

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, March 5, 2018
Kitty Hawk Town Hall, 6 PM

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentations
 - Police Detective Jeff Gard/20 Years of Service
 - Robin Holton/Outer Banks Children @ Play Museum
5. Public Comment
6. Consent Agenda
 - a.) Approval of February 5, 2018 Council Minutes
 - b.) FY 17-18 Budget Amendment #9
 - c.) Approval of FY 18-19 Dare County Government Education Access Channels Committee Budget
 - d.) Resolution Urging the NC Legislature to Limit the Entities that can Operate Behavioral Health and Substance Use Service Plans
 - e.) 2018 Street Paving
7. Items Removed from Consent Agenda
8. Public Hearings:
 - a.) Subdivision Variance: 4600 blocks of Lindbergh Avenue and N. Croatan Hwy.
Requested subdivision variance would allow reconfiguration of six existing lots in a matter that would be inconsistent with ordinance requirements.
 - b.) Text Amendment: 42-504(i). Staff is proposing a text amendment that would allow pool equipment to encroach into the side and rear yard setback.
 - c.) Text Amendment: 42-250(c)34. Multifamily dwellings. Requested text amendment would allow multi-family dwellings as a conditional use in the Beach Commercial (BC-1) district.
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. Adjourn

COUNCILMEMBERS PRESENT:

Mayor Gary Perry, Mayor Pro Tem Craig Garriss, Councilman Ervin Bateman, Councilwoman Lynne McClean and Councilman Jeff Pruitt

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STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Finance Officer Liliana Noble, Planning Director Rob Testerman, Management Assistant Melody Clopton, Police Chief Joel Johnson and Fire Chief Mike Talley

1. CALL TO ORDER

Mayor Perry called this meeting to order at 6 PM.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

3. APPROVAL OF AGENDA

MPT Garriss made a motion, seconded by Councilwoman McClean, to approved the agenda. It passed unanimously, 5-0.

4. PRESENTATIONS:

- Police Detective Jeff Gard/20 Years of Service – Police Chief Johnson presented a plaque to Detective Gard and thanked him for his service.
- Robin Holton/Outer Banks Children @ Play Museum – Ms. Holton provided a PowerPoint presentation on the children’s museum in Kitty Hawk. It showed the different activities and exhibitions for the children and said there are many opportunities to donate time or money at the museum.

5. PUBLIC COMMENT:

1. Glenda Keel, 115 Poteskeet Trail, Southern Shores, NC. On behalf of the League of Women Voters, Ms. Keel formally presented the *Citizens Guide* to council and thanked them for contributing money to its publication. It is a booklet with valuable state, county and municipal information.

2. Spencer Oliver, 4932 Lunar Dr., Kitty Hawk, NC: *Thank you mayor and members of council. I know I am not winning any popularity contests around here after what I said last time. The complaints I made about this process.*

There is a case before the Supreme Court of the United States right now about a fellow who went before the Riviera Beach Town Council and he always complained about what they were doing.

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One time they got tired of what he was saying so they just arrested him and handcuffed him. Now the case is all the way to the Supreme Court of the United States ... whether they have tread on his rights. Don't worry officer I will go quietly when the mayor shuts me down.

I am here because I am concerned about what happened here last month with the rezoning of the two properties on Putter Lane. As the mayor said, some people did not do all their due diligence and I had not done all of mine then, but I think I have done it now. When this proposition was put before the planning board in December of course they gave no notice and there was almost nobody there. The presentation by the representative of the applicant made a statement that related to a study that had been done. He completely misrepresented what that study had concluded. I pointed that out, but nobody responded when I was here a month ago.

I noted in a previous planning board meeting when Councilwoman McClean was serving on the planning board when someone came through and wanted a rezoning request she asked if the adjoining property owners were notified. The person came forward and said yes ma'am we have five letters signed by these people saying this is all right with them. We did not have that opportunity. We had no notice.

Then in January when it was on the Town council meeting there was no notice given to us then that this was coming up affecting our properties. If you look at the video of it, it went through so fast that if you blink you would not have seen it. There was no discussion, no discussion at all. Then when we got the notice a few days before the last meeting last month three of us came up here. We did not know each other. We came up here innocently and honestly saying we do not think this is a good idea and this is why. The other two fellows said it has been such short notice, could we have a little time to see if we might get up some opposition in the community or hire a lawyer or whatever. The lawyer said we have met all the minimum requirements, so you do not have to do that. They did not give them any time.

They went ahead and rezoned it and the whole discussion was about whether or not there would be a land swap. Four lots for two and how this might increase the value of what the Town was getting by \$100,000. You kept saying we are going to get \$100,000. Someone who was here with me said I hope they are not trying to bribe the Town council with \$100,000.

Due diligence was not done. Those lots are not worth what they said they were worth. The fellow bought them for \$75,000 a piece a few years ago and he put them on the market to sell and not a single one of them has sold. He took them off the market, so it would be a bad deal no matter how you did it.

I think it was unnecessary because there is already more land zoned for medical up there than you could possibly use. On the three lots next to the two lots that are in question there are two other lots right next to it. One of them is not vacant and the other one is the cardiac clinic which is now leaving just like Sentara is leaving. They are leaving because as Sentara has said ... the other fellow who happened to be working for Sentara said they left because they were not making money.

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Down the street there was another urgent care in the Market Place less than half a mile away. So you have two urgent care centers competing with each other within half a mile. Now you are only going to have one that is going to be smaller than the one that was in Sentara. And it is not going to increase the availability of health care in the community. There are going to be less doctors, less nurses, less capability. I would hope that you would think about this.

First of all, Mike Dunn, who is building the house across the street, has a big investment. He is a young contractor with small children and he is building a house that is for sale for \$600,000. He did not know this was going to happen until four days before. He is going to lose a lot of money. The other couple had built their retirement home right across the street and they did not know about it until a few days before. So, I think it was not properly done. We did not get the notice that we should have gotten. Maybe it met the minimum legal requirements that the lawyer said at the last meeting, but I do not think it met the requirements of good government. I mean public office is also a public trust and the people need to have confidence in their government. They need to know that they are going to be treated fairly and openly and that their property is not going to be devalued without notice and for no reason at all.

The Land Use Plan is supposed to be the guideline. Now they said it is not legally required but the Town has said they are going to follow this Land Use Plan. They just threw it aside for no reason. So, I am here tonight to tell you I hope you will reconsider this. I hope you will consider what you have done, and I hope you will consider that the due diligence was not done. That it was not fair to Mike Dunn, or Tom DeLucia, or to me and that this is not the way that you prove your service to the community. People need to have confidence in what you do. To be open, to be fair. People are going to get proper notice and that you do not take away the value of somebody's property for no good reason.

So that is why I am here now. I will probably have some other things to say later on.

I know one of the things I am concerned about is the traffic. I know Mr. Mayor you have been very concerned about the congestion at that intersection since you asked for that \$25,000 from the Tourism Board. Now you have three or two new cuts and if you improve this you are going to get another cut right around the curb right into 158 at the busiest intersection on the Outer Banks. The traffic jams are going to be enormous. This is really not a good idea. So, I think that maybe you should reconsider and I hope you will. And I hope that you will give my neighbors and me proper consideration in what you are doing.

I was told a couple of days ago that you had put this on the agenda and now it has been removed from the agenda. The land swap, which was supposed to be the basic reason why you did this, is now pushed back to maybe June I am told today because they have to do something at the planning board on the 15th. Then there has to be something done on the 9th of April, then if that is done properly then there will be something May the 7th and it might be pushed until June. So why couldn't you give Mike Dunn and Tom DeLucia a little more time? I mean it is almost like a bait and switch thing. Now the baits gone back to the planning board. But the fish has already been

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landed because they already have the lots zoned the way, whoever the applicant is, wanted them zoned. I do not think it is fair. I think you ought to give it some thought and I hope that you will reconsider what I think is not good policy, or good government, or good practice for everyone in the Town of Kitty Hawk and for the government of Kitty Hawk. Thank you for your patience.

Council thanked Mr. Oliver.

Seeing no one else come forward to speak, Mayor Perry read aloud the following comments regarding the medical rezoning and possible Town land swap:

Questions over the rezoning of Town owned property from residential to medical or governmental and a possible exchange of Town owned property, two lots for four lots, resulting from that rezoning has raised a question of transparency and ethical actions.

Since taking a seat on this council in 2005, ensuring transparency of all council and staff actions has been at the forefront of how we have attempted to conduct government business in Kitty Hawk. Because questions have been raised I will take this opportunity to put before you facts as understood from the time the rezoning and potential land swap came to my attention.

Soon after the Sentara Medical center closure was announced, an inquiry for possible swap of two Town owned lots for four privately owned lots was received by staff and relayed to me. The proposed reason was to facilitate adding a medical complex adjacent to existing medically zoned land. Rezoning of Town owned property would be required. My instruction to staff was to proceed, under statute for notice and public hearings, as appropriate for all conditions to be considered.

At the February council meeting, Town owned property was zoned for possible medical or governmental purpose. Because governmental use was the original purpose for purchase of the property, rezoning should have occurred more than a decade ago. That said, the property is now correctly zoned and will not be returned to residential.

As of this council meeting, a land swap has not occurred but is expected to be part of the May 2018 agenda discussion or action.

Now to discuss issues brought forth during the rezoning hearing:

1) Adjacent property owners have expressed concern regarding inadequate public rezoning notice suggesting that mailed notice to adjacent property owners should have been sent prior to the planning board review of the matter. Several years ago, council initiated adjacent property owner mailed notification for issues that come before council. Mailing notice ahead of planning board review was rejected because that is an "advisory" board, only required to post notice of meetings. They do take the extra step to allow public comment. Recognizing that many adjacent property owners do not reside locally, I have instructed staff to commence mailing notice for appropriate

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issues ahead of planning board review. All that said, N. C. statute requires mailing to all adjacent property owners, not less than 10 days nor more than 25 days prior to a “zoning” change hearing.

2) Concern was expressed that additional medical land/construction was not needed in Kitty Hawk considering the existing Regional building and facilities located in the Market Place Mall. Pasquotank County owns the regional center. I have spoken directly with the interim Pasquotank County Manager and can report that they do not wish to continue any kind of service associated with the property. They desire to sell to the highest bidder for purpose yet to be determined.

3) Is there a need for medical facilities on this end of Dare County. The answer is yes. When Sentara pushed existing doctors and facilities south into Nags Head it left a gap filled by Vidant at the Southern Shores Mall. Vidant has indicated a desire to become independent of the mall and loss of that service for whatever reason reduces medical care access not likely to return in the old regional center. Retaining medical service in Kitty Hawk has a positive effect on a large segment of our population.

4) Did land values impact the decision to rezone? Will it be part of the consideration for swapping land? The answer for me is no, nor do I think, members of council. There is no intent to sell the property currently owned and that intent would carry through to any other property owned. The property was originally purchased for a second fire station. While there is no immediate nor future planning to build another station in Kitty Hawk, State Fire Inspection results continue to insist that a second station is needed. A future council may need the property to meet a “mandated” requirement. Exchange of property will be based upon ability to provide Town service, not monetary value. However, state statute requires assessed values be published, I assume to ensure the taxpayer is not being cheated for benefit of private enterprise.

5) On a final note, it has been stated to me that the applicant for the land swap is a well-connected, high power individual that will run over any one that gets in his way. I state here and now that no one will ever steam roll over this councilperson in the conduct of trying to do what is best for the community. My attachment to Kitty Hawk since 1942 makes council representation a “civic” duty second to no purpose other than the welfare of this community.

Following his prepared remarks Mayor Perry said this subject is over for council until the May meeting.

6. CONSENT AGENDA

a.) Approval of February 5, 2018 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) FY 17-18 Budget Amendment #9. This amendment transfers \$392,682 from the beach nourishment capital reserve fund to the beach nourishment capital project fund. *(An approval of the consent agenda will approve this amendment.)*

c.) Approval of FY 18-19 Dare County Government Education Access Channels Committee Budget. The proposed budget is in the amount of \$336,625 and requires no additional Town funding other than the current \$1,000 annual membership fee. *(An approval of the consent agenda will approve this budget.)*

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d.) Resolution Urging the NC Legislature to Limit the Entities that can Operate Behavioral Health and Substance Use Service Plans. This resolution requests that the North Carolina General Assembly allow the Local Management Entities/Managed Care Organizations model for managing mental health problems, developmental disabilities and substance use disorders to continue rather than considering privatized, for-profit enterprises which could prove to be detrimental to this vulnerable populations. *(An approval of the consent agenda will approve this resolution.)*

e.) 2018 Street Paving. After soliciting bids staff is suggesting Barnhill Contracting Co. be awarded the bid in the amount of \$30,520 to be paid from the Powell Bill Fund. The project includes the resurfacing of portions of Hallett and Goosander Streets and the intersection of Maynard Street and Lindbergh Avenue. *(An affirmative vote of the consent agenda will award the bid to Barnhill.)*

Councilman Pruitt made a motion, seconded by Councilman Bateman, to approve the consent agenda. The vote was unanimous, 5-0.

7. ITEMS REMOVED FROM CONSENT AGENDA

There were no items removed from the consent agenda

8. PUBLIC HEARINGS:

a.) Subdivision Variance: 4600 blocks of Lindbergh Avenue and N. Croatan Hwy. Requested subdivision variance would allow reconfiguration of six existing lots in a matter that would be inconsistent with ordinance requirements.

Mayor Perry moved to go into public hearing. It was seconded by MPT Garriss and approved unanimously, 5-0.

Clerk Morris swore in Planning Director Testerman and the applicant Blair Meads. Testerman reviewed the following staff report:

The Kitty Hawk Subdivision Ordinance, Sec. 38-10 states “Where, because of topographical or other conditions peculiar to the site, strict adherence to the provisions of the regulations of this chapter would cause an unnecessary hardship, or it appears that the interest of the Town would not be best served, the planning board may refer the matter to the Town council and the Town council may authorize a variance. Any variance thus authorized is required to be entered in writing in the minutes of the planning board and of the Town council and the reasoning on which the departure was justified set forth.”

Proposal

The lots subject to this subdivision variance request consist of six lots, each measuring 100' by approximately 150'. Each with 100' of road frontage. Three lots front on Lindbergh Ave. and three lots front on N. Croatan Highway. The applicant has requested a variance from Sec. 38-105(b)4, *Minimum Lot Width*. The ordinance requires a minimum lot width of 75 feet measured at the front setback, and no less than 50 feet of road frontage. The proposed variance would allow the proposed lots to have 50 feet of road frontage, and a total width of 50 feet, rather than the required 75 feet at building setback.

The applicant has also requested a variance from 38-105(b)1, which establishes that the minimum lot size of the zoning district be met. The lots in question are located within the General Beach Commercial, BC-1 district. Minimum lot size in the district is 15,000 square feet. The proposed variance would not create any new lots but would reconfigure the existing six lots to dimensions of 50' by 299.36', or 14,968 square feet.

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The reconfigured lots would have double-frontage on N. Croatan Highway and Lindbergh Avenue.

The existing residential lots to the east on Lindbergh are all 50' in width while the residential lots to the south on Lindbergh are 100' in width.

The subject properties, as well as the surrounding properties are zoned BC-1, general beach commercial, which allows single-family residences as an administrative conditional use. The applicant intends to have the lots available for six single-family residences, all fronting on Lindbergh Avenue. While Sec. 38-105(c) states that double frontage lots *should* be avoided, they are not prohibited, and it could be argued that it would be in the Town's best interest to allow the subdivision variance in order to reduce potential curb cuts on N. Croatan Highway. As currently configured, there could be a potential of three new curb cuts for either residences or commercial uses on N. Croatan Highway, all within 300 feet of one another.

In order to ensure that the lots will front on Lindbergh, it is staff's recommendation to require through recordation that the lots be accessed via Lindbergh Avenue.

It should be noted that approval of the variance does not approve the subdivision, the variance would simply allow staff to approve the nonconforming lots.

Planning Board Recommendation

At its January 25, 2018 meeting, the Planning Board unanimously recommended approval of the proposed subdivision variance, with the condition that the lots be required through recordation to be accessed via Lindbergh Avenue.

Testerman added the applicant, at the planning board meeting, offered putting an easement along the 158 side to prevent any curb cuts and it would allow the Town to enforce it. Also, if this is approved, it is not approving this configuration it is just putting in place the mechanism to allow staff to approve the subdivision once they bring the plat back.

Perry: *If you did not allow for the easement would the lots meet the square footage requirements?*

Meads: *No.*

McClean: *We would in effect have six non-conforming lots in a subdivision. What is the impact of a lot being non-conforming to someone purchasing a piece of property. Can they build on it? We have a 15,000 square foot minimum size. Would they be allowed to build on it?*

Testerman: *Yes. Many of the lots we have between the highways are non-conforming both in width and lot size. If they can meet the setback requirements, lot coverage and septic there is nothing keeping a house from being built.*

No one came forward to speak.

Seeing no one else wishing to speak, **Mayor Perry made a motion to go back into regular session. The motion was seconded by Councilwoman McClean and passed unanimously, 5-0.**

MPT Garriss made a motion, seconded by Councilman Bateman, to grant approval of the proposed subdivision variance to allow lots 33, 34, 35, 42, 43 and 44 of Kitty Hawk Beach Revised Section A, Block 36 to be reconfigured as shown on the associated plat. Town

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Council has found that it is in the best interest of the Town to allow the reconfiguration, with the condition that through recordation, access to the subject parcels will be provided via Lindbergh Avenue, as this will reduce potential curb cuts on North Croatan Highway, reducing risk of traffic incidents. Councilman Bateman seconded and it passed unanimously, 5-0.

8(b.) Text Amendment: 42-504(i). Staff is proposing a text amendment that would allow pool equipment to encroach into the side and rear yard setback.

Mayor Perry made a motion to go into public hearing. MPT Garriss seconded and it passed unanimously, 5-0.

Planning Director Testerman reviewed the following staff report with those in attendance.

Proposal

42-504(i) Swimming pools, associated aprons, uncovered pool equipment on an unenclosed stand, and decking no greater than 30 inches in height must meet required front building setbacks, but can encroach as close as five feet to side and rear property lines. Any pool structures greater than 30 inches in height (such as an aboveground pool, decking, pool house, or pool equipment in an enclosed or covered structure) must comply with the required setback standards for the district in which they are located.

Background

Kitty Hawk's zoning ordinance currently allows swimming pools, aprons, and decking no greater than 30 inches in height to encroach as close as five feet to side and rear property lines. All pool equipment must meet all required setbacks.

Sec. 42-504(b) allows HVAC units, and their associated stands to encroach up to five feet into the required side yard setback. We have had several instances in which the contractor constructs the HVAC stand encroaching in the side yard setback, as permitted, then sets the pool equipment on the same stand. When this occurs, although there is no increased encroachment, and no additional structure, it creates a zoning violation with Sec. 42-405(i). The property owner is then forced to construct an additional stand, which creates additional lot coverage, in order to place the pool equipment outside of the required setback.

It is staff's opinion that if an encroachment is permitted for HVAC units and their unenclosed stands (mechanical equipment and stand), that it seems logical to extend the same encroachment allowance to a pool pump on a stand (mechanical equipment and stand).

It should be noted that as proposed, this text amendment would allow for an unenclosed, uncovered stand for pool equipment. If a property owner wished to construct an enclosed, covered structure to house their pool equipment, it would still be required to meet the side and rear yard setback requirements.

Consistency with Land Use Plan

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

POLICY #17A: Kitty Hawk will continue to adopt, enforce, and amend as necessary ordinances and procedures to regulate residential development and redevelopment. The Town supports applicable State and Federal laws and regulations regarding building, land uses, and development.

OBJECTIVE #17B: Ensure future development is consistent with adopted goals, objectives, and policies and regulations including building code requirements and is in character with existing development with respect to features such as building size, lot coverage, architectural design standards, and construction materials and methods.

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Planning Board Recommendation

At its January 25, 2018 meeting, the Planning Board unanimously recommended approval of the proposed text amendment.

Testerman added the way this is written now is for uncovered pool equipment on an unenclosed stand to sit within the setback. If somebody wants to build a little roof structure or something to protect it from the elements it will still have to meet setbacks.

Perry: *It would not take much to build a box around it and then it becomes an enforcement problem.*

Bateman: *If I was a neighbor I would much rather look at it being enclosed. The average guy is going to enclose it anyway so why don't we allow for that?*

Perry: *I think that wording might change the amendment enough to have it come back to us.*

Varnell: *Maybe.*

Pruitt: *As it is now this pump could go all the way to five feet ...*

Testerman: *Currently the pool pump has to meet all setback requirements. On the sides at a minimum it would be ten feet and twenty-five feet front and rear. The HVAC stand and units are allowed to encroach the five feet.*

Pruitt: *We are proposing this to encroach no more than five feet?*

Testerman: *Correct.*

McClellan: *If I had this motor sitting outside of my house and the rain was hitting it and the wind was blowing seeds into it and other sundry things and I decided to put something on top to protect it, would that be considered an enclosure? Even if it is just something that looks like a big rock sitting there. Is that still considered structural or is that a cover?*

Testerman: *That was not the intent. Some people get plastic covers to set over top of them. The way this was intended to come across was building a walled structure with a roof.*

Varnell: *Perhaps a good measuring stick would be if you are building something that essentially becomes affixed. Much like the stand the HVAC is sitting on.*

Mayor Perry called the first speaker.

1. Brian Morgan, 4900 Lunar Dr., Kitty Hawk: *I was actually coming here to speak a little later. The only thing that pops into my head ... we are considering a pool pump to be a part of the utility package. I think that can encroach in the five feet. Are we all in agreement on that? So why*

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aren't we simply calling the pool pump a utility whether you cover it or not as long as it does not go any further than five feet.

One of the reasons I was coming here was to thank Rob and a couple of the other folks and it has to do with a matter of my getting some property changes on my lot and I am discovering that I can milk an extra five feet for a utility out here now. So if I call a pool pump part of the utility package why are we even worrying about covering it or not? Because if I am allowed to do that I am definitely going to do it. I am going to cover it up in a heartbeat. It is part of the utilities. That's my comment.

Seeing no other speakers, **Councilman Bateman made a motion to return to regular session. Councilwoman McClean seconded and it passed unanimously, 5-0.**

Garriss: *I think it makes good sense ... you have a stand with an HVAC unit that is compliant and when you put the pool pump on it is not compliant. That makes no sense to me whatsoever. We need to do whatever it is to make them both compliant.*

Bateman: *And allow them to be covered. If you take the HVAC unit cover off there are nuts and bolts and you cover it. The same thing with a pool pump. Like the gentleman said the utility. What I do not want to do is create something for someone to break the law because everyone is going to cover it.*

Perry: *That is exactly right.*

Bateman: *So just let them do what they want to do and cover it up.*

Perry: *We are very careful not to allow stairs that encroach into the five feet to be covered so now you are carving out yet another exemption to the exemptions. Is it wise to keep doing that? I don't know. Tell me what you want to do. I think it is an enforcement problem and it will be covered if it goes the way it has been brought to us. If you want to change the wording, then it needs to go back because the wording change is substantial.*

Varnell: *That would be accurate if we are going to go so far as to preempt the exemption then yes we would need to take it back for further consideration.*

Perry: *Exactly. You can deny, approve or send it back for the wording you prefer. Which do you want to do?*

Bateman: *I prefer to send it back and get the wording we need.*

Perry: *Is that a motion?*

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Bateman: *I will make it a motion ... I prefer to send it back and get the wording we need and bring it back.*

Perry: *Does that motion have a second?*

Pruitt: *Why are we sending it back?*

Bateman: *For them to be able to have a cover on it.*

McClellan: *You mean a structural cover. Not just an aesthetic one.*

Perry: *Covered is covered.*

McClellan: *It does not matter whether it's covered by a plastic housing ...*

Pruitt: *We are going to send this to the planning board to reword it.*

Perry: *Reword it in such a fashion that covers are allowed.*

Bateman: *Would this be classified as a utility?*

Varnell: *That is a good question. When it was raised I was pondering as to whether or not it would.*

Bateman: *That way it would take stairs completely out of it.*

Varnell: *Right and if you approve this because it is a good idea, and makes sense, it can be amended again later as well. Another staff amendment can come forward asking for the enclosure language.*

Garriss: *I like that.*

Bateman: *Do you want me to withdraw my motion and do it the way Casey said?*

Perry: *It does not have a second yet. To send it back to the planning board for rewording. If there is no second the motion will fail.*

Pruitt: *If it is going to help Rob then I do not have a problem with passing this. But if there is no rush I do not see why we don't let the planning board deal with it and bring it back to us.*

Perry: *You just seconded his motion?*

Pruitt: *I will second Ervin's motion.*

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Perry: *All in favor?*

The vote was 3-2 to send the amendment back to the planning board. Garriss and Perry voted no.

8(c.) Text Amendment: 42-250(c)34. Multifamily dwellings. Requested text amendment would allow multi-family dwellings as a conditional use in the Beach Commercial (BC-1) district.

Mayor Perry made a motion, seconded by Councilwoman McClean, to go into public hearing. Vote was 5-0.

Planning Director Testerman reviewed the following staff report.

Proposal

The applicant has proposed a text amendment that would add multifamily dwellings as a conditional use in the BC-1 (General Beach Commercial) district.

42-250(c)35. Multi-family dwellings.

Maximum allowable lot coverage by principal use and all accessory structures is 60%.

The minimum front yard setback is 15 feet.

The minimum side yard setback is 10 feet, an additional five-foot side yard adjacent to the street is required for a corner lot.

The minimum rear yard setback is 20 feet.

The maximum permitted density shall be ten residential dwelling units per acre.

Type A. vegetative buffer, per Sec. 42-654 shall be required between any multifamily dwelling and abutting residential zones or uses.

Background

Currently in the BC-1 district, the Kitty Hawk Zoning Ordinance permits apartments on the second story of compatible commercial uses, provided that applicable state building and fire codes are met and that one parking space per bedroom be reserved for the occupants of the apartment, in addition to any other parking spaces that may be required. There is no regulation on maximum density on apartments over permitted ground floor commercial uses.

The proposal of 60% lot coverage, and setbacks of 15 feet in the front, 10 feet on the side yards, and 20 feet for the rear yard are consistent with the dimensional requirements of the BC-1 zoning district.

In the districts that multi-family dwellings are currently permitted (BR-2, BR-3, VR-3) the setbacks are: 25 foot front and rear, and a scale of 10 to 25 feet side yard setbacks, depending on the square footage of the dwelling. The language is silent on how side yard setbacks are calculated for multi-family dwellings. In the BR-2, BR-3 and VR-3, the maximum lot coverage permitted is 30%.

The applicant has requested a maximum density of ten (10) units per acre. An argument could be made that a commercial zoning district is, by nature, a more intensely developed district than any residential district in Town, therefore providing justification for the higher density limit, higher lot coverage maximum, and smaller front and rear yard setbacks than if the multi-family dwelling were constructed in a residential district.

Additionally, in an attempt to mitigate potential visual impacts of a multi-family dwelling being permitted adjacent to a residential zone or use, the Planning Board recommended a required vegetative buffer be placed between the uses.

It should be noted that this text amendment, if approved, would allow stand-alone multi-family dwellings. Multi-family developments, such as an apartment complex, as multifamily dwelling developments are defined separately from multi-

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family dwellings. Multifamily dwelling developments are not a part of this text amendment request and would not be permitted in the BC-1 district, should the request be approved.

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 – Does not allow.

Southern Shores – Multi-family dwellings are permitted in the C, general commercial district, according to the dimensional requirements of their RS-8, multi-family residential district. They do allow an extra 10% lot coverage for multi-family dwellings in the commercial district (40%) versus those in the RS-8 (30%).

Kill Devil Hills – Multi-family dwellings of three or more units per dwelling are permitted in the C, commercial district at a density of 18 dwellings per acre. The RH, high density residential district, setbacks are applied.

Nags Head – Multi-family dwellings are permitted as a conditional use, provided a number of conditions are met (attached).

Manteo- Multi-family dwellings are permitted at a density of six dwellings per buildable acre.

Consistency with Land Use Plan

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

Policy #17a: Kitty Hawk will continue to adapt, enforce, and amend as necessary ordinances and procedures to regulate residential development and redevelopment. The Town supports applicable state and federal laws and regulations regarding building, land uses, and development.

Policy #17b: Detached residential structures are the preferred type of residential development.

Objective #17a: Ensure the continuance of established residential development patterns.

Objective #17b: Ensure future development is consistent with adopted goals, objectives, and policies and regulations including building code requirements and is in character with existing development with respect to features such as building size, lot coverage, architectural design standards, and construction materials and methods.

Objective #17d: Enforce, and amend as necessary, the Town zoning ordinance including designation(s) of permitted and conditional use intensity and density criteria.

Planning Board Recommendation

At its January 25, 2018 meeting, the Planning Board unanimously recommended approval of the requested text amendment to allow multi-family dwellings in the General Beach Commercial (BC-1) district as a conditional use permit, with the conditions listed above.

Perry: *This amendment is for property up by Sea Scape.*

1. John DeLucia, Albemarle and Associates, Kill Devil Hills, NC: *I do not know if that will be possible because there are restrictive covenants on those properties. However, this subject has come up to me multiple times from other developers asking why they cannot build an apartment complex. Why do we have to put commercial underneath it if it is in BC zoning?*

Rob did not get into it, but I know you have heard the discussions about the need for housing. What we are seeing, and hearing, is that there is a real need for two-bedroom units. We do not as a Town have any ordinance in place that will allow that unless you want to put retail on the first floor.

I have joked with Rob and said I will build a five hundred square foot convenience store with parking next to it and build three stories above it. But I do not think that is how the ordinance was structured and was intended to be interpreted.

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This is not site specific. It may not work on the site we were hoping to put it on however I still think it is probably a good idea for us to discuss and see how we may be able to accommodate some of the needs we have in the community and in the commercial zone. We do not want to re-create the wheel as far as setbacks. In a commercial zone there can be 60% lot coverage, you have setbacks that are a little bit looser, and as Rob said, it is a higher intensity type of zone.

Testerman: *There are two other things I want to note. If approved, it would be as a conditional use. Any potential development would be reviewed on a case by case bases by the planning board and council. I have been attending the work force housing committee meetings one of the contractors mentioned they do not look in Kitty Hawk because our current density requirement of four buildings per acre is not viable for a multi-family dwelling.*

DeLucia: *You are not going to be able to achieve much more than about ten to twelve units per acre when you have lot coverage, storm water, a maximum building size. And multi-family's do require sprinkler systems. There are a lot of checks and balances in place. I think ten is probably not a bad number if we wanted to consider this. I am sure there are some developers that would like twelve, but I think ten works.*

Perry: *Kitty Hawk is a little unique in that we have BC's that used to be motels and such and then they turned into residential. Do we have a lot of places where that could be reversed and suddenly we are inundated with multi-family dwellings?*

Testerman: *I think the risk of getting overrun by apartment buildings up and down 158 is not a very big concern.*

Garriss: *Going back to what you said Mr. DeLucia. This probably will not happen in Sea Scape because of what?*

DeLucia: *The lots we were looking at have some restrictive covenants on them. However maybe it could because covenants can be changed but if council does not put the language in place then there is no reason to talk to the property owners.*

Perry: *Many things can be changed because of conditional uses but council must have a good reason to reject a conditional use correct?*

Varnell: *Absolutely.*

Perry: *I just wanted to remind all of us. There must be a foundation for denial.*

Seeing no other speakers, **Councilman Bateman made a motion to return to regular session. Councilwoman McClean seconded and it passed unanimously, 5-0.**

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Bateman: We do need housing for our young families starting off and we do not have any now. There is none throughout Dare County. As an employer we face it every day. Young people cannot afford \$1,500 or \$1,700 a month in rent.

Councilman Bateman moved to adopt the proposed text amendment to add subsection 42-250 (c) 35 multi-family dwelling allowing multi-family dwellings as a conditional use in the general BC-1 district. The Town Council finds that the proposed text amendment is consistent with adopted CAMA Land Use Plan and finds these amendments to be in the public interest. MPT Garriss seconded the motion.

Pruitt: *We are opening this up for multi-family dwellings in the commercial areas, reducing our commercial properties. The Bonanza Motel comes to mind. Would that be a place that would be a fit for this?*

Testerman: *I believe that is zoned as BR-1.*

Pruitt: *I am trying to wrap my head around how many places there are.*

Testerman: *Most of the land is along the bypass. There are a few areas where it pushes over to the beach road.*

Testerman showed the zoning map on the monitor and showed different areas of the BC-1 district.

Perry: *The bottom line is it is commercial. Retail with apartments above it. The only difference is now you have apartments up and down. While the whole county needs work force housing whatever we do here does not mean it will be affordable.*

McClellan: *And the land in those areas could also support ten-bedroom houses or something of that nature.*

The vote was unanimous to approve, 5-0.

9. TOWN MANAGER

Manager Stewart announced the following:

APRIL COUNCIL MEETINGS: April 9, 2018 (April 2nd is the Town observed Easter Holiday).
April 23, 2018 Budget Workshop.

CHIPPING SERVICE: Begins April 9, 2018.

CURRENTtv: The most recent video highlighting Kitty Hawk was shown. It was a segment about the cleaning of the ditches and canals in Town.

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10. TOWN ATTORNEY

There were no comments from Attorney Varnell.

11. TOWN COUNCIL

COMPLIMENTS TO STAFF: MPT Garriss thanked Town staff for all their work during the past few days when the high winds hit. He said he also had compliments on the large item pickup that occurred last week and on the great job done on the bike path. Friends of his use it all the time and they said it is very nice. The video that was shown was very good.

DITCH/CANAL DEBRIS CLEANING: Councilman Bateman said he was jogging along Duck Pond Ditch, which is between Poor Ridge and Herbert Perry Roads, and one of the debris workers was up to his chest in mud. There is a lot of silt in the ditches and they are doing a good job.

THANK YOU: Councilman Pruitt thanked Detective Gard for his service and said it is nice that employees are starting to stay with the Town for as long as they do.

BEACH NOURISHMENT: Mayor Perry stated that while there was some ocean over wash with the recent storm it was nothing compared to what it would have been without the beach nourishment. In years past he would have ordered pumps to be on standby. The question everybody has is will it continue to work and for how long. That is a question no one knows the answer to.

He also shared a funny story of going to the beach this morning just ahead of high tide to see any damage. A wave hit him and knocked him on his keister and he was wet from head to toe with million-dollar sand in his ears, nose and pockets.

12. PUBLIC COMMENT

1. Spencer Oliver, 4932 Lunar Dr., Kitty Hawk, NC: *I figured I was doing so well in the popularity contest I could not waste another opportunity.*

I just wanted to say a couple of things. First of all, after what you said Mr. Mayor my point was not if somebody had done anything illegal. I was just saying it would have been nice to follow what Councilwoman McClean did where you ask people in advance whether the neighbors had been notified before the planning board makes a recommendation. And then when the planning board makes a recommendation at least in that month or so in between that the people who are affected would be notified or consulted or asked what they think. I think that is just a common courtesy.

I mean people have been hurt. Mike Dunn has a \$600,000 house. He is a young contractor and this is one of his first projects and he is hurt because he has that thing for sale and now he is facing a zoning change right in front of his house. Tom DeLucia and his wife who retired and built their retirement home over there were going to put a swimming pool in and have decided not to do that

and they are going to move. The doctor who lives in the house I own after this happened gave me notice and we were negotiating for him to buy the house. He has withdrawn the offer and now gave notice that he wants to leave. People have been hurt.

There needs to have been a reason. I saw no reason for this. There is plenty of property above those three lots that have already been zoned. One is vacant. It is zoned properly. People in the cardiac building have left. There is plenty of room to do whatever was they were going to do. So, I would hope that maybe there would have been a better reason to do this and that the people might have been given an opportunity to make their case and to be heard.

I just think it is a common courtesy and it is a good way for the government to perform. I just want to register my complaint and hope you will give that some consideration.

Also want to say that I was told this afternoon that this Putter Lane thing is going to go to the planning board and you announced something about May for a conditional use permit. My question is can an applicant ask for a conditional use permit on property he does not own? Because the swap has not taken place yet, so does somebody go in and ask for a conditional use permit on some property that has not been swapped yet or does not own? There is no plan yet there. So, I am just curious as to how this works. I mean can you really ask for a conditional use permit on somebody else's property? Thank you for your courtesy and thank you for listening.

Perry: *Thank you. Anyone else?*

2. Brian Morgan, 4900 Lunar Dr., Kitty Hawk: *Though I live around the corner I am not going to speak to that issue. We bought our house here in 2000. The house was built in the early '80's and there were some interesting things that were going on in the early '80's. I came here to thank the people. I appreciate Rob's help, I appreciate David's help and Phyllis's help. I came to them with some questions. They did not have the documentation and they were very patient and gave me the time I needed to get the information. They helped me find it and then they helped me negotiate what I needed to do to get it through.*

I understand I am one of the first people in Kitty Hawk that is going to take a Conex container and turn it into a shed on property in Kitty Hawk. I do not know why that is a big deal, but I can guarantee you it is not going to end up looking like a Conex container when I am done with it. The point is everybody has been very gracious. They have given me the time.

We have been here since 2000 and I do not have any horror stories. It is never a happy thing when you have to mitigate business with property and you are going to have some winners and some losers but frankly we have been very grateful for all the help that the people of Kitty Hawk have given us. I just wanted to let you guys know that. At least those folks have done right by us. You gave me the time I needed and I just wanted to say thank you.

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Council thanked Mr. Morgan and Mayor Perry added it is what council asks of staff to do and they do it very well.

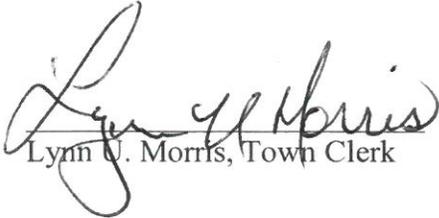
No one else wished to speak and the mayor asked the attorney to elaborate on Mr. Oliver's question.

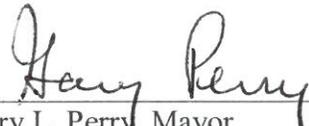
Attorney Varnell said the answer is yes you can apply for a conditional use permit without owning the property. It occurs often in due diligence periods when it comes down to commercial developments. People do not want to pay high premiums, so they run things through the appropriate avenues such as Town council meetings to get those type of approvals before they pull the trigger on buying land and building a hotel or something of that nature. If a hotel developer cannot do what he wants he does not want to be stuck with the property.

13. ADJOURN

Councilwoman McClean made a motion to adjourn. MPT Garriss provided a second and the motion passed unanimously, 5-0. Time was 7:31 p.m.

These minutes were approved at the April 9, 2018 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor