

MINUTES
KITTY HAWK TOWN COUNCIL
Tuesday, September 5, 2017
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Public Comment
5. Consent Agenda
 - a.) Approval of August 7, 2017 Council Minutes
 - b.) Financial Reports as of June 30, 2017
 - c.) FY 2017-18 Budget Amendment #2
 - d.) FY 17-18 Inter-Local Agreement for Solid Waste Collection Services
 - e.) Resolution Establishing the Town Council Meeting Dates for 2018
 - f.) Governor's Highway Safety Program Local Governmental Resolution
 - g.) Interlocal Agreement with Dare County for Hurricane/Disaster Debris Removal
 - h.) Flood Insurance Rate Map – Comment letter
6. Items Removed from Consent Agenda
7. Public Hearings
 - a.) Subdivision Variance, 4100 block of Lindbergh Avenue: Proposed subdivision variance proposal would allow applicant to return the lot layout to the original configuration, versus the current nonconforming lot layout.
8. Planning
 - a.) Schedule Public Hearing: Text Amendment, 42-616(a), 42-247(b)3: The applicant has proposed a text amendment that would allow motorhomes and travel trailers to be occupied within the BR-1 district, if certain requirements are met.
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

STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Finance Officer Liliana Noble, Management Assistant Melody Clopton, Town Planner Rob Testerman, Fire Chief Lowell Spivey and Public Works Director Willie Midgett

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1. CALL TO ORDER

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

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

3. APPROVAL OF AGENDA

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

4. PUBLIC COMMENT

1. Bill Pope, 4108 Lindbergh Ave., Kitty Hawk: *I am not against the reconfiguration of the lots in the subdivision (Item 7a) but I think when you reconfigure this in the back the 150 comes right up to the hotel. There will be no parking for the hotel so I think it would make more sense to redistribute the whole parcel into six, that's what I think they were talking about doing anyway, and then take the hotel down. If you go with the three they are talking about, when they build the houses, it is going to be right up next to the hotel and if it closes who is going to take care of the hotel? Why not take it down? And then that gives you the three in front and that gives you six lots. That is all I have to say.*

Mayor Perry thanked Mr. Pope and asked if there was anyone else wishing to speak. No one else came forward.

5. CONSENT AGENDA

a.) Approval of August 7, 2017 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) Financial Reports as of June 30, 2017. *(An approval of the consent agenda will acknowledge these reports.)*

c.) FY 2017-18 Budget Amendment #2. This amendment recognizes and appropriates a donation to the police department in the amount of \$100 from Joe Lamb Jr. Realty. It will be allocated for the future purchase of AED's (automated external defibrillator). *(An affirmative vote for the consent agenda will approve this amendment.)*

d.) Fiscal Year 17-18 Inter-Local Agreement with Dare County for Solid Waste Collection Services. This agreement provides for the following: twice a week residential collection from Labor Day through Memorial Day and only on the beach side of the by-pass a third pick up per week from Memorial Day through Labor Day. Residential collection services will be \$113.26/hour (\$114.55 last year). Commercial

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collection services will be \$99.48/hour (\$102.49 last year). Large item collection, if scheduled, will be billed at a rate of \$250.00 per hour. These sums shall remain in effect until June 30, 2018. *(An affirmative vote for the consent agenda will approve this Inter-Local Agreement.)*

e.) Resolution Establishing the Town Council Meeting Dates for 2018. The Town Council will meet on the first Monday of each month except for the following months: Monday, January 8th, Monday, April 9th, Monday, July 9th and Tuesday, September 4th. *(An affirmative vote for the consent agenda will approve this resolution.)*

f.) North Carolina Governor's Highway Safety Program Local Governmental Resolution. This \$43,000 "no match" grant from the GHSP will assist the police department's GHSP Region 1 Law Enforcement Liaison with travel for meetings and seminars and the purchase of traffic safety equipment. The amount is more than customary and will be used by all eleven LEL's in the state to purchase an impaired driving simulator for use in teen driving education programs throughout each region. *(An affirmative vote for the consent agenda will approve this grant.)*

g.) Interlocal Agreement with Dare County for Hurricane/Disaster Debris Removal. This annual agreement will allow the county to coordinate the collection of disaster related debris in the event it is needed. *(An affirmative vote of the consent agenda will ratify this agreement.)*

h.) Flood Insurance Rate Map – Comment letter: Planning staffs of the municipalities within Dare County have developed a common themed letter to submit to FEMA and the NCFMP to vocalize local concerns regarding the preliminary FIRM. *(An affirmative vote of the consent agenda will approve this letter.)*

Councilwoman McClean made a motion, seconded by MPT Garriss, to approve the consent agenda. The vote was unanimous, 5-0.

6. ITEMS REMOVED FROM CONSENT AGENDA

There were no items removed from the consent agenda.

7. PUBLIC HEARINGS

Mayor Perry made a motion to go into a public hearing for a subdivision variance at the 4100 block of Lindbergh Avenue. It was seconded by Councilman Pruitt and the vote was unanimous, 5-0.

a.) Subdivision Variance, 4100 block of Lindbergh Avenue: Proposed subdivision variance proposal would allow applicant to return the lot layout to the original configuration, versus the current nonconforming lot layout.

Clerk Morris swore in Planning Director Testerman, Beth Carey and Kurt Verscharen.

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Planning Director 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 applicant has 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 allow the creation of one new buildable lot, 7,500 square feet in area (50'x150'), and reconfiguration of two existing 7,500 square foot lots from 75'x100' back to the original 50'x150' configuration.

Additionally, the proposal seeks 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. This is the typical lot layout seen between the highways in the vicinity.

Background

This area was originally configured as is typical between the highways, made up of six lots, each measuring 50' x 150'. In 2005, the owners at the time requested a subdivision variance that allowed it to be configured as it currently lies. There are currently two lots that front Lindbergh Ave, each measuring 75' by 100' (7,500 square feet), the remaining lots were never recombined, so in addition to those two lots, there are three existing lots that front N. Virginia Dare Trail, each measuring 50' by 150'. In the middle, there are three land-locked lots, each measuring 50 by 50', which were left over from the creation of the two 75' by 100' lots on Lindbergh. The previous variance (and current configuration) was granted under the recommendation that the best interests of the Town would be served by allowing construction of two smaller residential structures on Lindbergh rather than three.

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. Before the subdivision plat could be approved, there would be several items on the site itself that would need to be addressed. Mainly, the three 50' x 50' lots are currently used as parking for the motel. If those lots were to be used for anything other than parking, the motel would not meet minimum parking requirements, and would create a zoning violation. Therefore, prior to officially recording the subdivision plat, the motel would have to be removed.

Although the Town found in its previous variance approval that it was in its best interest to allow two single family residential homes to be built rather than three, there is an argument to be made that the Town would be better served by three single family homes, as it would increase the tax base. Also, with the current configuration, if the motel use were to cease, and be torn down, there would be three unbuildable 50' by 50' lots. The Council should, in developing its motion, decide if it is in the Town's best interest to allow for the additional lot to be created. If the Town Council determines that it would be in the Town's best interest to allow three single family homes rather than the two currently platted for, it would be staff's recommendation to allow the lots to be re-platted in their original configuration. The original configuration would be preferable from an aesthetic standpoint, as well as for services provided to the lot (fire, police, trash pickup).

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Planning Board Recommendation

At its August 17, 2017 meeting, the Planning Board unanimously recommended approval of the subdivision variance application.

Following the review, the owners of the hotel, Beth Carey and Kurt Verscharen (4104 Virginia Dare Trail) provided a PowerPoint presentation.

1. Beth Carey: *Good evening. My name is Beth Carey and my brother and I are here tonight to talk about this and forgive us if we are repeating some of what Rob has already said. He did a great job summarizing and we would like to tell our story as a family that has been in business and have been coming to the Outer Banks since we were very, very small, over four decades.*

Our story on the Beach Haven and the lots we are talking about tonight started in 1987 when our parents, Joe and Janet Verscharen, purchased the six lots as Rob was describing. When they bought it was known as the Carr Cottages. They bought those six lots which were 50' by 150' and continued to operate and redo the motel. This is the original plat. You can see the buildings and where they are existing basically on the front two lots of the south side and then the back lots remained empty. This is very consistent of that neighborhood. We then turned this property into the Beach Haven Motel and there are probably many of you that are familiar with it as it has been in operation for close to 30 years now.

The motel, the six units sit on lots 35, 36, 37 and the configuration of the other lots has been where our parking lot has been giving us some very odd non-conforming lots. The back lots on Lindbergh are two lots that at some point my father had plans to develop into cottages or just sell them. Unfortunately, we lost dad in 2007 and since then the family has tried to carry on the tradition.

Beach Haven has a four-and-a-half-star rating. We have 50% of our people that continue to come back and we are constantly converting people to become OBX lovers and Kitty Hawk lovers but after 10 years of trying to carry on dad's legacy, the family, who all live out of state, is coming to you tonight with heavy hearts and tell you we need to sell this property. We asked ourselves what is in the best interest of the Town and what is also in our best interest as we try and carry on my dad's wishes for this investment in our family. We have come to you tonight to ask to return the lots back to the original six lots all of equal size.

We figure there will be four basic benefits. Benefit number one is we have tried to sell the motel as is for ten years off and on and it is a hard sell because as you well know the sand is more valuable than a small hotel. It has been very hard for us to sell it as is. We also know that if we go back to the six lots the Town is going to benefit from an increased tax base because you are going to have another lot. Most importantly we are looking for options for future buyers because someone is going to have a vision maybe better than what our vision has been and we are asking for a variance. We do not intend to re-deed the property at this point. We would just like for future buyers to have options of a configuration and not a landlocked non-uniform area. As a family we will finally leave the Outer Banks except for true vacations. We will continue to come back and visit and have my dad's wishes of leaving this life's work to his family.

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Verscharen: *The Beach Haven is going to close Columbus Day weekend this year and it is not going to reopen.*

Carey: *Under our ownership.*

Perry: *I asked Rob for some history of when the 15,000-square foot lot came into existence because I really did not know. Would you relay that for everyone?*

Testerman: *It turns out that the 15,000-square foot minimum lot size was the original size that was set in 1986 when the Town first adopted the zoning ordinance. Before that time, from what I have been told, the Town mirrored what Dare County had in their ordinance for their minimum lot size which at the time was 15,000-square feet. The lots we are looking at in the Lindbergh area were platted between 1945 and '46 at 7,500-square feet.*

There was a time the minimum lot size was discussed in 2004 when language was included into the ordinance saying there had to be 15,000-square feet of uplands area. It could not include the CAMA or CRC wetlands in that calculation.

Perry: *I was surprised it went that far back. I thought it was a more recent change to 15,000-square feet. I think it changed about the time that central water came into being back in the '70's. Does that make sense?*

Bateman: *It does make sense.*

Testerman: *In reading through Dare County's zoning ordinance it looked like it was '74 or '75 when they changed theirs.*

Perry: *That is when they started putting water on the beach. Another question I have is grandfathering for these lots as they want them to be laid out. It really does not apply any more since there has already been one variance granted. Is that correct?*

Testerman: *Right.*

Perry: *Grandfathering no longer applies. This would have to be an out and out new deal.*

Varnell: *In researching this matter Rob and I concluded it would be appropriate to bring this to the Town Council because the variance that resulted in the unorthodox lot arrangement was done by Council. The standard is very simple for you and it is what is in the best interest of the Town. That is what is written in the code and that is the decision it will be based on. And you are correct, because of that variance, grandfathering does not apply in this scenario.*

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Perry: *The six lots, as they were laid out in the '40's, there is nothing to say if two variances have been done, another variance to combine all of them could be done. Is that also true?*

Testerman: *There would not be anything to stop someone from applying for something down the road. I think if somebody wanted to combine all of those I do not think they would need a variance because it would meet the minimum lot size and the width requirements.*

McClellan: *Are all the lots owned by the family right now?*

Carey: *Yes.*

McClellan: *What are your plans for the motel after mid-October?*

Carey: *We always close for the winter months. We will be putting it on the market and hopefully finding a buyer. It is in a BC-1 zone so there are options for a future buyer. I was talking to a lady last week who would love to buy Beach Haven but she cannot find the financing because the sand is more valuable than the revenue generated by a small motel. We will not let it sit vacant for an unending period. If we need to we will take it down. That will be very hard as a family to do.*

McClellan: *The variance that created the unbuildable lots was to give parking to the motel.*

Carey: *It is my understanding the parking could potentially be done on the north driveway on that side. My father had an aesthetic issue in that he did not like people parking in front of motel rooms. He did not think it looked nice. He planted grass and wanted everyone to park in the back. I do not know what the requirements would be to have parking on the north driveway.*

Bateman: *If we grant the variance they could not operate the hotel because they do not have the parking.*

Testerman: *Granting the variance will just put a mechanism in place to subdivide later. A variance will not actually reconfigure the lots. It will just give them permission to move forward.*

No one else came forward to speak during the public hearing.

Mayor Perry made a motion, seconded by Councilman Bateman, to go back into regular session. The vote was unanimous, 5-0.

McClellan: *The variance is to only configure the six lots?*

Varnell: *Yes.*

McClellan: *Once something else is done the variance is gone? If somebody buys it and it never gets divided into six lots the variance is null and void?*

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Varnell: *Correct. If someone left it whole and did not require any approval from the Town Council then that would be a change and they would have to come back if they wanted to do something different.*

Perry: *I move to deny the proposed subdivision variance. Town Council finds that allowing the variance would not be in the best interest of the Town and that we should not be regressing backwards but rather forward consistent with the Land Use Plan that represents citizen desire for low density development within the Town. Does that have a second?*

Pruitt: *I am trying to figure out why this would not be in the best interest of the Town.*

Perry: *Because it would turn lots from 15,000-square feet into 7,500-square feet. My thoughts are not to go backwards and make smaller lots. The citizens obviously do not want that. They have told us that time and time again. The Land Use Plan also dictates lower density. That is what prompted me to make this motion. We follow the rules that are in existence at the time. If people tell us they want higher density, taller buildings, I'll go there. But they have not.*

Bateman: *I was going completely in the other direction. Thank you for bringing this up. I can make the argument that what we are doing is creating six lots to build six houses on or for someone to buy the whole piece of property and do a nice development. That could be construed as being in the best interest of the Town. Your argument is a good one and is one I never thought about. I humbly disagree with it.*

Perry: *If the motion does not have a second then it dies for a lack of a second.*

Garriss: *I respectfully do not agree with your motion.*

Perry: *Let the record show the motion has died. Do we have a motion?*

Bateman: *I move to grant approval of the proposed subdivision variance to allow the reconfiguration of the subject parcels into three 50' by 150' lots. The Town Council finds that the proposed use is consistent with the Town's adopted Land Use Plan and finds this to be in the Town's best interest. The subdivision variance is in the best interest of the Town because it will return the lot configuration to the typical lot layout and dimensions seen between the highways and remove three 50' by 50' landlocked, unbuildable lots. MPT Garriss provided a second.*

Perry: *Any further discussion?*

Pruitt: *Yes. I want to state for the record I am not in any way out to reduce lot sizes. It is just every lot in that area is platted for that size and this will put it in line with the other ones on that stretch.*

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Bateman: *If the lots around there were 100' by 150' I would not want to decrease the lot size but that is not the case.*

Perry: *Good discussion. All in favor of the second motion?*

The vote was 4-1. Mayor Perry opposed the motion.

8. PLANNING

a.) Schedule Public Hearing: Text Amendment, 42-616(a), 42-247(b)3: The applicant has proposed a text amendment that would allow motorhomes and travel trailers to be occupied within the BR-1 district, if certain requirements are met.

MPT Garriss made a motion to set a public hearing at the Town Council meeting on October 2, 2017 to consider the proposed text amendment to amend subsection 42-616(a) and 42-247(b)3 regarding the occupation of motor homes and travel trailers. Councilman Pruitt seconded the motion and it passed unanimously, 5-0.

9. TOWN MANAGER

Finances: Manager Stewart said Council acknowledged the financial reports as of June 30th on the consent agenda and is pleased to report they show all the departments were under budget. Everyone is to be commended for this. Also, the annual audit has commenced.

Beach Nourishment: The beach nourishment project is going well. They are currently pumping south of Balchen Street and then switching to the Lillian Street subline. Weather depending, the project should be finished mid-September. It has been inconvenient to some of the vacationers and homeowners but the contractors have done an excellent job of trying to accommodate people in the construction areas.

Mayor Perry agreed and said he believes they have done an outstanding job of trying to appease people. The Town is very lucky this company got the bid and they are pushing to get it done as fast as they can.

Thank you: Mayor Perry said he appreciates staff staying under budget. Doing what needs to be done and still serving the public in a good fashion.

10. TOWN ATTORNEY

Attorney Varnell said he and his children were on the beach yesterday and beach nourishment makes all the difference in the world. He agrees the company was the right company to go with. They are wonderful beach builders.

11. TOWN COUNCIL

Perry: *This will be Chief Spivey's last meeting with us. He is retiring the 1st of October. I have been given a cheat sheet on his years of service and will share with you what he has been doing for most of his life. From 1981 to '84 he was a volunteer for the Kitty Hawk Volunteer Fire Department. 1984 to '95 he was a volunteer with the Duck Fire Department. Why did you abandon us?*

Spivey: *I moved.*

Perry: *From 1985 through '87 he was a volunteer training officer for the Kitty Hawk Volunteer Fire Department and notice I said volunteer because at that time it was all volunteer. From 1986 to '94 he was a paid, full time firefighter for Nags Head. In '94, until October of this year, he has been a full-time fire chief for Kitty Hawk. He came here during a time of a somewhat upheaval in the fire department and since then he has straightened things out. We have better ratings and more first responders available to the citizens of the Town. I would like for all of us to acknowledge that you have done a good job and we are going to miss you. I guess we will not see you at any more meetings unless you want to come out. You are always welcome.*

Chief Spivey thanked the mayor and council.

Council thanked Chief Spivey for everything he has done for the Town.

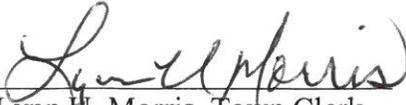
12. PUBLIC COMMENT

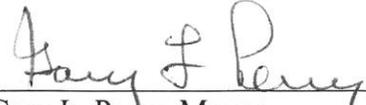
There were no public comments.

13. ADJOURN

MPT Garriss made a motion, seconded by Councilwoman McClean, to adjourn. The vote was unanimous, 5-0. Time was 6:47 p.m.

These minutes were approved at the October 2, 2017 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor