment: Special Exception Standards for Fill

Proposal
Proposal to amend the standards for land disturbing activities in Subsection 156.128 of the Zoning Ordinance by establishing a new subsection outlining standards for consideration and approval of special exceptions for filling activities.

Per the direction of the Planning Board, Community Development staff has prepared the attached draft ordinance containing the concepts previously presented to the Board members, as well as the requested amendments to Subsection 156.128(C)(5).

Background Information
During the Planning Board’s review of the recent special exception application (SE 2016-003) at 1166 Duck Road, there was a considerable amount of discussion about the lack of definitive standards for review of a special exception for filling activities. After completing its review of the application, the Planning Board members decided to prepare a memorandum to Town Council explaining the difficulty of the situation and requesting authorization to develop special exception standards for use in the future.

At its meeting on February 1, 2017, the Duck Town Council considered the Planning Board’s request and authorized the Planning Board and Community Development staff to develop a text amendment that establishes specific criteria for the review of special exceptions for filling activities.

******************************************************************************

The Town of Duck Zoning Ordinance presently contains criteria for several different types of special exceptions:

1. Special exceptions for building height and setbacks to allow reasonable improvements to single-family dwellings built prior to July 1, 2003.
2. Special exceptions to permit small child care homes in residential zoning districts.
3. Special exceptions from parking or loading space requirements.
4. Special exceptions from the size, height, and location standards for signs.
The N.C. General Statutes authorize municipalities to establish standards for the consideration and approval of special exception applications. NCGS 160A-381(c) states, “The regulations may also provide that the board of adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits.”

From a legal standpoint, conditional use permits and special exceptions are two different names for the same quasi-judicial process. As a practical matter, the Town of Duck uses both of these terms in its zoning ordinance, with each process serving a different function for the Town. Conditional use permits are treated as a development review tool, allowing more detailed review and the opportunity to place conditions on certain types of development with the potential for greater impacts. Special exceptions are treated as a quasi-variance process intended to be an opportunity for the Town Council to provide relief for property owners from certain development standards under particular situations. Generally, the standards for approval of a special exception are less stringent than what is required for a property owner to obtain a variance from the Board of Adjustment.

**Staff Analysis**

As noted in the staff report for the recent special exception application (SE 2016-003) for fill extending into the sound at 1166 Duck Road, all special exceptions are subject to certain general requirements. These include:

1. The proposal’s consistency with the Town’s adopted CAMA Land Use Plan.
2. The proposed special exception will not adversely affect the public interest.

As ideas were considered and developed for the attached draft ordinance, staff tried to use a similar level of detail and requirements as found in the other special exception standards. The draft ordinance contains several criteria that seem to be relevant when reviewing a special exception application for fill.

**Planning Board Comments – 3/8/17 Meeting**

At its meeting on March 8th, the Planning Board reviewed potential standards in the draft ordinance and had a thorough discussion about several concepts, specifically:

1. Adding a statement requiring compliance with the Town’s adopted Vision. It was discussed that the Vision Statement is, by its nature, a list of vague concepts.

**This wording was added in Subsection (C)(5) of the revised draft ordinance.**
2. The Town will conduct its own, separate analysis for consistency with the Duck CAMA Land Use Plan. Its finding may differ from the interpretation made by the NCDCM during its permitting process.
   **This wording was added in Subsection (C)(5) of the revised draft ordinance.**
3. Consider separate standards for special exceptions for soundfront fill.
4. Completely denying the opportunity for special exceptions for soundfront fill as it is generally not an activity supported by the Town. It was countered that property owners should have a right to ask. There may be situations when it is warranted. It was also noted that other environmental agencies will permit soundfront fill.
5. Limiting the amount/distance of soundfront fill.
6. Requiring an applicant to provide an analysis of alternative solutions. It was noted that this could be tricky and the Town Attorney should be consulted if pursuing this option.

**Duck CAMA Land Use Plan**

The Town of Duck’s adopted CAMA Land Use Plan does not contain recommendations relating to the specific amendment being proposed, but contains the following objectives generally guiding the adoption of development standards relating to fill:

OBJECTIVE #6b: Develop regulations and programs that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise.

OBJECTIVE #12a: Adopt and apply local development regulations and procedures to ensure protection of natural resources and fragile areas supporting appropriate levels of economic development.

OBJECTIVE #12b: Adopt regulations and procedures that provide clear direction to assist local decision making and consistency findings for zoning, divisions of land, and public and private projects.

OBJECTIVE #13a: Develop programs and regulations that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise.

OBJECTIVE #13d: Develop regulations for responsible development in flood plains.

OBJECTIVE #19g: Encourage new residential development to respect the rights and consider the concerns of adjoining property owners with respect issues such including storm water runoff, line of sight, and vegetative buffer installation.

As part of its recommendation, the Planning Board is asked to determine if the proposed text amendment is or is not consistent with the Town’s adopted CAMA Land Use Plan.
Staff Recommendation
As the proposed amendment will establish clear standards for the review of special exceptions for fill, staff recommends APPROVAL of the proposed text amendment.

ATTACHMENT
A. Draft Ordinance 17-03
During its initial review of concepts for special exception standards, several members of the Planning Board expressed an interest in learning about the standards that other agencies and communities on the Outer Banks have for soundfront fill. Staff contacted the following agencies and communities. Their standards and comments are listed below:

**Standards for Soundfront Fill – Other Agencies & Communities on the Outer Banks**

**N.C. Division of Coastal Management** – There is no criteria that limits the amount of soundfront fill. When a bulkhead permit application goes through the CAMA Major Permit process, it is reviewed under 7H.0208(b)(7). These rules are more for a proposed bulkhead alignment location in regards to Normal Water Level (NWL). The only mention in regards to fill material is that it must come from an approved upland source or an authorized dredge project. 7H.0208(b)(8) has rules for beach creation or maintenance within Sound waters, but again makes no specific mention in regards to the amount of fill material that may be placed within the water. 7H.0208(b)(11) has rules for the filling in of man-made canals, basins and ditches. These rules again do not mention fill amounts, but do look at any possible effects on submerged aquatic vegetation (SAV), wetlands, etc… Ronald Renaldi, Regional Field Representative, NCDCM

**Southern Shores** – No regulations on soundfront fill.

**Kitty Hawk** – No regulations on soundfront fill.

**Kill Devil Hills** – No regulations on soundfront fill.

**Nags Head** – No regulations on soundfront fill.

**Manteo** – No regulations on soundfront fill.

**Dare County** – No regulations on soundfront fill.

**Currituck County** – For a subdivision of land or commercial site plan on a lot greater than ten acres, the applicant must establish a riparian buffer that allows no development activity (which includes fill) within 30 feet of the wetland or surface water. Within this buffer area, there are exemptions for docks, piers, boatlifts, or other water dependent features. I’m not sure how we would apply this section to a living shoreline project, but adding fill into the Currituck sound would definitely not be allowed as part of the subdivision or site plan approval. The 30-foot buffer area is typically designated as common area open space.

In all situations, including a residential site plan, the county does not allow fill within ten feet of a property line with the exception of drainage and stormwater improvements as approved by the county engineer. There are also a few utility exemptions to this standard. The ordinance also states that bulkheads shall not be allowed as a method to stabilize or contain fill except for a few exemptions, one of which includes shoreline protection as permitted by the county engineer. So,
under these requirements any fill in the Currituck Sound would require county engineer approval.”

Ben Woody, Planning Director, Currituck County
AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE TOWN OF DUCK, NORTH CAROLINA BY ESTABLISHING
STANDARDS FOR CONSIDERATION AND APPROVAL OF
A SPECIAL EXCEPTION FOR FILLING ACTIVITIES

Ordinance No. 17-03

WHEREAS, the Duck Town Council and Planning Board have determined that it is fair, reasonable, and more legally defensible to establish specific criteria for the review of special exceptions to add a greater amount of fill than allowed under the Town’s standards for land disturbing activities; and

WHEREAS, the Duck Town Council and Planning Board have concluded that establishing such standards benefits all parties by providing reasonable and consistent standards to be applied to every special exception application for fill; and

WHEREAS, the Duck Town Council and Planning Board have found that creating this allowance is reasonable and consistent with the recommendations of the Town’s adopted CAMA Core Land Use Plan.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Duck, North Carolina that Section 156.128, Land Disturbing Activities, of the Zoning Ordinance shall be amended in the following manner:

PART I. Add the following wording as Subsection 156.128(C):

“(C) Special exceptions for fill/grading activities.

All proposals to add fill on a lot in excess of 36 inches shall require approval of a special exception application by the Town Council in accordance with the procedures established in Section 156.145.

The Town Council may grant a special exception only after determining that the application meets the following criteria:

(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;

(4) The proposed fill will not negatively impact adjacent properties or the surrounding area;

(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; and

(6) The applicant has submitted a drainage plan consistent with the requirements described in Subsection 156.128(A)(4)(c).

PART II. This ordinance shall be effective upon its adoption.

____________________
Don Kingston, Mayor

ATTEST:

____________________
Lori Ackerman, Town Clerk

Date adopted: ________________

Motion to adopt by: ________________

Vote: _____AYES _____NAYS
The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, March 8, 2017.

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

Absent: Ron Forlano and Tim McKeithan.

Also present were: Council Liaison Chuck Burdick, Director of Community Development Joe Heard, Attorney Ben Gallop and Permit Coordinator Sandy Cross.

Others Present: Sandy Whitman, Bryan Weisbecker and Philip Ruckle.

Others Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for March 8, 2017 at 6:35 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

None.

NEW BUSINESS

Discussion of Potential Sign Ordinance Text Amendments: Discussion of Concepts for Potential Amendments to Sign Standards in the Zoning Ordinance Consistent with the Recent U.S. Supreme Court Decision in Reed v. Town of Gilbert

Director Heard stated that this was another part of the Planning Board’s process in getting the sign ordinance in compliance with the recent Supreme Court decision. He stated that this meeting is the first time that staff and the Town Attorney put all the initial concepts into a complete ordinance form for the Board’s consideration so that they can see where potential changes are occurring. He explained that the staff report outlines where the proposed changes are occurring and why those changes are being recommended.

Director Heard stated that Attorney Ben Gallop is present to provide insight from his prospective as well as give the Board some legal advice. He stated that Attorney Gallop met with the Board two months back as the concepts were being developed to help the Board understand what needs
to be accomplished with the changes. He stated that Attorney Gallop was very involved in putting together the draft ordinance that is in front of the Board.

Chair Blakaitis asked when an item is removed from the ordinance, it means the Board does not need to consider it or is it removed to make it easier for the Board to not include it in their thinking regarding signs. Director Heard stated that it means that staff is proposing that it be stricken completely from the ordinance. Chair Blakaitis noted that it still has pertinence to a sign. Director Heard stated that in some cases there are things that the Town can no longer regulate. Chair Blakaitis clarified that Director Heard is striking items that can no longer be regulated. Director Heard concurred.

Director Heard explained that there are several instances where a certain standard was removed and relocated in another section where it made more sense. Chair Blakaitis noted that one is “reader board” where parts of it were stricken. He clarified that there isn’t anything added to it. Director Heard stated he is correct.

Chair Blakaitis asked Attorney Gallop to give the Board an explanation of his viewpoints on the regulation of commercial versus residential signs. Attorney Gallop stated that the basic concept is that a community cannot regulate signs based on what they say. You shouldn’t have to look at the content of the sign to determine what provisions of the ordinance apply to it. He stated that in most cases, specific types of signs are still allowable in some form or fashion. The proposed amendments look more at the physical structure of signs, whether they are allowed on commercial sites, certain types of signs, number of signs, sign size, and sign location. He added that on residential sites, it is the same sort of thing, but not caring as much about the content of the sign. He thought that is where most of the removed items went. He explained which signs will be allowed in different areas. He noted that between commercial and residential signs, the way the current ordinance is written, it treats both the same in terms of trying to be as content-neutral as possible. He added that it does have free-standing signs and wall signs that differentiate between commercial and residential zoning districts. He thought that in a bigger city, it can be broken down by each individual use, but the way the Town has a small commercial district and a large residential one. He stated that there is not be a lot of intermingling of residences in commercial areas or vice versa so the breakdown between the two is delineated by the existing zoning ordinance.

Chair Blakaitis stated that he looked at the UNC School of Government recommendations, which differ slightly from Attorney Gallop’s approach. Attorney Gallop stated that the most recent item he saw from the School of Government was a blog they had put out shortly after the Reed v. Town of Gilbert decision. He explained that there is a long history of case law that has gone all the way to the U.S. Supreme Court that has allowed some differentiation in how a municipality can regulate commercial signage. He stated that most are looking at a strict scrutiny application that requires a compelling government interest and the regulation must be narrowly tailored to address the compelling government interest. He stated that most lawyers look at that as it is very rare that those standards will be met.

Attorney Gallop stated that other cases in the past related to commercial speech in that it provided for intermediate scrutiny, which is hard to meet, but not impossible. He thought that the problem with the Reed decision is that it doesn’t reference any related cases and it doesn’t
provide additional guidance, but it is very clear that if someone looks at the content of a sign, it requires strict scrutiny. He stated that there hasn’t been a case in the U.S. Supreme Court that has dealt with the question as to whether or not an intermediate scrutiny can still be applied to commercial signs. He noted that some courts in the country have said “yes” while others have said “no”. Two North Carolina court opinions seem to be reading Reed v Town of Gilbert relatively strictly and find that looking at the content of something is a strict scrutiny analysis, but these are not sign related cases.

Attorney Gallop stated that when looking at the School of Government’s position versus what his position may be, his position is one of an attorney for the Town trying to avoid risk. He stated that the least risky way is to read the Supreme Court’s decision as strictly as possible. He stated that the School of Government’s position appears to be from the more of theoretical perspective of professors, but they are not looking at it from the position of risk analysis. They are looking at the issue from the position of what can be done to help towns, but not dealing with the risk.

Attorney Gallop thought there are still three or four other provisions that need to be amended in the draft ordinance related to this subject, but they will be short modifications to reference back to the sign ordinance. Director Heard stated that staff has made some of the changes, but Attorney Gallop’s suggestion to refer to it is preferred.

Chair Blakaitis asked if everything in the draft ordinance incorporates the conversations between Director Heard, Attorney Gallop and the Board at their last meeting. Director Heard stated that it does. Member Cofield stated that he is comfortable with the discussion the Board had at its last meeting and thought the draft ordinance reflected what was discussed.

Vice Chair Murray agreed with Member Cofield. He stated that it seemed consistent with the Board’s previous conversations. He asked Attorney Gallop and Director Heard if there are other areas in the ordinance where they want to go in a direction where the Board may want to look more closely. Attorney Gallop stated that having allowances for seasonal displays and religious symbols are slightly more complicated and may require an adjustment to the definition of the term “sign”. He noted that these displays are not necessarily signs with content, but are usually more of a display. However, they are presently defined as signs and will need to be addressed.

Chair Blakaitis asked if seasonal displays and religious symbols are items that Director Heard and Attorney Gallop can discuss further and bring back another ordinance draft at a future meeting. Attorney Gallop stated that they are. He thought he and Director Heard have a good grasp on all the areas that need to be dealt with. He added that 90% of what they want to do is already completed. He stated that there are a few more items that will be brought back to the Board.

Chair Blakaitis thought the Board didn’t need to make a motion but will need consensus that Director Heard and Attorney Gallop make the changes and bring it back to the Board at the next meeting.

Member Cofield stated that he wants to discuss the religious symbols a little further. He asked if Attorney Gallop can provide a simple description of a seasonal sign. Attorney Gallop stated that the existing ordinance lists seasonal displays as exempt. Member Cofield asked if these include
items such as Christmas displays. Attorney Gallop stated he is correct. He doesn’t think the Board wants to define seasonal displays as signs, but the way the current definition is written, it incorporates anything that conveys any sort of message. He stated that the question is if it can be limited by making the definition state that it should convey a written message or something that can be read. He noted that this is not easy wording to draft.

Chair Blakaitis clarified that Attorney Gallop and Director Heard will craft better language for the items and come back at the next meeting for the Board to review. Attorney Gallop stated that they can provide a different, and hopefully, better definition for signs.

Council Liaison Burdick thought Director Heard and Attorney Gallop are moving in the right direction regarding the draft ordinance. He suggested striking the word “morals” in the sixth paragraph. He stated that ground mounted signs have a ground clearance of eight inches or less and pylon signs had a ground clearance of greater than six inches. He asked what it means. Director Heard noted that they are existing definitions. Council Liaison Burdick stated that they don’t make sense. Attorney Gallop stated that he and Director Heard will need to look at where these terms are used in the ordinance. Director Heard stated he will flag those terms to see if they are necessary or if they can be located in the single, free-standing sign category.

Council Liaison Burdick didn’t know where signs and flashing signs connect to anything else in the ordinance. Director Heard stated that flashing signs are prohibited. Council Liaison Burdick pointed out that it doesn’t show up anywhere else in the ordinance. Attorney Gallop stated that it is most likely defined in one way and spelled out instead of using a one-word definition. Council Liaison Burdick stated that it is a headache regarding getting the commercial entities to abide by the sign ordinance as they like to have flashing “Open” signs. Attorney Gallop stated that the definition is not used but looks to be referenced on Page 8 of the ordinance.

Director Heard stated that Attorney Gallop had some comments after the draft ordinance was distributed. He added that Attorney Gallop had noticed that the final draft about temporary residential signs has no limit on the overall number of temporary signs and suggested capping the overall square footage of the sign. Member Cofield noted that a permit is not needed for these types of signs. Chair Blakaitis noted that there is a sign standard for residences in the draft ordinance. Attorney Gallop stated that that standard is for wall-mounted signs, but he thought they are considered permanent signs.

Vice Chair Murray asked for an example of a temporary residential sign. Director Heard stated that examples include real estate signs, yard sale signs and a construction signs for a contractor. Vice Chair Murray asked if there is a size specification elsewhere in the ordinance that can be applied to this situation. Attorney Gallop stated that the proposed standards do not specify how many signs a person can have. He didn’t think the Board will want an unlimited number of temporary signs. Council Liaison Burdick noted that election signs are not limited.

Vice Chair Murray suggested taking the dimensions from a typical real estate sign, multiplying it by two or three and using that as the number. Chair Blakaitis agreed, adding that real estate signs are usually two square feet. Director Heard clarified that he included temporary construction signs in a separate category. Member Cofield stated that since the Town currently does not have any limitations, he thought it should be capped at 10. Chair Blakaitis asked if
Member Cofield means to allow 10 signs on one premise. Member Cofield stated he is correct. Vice Chair Murray noted that there is no compelling reason to do that. Chair Blakaitis agreed. Council Liaison Burdick suggested that there be a limit of one sign on a property and two signs for corner properties. Chair Blakaitis thought it should be all the same no matter the property. Director Heard clarified that under the current standards, there can be more than two signs on a property, but only two real estate signs can be on a property.

Vice Chair Murray asked if the limitation is two or only two for corner properties if the property faces two different streets. Director Heard stated that it is two for corner properties. He added that it will only be one sign on each corner. He reiterated that it only applies to real estate signs. Council Liaison Burdick suggested that the sign limitation be two for any property. Chair Blakaitis suggested putting two in the ordinance and review it at the next meeting. Member Cofield noted that two is just for real estate signs. He suggested keeping what is currently in the ordinance which is no limitation. Chair Blakaitis agreed but thought two will be reasonable. Vice Chair Murray stated that he is always in favor of no limitation whenever it can be done. Attorney Gallop stated that he and Director Heard will come up with a proposal and bring it back to the Board at their next meeting.

Director Heard stated that on Page 11 of the ordinance, it talked of how the Town deals with real estate signs. He stated that there was a suggestion by Attorney Gallop that the Town could develop another way to have standards for real estate signs without calling them that. He explained that the Town may not regulate the content, but can regulate the type of sign by giving a physical description. He added that the reference to metal frames will be changed to substantial metal or wood. Council Liaison Burdick suggested it be “a frame”. Chair Blakaitis agreed.

It was consensus of the Board to have Director Heard and Attorney Gallop review the draft ordinance and bring it back for consideration at the Planning Board’s April 12, 2017 meeting.

**Discussion of Special Exceptions for Fill Text Amendment: Discussion of Concepts for a New Subsection Outlining Standards for Approval of Special Exceptions for Fill Over 36 Inches in Depth**

Director Heard stated that during the Planning Board’s review of the recent special exception application for 1166 Duck Road, there was a considerable amount of discussion regarding the lack of definitive standards for review of a special exception for filling activities. He stated that after completing the review of the application, the Board decided to prepare a memorandum to Town Council explaining the difficulty of the situation and requesting authorization to develop special exception standards for use in the future. He noted that at Town Council’s meeting on February 1, 2017, they considered the Board’s request and authorized both the Planning Board and Community Development staff to develop a text amendment that will establish specific criteria for the review of special exceptions for filling activities. He noted that the standards will apply to both the typical fill requirements as well as soundfront fill like the situation at 1166 Duck Road. He added that the staff report lists some of the specific criteria for other types of special exceptions in the current ordinance as well as a draft outline for what can be special exception standards for fill and grading activities. He stated that these are his initial thoughts and are not intended to be complete and comprehensive.
Chair Blakaitis asked if the criteria are pulled from the other exception ordinance. Director Heard stated that some of the draft standards are pulled from other special exception standards in the Town’s ordinance, but they aren’t all pulled because fill has certain differences.

Member Cofield asked Director Heard to review the property ownership along the sound and the ocean. He asked how far a property owner’s property extend, based on North Carolina law, into the sound and ocean. Director Heard stated that on the ocean side, it can extend up to the eastern edge of the dune. He noted that CAMA and the Town each have requirements as to where the properties are measured. Member Cofield asked if it is on the ocean, it is considered the dry beach. Director Heard stated that it is typically where the water comes up to the edge of the dune. Chair Blakaitis asked if that is the first line of stable natural vegetation. Director Heard stated that the first line of stable natural vegetation is related to CAMA setbacks and does not relate to the property line.

Member Cofield asked if the dry beach varied on the ocean side. Council Liaison Burdick thought it was the mean high water mark. Vice Chair Murray agreed. Chair Blakaitis noted that fill was not allowed on the ocean side. Member Cofield asked about the property that the Board considered at 1166 Duck Road. Chair Blakaitis stated that the water line would be at the end of the proposed new bulkhead. Member Cofield disagreed. Chair Blakaitis asked if it is further towards the property. Member Cofield stated that it is. He stated that he is trying to figure out what the Town is regulating compared to what the property owner owns. He added that the Board may be regulating property that the property owner does not own, based on what he sees. Director Heard stated that a waterfront property owner has a riparian right to the public waters in front of their property. He added that, depending on what is done, the area in the sound can become part of their property. Member Cofield confirmed that, beyond the property line on the sound, without approval from other agencies, the owner cannot go out. Director Heard stated he is correct.

Vice Chair Murray asked if the Board was tasked with only discussing criteria for special exceptions or the entire fill ordinance. Director Heard stated that the Board was tasked with discussing criteria for a special exception regarding fill. He reiterated that it isn’t just fill in the sound, but everywhere. Vice Chair Murray noted that Director Heard gave the Board six examples of conditions. He asked if the Board is to discuss and/or potentially refine a list of conditions and not go back into the fill ordinance to make changes. Director Heard stated that is correct.

Member Cofield stated that it seemed to him that there is a big difference between filling in one’s backyard and filling in the water area. He asked if there is a reason why the Board is trying to lump them together to create a single special exception. He added that prior to the application at 1166 Duck Road, most would have assumed that fill is for land, but the special exception application gave us reason to think about water. He asked if there is a reason why the Board does not want to create two different special exceptions – one for land and one for water. Director Heard stated that if it is the desire of the Board to do that, he doesn’t see a problem in approaching it that way, if they see some significant differences. Chair Blakaitis agreed with Member Cofield’s comments, but does not think there need to be two special exceptions. He added that if Director Heard takes what was on the last page of the draft ordinance, he can add
another item to the criteria. He gave the following example: “There shall be no filling of the
sound on individual lots.” He noted that it can be another special exception criteria and take care
of the sound issue.

Vice Chair Murray noted that on the face of it, it is disturbing, but once a homeowner has
obtained a CAMA permit from the State, it is no longer the sound in the State’s mind because the
owner has purchased a portion of marsh greater than that size somewhere else. He thought the
Board should think very carefully about the consequences if the Town is not going to allow
something that the Department of Environment and Natural Resources will allow and has a
mechanism to allow it. Chair Blakaitis pointed out that there are other examples of not allowing
things that other governmental agencies allow. He noted that sandbags are a good example.

Vice Chair Murray agreed, but doesn’t think it can be dealt with in one sentence. Chair Blakaitis
stated that he isn’t suggesting doing that, but is providing an example of adding criteria instead
of creating a whole separate ordinance.

Member Cofield stated that he wants to offer another suggestion as to why they should be
separated. He stated that for the issue on the water, the Town is dealing with environmental
concerns that the Town does not deal with in regards to someone adding fill to a back yard. He
added that the Town, in its Vision, draws that into what is important for the Town with respect to
the water. He noted that the Vision read as follows: “There is a conscious respect for Duck’s
fragile and extraordinary environment. We protect and preserve opportunities for our residents
and visitors to enjoy our ocean, sound and natural coastal inhabitants. We value our pristine,
safe, uninterrupted beaches which is our most valuable asset. Our resilience and adaptability
guided by environmental awareness and forward thinking, ensure our sustainability as a
community.” He pointed out that the Town fathers thought it was the vision for the Town to
look at the sound. He reiterated that the Town does not consider those environmental concerns
in if someone wants to add fill to their back yard.

Vice Chair Murray disagreed with Member Cofield’s comments. He didn’t think the Board can
differentiate as there is no hardened surface, no concrete, or no creation of runoff. He added that
all the rainwater that fell on that portion of sand at 1166 Duck Road would percolate down to the
sand naturally. He stated that, filling an upland lot can create a situation, particularly when an
impermeable surface is put on it, where stormwater will travel from the upland, gather pollutants
and end up in the sound. He noted that it is far more damaging than zero runoff from soundfront
fill. Member Cofield stated that it would be that way only under Vice Chair Murray’s example.

Vice Chair Murray disagreed with Member Cofield’s example is changing the flow of the stormwater. Member Cofield disagreed. He added that it would percolate down. Vice Chair Murray stated that the Vision statement is a
good one, but he felt that Member Cofield is taking a small example and using the words in the
Vision statement to prove a point. He added that people are subjected to soundside erosion and a
bulkhead is not the best solution to the erosion problem. He stated that if the Town is truly
forward thinking and set on sustainability, staff would be seeking out grants to do wetland
restoration that will stop the erosion that is happening. Council Liaison Burdick stated that staff
is doing that. Vice Chair Murray clarified that it is to help with the erosion on the property at
1166 Duck Road. Council Liaison Burdick stated that the Town is seeking grants to find ways to improve the environment in the sound.

Member Cofield thought land and water are two entirely different situations and that should be looked at differently. Vice Chair Murray didn’t think there will be any problem looking at them separately, but feels that the Board needs to gather more information. He added that he wants to see some data to back up which is more or less damaging. He noted that he doesn’t know how to begin to go about responsibly developing an ordinance to deal with it. He added that there has to be a middle ground between development and environmental interests. He stated that he wants to see data that will tell him that filling a bulkhead will be more damaging than another alternative. He added that he would like to see other examples of the Board living up to the Vision statement. He felt that the beach nourishment project is getting a lot of attention, which is good, but felt that the sound is being neglected. He stated that before the Town tells individual property owners that they cannot do something that they are permitted to do by the State, the whole picture should be looked at.

Member Cofield stated that he doesn’t have a problem looking at more data. He reiterated that they are two different items and the environmental concerns for water are very different than the concerns for land. He thought the Board needs to approach it differently. Chair Blakaitis noted that the Town already has an ordinance allowing fill up to 36 inches and the Board is not trying to change that. He stated that the Board needs to develop a procedure for a special exception.

Member Cofield agreed with Chair Blakaitis. Chair Blakaitis stated that if an owner wants to fill their pit four feet, they must come before the Board and explain why they want to do it. Member Cofield stated that he has suggested that the Board make the existing ordinance for land only and then come up with different considerations for water. Chair Blakaitis disagreed. He thought everything that applied to land also applied to water, but more things apply to water as well.

Council Liaison Burdick reminded the Board they aren’t tasked with rewriting the ordinance, but trying to come up with a list of criteria that the Board and Council can consider when dealing with a special exception. He added that the Town does not have a set of standards that are adequately defined and needed to have them defined. He reminded that they are considering standards for a special exception and not a new ordinance for the fill. Chair Blakaitis thought the Board should come up with criteria for soundfront properties, which is what troubled the Board the most. He stated that if a property owner wants to fill part of a soundfront lot, there is an ordinance in place for it. He added that the applicant at 1166 Duck Road was seeking to create an unusual circumstance by moving their property 20 feet into the sound, which is the part that people did not like.

Member Cofield suggested a condition that the proposed use is not inconsistent with the Town’s adopted Vision. He added that the Vision statement is concerned with the environment of the sound and ocean. He stated that he wants the Board to consider that in any request or application for a special exception. Chair Blakaitis clarified that in addition to a special exception being consistent with the Town’s adopted CAMA Land Use Plan, Member Cofield wants to add his suggestion. Member Cofield stated he is correct. Chair Blakaitis stated that he has no objection to that.
Vice Chair Murray clarified that Member Cofield wants to add the CAMA Land Use Plan and the Vision statement. Member Cofield stated he does. Chair Blakaitis agreed, adding that he doesn’t see anything wrong with it. Vice Chair Murray stated that the only problem he had is that the reason the Board is trying to do this was to make the decision-making criteria less vague, and the statement is extremely vague. He understands the value in it as a Vision statement, but that’s all it is, a Vision statement.

Chair Blakaitis thought about it as saying that the listed criteria are good and the only criteria that bothered the Board came from the special exception request, with the main part being the filling of the sound. He asked what else can be done on a soundfront property. He noted that currently, a person can fill a hole 36 inches if they want to, based on the Town’s ordinance. Vice Chair Murray agreed. Director Heard clarified that Chair Blakaitis is not referencing the sound. Chair Blakaitis stated that his comment relates to a soundfront lot and not fill in the sound. He stated that for a soundfront lot, the current ordinance takes care of what someone can do and if they want to do it differently, then they must apply for a special exception.

Vice Chair Murray stated that, from a practical standpoint, any bulkhead repair involves building a bulkhead immediately to the west of the failing bulkhead and filling that area in. Chair Blakaitis agreed, adding that the Board would like to see it six inches away. Director Heard pointed out that staff deals with that in a practical manner. Vice Chair Murray agreed, asking if the applicant for 1166 Duck Road had not proposed eight feet of fill and had proposed a three-foot bulkhead and three feet of fill, would it still require a special exception. Director Heard stated that staff would have to look at it very closely.

Vice Chair Murray stated that when the Board states that the special exception will be consistent with the applicable goals of the CAMA Land Use Plan, the plan is also evaluated by Division of Coastal Management. He added that when it states that it is consistent with the CAMA Land Use Plan, it is tricky in that it is a condition of the special exception in the sense that the applicant is going to think that CAMA has already evaluated it. Chair Blakaitis pointed out that there are other criteria that the Board can consider as well. He stated that the Board needs to add some criteria to the ordinance, adding that it should include soundfront properties. Vice Chair Murray asked if there is a way to explicitly say in the ordinance that it is the Town’s evaluation of the CAMA Land Use Plan, which may be more stringent than CAMA’s evaluation. Director Heard stated that he doesn’t see any problem with clarifying the wording in that manner.

Council Liaison Burdick stated that the Town didn’t default to CAMA regulations, but wrote its own sandbag ordinance for the beach. Vice Chair Murray agreed, but added that in this case, there isn’t one. Council Liaison Burdick stated that CAMA allowed sandbags. Chair Blakaitis asked Vice Chair Murray if he was discussing the sandbag ordinance. Council Liaison Burdick stated that CAMA has a sandbag standard. Vice Chair Murray stated that it is allowed. Chair Blakaitis agreed. Council Liaison Burdick stated that the Town decided that CAMA standards were not sufficient to meet its needs, so it wrote its own ordinance that put a more stringent standard on the use of sandbags on the beach to save pools and properties. He added that CAMA allows that. Vice Chair Murray stated that it is different because Council Liaison Burdick made his point that there is an ordinance regulating sandbags. He added that it needed to be written in the ordinance that this is a more stringent interpretation that can be allowed, because it is the same land use plan.
Member Cofield stated that he is comfortable with that proposal. Vice Chair Murray inquired if the Board is bound by the ordinance in special exception cases. Director Heard stated that the Board has to find that all of the criteria in the ordinance are met. He stated that if they find that they are all met, the Board does not have a choice but to vote to approve the application. He stated that if some of the criteria are not met, the Board’s only choice is to deny the application. Member Cofield stated that it should be consistent from one application to the next. Vice Chair Murray agreed, adding that it needs be in the ordinance. He added that he agrees with Council Liaison Burdick’s philosophy.

Council Liaison Burdick stated that he is supporting Vice Chair Murray’s comments in regards to how the sandbag issue was treated. Vice Chair Murray asked if it can be part of the conditions or if it must be embedded in the ordinance. Director Heard didn’t think it needs to be in the ordinance at all from a legal standpoint. He added that if the Board wants to clarify it, there will be no problem. He explained that the Board has the authority to do it, but if they want to spell it out, there will not be a problem. He stated that if the Board wishes, he will look into the wording to that effect. He stated that he understands the concern that someone can read the current ordinance and feel that they’ve met the land use plan condition, because they have a CAMA permit.

Chair Blakaitis stated that when the Board was discussing sandbags, once they realized that the Town did not have any ordinances about sandbags. It was decided to craft one and Council liked it. He added that the Board was complimented for being proactive by the community. He thought the most important thing on the soundfront is enlarging the soundfront behind a house with fill. He thought that the draft criteria are good along with what Member Cofield and Vice Chair Murray suggested. He added that if the Board does not like fill in the sound, it should be stated as such. He thought the point was made that any protrusion into the sound will affect the adjoining properties. He asked the Board what they dislike about the soundfront as it relates to 36 inches of fill in the ordinance.

Member Cofield asked if the Board can put in the ordinance the following language: “Thou shalt not go into the sound more than three feet.” Chair Blakaitis stated that the Board can. Director Heard stated that, currently, the ordinance already states that it cannot be done. Chair Blakaitis pointed out that there is an ordinance that states it can’t be done, but the applicant at 1166 Duck Road obtained a CAMA permit to do it. Member Cofield asked what the ordinance states. Director Heard replied that that no one can fill in the Ocean and Sound Overlay district, which includes everything west of the property at 1166 Duck Road. Member Cofield asked why the Board considered the application. Director Heard stated that the applicants asked for relief from that standard through the special exception. The Board of Adjustment would have heard a variance to grant relief from it as well. He added that there are only a handful of regulations and standards that can go before the Board and Council for a special exception request. He stated that the Board and Council can consider a clarifying statement that states a special exception will be allowed for fill in one set of circumstances and not in another. He added that it can only apply to dry land if the Board wishes.

Member Cofield stated that he is almost comfortable with Director Heard’s suggestion. He wondered what will happen if someone wishes to repair a bulkhead that requires them to go out
six inches to one foot to build. Chair Blakaitis noted that CAMA has provisions for it currently and it was not 20 feet. So, the homeowner can apply for a special exception to repair a bulkhead, which would likely be granted. Member Cofield didn’t think the Town wants to create a special exception for it. He added that the ordinance states, “Thou shall not do this”. Chair Blakaitis stated that they can still apply for a special exception. Member Cofield disagreed.

Vice Chair Murray asked if the hassle is what the Board is trying to avoid. He added that the applicant at 1166 Duck Road applied for a special exception for something that was denied. He noted that the Board approved it, but Council denied it. He thought all the Board needs to do is to put strong enough conditions on it so that the denial is a little more forceful the next time around for a case like that. He gave an example of a case where the homeowner might ask to put in two feet, six inches but the Board tells the applicant that they cannot do it more than two feet, so it will create a problem. He noted that they are not filling 20 feet out into the sound. He added that the Board is trying to refine the ordinance. Chair Blakaitis noted that it can add criteria for that situation.

Vice Chair Murray thought it would deal with things, but could leave the Town open for the possibility that there may be a case with a compelling public interest. He added that there could be an environmental impact, but there is also an environmental impact in pumping millions of cubic yards of sand onto the beach. However, the Town may come to a consensus that it is a good decision. He noted that it can happen here and he doesn’t want to deny a homeowner the ability to have their case heard.

Member Cofield understood that currently, the Town ordinance states that “thou shalt not go out into the sound”. Director Heard stated that he is correct, adding that it is not related to the special exception. Member Cofield noted that the only reason the special exception was before the Board was because Director Heard made the determination that a special exception is allowed under the criteria for fill. Director Heard stated that the special exception at 1166 Duck Road did not have to do with the applicant going out into the sound, but had to do with the height of the fill. Member Cofield understood. He asked why Director Heard didn’t reject the application on the basis that it violated the ordinance that stated: “Thou shalt not go out into the sound”. Director Heard stated that he does not have that authority and the applicant has the right to apply and have his special exception heard. He added that even if it is something he knew is improper, he does not have the authority. It must go to either the Planning Board or Board of Adjustment and the Board has to make the determination of eligibility even before discussing the merits of the application.

Member Cofield stated that he is looking for clarity that makes it clear to any applicant that it will not be considered. He thought clarity will be helpful so Director Heard will not have to struggle with it and the Board will not have to deliberate over it. Chair Blakaitis stated that it cannot be a criterion for a special exception. Member Cofield agreed. Chair Blakaitis noted that anyone can apply for a special exception. Member Cofield agreed.

Council Liaison Burdick thought Vice Chair Murray has a good point in that the Town cannot foresee all the possible events that can arise. He stated that it may be in the Town’s interest to at least allow a hearing on those applications. He stated that by constructing it the way Member Cofield is trying to, there should be a set of criteria so that there is a basis for dealing with this
particular type of problem. He thought that is why the Board is where it is. Chair Blakaitis agreed. Member Cofield stated that he is fine with it. He added that he wants something that states that it cannot be 20 feet. He added that he is fine with three or four feet. Chair Blakaitis asked if it could or should be put in the criteria. Director Heard stated that it can either be in the ordinance or in the criteria for a special exception. He explained that the special exception for setbacks states that an encroachment can only go two feet into the side yards and 10 feet in the rear yards. He added that fill can be similarly limited as far as what can be asked for and granted with a special exception.

Director Heard stated that the Town is considering a marsh restoration project along the soundfront of the Town Hall property, which will involve adding some fill in the sound to build up the area where the plantings would be installed. He added that the Town would have to come the Board for either an ordinance change to create an allowance or a special exception or variance-type of process to allow the project. He noted that it is a public project to protect the public property and is planned to be an educational project to help people learn and encourage them to do similar things. Chair Blakaitis clarified that it is a project to increase sound vegetation. Director Heard agreed. Chair Blakaitis commented that it is a different type of project than what the Board is discussing. Vice Chair Murray disagreed. Director Heard stated that it is still not allowed by the current ordinance.

Vice Chair Murray questioned what would happen if someone is totally compliant today with their CAMA permit and has their house set back 30 feet or more and there is a storm even that tears the bulkhead out. He noted that a person can presently go buy a property with an existing bulkhead, the setback would be 30 feet from that and can build their house there and then a hurricane can come through making the new water line behind the house. He stated that it would be totally unreasonable of the Board to not allow them to put the bulkhead back and fill the property.

Member Cofield stated that he is in favor of something minimal to allow the restoration of a bulkhead. He didn’t think what the Board was presented with is a reasonable way to get there. He stated that if the Board drafts something to help to do that, he is in favor of it; otherwise he is more comfortable with not allowing it. Vice Chair Murray thought Member Cofield is pressing to not allow fill and not allowing a property owner to apply for a variance to fill a certain number of feet into the sound. Member Cofield stated he is correct. Vice Chair Murray stated that if Member Cofield is saying that, then the Town will be bound by the ordinance to deny the person the repair, which seems unfair. Director Heard stated that a homeowner will always have the right to apply for a variance. He reminded that the Board is discussing special exceptions.

Member Cofield asked for clarification that the ordinance stating that “thou shalt not go into the sound” is a Board of Adjustment consideration and not a Planning Board one. Director Heard stated he is correct. Chair Blakaitis noted that it is already in place. Member Cofield and Director Heard agreed.

Vice Chair Murray asked how it would work from a logistical prospective where the Planning Board approved the fill based on the ordinance. Chair Blakaitis asked what would have happened if Council approved the special exception for fill at 1166 Duck Road. Vice Chair Murray asked why Council would even hear the special exception for fill before the variance.
Director Heard stated that the Council meeting was the day before the Board of Adjustment meeting. Member Cofield noted that the BOA meeting was deferred after the Council decision. Director Heard stated that the order was irrelevant. He added that the applicant had to receive approval from the Town Council and Board of Adjustment. He stated that the Board of Adjustment has very specific criteria, not specifically dealing with fill, they follow when considering approval of a variance. He stated that it doesn’t mean that they can approve something that doesn’t meet the special exception standards or vice versa.

Chair Blakaitis stated that the Board agrees that there should be a separate set of criteria for soundfront lots to add to the other special exceptions that are currently in place. He clarified that it is a good idea. He noted that there are not separate criteria for soundfront lot filling as it is in with the other ordinance. Vice Chair Murray pointed out that it is not allowed. Chair Blakaitis understood, but pointed out that it is not mentioned by itself. Vice Chair Murray agreed. Director Heard stated that it is mentioned that such activity is prohibited. Chair Blakaitis clarified that there isn’t a set of criteria for soundfront conditions, which is the reason for this discussion. Vice Chair Murray disagreed and pointed out that the Board is meeting because there isn’t a list of criteria for fill greater than three feet. Chair Blakaitis added that it is for soundfront properties. Vice Chair Murray disagreed, adding that it was just fill greater than three feet. Member Cofield pointed out that the real concern is the soundfront. Chair Blakaitis agreed, adding that the Board is sitting at this meeting with a new set of criteria that will apply to soundfront properties. Vice Chair Murray added that it will also apply to upland properties.

Vice Chair Murray thought that if the Board refined the criteria and added more, he will be comfortable with it. He added that Council may want the Board to do something. Chair Blakaitis stated that Council will have to decide that after they see it because they are not the ones who thought of it, the Board did, and asked for Council’s permission to look at it. Vice Chair Murray agreed. He thought the Board should fix the problem. Chair Blakaitis agreed, adding that the Board should refine the list. Member Cofield stated that he is fine with it.

Chair Blakaitis clarified that not being allowed to fill in the sound is a Board of Adjustment consideration. Director Heard stated he is correct. Chair Blakaitis noted that it isn’t for the Board to consider. Member Cofield stated that the Board can make it their issue. Chair Blakaitis disagreed, noting that it isn’t for the Board to consider at this time. He wanted to clarify that it is not one of the Board’s criteria, but is the Board of Adjustment’s. He stated that if the Board wanted to make it one of its criteria, it can be done. Member Cofield stated that he is fine with refining the list and adding to it, but wants to do so in such a way that the Board deals with the issue that came before the Board.

Chair Blakaitis asked if there are any more suggestions. He further asked if the work should be completed when a full Board is present. Member Cofield stated that it will not be completed at this meeting. Director Heard stated that the intent is to obtain ideas for an ordinance that the Board can review at its April 12, 2017 meeting. Chair Blakaitis agreed, adding that if a full Board is desired, all of the work does not have to be completed at this meeting. Member Cofield stated that the Board was only making suggestions at this meeting. He didn’t feel that the discussion should be repeated at the April meeting. Chair Blakaitis stated that it may have to.
Member Cofield asked Director Heard if he needs further clarity from the Board regarding the discussions at this meeting or if he can draft an ordinance based on tonight’s discussion. Director Heard stated that he only has two items that he heard consensus on – (1) adding wording about the consistency of the special exception with the Vision Statement, in addition to the Land Use Plan and, (2) the clarifying that the evaluation of the Land Use Plan is the Town’s interpretation of the Plan and may not necessarily be consistent with the Division of Coastal Management’s interpretation. He noted that there were several other points of discussion, but he hadn’t heard a consensus from the Board on those items.

Chair Blakaitis wondered if something can be added to the effect that the applicant needs to demonstrate that their plan is consistent with the existing requirements of fill in the sound. He added that the applicant cannot do it now, but he wondered if there is a way to bring it out somehow in a statement for use as a criterion. He explained that by doing it this way, the Town is not saying it can’t be put there. Director Heard asked how a finding could be made that the applicant meets that criterion. Chair Blakaitis wasn’t sure.

Vice Chair Murray reiterated that he felt that the Vision Statement is too vague to be used in making a finding, so he is opposed to adding the suggested language. He added that he is open to it, but isn’t sure how to interpret it clearly enough to make a finding. Chair Blakaitis wasn’t sure how a finding can be made on the suggested language. Vice Chair Murray understood the impulse of wanting to limit fill in the sound as much as possible. He asked if a mandate can be put in the draft ordinance that the circumstances under which the hardship occurs must be explained as part of the application. He further asked if it is enough to demonstrate that the standards are unreasonable or impractical due to the necessity for fill. He asked if there is a way to strengthen the language or if it is strong enough. He thought the second condition deals with the Board’s dislike for fill in the sound. Director Heard stated that the wording of the second condition is consistent with the wording that is used for other types of special exceptions. The special exception is a lower bar, as it is intended to be, than a variance. He added that, by its nature, it should be easier to get approval for a special exception over a variance. He explained that the criteria for a special exception may be different, but they aren’t typically as stringent as the requirements for a variance. Chair Blakaitis pointed out that Item 3 basically states what he is trying to say.

Member Cofield stated that he had written some separate wording before re-reading the list. He stated that one suggestion he had on his list is that no alternative remedies are reasonable. He thought Item 3 gets to that point, except that the Board needs to press the issue with regards to Item 3 with applicants. He noted that there was a discussion at the Board level regarding alternatives. He added that, in order for an applicant to demonstrate what is called for in Item 3, they have to say that they looked at everything and there are no alternatives and this is the minimal amount necessary to accommodate what is needed for the project. He stated that it did not happen at the last meeting. Director Heard noted that the ordinance didn’t state such. He explained that there have been conversations regarding this issue with the Town Attorney and Town Manager and it is a tricky road to go down. He added that the applicant has a right to have their proposal heard. He stated that the Town is walking down a slippery slope to require the applicant to provide other alternatives. Member Cofield asked how Item 3 is demonstrated by any applicant. He further asked how it can be demonstrated without the applicant looking at other options. He pointed out that if the applicant has not looked at any other options, they...
cannot make a statement that it is the best option. Vice Chair Murray stated that they can because it’s a proposed project and not the minimum necessary to solve the problem. Member Cofield stated that the language is worded poorly. Vice Chair Murray stated that it is the only way it can be worded. He asked how the negative can be proven. He added that there are a lot of possible ways to resolve any problem. The applicant would ask and the engineer would have to design every possible permutation. Any responsible engineer will tell an applicant when they come before them to discuss an application for a special exception, that they did not do special exceptions because the applicant cannot afford it. He wondered if it is legal. Director Heard noted that there are challenges with implementing this requirement and suggested consultation with the Town Attorney.

Mentioning the special exception application at 1166 Duck Road, Chair Blakaitis stated that the difference between needing eight feet and needing three feet of fill is a structural calculation to prevent the structure from moving. Vice Chair Murray added that it was implied that it was tested technology in the sense that if it was done a certain way, it would work. Chair Blakaitis was doubtful as he isn’t sure of where it has been tested. Vice Chair Murray wasn’t sure how the Board can ask an applicant to do that.

Council Liaison Burdick stated that Council did not agree on denying the exception – two members wanted to defer it and three wanted to deny it - so it was denied. He stated that Council was hung up on the impact on the neighboring properties and the fact that if Council granted it, it was carte blanche for anyone to do it anywhere in Town and will be an ongoing problem. He stated that it will potentially generate problems for neighboring properties. He noted that it is one of the criteria that is in front of the Board. He stated that Council would have liked a better explanation of the alternatives so that they could make a better decision. He stated that it was in the best interest of the applicant to be able to show what they have come up with as to the best solution to the problem. He added that it will become more reasonable for the Planning Board and Council to be able to make a good judgement. Director Heard thought Item 3 could have been used in this application. He added that Item 3 isn’t telling the applicant that they have to come up with a lot of alternatives, but have to show why the proposal is the minimum necessary for the project.

Vice Chair Murray thought the criteria with no changes will get the Board where it needs to be. Chair Blakaitis thought it will give the Board more ammunition. Vice Chair Murray stated that it would have made the Planning Board meeting and Council public hearing go far more smoothly. He thought there is enough in front of the Board. Council Liaison Burdick stated that it would have shortened the public hearing significantly. Chair Blakaitis thought the public hearing would have been shorter if Council had read the Planning Board minutes before they debated the issue. Council Liaison Burdick agreed, adding that he thought the proposed criteria are in the right direction. Chair Blakaitis agreed, adding that it will not require banning anything outright. Council Liaison Burdick agreed, adding that fill in the sound is already banned. He reiterated his point is that this proposal is going in the right direction to help the Board and Council.

Chair Blakaitis suggested that Director Heard revise the draft ordinance with what was discussed and bring it back to the next meeting. Director Heard clarified that the Board wishes to include the reference to the Vision Statement. Chair Blakaitis suggested it be included to see how Member Forlano and Member McKeithan feel. Vice Chair Murray stated that if distances into
the sound are going to be discussed, he thought it would be helpful for Director Heard to come up with some current, accurate shoreline determinations to be used as examples. He added that an even better idea is to come up with examples that the Board can visit before the next Planning Board meeting. Member Cofield thought it will be helpful to have examples of what other towns have done regarding the issue. Director Heard stated that special exceptions are something that are relatively unique to Duck on the Outer Banks. Member Cofield asked if any other towns address the issue of not going out into a body of water. Director Heard stated he will check into that issue.

Member Cofield suggested adding hardship to the list. Chair Blakaitis stated that it is already a criterion. Director Heard stated that requiring hardship goes beyond the typical special exception criteria. Member Cofield disagreed, pointing out that it was in another special exception. Director Heard stated that this same issue was discussed at a few meetings, but it is not in any other special exception criteria. Chair Blakaitis explained that the Board considers it, but it is not part of the special exception. Member Cofield pointed out that it was discussed for Wampum Drive. Chair Blakaitis agreed, adding that it was explained to the Board that it is not a criterion. Director Heard agreed, adding that it is a higher standard than “unreasonable and impracticable”, so it is not something typically used in a special exception request. Council Liaison Burdick asked if hardship is used in a variance. Director Heard stated that variances require the Board of Adjustment to find an unnecessary hardship based the rules that are in place.

**APPROVAL OF MINUTES**

**Minutes from the February 8, 2017, Regular Meeting**

Vice Chair Murray had a change to Page 11 of the minutes.

Member Cofield moved to approve the February 8, 2017 minutes as amended. Chair Blakaitis seconded.

Motion carried 3-0.

**OTHER BUSINESS**

None.

**STAFF COMMENTS**

**Summary of Duck Annual Retreat, February 14-15, 2017 and March 1, 2017, Town Council Meeting**

Director Heard gave an update on the February 14-15, 2017 Council Retreat and March 1, 2017 meeting to the Board and audience.

**Project Updates**

Director Heard updated the Board and audience about several Town projects.
BOARD COMMENTS

Member Cofield stated that at the Planning Board meeting where 1166 Duck Road was discussed, when alternatives were discussed, he showed photographs to the engineers and the applicant’s consultant showing a solution that the owners of the house three doors away had established to solve their bulkhead problem. He stated that the uncredentialled structural engineer at the meeting felt that it is not an adequate solution to the problem. He noted that it isn’t traditional rip rap, but blocks and stone used to reinforce the bulkhead. Vice Chair Murray asked Member Cofield what he meant by referring to the structural engineer as being uncredentialled. Member Cofield stated that it was people that talk of stop wave action. Chair Blakaitis pointed out that the engineer has his credentials as a licensed engineer. Member Cofield disagreed. Chair Blakaitis stated that at least one of the engineers is credentialied. Vice Chair Murray agreed. Member Cofield disagreed, adding that he isn’t a structural engineer. Vice Chair Murray disagreed, noting that he is. Member Cofield stated that he stands corrected.

Member Cofield stated that, a few weeks ago, the house at 1172 Duck Road had a concrete company repairing the swimming pool. He stated that he talked to the contractor and asked if the rip rap had solved the problem, to which the contractor stated that it had. He added that the owners have a bulkhead on the property and are so satisfied with the results of the structural support for the bulkhead that they were spending money to repair the pool.

Member Cofield stated that the reason for raising the issue then and discussing it now is that there are solutions other than the one proposed that do not require going 20 feet into the sound. He stated that in the Board’s discussion on how to move forward, he wants the Board to look at a concept of other solutions or alternatives that do not go out into the sound like the applicant at 1166 Duck Road had proposed. Chair Blakaitis stated that he doesn’t disagree but would say that the Board cannot venture into the area where it tells a contractor or engineer what they have to do. He added that the contractor will have to tell the Board why it doesn’t work.

Vice Chair Murray asked how a pool contractor, who is being paid to repair a pool, is a more reliable source of information than an engineer who is paid only for his designing. Member Cofield stated that his comment is that it worked on the property at 1172 Duck Road and the homeowner is so satisfied that they are spending money to repair the pool. Chair Blakaitis asked what is happening to the property where it worked. Member Cofield stated it stabilized the bulkhead. Chair Blakaitis asked if there was any house or pool moving. Member Cofield stated that he isn’t aware of either one as he only discussed the pool with the contractor. Chair Blakaitis thought the pool is the only concern of the homeowner. Vice Chair Murray stated that he found it hard to believe that Board members find anyone who is being paid to reinvest in a pool to say that it will probably fail in a few years. Member Cofield stated that the pool contractor was discussing with him the decision of the homeowner and that the homeowner is satisfied and reinvesting in the pool.

Council Liaison Burdick stated that at the end of Council’s March 1, 2017 meeting, he had brought up and discussed that, with the resiliency effort, a dune is being put in that was 20 feet by 20 feet. Director Heard stated that the dune will be at an elevation of 20 feet and 20 feet in width. Council Liaison Burdick stated that compared to where the dune is presently, at least for
the area of Buffell Head Road section, there aren’t many places that are at 20 feet with the dune. He added that the Town will end up with a lot of people thinking that with the dune coming in, they can pull the existing stairs or let them be buried and extend the boardwalk to put the stairs down. He noted that if one looked at what is presently there, a flyover must be built over the existing dune. He stated that his concern is that all of the property owners and homeowner associations understand what will be happening as there are only so many contractors that can build stairs at the same time. He noted that it will be critical that the Town be able to maintain accessways for everyone and not just oceanfront owners. He added that the Town does not want people running up and down the new dunes. Director Heard pointed out that Town Manager Chris Layton had sent out an email to all of the Council members. He explained that an analysis had been completed based on the 2015 dune profiles, which are the most recent data, and out of all of the cross sections in the project area, nine of the ten cross sections are already at 20 feet elevation or above. He added that there was only one property that is at 17-18 feet, just north of the North Snow Geese subdivision.

Vice Chair Murray asked if the properties are 20 feet above mean sea level. Director Heard stated that the measure is to the NAVD, which is similar but not exactly the same as sea level. Council Liaison Burdick stated that if it is from the base of the dune, it will not make it. Director Heard and Vice Chair Murray stated that it is not. Vice Chair Murray added that most oceanfront lots are at an elevation of approximately 14-16 feet. Council Liaison Burdick agreed. Director Heard stated that they will not be building a 20-foot-high dune, but a dune to a height of 20 feet in elevation. Council Liaison Burdick asked where the 20-foot dune is in relation to the properties in the project area. Director Heard stated that it will not increase the height of the dune throughout most of the project area. Council Liaison Burdick thought the information is good as it is a concern. Director Heard stated that the new sand will be tied into the east side of the dune. Council Liaison Burdick stated that there will be some issues on Buffell Head Road that may be very interesting. Director Heard stated that the sand may still cover stairs as it goes out the 20 feet to the east. Council Liaison Burdick agreed, adding that it will be covering everything. He noted that there is also the problem of the house that lost its pool as it has a pool house sitting on pilings. He wasn’t sure what will happen when it gets filled in. He stated that there are some interesting challenges. He wanted to make sure that everyone is prepared because the Town doesn’t want people running on the new dunes.

**ADJOURNMENT**

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

Motion carried 3-0.

The time was 8:50 p.m.

Approved: ________________________________

Joe Blakaitis, Chairman