

Kitty Hawk Planning Board Meeting
August 12, 2021 – 6:00pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. June 17, 2021
4. Administrative Report:
 - a. Town Council Action – July 6, 2021 Meeting
5. Public Comment
6. Zoning Amendment: (7)
 - a. 3722 N. Croatan Highway. Applicant proposes to rezone a portion of the parcel to BC-1 to correct an existing split-zoning
7. Text Amendment Application (6):
 - a. Proposal to amend Sec. 42-1 Definitions. 42-250, BC-1; 42-251, BC-2; 42-277, VC-2; and 42-278, VC-3; to define and allow ‘tattoo studios’ as a Special Use,
8. Comments:
 - a. Chairman Richeson
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director
9. Adjourn

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

Chairman Richeson called the August 12, 2021 Kitty Hawk Planning Board Meeting to order at approximately 6:00pm.

Board Members Present:

John Richeson, Chairman; Dusty Rhoads, Member; Chuck Heath, Member; Jim Geraghty, Member; Blair Meads, Alternate; Matt Spencer, Alternate; Rob Testerman, Planning Director; Casey Varnell, Town Attorney

Absent: Bryan Parker, Vice-Chairman

2. **Approval of Agenda:**

Mr. Testerman stated that Items 6 and 7 to be switched and Mr. Richeson made the motion to switch Items 6 and 7 and Mr. Testerman seconded and the Agenda was approved unanimously.

3. **Approval of Minutes:**

Hearing no objections/changes or corrections to the June 17, 2021 Minutes, the Minutes were approved with Mr. Geraghty making the motion to approve and Mr. Richeson seconded and the Minutes were approved unanimously.

4. **Administrative Report:**

- a. Town Council Action – July 6, 2021 Meeting
- Mr. Testerman stated that the Town Council unanimously approved the four (4) lot subdivision on 740 Kitty Hawk Road and denied the subdivision variance application for Hornbeam Road.

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5. **Public Comment:**

- Mr. Richeson stated that this was where, on the Agenda, anyone in the audience may come forward to make a 'public comment' and he also reiterated that the Planning Board is an 'advisory board', in that, the Board may recommend approval or denial of a Agenda item, but the Town Council may not agree and not approve or deny the Board's recommendation

6. **Zoning Map Amendment: (7)**

- Mr. Testerman stated that the proposal is to rezone a portion of the property at 3722 N. Croatan Highway from Beach Residential (BR-1) to Beach Commercial (BC-1).
- A portion of the subject property is proposed to be rezoned from Beach Residential (BR-1) to Beach Commercial (BC-1). There are no current proposals for any additional development on site or any redevelopment that Mr. Testerman is aware of.
- The property is 'split-zoned' where the zoning boundary goes down the middle of the property and with this proposal it would be an effort to redefine the zoning.
- He stated that approximately the eastern half of the property is zoned as BC-1 and the remainder is BR-1 and is approximately 3.7 acres in size and presently houses a multi-unit commercial building.
- Currently, the property can only be accessed from N. Croatan Highway as the BR-1 portion of the parcel is landlocked and having these 'split-zoned' parcels can complicate any future development/redevelopment proposals when determining setbacks, calculating lot coverage maximums or looking at approved uses.
- The adjoining properties to the west are zoned BR-1 which contains single-family homes in the First Flight Ridge subdivision. The two (2) adjacent properties to the east across N. Croatan Highway are zoned BC-1 and contain various commercial uses. The northern property contains Barefoot Bernies and the southern parcels contain Miss Lizzies and the Harbour Bay Shops, all zoned BC-1.
- **Current Zoning:** Split-zoned BC-1/BR-1. The Beach Residential (BR-1) District allows mainly single-family residential uses. A handful of limited institutional and commercial uses are also permitted as conditional uses. The intent of the BR-1 District is to encourage the development of low-density residential neighborhoods in Kitty Hawk.
- The BC-1 Districts' intent is to provide 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-density. The BC-1 District is not intended to be developed for shopping centers, shopping malls or big box retail/wholesale businesses. (Again, Mr. Testerman stated that he is currently not aware of any proposed development or redevelopment and the property up for discussion is the commercial area which houses Sherwin-Williams. Mr. Rhoads stated that he heard that that property was sold.)

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- Mr. Richeson offered some history for this same situation that the former “Better Beginnings” near Ascension Drive was ‘split-zoned’ but was BR-1 initially.
 - Mr. Testerman stated that there was an area behind Barefoot Bernies where a portion dealt with the septic area which was zoned ‘residential’ and was then corrected to BC-1 and Mr. Richeson wanted to confirm that this is not ‘spot-zoning’ and Mr. Testerman stated that it was not.
 - Mr. Richeson asked for a member of the Board to make a motion and Mr. Spencer (in place of Mr. Parker) made the following motion: ***“I recommend approval of the Application to rezone the entire property at 3722 N. Croatan Highway to Beach Commercial (BC-1). The Board has found this Proposal to be consistent with the Town’s Adopted Land Use Plan.”*** Mr. Geraghty seconded and the motion was approved unanimously.
7. **Text Amendment Application (6):**
- a. Proposal to amend Sec. 42-1 Definitions. 42-250, BC-1; 42-251-BC-2; 42-277; VC-2; and 42-278, VC-3; to define and allow ‘tattoo studios’ as a Special Use.

Proposal: The Applicant has proposed a Text Amendment that would allow tattoo studios, as a ‘special use’ and with specific conditions, in the BC-1, BC-2, VC-2 and VC-3 Districts and in addition to the Proposal allowing the proposed use as a ‘Special Use’, a definition has been proposed for Sec. 42-1, Definitions.

Definitions:

- The proposed definition is: a ‘tattoo studio’ means an establishment which the activity of tattooing occurs. Tattooing means the inserting of permanent markings or coloration or the production of scars upon or under human skin through puncturing by use of a needle or other method.
- The language proposed for the various Zoning Districts would be allowed a ‘special uses’ as tattoo studios are subject to the following conditions:
 - a. Shall meet the separation requirements listed below for minimum distance in a straight line from the property line:
 - 1. Church, school, public park or libraries: 200 feet
 - 2. Other tattoo studios: 400 feet
 - b. Health Department and any other applicable local and state agency approval is required.
 - c. Hours of operation shall be limited to 8:00am to 10:00pm
 - d. The Planning Board may recommend to the Town Council and the Council may impose any additional conditions that they determine are appropriate based on surroundings.

Background:

- Currently, Kitty Hawk does not allow tattoo studios as a ‘permitted or special use’ in any of its Zoning Districts.
- The Applicant has included four (4) separate Zoning Districts; however, the Board is not bound to a recommendation on all four (4). If the Board feels the ‘special use’ to be appropriate in some of the proposed Districts, but not others, they can express that in any motion put forward to Town Council.

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District Definitions: BC-1: This District is established to provide for the proper grouping and development of commercial facilities in Kitty Hawk Beach. The BC-1 District has been established to provide for the commercial needs of the neighborhood and the immediate surrounding geographical area. The commercial developments are meant to be characterized by small to medium size land parcels with commercial development of low-intensity. 'Uses' permitted in the BC-1 include offices, retail and service establishments. There is a wide variety of 'special uses' permitted in the BC-1 District.

BC-2 District: This District is established to provide for the development of commercial facilities in Kitty Hawk Beach to furnish a broad range of services and commodities to serve the entire community. It has been established to provide for the commercial needs of the Town and in the immediate surrounding geographical areas. The commercial development of the district is meant to be characterized by medium to large size land parcels with commercial development of medium intensity. 'Permitted uses' include all those permitted in the BC-1 with the addition of home center sales, cabinet and woodworking shops and marinas which have their own set of 'special uses' that are allowed.

VC-2 District: This District is established to provide for the development of commercial facilities in Kitty Hawk Village and furnish a broad range of services and commodities to serve the entire community. 'Permitted uses' include offices, retail, service establishments, cabinet and woodworking shops, hardware sales and rental, medical equipment sales and rental and rental of household furnishing and equipment.

VC-3 District: This District is established to provide for the development of commercial and light industrial facilities and uses in Kitty Hawk Village to better furnish a broad range of services and commodities to serve the entire community including, but not limited to commercial laundry, building supply facilities, construction equipment storage and servicing, manufacturing and production and marketing of concrete and concrete products.

- Mr. Testerman stated that he checked out other Outer Banks communities regarding tattoo studios:
- Duck – not permitted
- Southern Shores – not permitted
- Kill Devil Hills – not permitted (nothing currently listed in their Ordinance but Mr. Testerman is not aware of any changes to their Ordinance at this time.)
- Nags Head – Conditional/special use in the C-3 commercial district
- Manteo – Conditional/special use in the B2-General Business District with no specific conditions attached.
- Dare County: Conditional/special use in VC-2, Village Commercial with no specific conditions attached.

Mr. Testerman stated that Mr. Richeson found no proposed language for parking requirements and per the Kitty Hawk Zoning Ordinance, minimum parking standards do not have anything that references tattoo studios. Mr. Testerman researched and found some common Ordinances that indicated one (1) parking space per 250-300 sq. ft of a tattoo studio and another had two (2) parking spaces/chair which seems to indicate 'the tattoo artist and the person being tattooed' for those two (2) spaces.

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- Mr. Testerman relayed a conversation had with another planner that from a land use perspective, there is no difference between a beauty salon or barber shop; one employee working with one client.
- Mr. Testerman stated that Kitty Hawk had 'conditional uses' listed in the Zoning Ordinance, but when the adopted 160 updates were approved, the 'conditional uses' were done away with and replaced with 'special uses'.
- Mr. Testerman stated that the difference between 'permitted uses' and 'special uses' is that 'permitted uses' is a 'permitted use' by right; i.e., if someone comes to the Planning Director and wants to move in to a given location that is zoned, they can move right in but within a 'special use' and an Application must be submitted, come before the Planning Board and Town Council and, here, the Council would make the final decision on the appropriateness of the Application.
- Mr. Meads wanted a clarification on 'special use' in that it was originally named a 'conditional use' and this Application can be a 'special use' and doesn't violate the law and Mr. Testerman said that was correct.
- Applicant Mr. Michael Smith and his wife, approached the Board and stated that for almost a year they have wanted to open a tattoo studio in Dare County and they would like that to happen in Kitty Hawk and that Mr. Smith's wife has been in the business for approximately nine years and would also have a few other artists in the studio with a combined experience level of 20-25 years.
- Mr. Smith stated that he feels Kitty Hawk would be a good fit for the Town; tattoo studios are heavily regulated and North Carolina is one of the strictest in the Country and that he found that Dare County is even stricter than the State. All equipment used in tattooing must be sterilized after servicing a client and all sterilized at the end of the day and that any hazardous waste would be handled by he and his wife.
- Mr. Varnell stated that this would work as presented and that the Board is not authorized to change the application unless the applicant agrees to any proposed changes.
- Mr. Richeson then asked if the parking should be determined by the number of chairs or the square footage and that he would prefer both to be considered.
- Mr. Geraghty gave an example: if it was 5000 sq. ft with two (2) chairs more parking spaces would be needed to accommodate clients/staff and how many people would be allowed in the studio at one time?

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- Mr. Testerman stated that the Town Ordinance has parking requirements and as an example; single-family residences equals one parking space per bedroom on one (1) parking space every 600 sq. ft., whichever is less.
- Mr. Smith stated that there could possibly be five (5) artists and there would be a separate room for sterilization of equipment accessed by the artists and the more square footage an artist has equals more room for them to work.
- Mr. Spencer asked if there would be other products that would be sold like t-shirt or products the client may buy to use after they have their tattoos and Mr. Smith stated that the artists offer an applicator with instructions on how to take care of the tattooed area and this is a requirement by the Health Department.
- Mr. Testerman stated that if the studio offered for sale different ointments which are typically small items and that there is no specific aisle where the products would be displayed for sale; but, if there was a dedicated area to sell t-shirts and other products, then that would be considered 'retail space' and there would be requirements separate from the tattoo area and Mr. Geraghty stated that with Mr. Testerman's previous statements that 'special use' would cover all the aforementioned areas.
- Mr. Geraghty asked if the motion language has to be stated as the text written in the Staff Report and Mr. Varnell stated 'correct and Mr. Geraghty also stated that he questioned the 8am to 10pm hours and Mr. Varnell stated that if the Board does not agree to the motion as written, the Board can deny and then make a recommendation on what they would prefer.
- Mr. Testerman stated that if the Board wanted to deviate from the language as written and the Applicant agrees and Mr. Smith stated they are open to any changes in the motion that would allow the passage of the Text Amendment, Mr. Testerman would meet with the Applicant to determine the correct language.
- Mr. Rhoads asked if the language would also include provisions for signage and lighting and Mr. Testerman stated that if the Text Amendment is approved in any district, even if the Applicant returns for a 'special use' permit, the signage would have to be consistent with the Ordinance for signage requirements and outdoor lighting, and would obtain a sign permit, which is administratively reviewed.
- Mr. Geraghty asked if the Board looks at this Text Amendment favorably, but did not want certain districts included how would that work based on the language in the motion and Mr. Testerman stated that the Applicant would have to agree and have the language amended at this meeting or the Board could make a motion on what districts could be included and those not included; and, again, Mr. Testerman stated that he would then meet with the Applicant to determine if they were amenable to the change in the language and Mr. Geraghty stated that he would like to limit this to VC-3 and BC-2 districts.
- Mr. Geraghty also has concerns on the setbacks and where are the best Districts for the Town and Mr. Richeson asked if this should be considered 'light industrial' and possibly be located in the BC-2 District where Black Pelican has their catering and there are possibilities near Ambrose Furniture.

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- Mr. Testerman stated that, per the Zoning map, the BC-2 District extends from West Kitty Hawk Road on the west side of Kitty Hawk Road North to Worthington to the first block back on Worthington that includes the entrances at the corner of Guy C. Lee and the building behind Sand Dune Drive and adjacent to where the Hilton is and also a section to the west to the right across the bridge where OBX Chevy is located and Islander Flag which are zoned BC-2.
 - Mr. Richeson stated that a good location would be VC-3 where this would give good separation from the residential districts and Mr. Varnell stated that he could support that area and Mr. Geraghty stated that he does not support all four (4) districts and Mr. Testerman stated that the Applicant applied for all four but should one be denied there would be three (3) other options and the Applicant would not have to keep re-applying for each district.
 - Mr. Varnell stated that if the BC-2 and VC-3 Districts are being considered the motion should be all encompassing and that VC-2 could be eliminated because it abuts the residential area and Mr. Testerman stated that the VC-2 District houses Cozy Kitchen and another multi-commercial building and the Public Works Department and just north of the VC-3 District which is also zoned VC-2.
 - Mr. Geraghty stated that the VC-2 District should be included and Mr. Richeson stated that be close to the VR-2 residential District across the street which is one lot away and Mr. Testerman stated that all commercial districts abut all residential districts; VC-2 butts up to VR-2 and that a waterway runs between VC-2 in that area.
 - Mr. Richeson stated that he would like to see the hours reduced to 8am – 8pm and that the number of parking spaces still needs to be determined on the site plan.
 - Mr. Richeson then asked the Board for a motion to be made and Mr. Rhoads made the following: ***“I recommend approval of the proposed Text Amendment to Section 42-1, establishing a definition of “Tattoo Studio” and adding the proposed ‘special use’ and associated conditions to: BC-2: Sec. 42-251(c)35; VC-2: Sec. 42-277(C)12 and VC-3: Sec. 42-278(c)17 and the operating hours reduced from 8am-10pm to 8am-8pm as agreed to by the Applicant.”*** Mr. Richeson seconded and the motion was approved unanimously.
8. **Comments:**
- a. Chairman Richeson – no further comments other than to thank the Board for their input on the last item.
 - b. Planning Board Members – no comments
 - c. Town Attorney – no comment
 - d. Planning Director – no comment
9. **Adjourn:** Mr. Richeson closed the August 12, 2021 Planning Board Meeting at approximately 6:50pm.
- Respectfully submitted by Patricia Merski, Recording Secretary