

Kitty Hawk Planning Board Meeting
November 15, 2018 – 6:00pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. September 27,2018
4. Administrative Report:
 - a. Town Council Action from 10/1/2018 Meeting
5. Public Comment
6. Buffer Review:
 - a. 5112 N. Croatan Highway, OBX Urgent Care. Per 42-651, the Planning Board and Town Council must review and approve vegetative buffer details.
7. Text Amendment:
 - a. 42-251(c). Gas stations. The Applicant has requested a Text Amendment that would reduce the required setback for fuel pumps from rights-of-way.
8. Planned Commercial Development (PCD):
 - a. Conceptual Review, 6100 N. Croatan Highway
9. Comments:
 - a. Chairman Richeson
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director

10. Adjournment

1. **Call to Order/Attendance:**

approximately 6:00pm on Thursday, November 15, 2018.

Board Members Present:

John Richeson, Chairman; Chuck Heath, Member; Dusty Rhoads, Member; Jim Geraghty, Member; Gary Muir, Alternate.

Staff Present:

Robert Testerman, Director, Planning & Inspections; Casey Varnell, Town Attorney.

Absent:

Bryan Parker, Vice-Chairman; Matt Spencer, Alternate

Voting:

In order to have a quorum and due to the absence of Mr. Parker and Mr. Spencer, Gary Muir, Alternate, will vote on tonight's agenda items.

2. **Approval of Agenda:**

Hearing no objections/changes/corrections to the November 15, 2018 Agenda, the Agenda was approved unanimously.

3. **Approval of Minutes:**

Hearing no objections/changes/corrections to the September 27, 2018 Minutes, the Minutes were approved with Mr. Geraghty making the motion to approve and Mr. Richeson seconded and the Minutes were approved unanimously.

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4. **Administrative Report:**

a. Town Council Action from 10/1/2018 Meeting

- Mr. Testerman stated that a few months ago, the Board reviewed a proposal that was requested from the Council about creating the governmental use of a Zoning District that resulted from the Urgent Care proposal. Mr. Testerman and Mr. Varnell discussed the legality of creating a government-use-zone and it was determined that it would still be considered 'spot zoning' if a Governmental Zoning District was created and applied it to the government-owned parcels in the Town. Council dismissed the proposal and therefore, the zoning map will be updated with a statement that "Town owned and leased facilities are permitted in any Zoning District" and will also reference another map that lays out all the Town owned properties.
- Therefore, should anyone want to purchase a house or land, they will be able to research if their property is next door to a Town owned parcel which may be a public parcel; i.e., public park, etc.

5. **Public Comment:**

- Mr. Richeson asked if any member(s) of the audience would like to speak, and if so, to come forward and state their name/address.
- Mr. Richeson clarified for members of the audience that the Planning Board is strictly an 'advisory board' that makes recommendations to the Town Council and the Council, in turn, can either agree with the Board's recommendation(s) or deny those recommendations; therefore, the Council has the final vote.
- As no member(s) of the audience approached the Board, Mr. Richeson closed the Public Comment portion of the meeting.

6. **Buffer Review:**

- a. 5112 N. Croatan Highway, OBX Urgent Care. Per 42-65 the Planning Board and Council must review and approve vegetative buffer details.
- Mr. Testerman referenced the recently approved OBX Urgent Care Center and per Sec. 42-651, buffer details, including vegetation type and size are to be reviewed by the Planning Board and approved by the Town Council. Per the Conditional Use permit, approved on May 7, 2018, a Type A vegetative buffer was to be required on the southern and western property boundary for the above referenced property. A Type A buffer entails an opaque vegetative buffer of a minimum width of ten feet (10') that will reach a height of six feet (6') in three years.
 - The attached landscaping plan shows the use of Ligustrum Japonicum (curlyleaf Ligustrum/Japanese privet) along the western and a portion of the southern property boundary. These plants grow to a height of 6-12 feet tall. According to the NC State Extension, these plants grow to be approximately 5-6 feet wide; however, according to Jim Gallagher from Ground Guys, due to our environment on the coast, they tend to exceed that and it would not be uncommon for the plants to reach 10 feet. It is an evergreen shrub/small tree that grows rapidly. It is drought and salt spray tolerant.

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- Additionally, along the southern boundary, closer to the front of the lot, the landscape calls for *Elaeagnus x ebbingii* (*Elaeagnus*). This is an evergreen to semi-evergreen plant that grows to 8-10 feet tall and 8-10 feet wide. This plant is also drought, salt spray and wind tolerant. It is noted as being good for screens.
- Mr. Testerman stated that, while it was discussed during the Conditional Use Permit, but it was not part of the requirements that were eventually put on approval, the Applicant has shown the buffers to extend north to the three (3) properties that were previously approved in 2015 using the same *Ligustrum Japonicum*.
- According to Sec. 42-655, the buffer shall be maintained according to the criteria of the Ordinance and maintenance of the buffers as a continuing condition of the site plan approval with the condition of compliance, but, failure to maintain the condition of the buffer, would constitute grounds for revocation of any Occupancy Permit. Therefore, in the event the plants do not grow to meet the requirements, it could be addressed in the future.
- Mr. Richeson asked for clarification of the Zoning Ordinance, that if the *Ligustrum Japonicum* doesn't reach the 8-10' width, the Occupant could lose their Occupancy Permit and Mr. Testerman stated that the Ordinance states that it takes approximately three (3) years to reach the 6 feet required height and at the three year mark, the width would be looked at.
- Mr. Richeson stated that he has these plants at his home and they do get very thick and offshoots go off of the root system and can send another up which blends in with the original and that they do get big.
- Mr. Testerman stated that the Applicant has submitted a full landscape plan and that the full landscape plan is not what is being reviewed at this meeting and that the vegetative buffer along the western and southern property lines is what the Board needs to consider and that all other plantings is up to the Applicant.
- Mr. Richeson then asked if the Board should favor the NC State Extension or does the Board go with the plant experts' who work with these plants all the time?
- Mr. Geraghty stated that, because there is a three year timeframe for the plant growth and if the plant doesn't grow to that height in three years, the Applicant can fill in and therefore; the Board can go with what the Applicant is proposing.
- Mr. Heath asked if there was an irrigation plan included in this proposal and Mr. Testerman stated that there is nothing that is shown on the proposed plan but it would be up to the Applicant to make sure the plants were properly taken care of.

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- Mr. Richeson asked if that pertained to all the species or just the Ligustrum Japonicum and Mr. Testerman stated that it pertains to any along the buffer and if the vegetation that is closer to the highway starts to deteriorate, there is no requirement for that. He also stated that the Applicant is required to keep the buffer between them and the Residential Zone on the west and south property lines intact.
- Hearing no further questions, Mr. Richeson asked for a Member of the Board to make a motion and Mr. Geraghty made the following: **“I recommend approval of the buffer details for 5112 N. Croatan Highway”** and Mr. Richeson seconded and the motion was passed unanimously.

7. **Text Amendment:**

- a. 42-251(c)2. Gas Stations. The Applicant has requested a Text Amendment that would reduce the required setback for fuel pumps from rights-of-way.
 - Mr. Testerman stated that this Amendment is proposed for 42-251(c)2 which allows gas stations as a Conditional Use in the BC-2 District.
 - 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 (8) vehicles to receive fuel simultaneously.
 - The proposed, revised language states that “no portion of the 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 40 feet to any right-of-way.
 - Currently, the Town’s requirement is 75 feet for any gas station building, equipment or pumps. The setback requirements go beyond the minimum structure setback requirements for the District. The Applicant is also proposing to reduce the setback requirements to 30 feet for a gas station building or canopy and 40 feet for the fuel pumps.
 - Other localities on the Outer Banks allow multi-family dwellings in Commercial Districts:
 - Duck – No specific setbacks for gas pumps. State standards apply.
 - Southern Shores – Gas stations are 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 are parallel to the pavement edge shall be a minimum of 25 feet outside of the highway right-of-way.
 - Gasoline pump islands that are not parallel to the pavement edge shall be a minimum of 50 feet outside the highway right-of-way.
 - While the requested setback of 40 feet from the right-of-way is less than what is required by the State, it would not create a conflict as the State requirements would override the Town Ordinance of the pumps that are not parallel to the right-of-way.

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- The required setback is more restrictive than the 25 foot setback required for parallel pumps. So, if someone came in with parallel pumps on their site plan, they wouldn't be able to go to the 25' then they would be restricted to 40' should that site plan be approved.
- Staff's recommendation, to avoid confusion, is that a statement be included that reads, 'that in instances where the State requirements are more strict than setbacks listed, that the State's setback requirement would be used' so that this wouldn't be overlooked in the future and where something might be approved that is too close to the right-of-way.
- Mr. Testerman stated that something which is not in the Staff Report that the Board should consider if this change is made, that the Board include the BC-1 District as well if gas stations are permitted in BC-3 which would make this consistent for all Zoning Districts that allow gas stations so that there are not two different sets of requirements for the Commercial Zoning District.
- Mr. Richeson asked if this would be a motion to approve and Mr. Varnell stated that it is no different than bringing in the extra language to bring in the BC-1 District.
- Mr. Testerman stated that gas stations are permitted as a conditional use in the BC-3 District as well.
- Mr. Geraghty asked if the Board approves, would the other Districts need to be included in the language and Mr. Testerman agreed.
- Mr. Geraghty stated that the canopies usually stick out a little further than the pumps and Mr. Testerman stated that no portion of the canopy would be nearer the 30' from the right-of-way and Mr. Richeson asked if 50' is universal?
- Mr. Richeson asked if a 50' setback can be applied Town wide, instead of the proposed 40' setback, which is the State's standard and Mr. Goodrich stated that he is fine with the State DOT requirements of a 50' setback and the canopy at a 30' setback.
- Mr. Richeson then asked for a motion to be made and Mr. Richeson made the following: **"I recommend approval of the proposed Text Amendment to amend Sec. 42-251(c)2, reducing the setback requirement for fuel pumps to 50' n the BC-1, BC-2 and BC-3 Districts, eliminating the maximum number of vehicles to receive fuel simultaneously and no portion of the gas station or building and thethecanopy shall not be nearer than 30' to any right-of-way. The Board has found this proposal to be consistent with the Town's Adopted Land Use Plan."**

- Mr. Geraghty seconded and the motion was passed simultaneously.
8. **Planned Commercial Development (PCD):**
- a. Conceptual Review, 6100 N. Croatan Highway
 - Mr. Testerman had the site plan on the projection screen for the Board and Members of the audience to see.
 - The Application Procedure for a PCD is:
 - a. Preapplication Conference
 - b. Conceptual Review
 - c. Preliminary Development Plan and Site Plan approval
 - d. Final Development and Site Plan approval.
 - Mr. Testerman stated that the Preapplication Conference was initially on the Board's Agenda a few months and two consecutive meetings were cancelled to impending hurricanes/tropical storms.
 - Sec. 42-415(b) allows the Developer to waive the Preapplication Conference and to proceed with the Conceptual Review Phase. The Applicant, Mr. Goodrich, had requested the Preapplication Conference to be waived; therefore, this meeting is about the Conceptual Review and after this there will be the Preliminary Development Plan and Site Plan approval and, lastly, the Final Development and Site Plan approval.
 - Mr. Testerman stated that the purpose of the Conceptual Review is to ensure:
 - 1. The Proposed Land uses are allowed by the underlying zones of the proposed Planned Commercial Development. Both the gas stations and multi-family dwelling developments are permitted as Conditional Use Permits in the BC-2 District.
 - 2. PCDs are permitted as a conditional use in the BC-2 District and permitted and conditional use of the underlying Zoning District are also permitted as conditional uses in the PCD and there is conflict on the proposed uses.
 - 3. The grouping of land uses within PCDs are appropriate to each other and are compatible with or only minimally impacting adjoining property uses.
 - As the two proposed uses are permitted via Conditional Use Permits and the grouping of the multi-family dwelling development building is separated from the gas station; therefore, it is Staff's recommendation that the grouping is appropriate. Due to the nature of the surrounding area being largely unimproved and the large amounts of land within the proposed development being left in a natural state there will be minimal impact to adjoining property uses. The property that lies between the subject parcel and N. Croatan Highway is owned by the State and will remain undeveloped. To the south of the subject parcel is the Dominion Energy plant and the north end of their property which abuts the subject parcel is largely open space and parking lots. The two other lots that would be most impacted are the auto mechanic and the cabinet shop on The Woods Road. The immediate impact would be seeing the redevelopment of the gas station lot.

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- An increase in traffic surrounding the two commercial uses would be expected, but, as they are commercial uses, this does not seem to be a detriment as it might for a residential area.
- The immediate impact would be the redevelopment of the gas station lot which is not an unreasonable expectation for them due to being in a Commercial District and at some point that lot would be redeveloped for commercial use
- The Conceptual Phase Review was also to ensure that the proposed and vehicular circulation patterns within the project will be compatible and the impact of the existing adjoining traffic ways will be minimized.
- Pedestrian and vehicle traffic inside the multi-family dwelling development would likely be kept to only residents and visitors of the residents. It is Staff's opinion, that it is unlikely that a large volume of vehicular traffic leaving or entering the gas station would be driving through the residential area of the development; thus, limiting chances of traffic conflict and also to ensure that the open spaces, parking, circulation patterns, land use types, pedestrian easements and amenities and architectural styles and themes are well integrated and are related to the natural features of the site.
- The Applicant minimally would disturb the wetlands in only a couple of areas where necessary for a drive aisle to access the structure which is shown on the site plan which is indicated by the cross-hatched areas.
- A majority of the project site would remain a natural, undisturbed open space. Parking is proposed to be under the residential building which would further reduce the footprint. Regarding the Conditional Permit and the Zoning Ordinance, there are a few issues that need to be addressed prior to the PCD being approved.
- The first issue involves the proposed gas pumps and if the associated text amendment is approved by the Council that issue will be satisfied.
- The second issues are the two western buildings that are shown on the Site Plan.
- Sec. 42-419(3) dictates minimum buffers for the PCDs. It states that no structure, parking or other facility, such as trash collection areas shall be erected or established within a distance of 50' from any PCD exterior boundary or perimeter line. This restriction does not apply to exterior boundary lines that abut nonresidential Zoning Districts.
- The property lines are shown on the site plan and The Kitty Hawk Woods Zoning District which is primarily a Residential District; therefore, the 50' buffer would apply on those two property lines and it is not a factor for the cabinet shop or the auto mechanic.
- Mr. Testerman referenced the projected Site Plan and said that he scaled the setback of the two westernmost buildings on the plan to 20-25' from the property line but it is not something that would cause the conceptual plan to be disapproved, but this would need to be addressed before the Preliminary Site Plan comes back to the Board for approval.

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- Mr. Testerman also stated that the Site Plan does not conflict with any Zoning Ordinance regulation; but, one area that should be addressed is the ingress and egress points on N. Croatan Hwy. The right-out of the multi-family dwelling, and right-in on the gas station a little further east seem to be a merging point that could cause traffic incidents.
- The Applicant's engineer, Mr. House, House Engineering, stated that there is a 150' separation between the two entrances; the deceleration lane and the entrance to the acceleration lane which come together and there is a right turn into the gas station and the residential area and what he is trying to do with the two entrances would allow for gasoline tankers to maneuver through the property with the least impact to the convenience store and the parking area.
- The Applicant has had DOT on-site and he stated that he could change the taper on the deceleration lane where it doesn't conflict with cars turning into the gas station and cars coming out of the residential area and the tapers could be changed to there would not be a conflict and if it was in the middle, there could be a taper for cars to get onto 158 and the cars decelerating into the gas station, there would be a deceleration lane to avoid any conflict in that area.
- Mr. Richeson asked if the exit on the western drive aisle could be eliminated and have it as an 'entrance only' and the Applicant stated that that could be done. He also referenced the other exit and asked, instead of coming out and having to merge, could there be a 'stop sign' at the corner into The Woods Road; the light is there but there is no turn lane onto The Woods Road.
- Mr. Geraghty stated that DOT could have it extended to The Woods Road and the Applicant stated that they could have a turn lane onto The Woods Road. The Applicant stated that there could be a right turn stop sign and have a deceleration lane for the turn onto The Woods Road which could be the optimum solution. The Applicant also stated that the DOT has a copy of the Site Plan and that all of this is definitely subjected to revisions to make a better traffic flow.
- The Applicant also stated that there could be another option for cars to go out to The Woods Road on the backside of the residential area and ultimately, the Applicant will do whatever the DOT recommends.
- Mr. Geraghty stated that the western buildings appear to close to the setback and asked whether that was the Nature Conservancy property and Mr. Testerman stated that it is zoned Kitty Hawk Woods which is primarily a residential Zoning District, but that it is owned by the state and Mr. Geraghty stated then, that it is unlikely that any residential houses could be constructed there.

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- Mr. Richeson clarified that the Conceptual Review is what is being considered at this meeting and Mr. Testerman stated that the next steps state that, “The Planning Board shall approve, disapprove or approve with recommended modifications.” The Conceptual Plan is to approve or deny the Applicant’s proposal is that the Zoning Amendment request to locate a PCD District to the location that is set forth in the Application. The recommendation of the Planning Board shall be placed on the Council’s meeting agenda where the Council will schedule a public hearing and that could be scheduled for the Council’s January, 2019 meeting to have the PCD Zoning Map Amendment put in place.
 - Mr. Testerman stated that the actual Site Plan will not go to the Council until the next phase, the preliminary site plan review. Council will get the PCD zoning map amendment recommendation but will not get the actual Site Plan and that the Council does not vote on the Conceptual Phase. The next step for the Applicant is to bring the preliminary Site Plan to the Planning Board and it will then go Council with a Planning Board recommendation.
 - Mr. Richeson clarified that at this meeting the Board is approving the concept as shown and Mr. Testerman stated that the PCD is an overlying district that goes on top of whatever Zoning District is applied for and in this case, it’s BC-2 and that will be put in place before the actual Site Plan get approved.
 - Mr. Richeson stated that the Board has to approve or disapprove recommended modifications and if the Board recommends to approve, can a recommendation be made that the Board needs to take a closer look at the ingress/egress conflicts that are subject to DOT’s approval and Mr. Testerman stated that the main issue is how the Zoning Ordinance will address the two buildings on the west side.
 - Mr. Varnell stated that DOT’s involvement will make that decision and it is up to the Board to put that in the motion and hearing no further questions/comments, Mr. Richeson asked for a motion to be made and Mr. Heath made the following: **“I move to approve the proposed PCD Conceptual Site Plan with the conditions that the two westernmost building locations are modified to meet the minimum buffer requirements. I further move to recommend approval of the Zoning Amendment to place a PCD at the location set forth in the Application.”** Mr. Richeson seconded and the motion was passed unanimously.
9. **Comments:**
- a. Chairman Richeson – none
 - b. Planning Board Members – none
 - c. Town Attorney – none
 - d. Planning Director – none
10. **Adjournment:**
Hearing no further comments, Mr. Richeson adjourned the November 15, 2018 Planning Board Meeting at approximately 6:55pm.

Respectfully submitted by Patricia Merski, Recording Secretary