

Kitty Hawk Planning Board Meeting  
February 14, 2019 – 6:00pm  
Kitty Hawk Municipal Building

**AGENDA**

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
  - a. January 17, 2019
4. Administrative Report:
  - a. Town Council Action from February 4, 2019 Meeting
5. Public Comment:
6. Conditional Use Permit/Preliminary Site Plan Review:
  - a. 6100 N. Croatan Highway – Gas Station. The Applicant has requested a Conditional Use Permit for a gas station that would be Phase I of the Planned Commercial Development.
7. Text Amendment:
  - a. Sec. 42-276(c)12. The Applicant has requested to add ‘multi-family dwellings’ as a conditional use in the VC-1 (Village Commercial) District.
  - b. Sec. 42-1 & 4-6. The Applicant has requested adding a distinct definition for horse and modified minimum lot size requirements for keeping miniature horses.
8. Comments:
  - a. Chairman Richeson
  - b. Planning Board Members
  - c. Town Attorney
  - d. Planning Director

9. Adjourn

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

Chairman Richeson called the Kitty Hawk Planning Board to order at approximately 6:00pm on Thursday, February 14, 2019

**Board Members Present:**

John Richeson, Chairman; Chuck Heath, Member; Dusty Rhoads, Member; Jim Geraghty, Member; Gary Muir, Alternate; Matt Spencer, Alternate; Robert Testerman, Planning Director

**Absent:**

Bryan Parker, Vice-Chairman; Casey Varnell, Town Attorney

2. **Approval of Agenda:**

Hearing no objections/changes/corrections to the February 14, 2019 Agenda, the Agenda was approved unanimously.

3. **Approval of Minutes:**

Hearing no objections/changes/corrections to the January 17, 2019 Meeting Minutes, the Minutes were approved with Mr. Geraghty making the motion to approve and Mr. Richeson seconded and the Minutes were approved unanimously.

4. **Administrative Report:**

a. Town Council Action from the February 4, 2019 meeting. Mr. Testerman stated that there were no Planning Board agenda items at this meeting.

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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 to address the Board, Mr. Richeson closed the Public Comment portion of the meeting.

6. **Conditional Use Permit/Preliminary Site Plan Review:**

- a. 6100 N. Croatan Highway – Gas Station. The Applicant has requested a Conditional Use Permit for a gas station that would be Phase I of the Planned Commercial Development.
- Mr. Testerman stated that this was brought up at the January, 2019 meeting where the Applicant had requested that the Conditional Use Permit be tabled while getting their 404 wetlands delineation which has now been updated.
  - The Proposal is for a gas station that is permitted as a 'conditional use' in the BC-2 District and Mr. Testerman reminded the Board that a few months ago, the Board had approved a Text Amendment that changed the setback requirements for the gas pumps and canopy which is now reflected in the text which was requested by the Board and is presented at this meeting.
  - Currently, there is an abandoned building on the site and the parcel is approximately 35,000 sf in area and abutting the subject property to the north, across 158 is a medical office building and a pond that are part of Southern Shores. To the west is an undeveloped parcel which is zoned BC-2 and one of which is part of the PCD which is the larger 5.4 acre parcel. The other two parcels contain a cabinet shop and an auto repair shop. To the east, across The Woods Road are undeveloped single-family residential properties zoned BR-1.

**Lot Coverage:**

- In the PCD district, the total ground area occupied by all principal buildings together with all accessory buildings and parking lots shall not exceed 50% of the total area of the PCD.
- Driveways, walkways and streets shall not be included for the purpose of maximum lot coverage calculations. The submitted drawings show coverage of 28,051 sf. The lot coverage percentage is 58.3% just for the area delineated as shown and not the entire PCD.
- With the overall site of 6.24 acres is 28,051sf of coverage which equals approximately 10.3% which is far below the maximum allowed and the lot coverage will be revised as Phase II begins.

**Building Height:**

- The maximum height in the BC-2 district is thirty-five feet (35') from the existing grade to the peak of the roof and this will be reviewed during the building permit application review process.

**Building Setbacks:**

- The list is as follows: the convenience store front setback required is 15', rear setback required is 20' and the side setbacks required are 10' minimum and the Applicant is proposing 68' front yard setback; 20' rear setback; 10' side setback to the west and a 16' side setback on the east side.

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- Canopy is listed as follows: front setback at 30'; 20' in the rear and 10' on the sides; the proposed is 35.2' front; 21' in the rear and 36' to the west and 148' to the east.

**Access:**

- The subject property is proposed to be served by one new 22 foot wide ingress/egress drive off of The Woods Road. A "right-in/right-out" ingress/egress drive is proposed to access the site directly from N. Croatan Highway to access the future Phase 2 multi-family development. This access drive will also tie into the rear of the gas station.
- A NCDOT permit will be necessary to install the proposed driveways onto N. Croatan Highway and The Woods Road which are both State roads.
- The interior drive aisle also serves as a fire lane for the property and complies with the N.C. Fire Code.

**Parking:**

- For the convenience store there is proposed one (1) space for every 300 feet plus one (1) space for every two (2) employees which equals a total of 16 parking spaces as required and there are 20 parking spaces shown on the site plan. It will also include two (2) ADA compliant parking spaces.

**Loading Zone:**

- Mr. Testerman stated that the 'loading zone' area was not shown on the plans that were sent out for this meeting but was presented at the January 17, 2019 meeting.
- There is a Loading Zone to the west of the proposed convenience store and Section 42.547 of the Zoning Ordinance states that a typical loading space should be a minimum of 12' x 25' in size, but also goes on to state, "a loading space need not be necessarily a full berth but shall be sufficient to allow normal loading and unloading operations of a kind and magnitude appropriate to the property served thereby."
- Mr. Testerman stated that after evaluating the proposed uses, the Planning Department can determine if a loading area is needed and if so, what size loading zone will be necessary to accommodate the proposed development, and, therefore, it is Staff's opinion that the proposed loading zone is sufficient.

**Buffers:**

- There are no residential uses or zones to the west or south of the proposed development; therefore, no buffer is required. The property to the east is zoned residential and is separated by The Woods Road and does not directly abut the subject property. The eastern boundary of the subject parcel is 60' from the adjacent residential zone and, therefore, it is Staff's opinion that no vegetative buffer is required with this proposal.

**Waste Management:**

- The Applicant has proposed to locate dumpsters at the northwest corner of the parking area.

**Lighting:**

- An outdoor lighting plan will need to be submitted and approved by the Planning & Inspections Department prior to the issuance of a building permit and must comply with the standards of Sec. 42-515 of the Zoning Ordinance.

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**Signs:**

- Signs will be reviewed at the Administrative level and the lot will be permitted to have a freestanding sign up to 48' in size and a total signage area of 100 sf which takes into account wall signage and window signage.

**Wastewater Disposal:**

- Septic improvement permits from the Dare County Environmental Health Department will be required prior to the issuance of any building permits. The septic area is proposed to be on the adjacent lot that is also a part of the PCD and is permissible within an approved PCD.

**Flood Zone:**

- The subject properties appear to be located entirely within an X Flood Zone which means that the buildings are not required to meet any particular flood elevations.

**Conditional Use Findings:**

- Per the standards of Section 42-99(h)(7), in order to approve this Application, the Town Council must make findings that the proposed conditional uses:
  - a. Does not materially endanger the public health or safety,
- If all of the required State and other permits are obtained, then the authorized agencies will have reviewed and permitted the driveway designs and locations, septic systems, water lines, stormwater management and erosion and sediment control plan. Therefore, it can be presumed that these improvements will be made in a safe manner.
  - b. Does meet all required conditions and specifications,
- The proposed development is consistent with all required conditions and specifications.
  - c. Will not substantially injure the value of adjoining property or be a public nuisance, and,
- Given that the site has sat for a number of years with an abandoned building and parking lot in disrepair, it would be Staff's opinion that the proposed development would not injure the value of the adjoining property.
- There is no evidence that suggests that a gas station and convenience store would become a 'public nuisance.'
  - d. Will be in harmony with the area in which it is located and be in general conformity with the comprehensible plan,
- With the approval of the previous text request and PCD zoning designation the proposed use is in general conformity with the comprehensive plan.
- With the commercial zoning and abutting commercial uses, the proposed use will be in harmony with the area in which it is located.
- Mr. Testerman concluded his presentation and Mr. Richeson asked if there were any questions from the Board and Mr. Geraghty asked if there is a time limit on the phases of the plan and Mr. Testerman stated that once the PCD conceptual plan is approved, there is no specific time limit as with a Conditional Use Permit proposal.

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- Mr. Richeson stated that on the revised plan he did not see the required fire hydrant which was presented at the last meeting and Mr. Testerman stated that on the new plan the fire hydrant will be shown as required and that the building permit will not be issued until it is included on the plan and Mr. Geraghty stated that that Fire Department will have to sign off on the final plan that includes the fire hydrant.
- As there were no other questions from the Board, Mr. Richeson stated that Mr. Muir would be voting tonight due to the absence of Mr. Parker and then asked for a Member of the Board to make a motion and Mr. Geraghty made the following: **“I recommend approval of the Site Plan and Conditional Use Permits for the gas station at 6100 N. Croatan Highway, subject to the conditions listed in the Ordinance. The Board has found this Proposal to be consistent with the Town’s Adopted Land Use Plan”** and Mr. Richeson seconded and the motion was approved unanimously:
  - a. Sec. 42-276(c)12. The Applicant has requested to add ‘multi-family dwellings’ as a Conditional Use in the VC-1 (Village Commercial) District.

**Proposal:**

The Applicant has proposed a Text Amendment that would add multi-family dwellings as a Conditional Use in the VC-1 (Village Commercial) District.

**42-276(c)12. Multi-family dwellings,**

1. **Lots shall be of sufficient size to meet requirements of the Dare County Health Department to provide adequate siting for structures and to provide parking, loading and maneuvering space for vehicles as required by Article VI, Division 2 of this chapter; however, all lots for multi-family dwellings shall have a minimum lot size of 25,000 square feet. A maximum density of 10 dwellings per acre is to be allowed. In addition, a ten-foot visual buffer consisting of trees or screen type shrubs with a growth of approximately ten feet within five (5) years shall be required where a commercial use abuts a residential use or district in accordance with Article VI, Division 5 of this chapter.**
2. **The minimum front yard is 15 feet.**
3. **The minimum rear yard is 20 feet.**
4. **The minimum side yard is 10 feet.**
5. **The maximum allowable lot coverage by the principal use and accessory structure is 60%.**
6. **Maximum total height shall not exceed 35 feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerials.**
7. **The minimum of 35% of the site shall remain in natural or manmade landscaped open space.**

**Background:**

The scope and intent of the VC-1 district is to provide an area where commercial uses of no more than 800 square feet are permitted as an accessory use to residential uses which are to be the primary use. The accessory commercial use must be of and by a person residing upon the lot or parcel upon which the accessory use is made. The residential occupant must be the owner and on premises supervisor of the commercial use. Employees may reside off the premises.

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**Background (cont'd.):**

Essentially, although referred to as 'village commercial', it is a residential district that allows accessory commercial uses.

Detached single-family residences and duplexes are permitted by-right in the district. Under current regulations, the minimum lot size for a single-family residence is 15,000 square feet and a minimum of 25,000 square feet for a duplex. The existing maximum lot coverage in the VC-1 is 60% and the maximum height is 35 feet which are consistent with those standards proposed for multi-family dwellings. The Proposal also requests 15 foot front yard setbacks; 20 foot rear side yard setbacks and 10 foot wide side yard setbacks. The existing regulations require a minimum 15 foot front yard setback and 20 foot rear yard setback. There is no specific side yard setback requirement listed in the VC-1 District.

It is Staff's opinion that, should the requested Text Amendment be approved, that accessory commercial uses listed could create parking and noise issues for other residents within the multi-family dwellings. Staff recommends an additional requirement that prohibits accessory commercial uses listed in 42-276(b) and (c), home occupations, subject to the provisions of Sec. 42-522 could be permitted without being an issue for residents of the multi-family dwellings.

- Per the Home Occupation Ordinance there are two (2) levels; Level 1 home occupations can be approved administratively which would be the type that would not create any traffic coming and going from the residence; i.e., work that can be done from home or on a computer at home.
- Level 2 is are more complex occupations wherein clients would be coming to the residence which would generate a lot of traffic entering into the townhouse setting, and in that case, the Planning Board and Town Council would have a chance to address such concerns.
- Mr. Testerman presented the zoning map on the projected screen to show the area affected which is along Kitty Hawk in a limited area.
- The Applicants were present: Mr. Sewell, Mr. House – House Engineering and Mr. St. Ledger – Developer of the project.
- The discussion was a result of the need for 'affordable housing' in Dare County. The Dare County Chamber of Commerce has been addressing this issue and Mr. Testerman has attended some of the meetings as well as participating in a field trip to Elizabeth City's affordable housing and also to University Park Development in Currituck. (FYI – University Park has 39 units and another 39 units are proposed)
- Affordable housing has been an issue for the past 20 years on the Outer Banks but the demand has increased due to more permanent residents seeking affordable housing, especially those at the professional level.

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- The Proposal is for 10 units per acre in the VC-1 district which is primarily residential but has a slight commercial component.
- Mr. Sewell and Mr. House of House Engineering spoke to the Board as did Mr. St. Ledger, the developer and sole owner on the project. The issue of home occupation was a discussion item in the meeting and Mr. St. Ledger stated that he would not be opposed to a Level I home occupation but would not entertain a Level II home occupation.
- Mr. St. Ledger stated that the building of the townhouses would reduce cost as well as increasing the tax base in the county. The townhouses would be yearly rentals and the cost to rent would be determined on density allotment, number of bedrooms and other variables to be determined.
- Mr. Richeson stated that he has an issue of having 10 units/acre in the VC-1 district which is primarily residential in nature.
- Another issue was the definition of 'affordable housing' vs. 'multi-family dwellings' in how is it represented in the proposal.
- Also, there is nothing in the proposal citing side yard setbacks and Mr. Testerman stated that, as a whole, there is no side yard setback requirement listed as part of the Text Amendment; but, the Applicant has requested a minimum of a 10' setback which, technically, goes above and beyond the normal standards of the district.
- Another example of duplexes in the BC-1 district were brought up and Mr. Testerman stated that the duplexes are 'permitted use by-right' and Mr. House stated that two duplexes, with six (6) bedrooms in each equals 12 bedrooms and being proposed for the affordable housing would equal the same number of bedrooms (12) of six (6) townhouses.
- Because of the ambiguity of the proposal on several issues; i.e., setbacks, etc., Mr. House, Mr. Sewell and Mr. St. Ledger are willing to work with Mr. Testerman to address any of the Board's concerns and Mr. Testerman advised the Board to make 'specific' recommendations/concerns to the Applicants for further research/investigation.
- At this point, it was discussed if the motion was to be 'denied' or 'tabled' until the next meeting. For the Board to deny the motion would mean that this would still have to go to the Council and have a public hearing; and, if the Applicant decides to 'withdraw' this proposal, he would have to re-apply. But, if the motion it to 'table' until the next meeting, the Applicant can address the concerns and then come back to the Board.
- Mr. Richeson asked for a motion and Mr. Geraghty made the motion to 'table' the proposal until the next meeting and Mr. Heath seconded and Mr. Richeson was opposed and the motion to 'table' was passed with a 4-1 vote.

7.b. **Sec. 42-1 & 4-6.**

The Applicant has requested adding a district definition for miniature horse and modified minimum lot size requirements for keeping miniature horses.

- Applicant not present at this meeting.

**Proposal**

The Applicant has proposed a Text Amendment that would add a new definition for miniature horse, additionally, the rest of section 4-6 would apply to miniature horses just as it would for standard horses with the exception of Sec. 4-6(c)8 which deals with the minimum lot size for keeping horses and the density of horses permitted on a given lot. The full list of proposed amendments can be found on the attached sheet many of them simply additions of miniature horses to specific subsections. The two (2) requested Amendments that would create new regulations are as follows:

**Sec. 42-1 Definitions**

**Horse, miniature means a breed of horse that does not exceed 38 inches in height when fully grown and is registered with either the American Miniature Horse Registry or the American Miniature Horse Association.**

**Sec. 4-6(c)8.**

The minimum size parcel on which a horse can be kept is one (1) acre with a density of one animal per acre. **The minimum size parcel on which a miniature horse can be kept is ¼ acre (10,890 sq. ft) with a density of four (4) animals per acre.** The maximum number of animals per parcel shall be two (2) per acre. (FYI – in a discussion with the Applicant, he inadvertently stated four (4) animals but the Applicant will only have two (2) per acre.)

- The reason for the two (2) per acre is that, sometimes, miniature horses have a companion animal that goes with the miniature horse and the Applicant has a goat as a companion for one of his miniature horses.
- The request to reduce the minimum lot size to a ¼ of an acre is that sometimes a goat can be larger than a miniature horse and there are no regulations for that. There are neighbors that have a few goats and some are larger than the miniature horse. A few goats can be on a lot without any setback requirements for pens or shelters.

**Background:**

The Applicant has provided the attached information on miniature horses which indicates that true miniature horses can be reasonably maintained on as little as a ¼ acre of land, provided that its feed is supplemented with hay on a daily basis and that the miniature horse is provided a structure for shade. (The Ordinance requires some type of shelter for horses and miniature horses but there is no way to police the feeding of the horses which is the responsibility of the Owner.)

- To ensure that the horses are true miniature horses, if approved, Staff has recommended the requirement in the definition for the horse to be registered with one of the two major miniature horse registries in the United States.
- On the attached regulation sheet, Kitty Hawk has specific requirements for keeping horses (the current horse definition includes ponies, mules and donkeys.) Kitty Hawk does not regulate other animals such as pigs, goats, etc.; some of which can grow to be larger than a true miniature horse which creates similar odors and create more noise than a miniature horse.

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- Kitty Hawk’s current standards for keeping horses were adopted in 2000 largely in response to a particular situation in which many horses were being kept in unhealthy and substandard living conditions on a single property and the Ordinance was then amended in 2011. The process of developing standards began in 1998 with the appointment of a subcommittee reporting to the Planning Board. The Kitty Hawk Horse Owners Association had membership on this subcommittee and participated throughout the process. Reviewing the standards of the Ordinance will be a valuable process that may result in improved standards, but it is important to recognize that the current Ordinance seems to have served the Town well over the past nineteen years.
  - Mr. Testerman stated that the house, driveway, swimming pool, etc. is not taken into consideration and is not dedicated to the animal and the ¼ acre of open land is open to interpretation.
  - Mr. Richeson reviewed few websites that stated that the recommendation is no more than three (3) horses/acre. Mr. Richeson was on the Recreation Committee when the original proposal came forward concerning the horses and asked Mr. Testerman if this proposal be remanded to the Recreation Committee or someone who is more knowledgeable in this area who could provide recommendations regarding lot size, etc.
  - Mr. Geraghty stated that the ¼ acre is below the Town’s standard lot size and Mr. Testerman stated that there are lots that area smaller than ¼ acre in the Town and that this would be Town wide if approved.
    - Mr.Geraghty asked if certain zones could be eliminated and Mr. Testerman stated that BR and BC lots could be eliminated for this proposal and Mr. Richeson asked if certain districts can be identified where horses would be permitted and to add the definition of what a miniature horse is and there could be no less than 1/3 of an acre.
    - Mr. Testerman it would be easier to go back to the Applicant rather than inserting ‘miniature horse’ into the existing horse ordinance or adding ‘miniature horse’ in different subsections. The suggestion is to have a specific section for miniature horses, setting specific standards which would then satisfy the violation.
    - Mr. Richeson than asked for a motion to be on tabling the decision until the March, 2019 meeting and it was passed unanimously in order for the applicant and staff to rework the proposal to be a stand-alone subsection relating to miniature horses.
- 8. Comments:**
- a. Chairman Richeson – none
  - b. Planning Board Members – none
  - c. Town Attorney – absent
  - d. Planning Director – none
- 9. Adjourn:** Chairman Richeson adjourned the February 14, 2019 Planning Board Meeting at approximately 7:05 pm.  
Respectfully submitted by Patricia Merski, Recording Secretary.