

**KITTY HAWK PLANNING BOARD
MINUTES
Regular Meeting, May 16, 2013 – 6:00 p.m.
Kitty Hawk Municipal Building**

AGENDA

1. Call to Order / Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. April 11, 2013 - Regular Meeting
4. Administrative Report:
 - a. Town Council Action from May 6, 2013 Meeting
5. Rezoning:
 - a. 108 W. Sibbern Drive – Beach Residential (BR-2) to Beach Commercial (BC-1)
 - b. 926 W. Kitty Hawk Road – Village Residential (VR-1) to Village Commercial (VC-2)
6. Conditional Use Permit:
 - a. Church of the Outer Banks, 608 W. Kitty Hawk Road
7. Text Amendment:
 - a. Section 42-41, Conditional Zoning
8. Comments:
 - a. Chairman Northen
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director
9. Public Comment
10. Adjourn

1. CALL TO ORDER / ATTENDANCE

Chairman Northen called the meeting to order at approximately 6:00 p.m., followed with roll call by Planner Heard.

PLANNING BOARD MEMBERS PRESENT: Oscar Northen, Chairman / Craig Garriss, Vice Chair
Richard Fagan / Jeff Pruitt / Don Stallman / Lynn McClean, Alternate / John Richeson, Alternate

STAFF PRESENT: Joe Heard, Director of Planning & Inspections / Steve Michael, Town Attorney

2. APPROVAL OF AGENDA

Hearing no changes, the **Chair declared the agenda approved as presented.**

3. APPROVAL OF MINUTES:

a. April 11, 2013 - Regular Meeting. The Chair asked if any members could amend where several "inaudible" quotes were noted, and with no corrections given, it was requested that anyone talking should speak clearly into the microphone for recording and transcription.

With hearing no changes or corrections to the minutes, **Chairman Northen declared the draft minutes for April 11, 2013 approved as submitted.**

4. ADMINISTRATIVE REPORT:

α. Town Council Action from May 6, 2013 Meeting. As a brief summary of action taken by Council at its last meeting, Planner Heard brought forward the following items of interest:

- Council held a public hearing regarding the text amendment dealing with neon "open" and "closed" signs. As was similar with the Planning Board's vote, the text amendment request was approved by Council with a 3-2 vote.
- Council also held a public hearing for the conditional use permit application for the Dominion Power alternative energy, wind turbine and solar panels project. A unanimous vote approved said request subject to a variety of conditions.

The Planner noted Council did not include the Board's recommended condition relating to buffering should the solar panels produce a glare. With further information being received by Council, it was determined there should be no problem with glare from the solar panels.

- Money was set aside by Council for initial study regarding the possibility of constructing stormwater ocean outfalls at several locations in Kitty Hawk, which would be most beneficial to areas in between the highways. Changes to State regulations and policies may permit such in the near future.
- Funding has been provided by Dare County to municipalities located along the Northern Outer Banks to pay for initial study and permitting related to a potential beach nourishment project. Council authorized spending a portion of this money to pay for a conceptual assessment outlining the costs and process associated with said project.
- In that the projects dealing with stormwater outfall and beach nourishment will be very expensive, Council directed staff to work with Town Manager John Stockton to look into developing alternative special tax district maps – to see if there could be the possibility of setting up special tax districts dedicated to funding such projects.
- If interested, the Board members were invited to attend Council's budget workshop May 21, 2013, at 9:00 a.m., at the Town Hall.

5. REZONINGS:

α. 108 W. Sibbern Drive – Beach Residential (BR-2) to Beach Commercial (BC-1). Planner Heard offered a summary of the rezoning request for the property located at 108 W. Sibbern Drive, from BR-2 to BC-1. The staff memorandum dated May 16, 2013 is entered into this record of review:

Property Owner: Decharmarnel, Inc.

Property Address: 108 Sibbern Drive

Parcel ID Number: 987512859274

Current Zoning: Beach Residential (BR-2) / Beach Commercial (BC-1)

Proposed Zoning: Beach Commercial (BC-1)

Proposal

A portion of the subject property is proposed to be rezoned from Beach Residential (BR-2) to Beach Commercial (BC-1) in order to allow the existing buildings to be reused for commercial purposes in the future.

Background Information

Although referenced as a single parcel for Dare County tax purposes, the subject property is actually two separate parcels of land. A majority of the eastern parcel is presently zoned Beach Commercial (BC-1), with a small portion of this parcel zoned Beach Residential (BR-2). The western parcel is presently zoned Beach Residential (BR-2). The building on the eastern property is located in the BC-1 district, while the western building is in the BR-2 zone. The property was previously occupied by a day care center for 29 years, which was a nonconforming use on the residentially zoned portion of the property.

The subject property is 64,857 square feet (1.48 acres) in size and is developed with two metal buildings with brick veneer, each 5,000 square feet in size. One of these buildings was constructed in 1982 and the other in 1984 for use as a day care center, which operated continuously until 2011. A variety of smaller outbuildings (sheds, pavilions, playground equipment) and concrete drive aisles/parking area are also located on the property. The property has road frontage off of Sibbern Drive, a Town maintained street. As the day care center vacated the property two years ago, any redevelopment will be required to be in compliance with current Town development standards.

The two parcels adjacent to the north are zoned Beach Residential (BR-2). One of these parcels fronts on W. Tateway Road and contains a duplex while the other fronts on Sunrise View Court and contains a single-family residence. The abutting property to the west and south is approximately 8.15 acres in size, zoned Beach Residential (BR-2), and presently undeveloped. The two adjoining properties to the east are zoned Beach Commercial (BC-1). One contains Kitty Hawk Carpets & Home Furnishings and the other contains Seto's Towing & Service Center, a legal, nonconforming business. Across Sibbern Drive to the southeast are a large water tank and pump station owned by the Dare County Water Department.

Staff Analysis

Current Zoning: Split-zoned BC-1/BR-2. The Beach Residential (BR-2) district allows mainly single-family residential uses, but does permit multi-family residential uses on larger properties. A handful of limited institutional and commercial uses are also permitted as conditional uses. The intent of the BR-2 district is to encourage the development of medium density residential neighborhoods in Kitty Hawk. The attached section of the Zoning Ordinance outlines the permitted uses and development standards for the BR-2 district.

Proposed Zoning: BC-1. The Beach Commercial (BC-1) district allows a variety of residential, institutional, office, and commercial uses. The intent of the BC-1 district is to provide for the commercial needs of the neighborhood and immediate surrounding geographical area. The commercial development will be characterized by small to medium size land parcels with commercial development of low intensity. The BC-1 district is not intended to be developed for shopping centers, shopping malls, or big box retail/wholesale businesses. The attached section of the Zoning Ordinance outlines the permitted uses and development standards for the BC-1 district.

Proposed Development: The applicant is presently seeking to convert the western building into a residence and establish a t-shirt printing business in a portion of the eastern building. However, these are not necessarily long-term uses for the property.

If the property is rezoned, the property owner will not be limited to these proposed uses, but will be permitted to establish any use that is allowed in the BC-1 district.

Should the subject property be rezoned, most redevelopment proposals would have to undergo site plan review, either administrative review for a minor amendment or review by the Planning Board and Town Council for a more significant redevelopment proposal.

Land Use Plan

It is important to note that approval of a rezoning request is not legally required to be consistent with the Town's adopted land use plan. However, the land use plan is an important document to consider as it is intended to help guide the pattern of development in the Town.

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the subject property as a **Commercial, Shopping, and Working Area** and provides the following description for this classification:

"Commercial, shopping, and working areas include areas that primarily encourage the concentration of commercial facilities in clusters or group developments and to provide readily accessible shopping facilities and will provide for the proper grouping and development of commercial facilities to serve permanent and seasonal residents and the general public. Some of these areas are envisioned to provide limited mixed uses."

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

"GOAL #4: Ensure continued commercial development in commercially zoned areas of Kitty Hawk and the continued vitality of existing businesses."

"POLICY #4a: Kitty Hawk, through its zoning ordinance, will continue to direct the placement of commercial development in areas zoned for such activities."

As part of its review, the Planning Board is asked to determine the consistency of this zoning amendment proposal with the adopted CAMA land use plan.

Planning Board Action

The Planning Board has been asked to provide the Town Council with a recommendation regarding the proposed zoning amendment for the subject property at 108 W. Sibbern Drive.

Should the Board decide to recommend **APPROVAL** of the proposed rezoning, the motion could be worded in the following manner:

"I recommend approval of the application to rezone the entire property at 108 W. Sibbern Drive to Beach Commercial (BC-1). The Board has found this proposal to be consistent with the Town's adopted land use plan. [ADDITIONAL JUSTIFICATION HERE]"

Should the Board decide to recommend **DENIAL** of the proposed rezoning, the motion could be worded in the following manner:

"I recommend denial of the application to rezone the property at 108 W. Sibbern Drive to Beach Commercial (BC-1). Although consistent with the Future Land Use Map in the Town's adopted land use plan, the Board has found that [INSERT JUSTIFICATION HERE]."

Directions to the Subject Property

From Kitty Hawk Post Office, N. Croatan Highway & Kitty Hawk Road, drive approximately 0.9 miles south on N. Croatan Highway. Turn right onto W. Sibbern Drive, immediately after passing Seto's Towing & Service Center. The subject property is located a few hundred feet on the right at the end of W. Sibbern Drive.

A zoning map depicting the subject property and surrounding area was displayed and referenced.

Planner Heard noted the Board should be familiar with the subject property and the surrounding area as a previous applicant had requested a rezoning for a dog grooming and boarding business on this property one year ago. The current applicant for the rezoning request was present, Charlotte Walker.

Stallman verified with the Planner the Town's Land Use Plan (last updated in 2005) does show the subject property appropriate for commercial zoning.

Walker indicated she originally developed the property in 1982-1984, adding an explanation there are two separate properties because of the expansion of the initial day care center (additional property was granted by her father to enlarge the day care center operation in 1984). Current parking standards restrict how the area under BR zoning may be used, and if the subject property were to be used for a day care operation, additional parking would be required, even with most vehicles coming on site basically for pick up and drop off.

VC Garriss stated he applauds anyone who wants to improve property in Kitty Hawk, noting the Board has to be mindful, as well as the applicant, to work within what zoning regulations permit. VC Garriss asked the applicant, in addition to consideration of a t-shirt business, about other possible business uses, and Walker offered professional offices, indicating she has reviewed the Town's conforming and nonconforming restrictions. As to input from nearby residents (letters of support from nearby businesses have been received), Walker indicated she has not obtained such but commented there seems to be a consensus among the neighbors that they are happy to see the property being cleaned up.

Access to the subject property is off Sibbern Drive, and Walker explained to Stallman she put the access road in when the property was being developed as a day care facility and has also kept up the maintenance. In response to a question concerning a residence, Heard noted the only single-family property abutting the subject property is accessed by Sunrise View Court, and the residence appears to be occupied year-round, but he doesn't know if it is owner-occupied or a rental. [Referenced from the Planner's memo: "*The two parcels adjacent to the north are zoned Beach Residential (BR-2). One of these parcels fronts on W. Tateway Road and contains a duplex while the other fronts on Sunrise View Court and contains a single-family residence.*"]

Fagan inquired if those happy to see the property being cleaned up were neighbors from Jejac Drive, and Walker commented no one has spoken to her about the property needing to be cleaned up, but that they just seemed happy about a use occurring because the property is showing signs of disrepair. Fagan referred to a red depicted area just in front of the subject property, asking to verify if it is adjacent to the commercial zone, to which Heard replied that it is.

Pruitt noted the residence to the north is buffered very well, as he had determined such when visiting the subject site at the time of the dog grooming and boarding application. He then stated an understanding of complications when a property is split in half, offering support for the rezoning.

McClellan and Richeson indicated they had no questions or comments.

Stallman directed the Board's attention to the uses currently allowed under BC-1, and Planner Heard highlighted the following permitted uses: a variety of offices, such as business, financial, government, professional; a variety of retail stores; service establishments, such as barber shops, dry cleaning, laundry, appliance or electronic equipment sales or repair; and restaurants. Stallman noted that one use not allowed is amusement parks, and Heard verified nothing of that nature is permitted, adding BC-1 is the least intensive of the commercial districts. Further note was made that Seto's is a nonconforming use in the subject zoning, as it was in business prior to the Town's zoning. Under today's regulations, said business use would not be permitted in that district.

Pruitt posed that any future uses would primarily be conditional uses, and Planner Heard explained that many of the listed uses are permitted uses and can be approved administratively. If a significant change were to be proposed, the Board would have a chance to review a site plan. [A dog grooming and boarding business, if proposed again, would require a text amendment. Council did not approve an earlier request for the same.]

Upon the Chair hearing no further comments or questions, **Fagan moved to recommend approval of the application to rezone the entire property at 108 W. Sibbern Drive to Beach Commercial (BC-1), adding the Board has found this proposal to be consistent with the Town's adopted CAMA Land Use Plan. The vote carried unanimously, 5-0.**

b. 926 W. Kitty Hawk Road – Village Residential (VR-1) to Village Commercial (VC-2).

Planner Heard gave a summary to the Planning Board of the rezoning request for the property located at 926 W. Kitty Hawk Road. A memorandum dated May 16, 2013 detailing the staff's review is entered into this record:

Property Owner: Mark A. Perry
Property Address: 926 W. Kitty Hawk Road
Parcel ID Number: 987505097598

Current Zoning: Village Residential (VR-1)
Proposed Zoning: Village Commercial (VC-2)

Proposal

The subject property is proposed to be rezoned from Village Residential (VR-1) to Village Commercial (VC-2) in order for the property owner to locate his landscaping business on the property.

Background Information

The subject property is 2.88 acres in size and presently zoned Village Residential (VR-1). The property is presently undeveloped. The central area of the property is cleared, but the edges retain a buffer of trees. The property is bounded on the north and west sides by a creek (Sandy Run). As a wetland also runs along the eastern side, the subject property is physically isolated from most of its neighboring parcels. The property gains access directly off of W. Kitty Hawk Road.

Across Sandy Run to the west is a relatively narrow, 0.9 acre parcel zoned Village Commercial (VC-2), which contains the Northeastern Marine Construction business. Across Sandy Run to the north is the RPC Construction complex, zoned Village Commercial (VC-3). The northeast corner of the subject property abuts a 3.5 acre parcel zoned Village Residential (VR-1) that contains a residence and manufactured home. Directly to the east is a large property (11.6 acres) zoned Open Space & Recreation (OS) that contains Dare County's Kitty Hawk Park. The dog park is located in the area nearest to the subject property. Abutting the subject property to the south is a 1.6 acre parcel that contains a barn-like structure and is zoned Village Residential (VR-1).

Staff Analysis

Current Zoning: VR-1. The Village Residential (VR-1) district allows mainly single-family residential uses. A handful of limited commercial, institutional and accessory uses are also permitted. The intent of the VR-1 district is to encourage the development of low density residential neighborhoods in Kitty Hawk Village. The attached section of the Zoning Ordinance outlines the permitted uses and development standards for the VR-1 district.

Proposed Zoning: VC-2. The Village Commercial (VC-2) district allows a variety of residential, institutional, office, and commercial uses. The intent of the VC-2 district is to provide for the development of commercial facilities in Kitty Hawk Village to furnish a broad range of services and commodities to serve the entire community. The attached section of the Zoning Ordinance outlines the permitted uses and development standards for the VC-2 district.

Proposed Development: In his attached letter, the applicant outlines an intention to construct a barn on the property to house equipment and materials associated with his landscaping business.

If the property is rezoned, the property owner will not be limited to these proposed uses, but will be permitted to establish any use that is allowed in the VC-2 district.

Should the subject property be rezoned, commercial development of the property would have to undergo site plan review by the Planning Board and Town Council.

Land Use Plan

The Town's adopted land use plan is an important document to consider as it is intended to help guide the pattern and standards of development in the Town. While consistency with the plan is certainly desirable, it is important to note that approval of a rezoning request is not legally required to be consistent with the Town's adopted land use plan if Town Council decides that other factors justify the need for a zoning change.

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the subject properties as a Lower Density Residential area and provides the following description for this classification:

"Residential areas should provide for the low-density development of single-family detached dwellings in an environment which preserves natural features to the extent possible and promotes stable, permanent neighborhoods."

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

"GOAL #4: Ensure continued commercial development in commercially zoned areas of Kitty Hawk and the continued vitality of existing businesses."

"POLICY #4a: Kitty Hawk, through its zoning ordinance, will continue to direct the placement of commercial development in areas zoned for such activities."

"OBJECTIVE #4g: Periodically assess land use type needs, commercial zoning district boundaries,

economic development conditions and emerging trends, and the types of permitted uses allowed in commercial zoning districts."

As part of its review, the Planning Board is asked to determine the consistency of this zoning amendment proposal with the adopted CAMA land use plan.

Planning Board Action

The Planning Board has been asked to provide the Town Council with a recommendation regarding the proposed zoning amendment for the subject property at 926 W. Kitty Hawk Road.

Should the Board decide to recommend **APPROVAL** of the proposed rezoning, the motion could be worded in the following manner:

"I recommend approval of the application to rezone the property at 926 W. Kitty Hawk Road to Village Commercial (VC-2). Although inconsistent with the Future Land Use Map in the Town's adopted land use plan, the Board has found that [INSERT JUSTIFICATION HERE]."

Should the Board decide to recommend **DENIAL** of the proposed rezoning, the motion could be worded in the following manner:

"I recommend denial of the application to rezone the property at 926 W. Kitty Hawk Road to Village Commercial (VC-2). The Board has found that this request is inconsistent with the Future Land Use Map in the Town's adopted land use plan and [INSERT ADDITIONAL JUSTIFICATION HERE]."

Directions to the Subject Property

From Kitty Hawk Post Office, N. Croatan Highway & Kitty Hawk Road, drive approximately 1.3 miles west on W. Kitty Hawk Road. The subject property is located on the right, just after the entrance drive to Cozy Kitchens.

****NOTE:** The applicant/property owner has invited Planning Board and Town Council members to walk around the property. Staff recommends doing so as the visit will provide perspective on the relationship between the subject property and adjoining properties.

After Planner Heard finished his summary, the applicant, Mark Perry, spoke about his intentions that have brought forth the rezoning request. He would like to run his own landscaping business from the subject property and build a barn to contain his equipment, keeping it out of sight, as well as keeping the property from becoming "messy."

When Board members were polled for questions, Pruitt was the first to comment, saying he knows the property and does not believe it is suitable for a residence because of being surrounded by intense commercial activity. The proposed landscaping use would be more appropriate for said location than someone building a custom home.

Fagan said he visited the subject property this date and took the applicant's letter to review what was being described as surrounding the property. Being in agreement with Pruitt's remarks, Fagan indicated the same would be his rationale for his vote in favor of the rezoning request.

At this point, Chairman Northern interjected an apology for an oversight, explaining that Board procedures now allow anyone attending the meeting to be given an opportunity to speak regarding an application. Apologizing for the first application's review omitting such, the Chair opened the floor for anyone wishing to speak on the rezoning request before the Board with this discussion. No one spoke, and the Board moved forward to offer a recommendation.

VC Garriss moved to recommend approval of the application to rezone the property at 926 W. Kitty Hawk Road to Village Commercial (VC-2). It was noted by motion that although inconsistent with the Future Land Use Map in the Town's adopted CAMA Land Use Plan, the Board has found this rezoning request to be consistent with the adopted LUP. Upon call for the vote, the motion carried unanimously, 5-0.

6. CONDITIONAL USE PERMIT:

a. Church of the Outer Banks, 608 W. Kitty Hawk Road.

Before this agenda item was taken up, McClean asked to be excused from any discussion on this matter, left the dais, and sat in the audience.

Planner Heard reviewed with the Board the conditional use permit application for the property located at 608 W. Kitty Hawk Road. During the Planner's presentation, reference was made to a site plan showing the proposed improvements to the subject property. The staff memorandum along with an addendum, both dated May 16, 2013, is entered into this record of review:

Proposal

The applicants are requesting approval of a conditional use permit to establish a church and several related uses on the former Westcott property at 608 W. Kitty Hawk Road. The main feature of the proposed project is to construct a new, approximately 11,300 square foot church building containing a sanctuary, fellowship hall, classrooms, and offices (a copy of the possible building elevations and floor plan are attached). All of the existing buildings on the site would continue to be used. The existing residence would become a parsonage for the minister. The existing two-bedroom apartment above the garage would likely be rented. The other storage buildings would continue to be used for that purpose.

Background Information

The subject property is 7.34 acres in size and contains a residence and several outbuildings. The property can only be accessed from W. Kitty Hawk Road via a twenty foot (20') wide strip of land that extends 185 feet to the main portion of the property. The property is surrounded on three (3) sides by a navigable waterway known as Hobbs Creek. The vast majority of the subject property is currently zoned Beach Residential (BR-1). However, the access drive into the property is zoned Village Commercial (VC-1). The existing single-family residence on the property was built in 1977, has three bedrooms, and is 1,854 square feet in size. The property also contains a large garage/storage building, stable/storage building, garage with upstairs apartment, and several smaller sheds. Since the passing of the previous owner, the property has been unoccupied and listed for sale for a number of years.

Surrounding the southern and western boundaries of the subject property are nine (9) residences and two (2) vacant parcels zoned Village Commercial (VC-1). All of these properties gain access from W. Kitty Hawk Road and back up to the subject property. The adjoining 3.5 acre parcel to the north contains a single-family residence and is zoned BR-1. To the east are a vacant, wooded 4.4 acre parcel and an 8.4 acre parcel containing the Dominion NC Power substation, both of which are zoned BR-1.

Staff Analysis

Proposed Use: Church. Presently allowed as a conditional use in the BR-1 district. Should the church be permitted, other accessory uses (classrooms, youth center, etc.) would also be permitted.

Lot Area: The subject parcel is 7.34 acres in size. This acreage greatly exceeds the minimum lot size of 15,000 square feet in the BR-1 district.

Lot Coverage: The applicants have not provided any calculations for lot coverage. Based on the large size of the property and amount of impervious surfaces proposed, it appears that the proposed improvements would likely comply with the maximum lot coverage standard. However, the exact figures are unknown at this time.

NOTE: It is also unclear what standard should be applied to this project. The maximum lot coverage requirement in the BR-1 district is 30%. I have not found any specific mention of a greater requirement for churches or other nonresidential uses in the BR-1 district. However, it appears that some past church projects were allowed up to 60% lot coverage, similar to the standard for commercial development in a BC district. Staff will research this issue further prior to the Board meeting.

Open Space: As the applicants have not provided any calculations for lot coverage, it is not clear if the proposed project complies with the minimum open space requirement of 35% for the BR-1 district. However, based on the large size of the property and amount of impervious surfaces proposed, it appears that the proposed improvements would likely comply with the minimum open space standard.

Building Height: The maximum height in the BR-1 district is thirty-five feet (35') from the existing grade to the peak of the roof. If desired, a church spire is allowed to extend as high as fifty-eight feet (58'). The applicant is proposing to reuse the existing buildings and sheds for various uses. All of these buildings appear to comply with the maximum height standards.

Building Setbacks: All of the existing structures comply with the Town's current minimum building setback standards for the BR-1 zoning district. The table below documents the compliance of the proposed church building with applicable building setbacks.

| <u>Setback</u> | <u>Proposed</u> | <u>Required</u> |
|----------------|-----------------------------------|--------------------|
| Front | 645 feet | 25 feet |
| Rear | 51 feet | 25 feet |
| Sides | 47 feet (east) 377 feet (west) | 25 feet 25 feet |

Access: The subject property is served by a single twenty foot (20') wide driveway off of W. Kitty Hawk Road that extends 185 feet from the road to the southern side of the property. Twenty feet (20') is the minimum width permitted for any two-way road in the Town of Kitty Hawk.

Once reaching the main portion of the property, the internal drive splits. The branch to the left (west) provides access to a smaller parking area. The branch to the right (east) and goes around the eastern buildings to the proposed church location near the northeastern corner of the property. This drive is approximately 22 feet in width and provides access to much of the parking area. This drive also serves as a fire lane for the property and complies with the NC Fire Code as the large cul-de-sac to the west of the church building offers an adequate turnaround area for fire trucks.

Parking: The minimum number of parking spaces for the proposed uses is calculated below:

| <u>Parking Calculations</u> | <u>Ratio</u> | <u># Required Spaces</u> |
|---|------------------------------|---|
| 288 sanctuary seats | 1 per 2.5 seats in sanctuary | 115.2 spaces |
| TOTAL (Minimum Parking Required) | | (rounds up to 116 spaces required) |

The applicants have not provided any parking calculations. However, during the technical review committee meeting with the applicants, it was determined that the sanctuary would accommodate 288 seats as presently designed. The site plan shows a total of 89 paved parking spaces accessed by a 22' wide paved drive aisle. The proposed amount of parking does not comply with the Town's minimum standard.

NOTE: A curb or wheel stop must be installed at the end of each parking space.

ADA standards require a minimum of five (5) handicapped accessible parking spaces to accommodate 111 parking spaces. A total of twelve (12) ADA spaces are proposed – six (6) along the western side of the church building and six (6) to the south of the front entrance. ADA accessible pathways have been provided from the handicapped parking spaces to the front entrance of the church building.

Buffers: There is not a specific buffer requirement for churches in a BR-1 zone. However, the Planning Board can consider recommending a buffer if it will help mitigate any negative impacts to the adjoining residential properties.

Section 42-654 of the Zoning Ordinance outlines the following options for landscaped buffers (other alternatives could also be used to serve a similar purpose):

(a) Type A. A type A buffer is an opaque vegetative buffer of a minimum width of ten feet that will reach a height of six feet in three years. The buffer may include a stabilized soil berm as part or all of the required height.

(b) Type B. A type B buffer is an opaque buffer consisting of a fence screened on the outside by vegetation. The top of the fence shall have a height of not less than six feet. The buffer minimum width shall be ten feet. The buffer may include a stabilized soil berm as part or all of the required height. The screening vegetation shall be a minimum of 50 percent opaque and shall reach a height of six feet in three years.

(c) Type C. A type C buffer is a 50 percent opaque vegetative screening buffer of a minimum width of five feet that will reach a height of three feet in two years. The buffer may include a stabilized soil berm as part or all of the required height. The buffer shall include local evergreen trees planted not more than 20 feet on centers and which shall reach a height of six feet in three years. A list of acceptable plant species for each buffer type shall be established and maintained by the town planning department.

Waste Management: The proposed dumpster location is toward the rear of the property at the northwest corner of the church. The dumpster area must be screened on three sides by an opaque fence or wall at least six feet (6') in height.

Lighting: Per the N.C. Building Code, the applicants will need to provide an appropriate level of lighting along the access drive to the entrance of the church. At this time, the applicants have not developed a site lighting plan. An outdoor lighting master plan must be reviewed and permitted by Planning staff prior to installation.

Signs: As the front of the property along Kitty Hawk Road is only wide enough to accommodate a minimal two-way access drive (20'), there is presently no space to locate a freestanding sign except back on the main portion of the property. A sign proposal has not been included with the proposed development project and, therefore, would need to obtain approval under a separate, administrative permit.

Water Service: The installation of new water lines will be necessary to serve the new church building and the required fire hydrants on the property. Provision of these services will require approval by the Dare County Water Department and Kitty Hawk Fire Department.

Wastewater Disposal: The applicants will be required to obtain a septic permit from the Dare County Environmental Health Department for the design and location of a wastewater system prior to issuance of a building permit.

Erosion & Sediment Control: An erosion and sediment control permit must be obtained from the Town of Kitty Hawk prior to the commencement of the major site work.

Stormwater Management: At this time, the applicants have not proposed any stormwater management improvements, which are required to accommodate the proposed church and parking areas. Surrounded on three (3) sides by a creek, it will be necessary to capture and manage the stormwater to prevent damage to the waterway. Without this information, the Town cannot determine compliance with stormwater management standards. It is also possible that the necessary location of stormwater improvements will impact the layout of the proposed site plan.

CAMA: The adjoining creek, Hobbs Creek, is considered to be an inland jurisdictional waterway by the N.C. Division of Coastal Management. As such, there is a required buffer 30 feet in width from the edge of the waterway. The church building, parking areas, and access drive have been designed to remain outside of this buffer area.

Flood Zone: The subject property appears to be located entirely within an AE flood zone, with a required floodplain elevation of 9.3 feet above mean sea level. The new church building would have to be sited and constructed in a manner that complies with this standard.

Land Use Plan

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the subject property as a "Lower Density Residential Area" on the future land use map. As part of its review, the Planning Board is asked to make a determination that the proposed development is consistent with the goals and objectives outlined in the land use plan.

Conditional Use Findings

Per the standards of Section 42-99(b)(7), in order to approve this application, the Town Council must make findings that the proposed conditional use:

- a. does not materially endanger the public health or safety,
- b. does meet all required conditions and specifications,
- c. will not substantially injure the value of adjoining property or be a public nuisance, and
- d. will be in harmony with the area in which it is located and be in general conformity with the comprehensive plan.

As part of its review, the Planning Board is asked to provide its findings regarding these issues.

Planning Board Action

The Planning Board has been asked to provide the Town Council with a recommendation regarding a conditional use permit to establish a church at 608 W. Kitty Hawk Road.

Should the Board decide to recommend approval of the proposed use, the motion could be worded in the following manner:

"The Board has found this proposal to be consistent with the Town's adopted land use plan. I recommend approval of the conditional use permit to establish a church at 608 W. Kitty Hawk Road, subject to the following conditions: [LIST CONDITIONS]

Conditions can be recommended as necessary to obtain necessary information, address concerns, and improve the compatibility of the proposed use with surrounding areas.

Staff Comments

Staff is still in the process of compiling a list of recommended conditions. An addendum to the staff report containing these conditions will be sent out by email to all Board members prior to next Thursday's meeting.

Directions to the Subject Property

From Kitty Hawk Post Office, N. Croatan Highway & Kitty Hawk Road, drive approximately 0.4 miles west on W. Kitty Hawk Road. The access drive into 608 W. Kitty Hawk Road is located on the right. Look for the "Westcott" sign.

ADDENDUM TO STAFF REPORT - Staff Comments

Staff asks the Planning Board to consider the following comments and conditions:

- The exact number of seats to be permitted in the sanctuary must be identified on the plans (presently states, "approximately 250 to 288").
- The applicants must provide calculations documenting the total amount and percentage of proposed lot coverage.
- A parking calculation must be provided. As calculated by staff (based on information provided by the applicants), the amount of parking proposed does not comply with the minimum standards of the Town (116 spaces required, 89 spaces provided). At least 27 additional parking spaces will have to be provided.
- The specific materials for the parking areas must be identified (presently states, "asphalt or other green products"). NOTE: The type of parking surface selected will impact the stormwater management calculations and plan.
- All parking spaces must be designated on site by the use of striping, parking bumpers, or railroad ties for each space.
- Required signage and other ADA access improvements must be made in compliance with the ADA standards.
- The proposed dumpster must be screened on three sides by an opaque fence or wall at least six feet (6') in height.
- A stormwater management plan showing calculations and proposed improvements must be completed by a qualified engineer. It is suggested that such information be provided prior to consideration and approval of the site plan as the location of such improvements could cause a shift in the location of buildings, parking, and access drives on site.
- An erosion and sediment control permit must be obtained from the Town of Kitty Hawk prior to the commencement of any site work.
- The applicants need to obtain a wastewater disposal permit from the Dare County Environmental Health Department prior to the issuance of a building permit for the proposed church. The system must be installed per the approved septic permit prior to issuance of a Certificate of Occupancy.
- The installation of a larger water line will be necessary to serve the new church building and the required fire hydrants on the property. These improvements will require approval by the Dare County Water Department and Kitty Hawk Fire Department. The approximate location of the water meter, water service line, and hydrants should be shown on the site plan.
- The N.C. Building Code requires lighting of the access drive from the church building exit to W. Kitty Hawk Road. A lighting master plan including all exterior lighting must be reviewed for compliance with Town lighting standards by Planning staff prior to issuance of a building permit.
- All signage for the proposed project must be approved under a separate administrative sign permit.
- The applicants will need to obtain an encroachment permit for the entrance drive from the N.C. Department of Transportation prior to issuance of a building permit or installation of any driveway improvements.
- If deemed necessary by the Planning Board, appropriate visual screening and buffering, including fencing and/or landscaping, should be provided along the portions of the property abutting residential parcels.
- The maximum height of the church building is thirty-five feet (35') from the existing grade to the peak of the roof. If desired, a church spire is permitted to extend as high as fifty-eight feet (58').
- The proposed development must comply with all other applicable federal, State, and local standards.

During Planner Heard's review of his staff memorandum, the following comments were made, adding further analysis for consideration:

The proposal's primary change to the subject property would be the addition of a church building, along with parking and driveway improvements. Staff has met with the applicant several times to discuss aspects of the project, and the proposed location of the church building has been chosen in such a way to minimize the impact to the single-family residences that back up to the western and southern sides of subject site.

With regard to lot coverage, development and approval standards used with the Catholic church (Holy Redeemer) were reviewed by staff. When that site plan was being developed, a provision was added to the Town's ordinance which allowed for a use to have lot coverage of up to 50% as long as a semi-pervious material was used. Planner Heard provided an explanation of this parameter, although noted the subject project would probably not exceed the 30% lot coverage restriction. The staff report had noted no actual calculations being provided, and there is still no definitive figure set for an absolute finding (the same also with the open space requirement and calculation).

As to parking, the Planner said his review and calculations indicate there would be additional parking that needs to be provided if the scale of the church building remains the same as proposed.

If the Board were to deem a buffer necessary, the Planner encouraged the Board members to consider incorporating the existing large trees and filling in the understory with bushes and shrubs which could provide a landscaped buffer against the residential areas, mainly in the area toward the southwest corner. Around the balance of the property, the buffer is already fairly thick.

At the time the lighting plan is developed, the Planner pointed out, it will be a bit challenging and interesting to see how best to accommodate the light requirement without spilling over to adjoining properties.

Depending upon the type of construction of the proposed church building, as many as three fire hydrants would need to be installed on the subject property in order to meet fire standards. Following said statement by the Planner, Chairman Northern inquired about the placement and type of water lines, to which Heard said the applicant would be asked to provide such information later, or if easements exist for access by Dare County.

The Chair then opened the floor for questions by Board members.

Fagan indicated to the Planner what he believes the Board has before it: a conditional use permit request that would lead to a site plan to be reviewed at a later time and then go before the Council.

Heard clarified, *"you are considering a recommendation on the conditional use permit that would include a site plan. In other words, you have what the applicants have provided us with this site plan that I've been referencing. I did reference in the report that there is some additional information that we typically have at this point that we don't have yet on this project, as far as stormwater, and there may be some other things that the Board may want to consider as well, some information that you might want or feel is needed at this time."*

"If the Board feels you don't have enough information to go on or you're not comfortable with the proposal as it's done, you can certainly ask to defer a decision on this application at this meeting tonight and recommend that the applicants provide the information for a future meeting."

Fagan: *"In conclusion, then, this is a conditional use permit including the site plan."*

Heard: *"That's correct."*

Fagan: *"That's what I wanted to clarify. Thank you."*

Chairman Northen called for further Board comments or questions. After a moment, the Chair inquired if the applicant needs to address all the issues as raised by staff in the memo in order to have an adequate review by the Board and compatible with what Council would expect to also review.

Heard responded: *"Typically, your site plan would have some of that additional information; however, the items that are listed in the staff report, there are a number of those that are quite often in our review, are things that are resolved at that point in time. For instance, it's certainly not uncommon for, just as an example, a lighting plan to come after the fact. There would just be a condition on a permit. The Council has certainly done that on a number of occasions, noting that the project has to comply with the Town's standards, but that would be done prior to issuing the building permit. Same thing with a sign permit, for example, would be another thing that can be done. So, there's some of these that are quite frequently dealt with as a condition, but the Board may not be comfortable with that for all of these issues. That's just something you'll have to decide, and if there are things you feel are needed now, you can make that decision."*

Pruitt: *"If we approve this site plan, we're basically approving an illegal calculation. Is that correct?"*

Heard: *"That's correct. Yes, you would have to recommend a condition that additional, whatever, 27 parking spaces be provided in this area of the property, or something like that, if you wanted to move it forward. You could do something of that nature, that the applicants could then amend the plan prior to going to Council, but otherwise, you would be approving it as it is drawn."*

Pruitt indicated he would personally like to see the site plan comply with the Town's codes and to have more knowledge about issues such as the easement and lighting, which are big considerations. He explained he does not feel comfortable approving a site plan which is not correct or in conformity with Town standards. VC Garriss concurred with Pruitt's statements, agreeing 100% the Board does not have all the information necessary to make a good decision. Pruitt said he has not made a decision either way, further stating that any Board recommendation rendered regarding a proposed project should not be deemed something illegal.

Chairman Northen and Pruitt both expressed uncertainty with the lighting requirements of the roadway, as well as, concerns with easements and utility access. Pruitt also added that stormwater runoff management needs to be clearly addressed, summarizing the concern is not the proposed use itself but determining appropriate conditions for the use.

The Chair opened the floor for input by a representative of the application, Rev. Winfield Bevins, Minister, Church of the Outer Banks. The Church of the Outer Banks was started seven years ago and has been growing ever since (many members are Kitty Hawk residents), with an office being maintained in Kitty Hawk for the last three to four years. During the last two years, properties had been looked at in order to choose a future building site, and the subject location has much potential - a beautiful piece of land which could provide a retreat-like atmosphere. Along with making use of the existing improvements, proposing to build the church structure towards the back of the property takes into consideration respecting the neighboring residential homes.

Chairman Northen offered he applauds and supports the church proposal and wants to do all possible to help; however, there are many planning issues to be concerned with, such as access and roadway use. Although confident the applicant would comply with Town standards, the Board needs a clearer picture for approval purposes as to the site plan and development details.

VC Garriss complimented the beautiful drawing of the proposal, and, with echoing his earlier statements, he reiterated the Board has too many unanswered questions in order to proceed.

Stallman indicated he agrees with VC Garriss.

Fagan asked if it would be beneficial in the planning process on the applicant's part to hear more of the Board's concerns, and Bevins replied, *"in addition to what's already been mentioned? Sure."*

Fagan then indicated this application's use is like that of a school use, which makes him mindful that children would be at the site and near water and traffic flow. As his primary concern, he noted the existing vegetated buffering is good but there are a few gaps, and to keep curious children from harm at water's edge, the need for a fence was posed.

Pruitt stated he had nothing further to add.

At this time, with no further comments by Board members, the Chair opened the floor for participation by the public and gave instruction for speakers to identify themselves and to keep comments to within three minutes, as well as, to address only matters relating to the subject application.

Reese Evans, who lives across the creek from the property, said the church use would make a great neighbor. Like the Board, he is concerned with the buffer and wanting to keep children safe from the water and also snakes. Using as an example the Town's police department which is well lighted and illuminates the nearby properties, Evans said he hopes the applicant would choose lighting which would be directed downward and less intrusive. With a question by Evans as to what is meant by "retreat atmosphere," specifically, if any camping would occur, Bevins explained a retreat-like atmosphere is the church's desire to keep the area naturally vegetated, to have an integrity of keeping the land area a park-like atmosphere, even welcoming picnicking. Evans then commented that such an activity as welcoming persons to have picnics at the site would increase the reasoning for proper buffering in order to keep children safe, and even if the current zoning does not require such, he encouraged and trustfully hoped the applicant would use good judgment.

A property owner adjacent to the right-of-way of the subject property, Lachelle Williams, expressed concerns about proposed lighting, then cited there are already problems with the newly installed culvert with water backing up and causing flooding onto the roadway greater than what has been typically experienced, a dilemma with traffic flow. She, too, has a worry with the creek and children's safety.

As the next speaker approached the microphone, the Chair summarized that the comments being offered are in agreement with the concerns the Board has recognized.

Concurring with Chairman Northen, Anissa Musick indicated she has nothing new to add, agreeing with what Evans and Williams has said. Musick stated she lives next door to the police department and owns a few of the properties which back up to the subject location. On the issue of traffic flow, and noting two churches nearby, she explained that trying to navigate the village area on Sunday mornings is becoming more and more difficult. Reflecting that she was born and raised on Kitty Hawk Road, Musick stated it seems Kitty Hawk Village has lost the true residential feeling it once had years ago as it is becoming more and more commercialized.

Directing his question to the residents, Chairman Northen asked if the subject property was flooded during the last hurricane, and Evans indicated Hobb's Creek rose approximately 11' and caused somewhere around 40" of standing water completely across the 7 acres, along with damage to the existing buildings.

Another neighbor, Tom Heffner, owns the property "*on the other side of the easement,*" and he stated he could answer the question about the water line, that it does go directly through the right-of-way. Heffner also commented about the property flooding during the last hurricane storm, noting that nor'easter weather is currently causing flooding. His primary safety question dealt with whether or not any improvement would be made to the property's entrance, describing concern with traffic flow and stormwater backup, as "*it's just going to make matters worse*" on his property.

The Chair asked McClean if she wanted to say anything, and she indicated everyone has said everything that should be heard.

Another representative of the church, and a Kitty Hawk resident for thirty-six years, Billy Diggs, noted he owns 7 acres down the road (his property does not have the canal around it) and is aware of conditions with the subject property. He recalled how the previous owner, Bob Wescott, enjoyed horses and was involved with the Boy Scouts, and at one time, desired the property to be turned over to the College of the Albemarle (COA). Part of the property's ownership is COA, intended to be used for the devotion of schooling and education. Diggs spoke of church members exhausting their building search in Kitty Hawk as most members are Kitty Hawk residents, seeking at least two to three acres, and they are aware of the subject property having gone through multiple sales, problems with flooding. The members are also concerned with snakes, lighting and those issues the Board has discussed. From working with the owners of the property, Diggs said the proposal attempts to preserve the intent of the property and the initial site plan helps to determine whether or not the proposed use could comply, adding the current application's site plan was not intended to be a final site plan.

Diggs offered, at this stage, there appears to be many concerns being expressed by all, dealing with stormwater, lighting, the culvert, and access, but "*we were surprised to see that it did satisfy a 20' [road] ..., which, he actually owns this, it's not an easement, so then it was an issue of if the neighbors do not want it, that's why we wanted to present it, because we've already put a deposit down, but before we can proceed, then the College of the Albemarle, David Ferguson, we have to go through this process to know whether or not it is compliant. We can make all the changes, do all the ... it's 7.5 acres ... it's never going to be a lot coverage issue, it'll never be an issue for buffer because you can plant or fence all around it ... it's a matter of whether or not we'll be able to get in and out of Kitty Hawk Road.*"

Diggs then talked about raising his family in Kitty Hawk and that he has relatives who have lived in Kitty Hawk for a long time. He offered that if the proposed project does not work out, everyone with the church will appreciate the Town's time, effort and energy put into seeing if the subject property could have been a possible location because of its value to the community. If necessary, another property will be pursued.

Indicating he welcomes Diggs' personal comments, and that the Board feels much the same, the Chair pointed out the planning issues have to be addressed and decisions made based upon specific information, summarizing that the major concern is access to the property because of its public use. With offering his own personal comments, Chairman Northen said the adjoining property owners and neighbors (who would be impacted) should be worked with

diligently to see if a solution could be found to get an adequate access to the subject site, adding the Town needs to know that information before rendering any intelligent decision.

Discussion was redirected for input by the Board, and Pruitt suggested the Board recommend a deferral and let the applicant gather more information and return when ready to address the issues which have been pointed out, particularly with regard to access, and to clean up the other items noted.

With a nod from the Chair, **Pruitt then moved to defer until some of the items in the staff report have been brought attention to by the applicant and cleared up.** Upon call for the vote, **the motion carried unanimously, 5-0.**

Following the motion, Attorney Michael advised the Board to continue the deferral until a date specific, and Planner Heard asked to make a few comments about the cited information and what the applicant would be dealing with. Some items need the involvement of an engineer, which is a commitment that would have to be made by the applicant with incurring moderate costs and requiring time so that a layout and proposal, for instance, could address a stormwater management plan and recommended improvements.

The Chair stressed he wants answers to deal with the access issue and a lighting plan, that he did not necessarily need to see an engineer's drawings for stormwater issues.

Fagan recapped from the Board's comments and those comments presented by neighbors this meeting that there are some concerns in regard to safety issues for children, required lighting and problems with flooding. As to professional input, addressing the roadway access and lighting could be valuable. Referencing the 17 issues detailed in the staff's addendum report, Fagan said these matters would also need to be dealt with as part of the Board's decision.

Responding to the Chair, Heard explained the reason for his comment regarding stormwater is simply to recognize that the improvements necessary to accommodate the project would have the effect of changing the layout of the site plan, possibly significantly. In other words, depending on where those improvements need to be located, they might change the layout and proposal significantly.

Pruitt noted the Board has made recommendations for conditional uses with stating that certain issues have to comply, those things which take place as the development moves forward, and he recognized the Board is not expecting the applicant to comply up front for review purposes – just those things which would show the project could comply with the Kitty Hawk Town Code. Chairman Northen felt that the deferral should give the applicant an opportunity to further explore or negotiate how to get an access greater than 20' wide.

Discussion began with the Board and staff weighing the amount of time to be set for said deferment, and the Chair asked if the applicant would want to return at the Board's next monthly meeting or just let the Planner know when the matter would be ready to return for further review. With Rev. Bevins indicating that some of the issues may take a while to work out and it may be better for the church to get back with the Town, **the Chair moved to defer "under those conditions," and with the vote on the motion passing unanimously, 5-0, the application was deferred.**

Chairman Northen wished the applicant well with addressing those things that needed to be worked out, also thanking those who participated for their time.

7. TEXT AMENDMENT:

a. Section 42-41, Conditional Zoning. At the Board's last meeting, Planner Heard recalled, a rezoning application was reviewed for a property on the southeast corner of Sibbern Drive. The proposal consisted of turning an existing residence into counseling offices. Though the Board had no issue with the specific use being proposed, members did have concerns about the variety of other uses which would be allowed if the property were rezoned.

During said discussion, a question had been asked if the Town has any opportunities by which to allow, with limitations, a specific use or to apply a specific development standard. Heard had described the concept of conditional zoning, and the Board indicated a desire to learn more about the concept as a way to help applicants.

Planner Heard reported he has discussed the Board's interest in conditional zoning with the Town Manager and Town Council, both giving a nod for the Planning Board to review such.

To begin the Board's review, a PowerPoint presentation which clearly explains the concept of conditional zoning was given. The Planner indicated he would like to get the Board's preferences after the presentation on how to proceed, noting State law is fairly flexible in how a municipality can go about adopting a conditional provision. Heard then offered that if the Board would desire to proceed with recommending the concept for Kitty Hawk, a draft ordinance could be written for consideration at the Board's next meeting.

Highlights from the PowerPoint presentation:

- Overview – the concept of conditional zoning combines two things: rezoning a property with a conditional use permit. The conditional zoning district could be more flexible than what a standard district permits or less flexible by setting limits (the more common manner).
- Conditional zoning could involve the approval of a specific site plan, as done with a typical conditional use, or it could simply define certain standards for the development of a property. It does not have to be tied to an individual, specific use.
- Conditional zoning is a legislative approval process, which can be done more informally. For instance, Board members could discuss with an applicant or a representative about application matters or alternatives when visiting an application site. [Otherwise, a conditional use is a more formal quasi-judicial process.]

The approval process, being a legislative process, would be the same as a typical rezoning, to be reviewed by the Planning Board for a recommendation which would be forwarded to the Town Council for final approval. Policy for approval or denial would also be applied to determine whether or not the proposed use complies with the Town's adopted CAMA Land Use Plan. Conditional zoning does not change the standards or planning criteria that need to be considered with a rezoning. Spot zoning is still spot zoning, such as a commercial business being proposed in the middle of a residential neighborhood, and a proposal could be denied on that basis.

- The concept has been used approximately 40 years, since Greensboro became the first documented community to initiate conditional zoning. During the last decade, a good variety of communities have used this technique, and during the 1990's, a specific court case upheld conditional zoning from a legal standpoint.

It was not, however, a technique specifically authorized by the North Carolina Planning Act until an overview of the State's comprehensive planning regulations in 2005 included said tool as an allowed technique that communities can use throughout the State of NC. Within three years of its incorporation, over 40% of the State's communities began using the conditional zoning tool.

- Communities use the technique, basically, in three different ways (all legal and allowed):

- o Some communities treat conditional zoning districts in conjunction with a conventional standard zoning district. An example of how this would work in Kitty Hawk: if somebody is looking at rezoning a property to the BC-1 district, under the conditional zoning scenario, it would be rezoned to BC-1 but then there would be a list of conditions that would apply only to that property. The Town's zoning map would designate the property as BC-1/CZ.
- o Some communities have chosen to establish general categories of conditional zoning – a residential category, a commercial category, an institutional category, an office category – and certain minimum standards are set depending upon the type of use being proposed.
- o The other way is to literally create a new zoning district and set standards from scratch every time a conditional zoning district is approved for a specific property. A specific site plan could be approved, or standards could be adopted by which future developments would be reviewed under for approval.
- The main difference with the process is what it does do: it allows the Planning Board and the Town Council to address certain issues in a manner that is not possible under conventional zoning. If it is deemed that certain uses in a district are appropriate and compatible with the surrounding area, but that there are other uses in that district which raise concern and believed to have a negative impact, then those uses could be eliminated.
- Conditions for approval of certain uses could be added by the Town, with the owner's/applicant's consent. The important point is this: the applicant and the Town Council have to agree mutually on all conditions so that it cannot be something the Town forces upon someone. If an applicant does not desire to comply with a condition of approval as part of the negotiations of the review process, the Council has the option to deny a proposal.
- Conditions can only address specific concerns which have to do with the proposal (things tied directly to the situation at hand being reviewed). The Town cannot, for instance, require the applicant to install a new traffic light a half mile down the highway. Conditions cannot, for example, require an applicant to donate money to a wildlife fund for approval to be granted.
- Benefits of conditional zoning provide flexibility not found under conventional zoning districts and allows the Town to address specific concerns, mitigate potential negative impacts, soften the transition between residential and commercial areas, and it could increase the certainty about the type of development.
- A basic outline of an example how conditional zoning could be used in Kitty Hawk (a depiction being referenced):

Someone seeking rezoning a property from BR-1 to BC-1, a property that fronts on a major highway, has an adjoining existing office use on a commercially zoned property, another adjoining commercially zoned property has a residential use – this would be consistent with the Town's LUP for a rezoning.

Such a proposal would not offer a major concern with regard to the rezoning. However, some of the issues that might arise would deal with the intensity of the use proposed, particularly how it would affect the nearby residential properties.

Access could become an issue, whether or not NCDOT would approve another curb cut. Adjacent residents could be affected by additional activity, traffic and noise, as well as, a building's size. Buffering would be another issue that could be addressed and required, even if the standard is not part of the conventional zoning standard.

The Town could use the conditional zoning tool to address issues and concerns, such as limiting the type of use in order to reduce impact on surrounding properties. With the applicant's approval, the Town could limit the maximum size of any building

or limit operating hours. Applying restrictive standards could make a proposed use more compatible and address its intensity.

Upon concluding his presentation, Planner Heard again indicated he would be happy to receive any input from Board members or to answer questions as to which of the three alternatives would be preferred. Chairman Northern stated he initially prefers the first alternative, believing there is a need in Kitty Hawk to offer this alternative for development.

Stallman asked if conditional zoning could be as specific as designating only one type of use to a property, such as restricting a property to only a dental office use, and the Planner replied that could be possible. As to restricting a building to only one story, with the applicant's agreement, said could also be done.

Heard then noted he spoke with the Chair and Vice Chair prior to this meeting about that very issue, *"we talked a little bit about that, that's one thing the Board and the Council might want to be careful with as you think through this, if it's a tool you want to use. You can be that specific with it, but then what you need to think about, as far as the ramifications of that, or if that dentist finds a better spot down the road and wants to lease that property to do a financial services office, which wouldn't have any different kind of impact, they could not do that without coming back and going through a three-month process to rezone that property.*

"So, what you might want to consider or think about, depending on the circumstance, and in some circumstances, it might be the appropriate thing to do ... to be that specific, but what you might want to think about is allowing maybe an array of office-type of uses if you wanted to limit."

Fagan asked about a use change on W. Kitty Hawk Road which went from a dentist office to a fitness center. The zoning of that property is Village Commercial, the Planner explained, which allows limited commercial uses up to a certain size.

Fagan posed that situations might arise when applicants are granted approval for something and later another property owner or business would want to have the same as well, and the Planner indicated those desires can only be applied in a circumstance when the Town is reviewing an application.

McClellan recalled an application which sought to have commercial offices in a residential area, asking if this could have been addressed and possibly permitted under conditional zoning. The Planner recognized that such an application request could be addressed if the Town adopts applying conditional zoning. Comments by the Chair and McClellan noted many concerns would be eliminated with being able to restrict a proposed use.

Pruitt inquired if applicants come before the Town to seek conditional zoning or if the Town picks certain areas of Kitty Hawk as potential sites for conditional zoning. Planner Heard explained:

"It would have to be a case where the applicant is involved in it, and I can see this actually happening two different ways. The applicant, through discussions with staff, you know, presuming all this is adopted, the applicant, often times before they come in with a proposal, they will sit and meet with us. For instance, all the issues on the list tonight for the church, we sat down and discussed that around these two tables here with the applicants two weeks ago and outlined the concerns and said, 'these are the requirements, we don't have this information,' etc.

"So, all of that was covered around that. They may take that information and say, or we would suggest to them, 'well, look, one of the options you have is rather than requesting a straight rezoning, I can tell you that these are things that there might be concerns about,' they might be aware of things that neighbors might be concerned about, 'and you get

an opportunity through the use of this tool, through conditional zoning, to make a proposal where you are proposing some of these conditions on yourself, to limit it to this, or to limit it to that, and if you do that, that will make it a better proposal, that will limit some of the concerns that the Board might have, it will limit some of the concerns the Council might have.'

"So, they could propose it individually. This is not something where ... I'm not aware of anywhere a town has actually actively gone out and approached owners about doing this.

"The other way it could come up, though, is you could have an individual come in and propose a conventional zoning, just a standard zoning district to you, and you're sitting around here and maybe some neighbors express some concerns, and you have some concerns, and you come to the conclusion at that meeting, 'you know, there's a better way we can address some of these concerns through conditional zoning. Applicant, can we talk? Would you be willing to consider this type of proposal?' And, you can negotiate that with the applicant, as far as coming up with a recommendation, where they might not have started out with a conditional zoning district, but you might find you end up with one if you're all in agreement. The applicant could switch that proposal to a conditional zone and you could move forward with conditions that address your concerns."

Wanting to make sure the Town Council is fully behind the Planning Board's discussion of examining a different planning tool that could help Kitty Hawk's interests, Pruitt asked to clarify that the Town Council has officially approved and requested the Planning Board to take a look at the concept of conditional zoning. Planner Heard reported that after the Board's last meeting he emailed the Town Manager and relayed that the Board has expressed an interest in learning about the concept of conditional zoning and briefly described what it entailed. The Town Manager forwarded the email to the Town Council, and the feedback received indicated Council members were interested in looking at the concept, even offering specific questions to be addressed. With Council's nod, Manager Stockton then instructed Planner Heard to move forward with the Planning Board in drawing up a proposal to be presented to Council.

Chairman Northen said several recent application requests have not come to fruition because Town standards restricted the Planning Board's ability to help, and conditional zoning would give the Board a tool by which to grant an applicant's request but to be able to do so with certain restrictions deemed appropriate. The Chair commented he is encouraged to know that over 40% of the State's communities have incorporated the planning concept, proving it is a viable tool that can be chosen and utilized, appreciating as well that the concept is not forced upon communities but provided as an alternative.

Fagan asked, *"suppose a person sitting here wanted to eliminate a use inside a residential zone, such as a cottage industry, could they use this tool?"*

Planner Heard replied, *"they could use this tool for a specific proposal. If you're talking about eliminating a use in a district, that would apply across the board to every property in that district, and that would just be a text amendment, a traditional text amendment proposal to eliminate that use. But, this [conditional zoning] would only apply to a specific property, this tool."*

Chairman Northen thanked the Planner for the presentation, and Heard polled if it is the Board's consensus to have the draft proposal tied to a conventional zoning district.

As another question for the Planner, McClean asked about persons coming forward and requesting conditional zoning and the result creating "island" properties, and Heard explained there are communities where this type of zoning is used as much as for 85-95% of the rezoning requests. In other words, some communities do practically nothing but conditional zoning in order to address identified concerns, and, as a result, what occurs is a zoning map with a series of properties with various zoning identities. In Kitty Hawk, particularly with commercial

areas, a vast majority is already developed, so it is less likely that a broad use of this concept would be made. Chairman Northern offered by explaining, "we could, if we wanted to, it's up to the Town, could establish a conditional zone, say, on both sides of US 158 all the way through Kitty Hawk. About all that means is that at any time a property, a site, wants to have a change in its use, it's got to come before us, and we have the right to put limits on it. That's all that means. But, the way that I've recommended it to Joe is that it be an individual thing ... each time that somebody wants to make a change, like the one we had last month, it's an individual thing. That doesn't mean that his neighbor couldn't do it next month, but again, we have that control."

McClellan: "And if his neighbor wanted to be"

Chairman: "... it couldn't be exactly the same thing if we didn't want him to be"

McClellan: "... well, if he wanted to be, then that could be an expansion of that zone, but if he wanted something different, he could be different"

Chairman: "... but we have to approve that difference."

McClellan: "Okay."

Richeson: "The way I see it, the one you're talking about last month, like, if we had this tool and it was approved for that use, if he sold the property or they died and heirs or someone else got the property, they would still have to use that property with the same use – they couldn't go for a tattoo parlor"

Chairman: "... unless they came back"

Richeson: "... right, and then you would have the option to deny it because you didn't see it as a fit use"

McClellan: "... and we could also say this is a residential property that has this commercial use to it, and if you're not going to use it in this commercial way, you can use it as a residence and we don't need to see you"

Heard: "... correct."

Planner Heard's comments continue:

"I will say of the options, tying it to a conventional district is probably the easiest way to do it because what you end up doing ..., that way, you don't even have to address a lot of things that aren't issues for you. It's always been the fallback to the basic standards of that district, and the only things you need to address are the things you want to change.

"Whereas, if you're doing the one where you create a whole new district every time, you've got to be careful that you're addressing all the issues every time, and I'm sure there's been times where something's slipped through the cracks, so that would be another good reason to consider the first option."

Fagan stated he believes the first option would be the way to go.

Chairman Northern then gave a nod to the first option and asked the Planner to draw up a proposal.

8. COMMENTS:

- a. **Chairman Northern.** The Chair stated he had nothing to bring before the Board.
- b. **Planning Board Members.** No other comments were made by the Board members.
- c. **Town Attorney.** Nothing was addressed by the Attorney.

d. Planning Director.

Dare County Mapping. Heard reported on an interesting thing which has come up in the last month - Dare County has undertaken a new project with a new position in its mapping department. The employee has been given the task of compiling a zoning layer to the county's GIS map. This will be a really nice tool if it is kept relatively current for future reference. In that the Town of Kitty Hawk does not have its own GIS mapping, information available through Dare County will be helpful as long as it is accurate, benefitting property owners and realtors in their due diligence.

A spin off from this effort is that staff has met with said employee to review a draft map, where that person identified many unique zoning line configurations and layout which have given him quite a challenge for mapping. Planner Heard indicated he took the matter to the Town Manager recognizing the need to clean up the Town's zoning map, and the same was relayed to Council and feedback received.

Outlining what will occur, Heard reported he will identify specific areas where zoning lines do not match up with property lines and then contact the property owners, explaining the situation and asking for their concurrence to do some minor corrections with zoning lines. After that procedure, which will probably take a few months in attempting to do in "one big swoop," the project will come before the Planning Board for review.

9. PUBLIC COMMENT

There was no public comment.

10. ADJOURN

With no other items, **the Chair declared the meeting adjourned at approximately 8:05 p.m.**



Oscar Northen, Chairman

Attachments: None

Minutes Transcribed and Respectfully Submitted By: Betty Moore Williams