

Kitty Hawk Planning Board
Meeting Minutes
January 19, 2017
6:00pm
Kitty Hawk Municipal Building

Agenda

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. November 17, 2016
4. Administrative Report:
 - a. Town Council Action from 12/5 Meeting
5. Public Comment
6. Conditional use Permits:
 - a. Blue Water ENT, Medical Center, 4009 N. Croatan Highway. The Applicant has requested approval of a CUP to establish an ENT doctor's office under the medical center classification in the BC-1 district.
 - b. OBXscape Rooms, Game Room, 4009 N. Croatan Highway. The Applicant has requested approval of a CUP to establish an escape room business under the game room classification in the BC-1 district.
 - c. Turf's Up, Game Room, 3712 N. Croatan Highway. The Applicant has requested approval of a CUP to establish an indoor golf simulator under the game room classification in the BC-1 district.
7. Text Amendment:
 - a. Sec. 42-98(i) Expiration of Site Plan Approval. Staff proposed Text Amendment as suggested by the Planning Board, shifting authority of granting a site plan approval extension from the Planning Board to the Planning Director.
8. Comments:
 - a. Chairman Richeson
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director
9. Adjourn

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1. Call to Order/Attendance

Chairman Richeson called the Kitty Hawk Planning Board Meeting to order at approximately 6:00pm with the roll call made by Recording Secretary, Patricia Merski

Board Members Present:

John Richeson, Chairman; Bryan Parker, Vice-Chairman; Chuck Heath, Member; Jim Geraghty, Member; Dusty Rhoads, Member; Gary Muir, Alternate; Jan Collins, Alternate.

Staff Present:

Robert Testerman, Director, Planning & Inspections; Casey Varnell, Town Attorney; Patricia Merski, Recording Secretary.

2. Approval of Agenda

Hearing no objections/changes/corrections to the Agenda, the Agenda was approved as submitted.

3. Approval of Minutes: November 17, 2016

Vice-Chairman Parker indicated a correction on Page 2 of the Minutes...An incorrect statement indicating that Mr. Parker had recused himself from the Site Plan Approval – Extension Report, 5201 N. Croatan Highway, Hurley-Wilkinson, LLC as this entity was a client of his, in actuality, Mr. Varnell, Town Attorney was the one who recused himself as the applicant was a client of his. Mr. Testerman will make the correction to the November 2016 Minutes.

Upon hearing no further comments/corrections/deletions, the Minutes were approved With the correction to be made.

4. Administrative Report: Town Council Action from 12/5/16 Meeting

Mr. Testerman stated that the Council has approved the text amendments for side-yard setback and unlisted uses.

5. Public Comment: Mr. Richeson asked if there was any one in the audience that wanted to address the Board to come to the podium and state their name and to make their comment(s). As no one came forward, Mr. Richeson concluded the Public Comment item on the Agenda.

6. Conditional Use Permits:

- a. **Blue Water ENT, Medical Center, 4009 N. Croatan Highway.** The Applicant has requested approval of a Conditional Use Permit to establish an ENT doctors' office under the Medical Center Classification in the BC-1 district.

Proposal

The Applicant is requesting approval of a Conditional Use Permit to establish an ENT doctors' office under the medical center classification which is permitted in the BC-1 district with a Conditional Use Permit.

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As described by the Applicant, she deals with medical and surgical problems involving the ear, nose and throat in patients of all ages. If patients need more advanced surgical procedures, they will be performed at a local operating room, not at the subject parcel. The Applicant also plans to employ an audiologist to perform hearing tests and dispense hearing aids and also a physical therapist to treat dizziness, vertigo, balance and falling problems.

Background Information

The subject property is presently zoned General Beach Commercial (BC-1) and is approximately 38,943 square feet (0.89 acre).

All adjacent properties on the north, east and south are zoned BC-1 and contains a carwash and a single-family home to the north and there are three (3) single-family homes to the east and the Beach Food Pantry to the south. Across N. Croatan Highway to the west is zoned BC-2 on which Guy C. Lee building supplies is located. (Here Mr. Testerman referred to the map on the projector screen showing the single-family home on the back side and to the north are the residential uses which are commercially zoned. He also indicated that there is no buffer or landscape buffers required for the subject property.)

Mr. Testerman then referred to the Staff report which states that the site, when it was originally developed met the setbacks, building height requirements.

Parking

Parking requirements for clinics per Sec. 42-546 are as follows: minimum of ten (10) spaces, five (5) per doctor assigned plus one (1) per each employee except where no more than two (2) doctors or dentists are practicing in the same building, the number of parking spaces per doctor or dentist need not be more than five (5) spaces and not more than one (1) per staff employee.

The Applicant indicated that the proposal includes one (1) doctor and four (4) employees. Because there are no more than two (2) doctors, the minimum numbers are used as described in the latter part of the requirement. For zoning purposes and for this use, there will be a requirement of a minimum of nine (9) spaces with a total of 29 parking spaces on site.

Mr. Testerman indicated that this proposed use for this site and the other CUP's parking requirement the January 19, 2017 agenda for the same parcel, combined will meet the parking requirements with the ordinance. At this time, Mr. Testerman turned it over to the Board and also indicated that the Applicant was present to answer any questions.

Mr. Richeson then asked the Board if there were any questions for Mr. Testerman or the Applicant and Dr. Marci Lait addressed the Board.

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Dr. Lait clarified for the Board that any surgical procedures done in the office would not require any sort of gas or an anesthesiologist. She stated that there would mostly be local procedures done which would require numbing, much like the dentist and if there was any procedure that requires anything other than local numbness, the patient would be referred to a hospital or a surgical center.

Dr. Lait also stated that there would be no IVs, but, there will be needles used for the numbing and the needles would be disposed of as required. She also indicated that there would be no radiology or radiation done in the facility and no special needs that would be needed. Also, there would be no ambulances coming in and out and if radiology required, patients would be required to go to the appropriate facility for that particular service.

Mr. Richeson thanked Dr. Lait for her input and asked the Board if they had any questions for Dr. Lait and Mr. Richeson did have a question for Mr. Testerman asking, should the business increased more than anticipated, and another physician employed, how would the parking be affected?

Mr. Testerman indicated if that matter was brought before the Board that another physician was employed the current parking would be revisited and then Mr. Geraghty stated that the minimum was already indicated for a minimum of two (2) physicians and bringing in another would not be an issue where Mr. Richeson agreed and withdrew his question.

Mr. Richeson then asked Mr. Testerman if there were any special conditions for the Staff to consider and Mr. Testerman indicated 'no.'

Mr. Richeson then asked for a Member of the Board to make a recommendation and Mr. Parker made the following: **"I recommend approval of the Conditional Use Permit for the establishment of a medical office to be located at 4009 N. Croatan Highway. The Board has found this proposal to be consistent with the Town's adopted land use plan."**

Mr. Rhoads seconded the motion and it was passed unanimously.

- b. **OBXscape Rooms, Game Room, 4009 N. Croatan Highway.** The Applicant has requested approval of a Conditional Use Permit to establish an escape room business under the game room classification in the BC-1 district.

Mr. Testerman stated that this is an additional Conditional Use Permit at the same location, 4009 N. Croatan Highway and that his understanding is that the owners of the building would be splitting the space into two (2) or three (3) units to allow for different tenants.

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Proposal

The Applicant is requesting approval of a Conditional Use Permit to establish an Escape Room business under the game room classification which is permitted in the BC-1 district with a Conditional Use Permit. Although the game room classification may not exactly match the proposed use, it is the most closely similar use listed in the BC-1 district.

As described by the Applicant, the OBXscape Room would be an amusement game room that would appeal to all ages of users. It would be comprised of six (6) to seven (7) different themed 'escape rooms' which is a physical adventure game in which a group of participants are required to work as a team to solve puzzles, find hidden items and find clues to escape the room before the 60-minute time limit has expired.

These types of escape room businesses have become increasingly popular across the country in recent years. There are a number of them that have opened in Virginia Beach and have been well received. The only nearby escape room business recently opened in Currituck and has been very popular. Reviews were provided by the Applicant on various escape rooms.

It also should be noted for safety reasons that the doors are not actually 'locked' due to fire safety regulations and the participants can leave at any time, even though, as they enter they are told they have to solve the puzzles to 'escape.'

Proposed Conditional Use:

42-250(c)18 – Game Room, subject to the following conditions:

- a. A game room conditional use can coexist with another authorized district use within a freestanding detached building or within the area owned or leased by a person or entity within a multi-use building where the game room utilizes no more than 49% of the gross interior square footage of the floor area excluding designated storage area and areas to which customer access is prohibited.

It is Staff's understanding that the subject property is intended to house multiple uses/tenants. The property at 4009 N. Croatan Highway consists of 7,896 square feet of heated space. The Applicant proposes to dedicate approximately 2,700 square feet of space to the 'escape room' business, 34% of the interior square footage.

- b. Supervision in the game room shall be provided during all operating hours. If the owner or lessee of the game room allows the consumption of alcoholic beverages within the game room, then the supervising attendant must be at least 18 years of age.

Staff will be onsite during business hours to supervise and the Applicant has no intention of serving alcoholic beverages.

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Mr. Testerman indicated that the Applicant has indicated that there is no intention of serving alcoholic beverages.

- c. The game room area shall be constructed in such a manner and with such materials as to prevent any noise originating within the facility from being heard beyond the approved site boundary. If the game room is located in a structure which houses other non-related businesses, the noise within the game room must not be audible beyond the boundaries of the area leased or owned by the game room operator. An architect, engineer or other qualified professional must certify on the site plan that the proposed design and materials will comply with these standards.

Although Staff has not received certification that the noise from the game room will not be audible beyond its boundaries, the Applicant has stated that it is very important for 'escape rooms' to from none to a very minimal amount of noise emanating from the rooms, as it is very distracting to adjacent room participants.

- d. The maximum number of occupants shall be determined by the Building Inspector according to the standards of the state fire code. The maximum number of occupants allowed in the game room shall be posted in a conspicuous place therein and its limits shall not be exceeded.

Mr. Testerman stated that, this requirement, should the CUP be approved, would be conducted prior to the business opening where Mr. Alexander would go to the site and make that determination.

- e. No alcoholic beverages shall be sold in the game room and no alcoholic beverages shall be consumed therein unless permitted by state law and in compliance with state law and the laws of the Town.

And, as previously stated, the Applicant has no intention of serving alcoholic beverages.

- f. It shall not be permissible to stimulate play by gambling incentives such as, but not limited to, free plays or games, monetary rewards of the exchange of coupons redeemable for play or gifts.

The Applicant has indicated that this requirement will be met.

- g. The parking requirement shall be calculated on the basis of one (1) space for each 200 square feet of floor area devoted to game room use.

The floor area devoted to the game room use totals 2,700 square feet; thus, resulting in a requirement of fourteen (14) parking spaces. There are currently 29 existing parking spaces on site and no existing tenants. As previously mentioned by Mr. Testerman, there are 29 existing parking spaces on site and with the two proposed uses combined, the minimum requirement would be met.

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At this point, Mr. Testerman turned it over to the Board and stated that the Applicant was in attendance should there be any questions.

Mr. Richeson asked if the Board should require the noise certification to be submitted to the Town as the game room would coexist with the ENT facility. Mr. Richeson also asked if there will be a sound-proof room where the audiologist will be conducting hearing tests and that the game room and any excessive noise could be a distraction to that practice and this would also cover the Town in making it a CUP requirement and Mr. Varnell agreed to have that included in the CUP.

Mr. Parker then asked if the building could have a third use and if so, would there be a parking concern for the next tenant to be limited to their use determined by the parking spaces. Mr. Testerman stated that he had met with the Real Estate Agent, Mr. Staten and it was indicated that there is some additional room on the site/lot and should another tenant come in, there is some flexibility for having additional parking.

Mr. Richeson then asked a Member of the Board to make a recommendation and Mr. Geraghty made the following: **"I recommend approval of the Conditional Use Permit for the establishment of a game room to be located at 4009 N. Croatan Highway, subject to the conditions listed in Sec. 42-250(c)18. The Board has found this proposal to be consistent with the Town's adopted land use plan.**

Mr. Parker seconded the motion and the motion was passed unanimously.

- c. **Turf's Up, Game Room, 3712 N. Croatan Highway.** The Applicant has requested approval of a Conditional Use Permit to establish an indoor golf simulator under the game room classification in the BC-1 district.

Proposal

The Applicant is requesting approval of a Conditional Use Permit to establish an indoor golf and sport stimulator under the game room classification which is permitted in the BC-1 district with a Conditional Use Permit.

Turf's Up will provide a family friendly atmosphere to utilize sports simulators for entertainment, practice and improvement in individual sports. As shown in the concept plan in the attached report, Turf's Up will include four (4) golf/sport simulators; additionally the Applicant has expressed the desire to include a small retail and refreshment section to the business.

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Specific requirements for the game room:

- a. The game room use for this Conditional Use Permit is well under 49% of the gross square footage of the floor area that is being proposed to be in one of the units of the shopping center that currently houses six (6) to seven (7) other businesses. (Mr. Testerman stated here that he did not have the exact square footage at this time.)
- b. Supervision in the game room area shall be provided during all operating hours. If the owner or lessee of the game room allows the consumption of alcoholic beverages within the game room, the supervising attendant must be at least 18 years of age. The Applicant has indicated that there will be Staff present during all operating hours, should the establishment serve alcoholic beverages, the supervising attendant will be at least 18 years of age, additionally, an ABC permit will be required. Additionally, the State ABC permit would be required and all State laws would have to be compiled with.
- c. Soundproofing. Mr. Testerman stated that no certification has been received by the Planning & Inspections Department. The noise from the game room would not be audible beyond its boundaries. Both the tenant and property owner have indicated that no noise is audible from the adjacent gym and the gym produces more noise than the sports simulators would.
- d. The maximum number of occupants shall be determined by the Building Inspector according to the State fire code and will be conducted prior to the opening of the business, should the Conditional Use Permit be approved.
- e. No alcoholic beverages shall be sold in the game room and no alcoholic beverages shall be consumed therein unless permitted by State law and in compliance with State law and the laws of the Town.
As previously stated, should alcoholic beverages be sold on site, the owner will be required to go through the ABC permitting process.
- f. It shall not be permissible to stimulate play by gambling incentives such as, but not limited to, free plays, or games, monetary rewards or the exchange of coupons redeemable for play or gifts.
The Applicant has indicated that this requirement will be met.
- g. The parking requirement shall be calculated on the basis of one (1) space for each 200 square feet of floor area devoted to game room use.

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The floor area devoted to the game room use totals 1, 200 square feet, thus resulting in a requirement of six (6) parking spaces. In calculating the existing uses and parking requirements, 53 of the 59 parking spaces on site are accounted for (excluding the use that Turf's Up would be replacing). The six (6) required parking spaces would bring the utilized parking spaces to 59 of 59, thus meeting the parking requirements of the zoning ordinance.

Background Information

The subject property is presently zoned General Beach Commercial (BC-1) and in total the lot is approximately 68,845 square feet (1.58 acre). The abutting property to the north is also zoned General Beach Commercial (BC-1) and contains Miss Lizzie's retail shop. Abutting the property to the south is Harbour Bay Drive and the Harbour Bay South shopping center, also zoned BC-1. Across N. Croatan Highway, to the east is Mile Post 4.5 shopping center, zoned BC-1 and to the west of the property is a private swimming pool owned by the Harbour Bay HOA zoned BR-1 and an open space owned by the adjacent shopping center zoned BC-1.

Mr. Testerman stated that if this development was constructed today there would be a requirement for a buffer to be in place and currently there is a six (6) foot fence separating the pool area and the shopping center which Mr. Testerman pointed out on the projected site map. He also indicated that there is a small amount of a vegetative buffer and as established in previous uses, a new tenant moving into the building that the only requirement is to improve or upgrade the buffer but that would not apply to this Applicant.

He also stated, that should the Planning Board desire as a condition, the Planning & Inspection Department would get the certification that would satisfy 250(c)18 regarding the noise levels. He then turned the matter over to the Board for any questions.

Mr. Richeson asked if any Board Member had any questions for Mr. Testerman or the Applicant and Mr. Rhoads asked if there is a requirement for handicapped spaces or are spaces already there and Mr. Testerman pointed out on the site plan on the projector that there are currently two (2) handicapped parking spaces marked and there would not be a need unless the parking spaces increased to 75 spaces.

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Mr. Richeson indicated that he would like to see the noise certification conditions left in the Conditional Use Permit. He then asked for a Member of the Board to make a recommendation and Mr. Richeson made the following: **"I recommend approval of the Conditional Use Permit for the establishment of a game room to be located at 3712 N. Croatan Highway subject to the conditions listed in Sec. 42-250(c)18. The Board has found this proposal to be consistent with the Town's adopted land use plan.**

Mr. Parker seconded the motion and it was passed unanimously.

7. Text Amendment: Sec. 42-98(i) Expiration of Site Plan Approval.

Proposal

Currently, the Zoning Ordinance dictates that if a building permit has not been secured within 180 days of site plan approval it will expire and be required of the Applicant to go back to the Planning Board and Town Council for review. If requested by the Applicant, the Planning Board can grant one extension of 180 days. This proposed Text Amendment would give the authority to grant the extension to the Planning Director rather than the Planning Board.

Per Mr. Testerman, the proposal is to change that from the Planning Board to the Planning Director to grant the extension, and in order to grant the extension there are two conditions that have to be met:

- 1) The site plan conforms with all current site plan standards and requirements and there have not been any changes in this chapter which would make the site plan nonconforming on the date of the extension, and
- 2) There have been no changes in the site plan.

Mr. Testerman pointed out that at the last Board Meeting it was determined that Staff review can determine that those two conditions have been met and because it was the only item on the November 2016 agenda this would save the Town time and money.

Mr. Richeson asked if the Board had any questions and asked for a Member of the Board make a recommendation and Mr. Geraghty made the following: **"I recommend approval of the proposed Text Amendment to add Sec. 42-980(i) regarding expiration of site plan approvals. The Board has found this proposal to be consistent with the Town's adopted land use plan.**

Mr. Richeson seconded the motion and it was passed unanimously.

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8. Comments:
 - a. Chairman Richeson – looking forward to another year working with the Board and thanked them for their good work for the past year.
 - b. Planning Board Members – no comment
 - c. Town Attorney – no comment
 - d. Planning Director – Mr. Testerman stated that the former Building Inspector, Dennis Speight retired at the end of 2016 and the new Building Inspector is David Lewis from Elizabeth City and comes to Kitty Hawk with 20 years of experience in Elizabeth City.
9. Adjourn – Mr. Richeson adjourned the January 19, 2017 Planning Board meeting at Approximately 6:33pm.

Respectfully submitted by Patricia Merski, Recording Secretary.