

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, January 7, 2019
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Oath of Office for Council Appointee Tina Tice
5. Public Comment
6. Consent Agenda
 - a.) Approval of December 3, 2018 Council Minutes
 - b.) Revision to the 2019 Town Council Meeting Calendar Resolution
 - c.) Culvert Bid on West Tateway (*Removed to Item 7*).
 - d.) Amendment to the Town Code, Chapter 8, Buildings and Building Regulations, Article 1
 - e.) Resolution Requesting N.C. General Assembly Pass Legislation to Address Problems Associated with Increased Use of E-Cigarettes in the Youth Population
7. Items Removed from Consent Agenda
 - a.) Culvert Bid on West Tateway
8. Public Hearings:
 - a.) Text Amendment 42-250(c)2; 42-251(c)2; 42-253(c)10. The applicant has requested a text amendment that would reduce the required setback for fuel pumps from rights-of-way in the BC-1, BC-2 and BC-3 districts.
 - b.) Zoning Map Amendment, 6100 N. Croatan Hwy. The applicant has requested that the subject parcels be classified as a Planned Commercial Development (PCD).
9. Reports/General Comments from Town Manager
10. Reports/General Comments from Town Attorney
11. Reports/General Comments from Town Council
12. Public Comment
13. Recess to January 28, 2019, 9 AM Capital Improvements Workshop

COUNCILMEMBERS PRESENT:

Mayor Gary Perry, Mayor Pro Tem Craig Garriss, Councilwoman Lynne McClean, Councilman Jeff Pruitt and Councilwoman Tina Tice

STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Planning Director Rob Testerman, Management Assistant Melody Clopton, Police Sergeant Jeff Wiggins, Fire Chief Mike Talley and Public Works Director Willie Midgett

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1. CALL TO ORDER

Mayor Perry called this meeting to order at 6 p.m.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

Following a moment of silence, the Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

Mayor Perry removed item 6 (c) for further discussion and **made a motion to approve the amended agenda. It was seconded by MPT Garriss and passed unanimously, 4-0.**

4. OATH OF OFFICE FOR COUNCIL APPOINTEE

Town Clerk Morris provided the oath of office for Tina Tice. She thanked council for the opportunity to serve.

5. PUBLIC COMMENT

There were no public comments.

6. CONSENT AGENDA

a.) Approval of December 3, 2018 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) Revision to the 2019 Town Council Meeting Calendar Resolution. This revision is a starting time change to 5:00 p.m., instead of the regular 6:00 p.m., when the Kitty Hawk Town Hall is used by the Board of Elections on a Tuesday following a Monday night Town Council meeting. It also adds a tentative January 28, 2019 Capital Improvements workshop, 9 a.m. *(An approval of the consent agenda will approve this amended resolution.)*

c.) Culvert Bid on West Tateway. *(Removed to Item 7(a))*

d.) Amendment to the Town Code, Chapter 8, Buildings and Building Regulations, Article 1. The Town follows the State Building and Fire Codes and they have been revised. This ordinance adopts the 2018 State revised Building and Fire Codes. *(An approval of the consent agenda will adopt this Town Code amendment.)*
Ordinance No. 19-01.

e.) Resolution Requesting N.C. General Assembly Pass Legislation to Address Problems Associated with Increased Use of E-Cigarettes in the Youth Population. This resolution requests legislation to: a.) eliminate the marketing of flavored e-cigarette products to children; b.) initiate the removal of all flavored e-cigarette products from the market, including on-line sales; and, c.) promote and enforce retailer compliance with stronger identification and age verification of purchasers of e-cigarettes. *(An approval of the consent agenda will adopt this resolution.)*

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Mayor Perry made a motion to approve the consent agenda and Councilwoman McClean seconded. The motion passed unanimously, 5-0.

7. ITEMS REMOVED FROM CONSENT AGENDA

a.) Culvert Bid on West Tateway. This bid with H&H, L.L.C. was approved at the December 3, 2018 council meeting but an incorrect amount was stated. The correct bid amount is for \$38,187.00.

Before getting to this item, Mayor Perry asked if the existing problem at Tateway will be fixed. Public Works Director Midgett answered he received an email from the contractor today who said they would be there to test the line this week and hopefully facilitate any repairs necessary.

Remarking that has been said before, Mayor Perry said he knows this contractor has been successful in obtaining other bids and will be busy. H&H has this bid and will be doing the same type of work as what needs to be fixed.

He asked for council to agree to give direction to the Town Manager to ask H&H to give an estimate to do the repair that needs to be done. If it is a good price get them to fix it. They will be on site and it can be added to this project. Legal ramifications and/or reimbursement from the original contractor can be dealt with later.

Councilmembers gave their consent to move forward with getting it fixed.

8. PUBLIC HEARINGS:

a.) Text Amendment 42-250(c)2; 42-251(c)2; 42-253(c)10. The applicant has requested a text amendment that would reduce the required setback for fuel pumps from rights-of-way in the BC-1, BC-2 and BC-3 districts.

Mayor Perry made a motion to go into public hearing for a text amendment regarding code 42-250(c)2; 42-251(c) and 42-253(c) 10. Councilwoman Tice seconded and it passed unanimously, 5-0.

Planning Director Testerman reviewed the following staff report with council:

Proposal

The applicant has proposed a text amendment that would modify the minimum setback for gas station canopies and gas pumps. The proposed amendment would also eliminate the restriction to allow only eight vehicles to receive fuel simultaneously.

42-251(c)2. Gas stations or fuel dispensing accessory use facilities; provided that no principal or accessory building shall be located within 50 feet of a residential district, and: provided that there shall be no storage of wrecked or abandoned cars, and that no portion of a gas station building, equipment or **canopy shall be nearer than 30 feet to any right-of-way, and no portion of** gas pumps shall be nearer than ~~75~~ **40** feet to any right-of-way. ~~A gas station or fuel dispensing accessory use facility shall be designed and equipped such that no more~~

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than eight vehicles can simultaneously receive fuel from the fuel dispensing devices located on the gas station or fuel dispensing accessory use facility site.

Background

Currently, the zoning ordinance allows gas stations as a conditional use in the BC-2, beach commercial district, provided certain setback requirements are met. These setback requirements go beyond the minimum structure setback requirements for the district. The applicant is proposing to reduce those setback requirements to 30 feet for a gas station building or canopy, and 40 feet for the fuel pumps.

Below is a list of what other localities allow regarding multi-family dwellings in commercial districts, the district regulations are attached to this staff report for your review:

Duck – No specific setbacks for gas pumps. State standards apply.

Southern Shores – Gas stations not permitted

Kill Devil Hills – No specific setbacks for gas pumps. State standards apply.

Nags Head – 50 feet from any right-of-way or property line.

Manteo- 75 feet to any right of way.

The NCDOT Driveway Manual states that gasoline pump islands that are parallel to the pavement edge shall be a minimum of 25 feet outside of the highway right-of-way. Setbacks of gasoline pump islands not parallel to the pavement edge shall be a minimum of 50 feet outside the highway right-of-way. Currently Kitty Hawk's requirement exceeds the minimum requirements by NCDOT by requiring a 75-foot setback, regardless of the alignment of the pump islands.

In order to avoid confusion with the DOT manual, the Planning Board recommended that the setback be reduced to 50 feet from the right-of-way, versus the 40 feet requested by the applicant. The recommended setback of 50 feet from the right-of-way would be consistent with NCDOT's minimum requirement for pump islands not parallel to the right of way and would exceed the minimum requirement of 25 feet from a right-of-way for pump islands that are parallel to the right-of-way.

Also, at staff's recommendation, in an effort to keep the ordinance consistent, the Planning Board recommended extending the proposed text amendment to the BC-1 and BC-3 districts, which also allow gas stations as a conditional use.

Language recommended by the Planning Board:

BC-1: 42-250(c)2. Gas stations or fuel dispensing accessory use facilities; provided that no principal or accessory building shall be located within 50 feet of a residential district, and: provided that there shall be no storage of wrecked or abandoned cars, and that no portion of a gas station building, equipment or **canopy shall be nearer than 30 feet to any right-of-way, and no portion of** gas pumps shall be nearer than ~~75~~ **50** feet to any right-of-way. ~~A gas station or fuel dispensing accessory use facility shall be designed and equipped such that no more than eight vehicles can simultaneously receive fuel from the fuel dispensing devices located on the gas station or fuel dispensing accessory use facility site.~~

BC-2: 42-251(c)2. Gas stations or fuel dispensing accessory use facilities; provided that no principal or accessory building shall be located within 50 feet of a residential district, and: provided that there shall be no storage of wrecked or abandoned cars, and that no portion of a gas station building, equipment or **canopy shall be nearer than 30 feet to any right-of-way, and no portion of** gas pumps shall be nearer than ~~75~~ **50** feet to any right-of-way. ~~A gas station or fuel dispensing accessory use facility shall be designed and equipped such that no more than eight vehicles can simultaneously receive fuel from the fuel dispensing devices located on the gas station or fuel dispensing accessory use facility site.~~

BC-3: 42-252(c)10. Gas station or fuel dispensing accessory use facilities; **provided that no principal or accessory building shall be located within 50 feet of a residential district, and:** provided that there shall be no storage or wrecked or abandoned cars, and that no portion of a gas station building, equipment or **canopy shall be nearer than 30 feet to any right-of-way, and no portion of** gas pumps shall be nearer than ~~75~~ **50** feet to any right-of-way. ~~A gas station or fuel dispensing accessory use facility shall be designed and equipped such~~

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that no more than eight vehicles can simultaneously receive fuel from the fuel dispensing devices located on the gas station or fuel dispensing accessory use facility.

Consistency with Land Use Plan

The following policies and objectives relevant to this application are stated in the CAMA Land Use Plan:

Policy #15a: Kitty Hawk will continue to adopt, enforce, and amend as necessary ordinances and procedures to ensure public safety. The Town supports State and Federal laws and regulations and the enforcement of criminal statutes.

Planning Board Recommendation

At its November 15, 2018 meeting, the Planning Board unanimously recommended approval of the modified text amendment to modify the site requirements for gas stations as a conditional use in the BC-1, BC-2 and BC-3 district, as noted in the staff report.

Tice: *What is the distance from the right-of-way to the existing structure?*

Testerman: *It seems to be about 45 feet.*

1. Carlos Gomez, Coastal Engineer. *I am not speaking as an engineer tonight. I was asked what I thought of this for Kitty Hawk and I think it is appropriate. Through the years we have been dealing with this property over and over and it has just been sitting there. I understand a convenience store will be there and it will be fantastic for that area. As a planner and an engineer, I think it is a great thing for the Town. Thank you.*

2. Matt Steed, 4019 Parker St., Kitty Hawk, NC: *My family owns the property right behind there and the only thing we would be concerned with is how far it would be from the rear property. The one he just highlighted ... right now the building is about 5 to 7 feet from our property. That is all.*

Testerman: *The minimum rear yard for structures in that district is 20 feet. Any structure that is built will be 20 feet from this rear property line.*

Perry: *There was a letter. Is it from your folks?*

Testerman: *The letter is actually for the next hearing.*

Steed: *Is that from my mom? I talked with Eddie. There was a rumor and it has been cleared up. We thought something else was going to happen and we are fine with what he wants to do.*

Tice: *There will be a vegetative buffer between them is that correct?*

Testerman: *A vegetative buffer is only required between a commercial and a residential use. It is something that could come up during the conditional use permit discussions.*

Perry: *If the state is good with 50 feet, I am not sure why we would not be.*

3. **Eddie Goodrich, Applicant and Developer:** *The planning board's motion was 50 feet for the pumps and 30 feet for the canopy. We are fine with that. Thank you.*

Hearing no further questions or comments from the public or council, **Mayor Perry made a motion to go back into regular session. It was seconded by Councilwoman Tice. The motion was approved 5-0.**

MPT Garriss made a motion to adopt the proposed text amendments as recommended by the planning board amending the site requirements for gas stations as a conditional use in Sections 42-250(c)2, 42-251(c)2 and 42-253(c)10. The Town Council finds that a proposed text amendment is consistent with the adopted CAMA Land Use Plan and finds these amendments to be in the public interest. Councilwoman McClean seconded and the motion passed unanimously 5-0.

8(b.) Zoning Map Amendment, 6100 N. Croatan Hwy. The applicant has requested that the subject parcels be classified as a Planned Commercial Development (PCD).

Mayor Perry said this is basically to classify a planned commercial development and **made a motion to go into public hearing. MPT Garriss seconded and it passed unanimously, 5-0.**

Planner Testerman reviewed the following staff report.

Property Owner: Mildred Roughton
Property Address: 6100 N. Croatan Hwy, unaddressed parcel
Parcel ID Number: 986606499460, 986606497145
Current Zoning: Beach Commercial (BC-2)
Proposed Zoning: Planned Commercial Development (PCD)

Proposal

The applicant is proposing to have the two subject parcels classified as a Planned Commercial Development (PCD). It is important to note that classifying a parcel as a PCD is not the same as a traditional rezoning. The PCD and PUD districts are "overlay districts", in which the underlying zoning district does not change, but the classification of a PCD allows for greater flexibility of the developer. The permitted and conditional uses that are permitted in the underlying zoning district remain the same. As the underlying zoning district does not change when classifying a parcel as PCD or PUD, spot zoning is not a concern.

Background Information

A PCD is intended to provide developers with an option by which they can achieve flexibility of design. PCD's are permitted as a conditional use in the BC-1, BC-2, BC-3 and BH-1 zoning districts. A PCD is an overlay district, meaning the underlying zoning (BC-2 in this case) does not change. Instead the overlay district is designated on top of the regulations that already apply. Permitted and conditional uses of the underlying district are permitted in the PCD. Designating the parcels as PCD gives the developer flexibility, for example, with how lot coverage can be calculated for the project as a whole versus each individual lot.

The general procedures for the application and approval of a PCD are:

1. Preapplication conference
2. Conceptual review
3. Preliminary development plan and site plan approval.
4. Final development and site plan approval.

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The applicant requested to waive the preapplication conference, which is allowable per 42-415(b). Although the intent was to hold the preapplication conference with the Planning Board, forecasted inclement weather (Florence and Michael), postponed two consecutive Planning Board meetings. At its November 15, 2018 meeting, the Planning Board held the conceptual review for the PCD and approved, with modifications; the Board also recommended approval of the zoning map amendment to designate the subject properties as PCD.

Per Sec. 42-417(f)4, the recommendation of the Planning Board shall be placed on the Council agenda to schedule a public hearing on the zoning amendment request. If the zoning map amendment is approved, the process will continue with the preliminary site plan review phase.

To restate, Council is not reviewing the site plan for the Planned Commercial Development at this time. Council is only scheduling a public hearing on the zoning map amendment at this point in time.

Staff Analysis

Current Zoning: BC-2. PCD's are permitted as conditional uses in the BC-2 District.

Minimum size of site: Per the text amendment that was approved at the September 4, 2018 meeting, the minimum size of a site allowable for a PCD is five contiguous acres in size, with not less than 500 feet of total road frontage on US Highway 158 or NC Highway 12. The size of the proposed PCD site is 6.24 acres, and has approximately 550 feet of frontage on US Highway 158 (N. Croatan Hwy)

All other standards and requirements are items that will be addressed in the future, during the preliminary site plan review.

Land Use Plan

The Town of Kitty Hawk's adopted CAMA Land Use Plan appears to designate the subject parcel as a **Commercial, Shopping and Working Area** on the Future Land Use Map. The plan provides the following description for a **Commercial, Shopping, and Working Area**: "Commercial, shopping, and working 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. Some of these areas are envisioned to provide limited mixed uses."

Consistency with the Future Land Use Plan

The following general goal and policy may also be considered when reviewing the application's consistency with the adopted land use plan:

"Policy #4e: Kitty Hawk will review and analyze development and redevelopment proposals for consistency with the future land use map."

Planning Board Recommendation

At its November 15, 2018 meeting, the Planning Board unanimously recommended approval of the zoning map amendment to designate 6100 N. Croatan Hwy and the adjacent unaddressed parcel (PIN# 986606497145) a Planned Commercial Development.

1. Eddie Goodrich, Applicant and Developer: *I do not have anything else unless you have some questions. I think it is the best use of the property and provides more flexibility. Lot lines make things so much more complicated.*

Perry: *Your future plans from what I know will help with what we want to get fixed and it might also benefit the community in other ways for housing and other ...*

Goodrich: *We plan to be a good neighbor for Matt and everybody else.*

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Hearing no further questions or comments from councilmembers or the public, **Mayor Perry made a motion to go back into regular session. MPT Garriss provided a second and it passed unanimously, 5-0.**

Councilman Pruitt made a motion to grant approval of the application to classify the properties at 6100 North Croatan Highway and the unaddressed adjacent parcel (pin number 986606497145) as a Planned Commercial Development. The Town Council finds that the proposed overlay district is consistent with the future Land Use Plan and Kitty Hawk's adopted Land Use Plan. Councilwoman Tice seconded and it passed unanimously 5-0.

8. TOWN MANAGER

Manager Stewart: **Welcomed** Ms. Tice to the council; said the **Moore Shore Road Living Shoreline Project** is about 75% complete; and, said he copied council a letter from the **Dare Soil & Water Conservation District** stating the Town was awarded \$13,000 in cost share assistance from the Community Conservation Assistance Program. It will be used towards permeable pavement at the police department building. They will send more information on the cost sharing procedure.

Mayor Perry reminded everyone when they finish the sills for the **Moore Shore Road** project the Coastal Federation and volunteers will plant native grasses in the summer.

9. TOWN ATTORNEY

Attorney Varnell welcomed Ms. Tice to the council.

10. TOWN COUNCIL

Councilmembers **welcomed** Ms. Tice and said they look forward to working with her. MPT Garriss added a thank you to staff for everything they did in 2018 and is looking forward to a prosperous 2019.

11. PUBLIC COMMENT

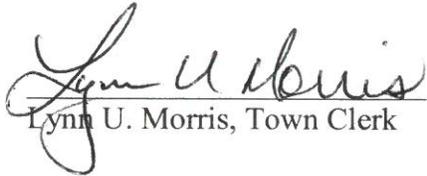
Mayor Perry asked for the record to show no one came forward.

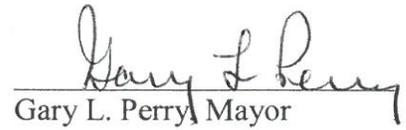
12. RECESS

Mayor Perry made a motion to recess to January 28, 2019, 9 a.m. for a Capital Improvements Workshop. MPT Garriss seconded the motion and it passed unanimously, 5-0. Time was 6:28 p.m.

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These minutes were approved at the February 4, 2019 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor