

Kitty Hawk Planning Board Meeting
October 14, 2021 – 6:00pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. September 16, 2021
4. Administrative Report:
 - a. Town Council Action
5. Public Comment
6. Zoning Amendment:
 - a. Proposal to rezone 4907, 4911, 4915 and 4919 from BR-1 (Low Density Beach Residential) to MS-1 (Emergency and Governmental Services).
7. Zoning Amendment:
 - a. Proposal to amend Sec. 42-446(e) to match the maximum lot coverage language from the MS-1 District to the language in the Beach Commercial Zoning Districts, allowing a maximum lot coverage physical area of 72% provided permeable pavement is used on site
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 October 14, 2021 Kitty Hawk Planning Board Meeting to order at approximately 6:00pm.

Board Members Present:

John Richeson, Chairman; Bryan Parker, Vice-Chairman; Dusty Rhoads, Member; Jim Geraghty, Member; Blair Meads, Alternate; Rob Testerman, Planning Director

Absent:

Chuck Heath, Member; Matt Spencer, Alternate; Casey Varnell, Town Attorney.

2. **Approval of Agenda:**

Hearing no objections/corrections, etc., the Board approved the Agenda unanimously.

3. **Approval of Minutes:**

- Mr. Richeson had two comments on the Minutes: 1), page 3, last paragraph sentence beginning “with a proposal for calculating “length” (not width) ; 2) page 7, beginning with ‘does Dare County have to put in and to confirm that this would not be occupied year round and “if” the plan to have permanent structures brought in to be used every year “and not occupied.”
- Mr. Parker approved the motion for the corrections and Mr. Rhoads seconded and the Minutes were approved with the above corrections.

4. **Administrative Report – Town Council Meeting of October 4, 2021:**

- Mr. Testerman stated that the Council approved the Text Amendment defining tattoo studios, allowing them in the BC-2 and BC-3 Districts with the change of hours of operation to 8am-8pm.

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- The Council tabled the decision on the ‘rezoning request’ for 3722 N. Croatan Highway on the split-zone parcel because the Council would ultimately like to hear any further concerns where the public may be affected.
 - The Council scheduled the Public Hearing for the December 6, 2021 Meeting regarding the RV park Text Amendments.
 - Also approved the language as recommended by the Board for the ‘accessory dwelling units’ and, therefore, any ‘accessory structure with living space would then be under 42-528 and they also approved the ‘non-conforming pier’ Text Amendment from the September 21, 2021 Board Meeting.
5. **Public Comment:**
- Due to no audience attendees, Mr. Richeson opened and closed this portion of the Meeting.
6. **Zoning Map Amendment:**
- a. Proposal to rezone 4907, 4911, 4915, and 4919 from BR-1 (Low-Density Beach Residential) to MS-1 (Emergency and Governmental Services).
 - Mr. Testerman began with the Proposal: The four (4) subject parcels are Town owned and are being planned for the development of a new Kitty Hawk Police Department and a Dare County EMS hub. Town owned and leased facilities are permitted in any Zoning District; however, development is limited to the dimensional requirements of that Zoning District. Additionally, having a police station/EMS hub located in an Emergency and Governmental Services District would be more appropriate than in a Low-Density Residential Zone.
 - **Background:** The subject properties were acquired by the Town as part of a land swap that allowed development of the Kitty Hawk Urgent Care facility. The existing Kitty Hawk Police Department which is located on W. Kitty Hawk Road was a former post office built in 1961. The building is located with a Special Flood Hazard Area and is frequently subjected to routine flooding during tropical events and heavy rainfall. The proposed location allows for a new structure to be built to comply with today’s standards for public safety structures as well as it would relocate it out of a flood zone and onto higher ground.
 - The adjoining property to the west is zoned Beach Residential (BR-1) and is part of the SeaScape Golf Links; two adjacent properties to the north include two (2) vacant parcels zoned Low-Density Beach Residential (BR-1); followed by several single-family homes in the same Zoning District. To the east across US 158 is a mixture of single-family homes and one (1) vacant parcel, all zoned Low Density Residential (BR-1) and to the south is the Coldwell Banker realty office followed by several commercial developments which are all zoned General Beach Commercial (BC-1).

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- Staff analysis comprises of: **Current Zoning – 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 and where the Town-owned lease facility is a ‘permitted use’ by-right in this Zoning District.
- Mr. Testerman stated that the challenge herein in developing the new Police Department would be the 30% lot coverage.
- **NOTE:** Mr. Testerman and Town Attorney Mr. Varnell had an in-depth discussion concerning the proposal. Here, Mr. Testerman referred to the parcel indicated in ‘red’ on the screen which are four (4) parcels that are in question that would be rezoned to MS-1 and that the existing MS-1 District is highlighted in yellow to the north and to the south which is the BC-1 District. When the fire house was built on W. Kitty Hawk Road, there was a concern regarding lot coverage as it was zoned VR-1 and, therefore, a Text Amendment was proposed to allow for fire stations be to classified as ‘conditional uses’ but with lot coverage up to 50% as long as it did not create any further runoff than 30% of the lot coverage.
- Another point of the discussion was to rezone this to BC-1 because the lot abuts the existing BC-1 District and again, the Town-owned leased facilities are permitted by-right in that District and the only difference between the MS-1 District and the BC-1 District is that in the BC-1 District there is a requirement of a 50’ setback from any parking lot structure or any improved portion of the lot from any residential zone. The north and west sides of the proposed Police Department structure would have a 50’ setback even though the golf course is to the immediate west of the permitted site.
- After the discussion with Mr. Varnell and Mr. Testerman it was determined that MS-1 would be the best solution because that area is intended for emergency and governmental services.
- Mr. Testerman then stated that with any rezoning the issue of ‘spot-zoning’ could arise when it is an especially small rezoning area and in his discussion with Mr. Varnell, it was in the best interest of the public to relocate the Police Department out of the flood zone and to bring it up to today’s public safety standards for the building and also for the benefit to the public and that the Courts have upheld that the rezoning does not constitute “illegal ‘spot-zoning.’”
- Mr. Testerman researched an article from The School of Government regarding ‘spot-zoning’ by David Owens and Mr. Owens is of the opinion that ‘spot-zoning’ in and of itself is not necessarily illegal and it not something that can’t be done but in doing a small scale zoning such as this,, there has to be a public policy or a public need to justify ‘spot-zoning’ and Mr. Varnell felt that there is a need for having the Police Department moved out of the current flood zone to a modern building that meets the criteria for public safety standards and public needs.

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- Mr. Testerman then discussed the **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 Plan provides the following description for a **Lower Density Residential Area**. "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 Community facilities area listed in the Future Land Use Plan are "Town, State or Federal' properties that provide typical governmental services to serve the Town's residents and visitors." It goes on to state that "Governmental uses are envisioned for transitional areas."
- The following general goals and policies may also be considered when reviewing the application's consistency with the Adopted Land Use Plan.
- **GOAL #15: Ensure safety of residents and visitors.**
- **OBJECTIVE #15c: Support the efforts and programs of the Kitty Hawk Fire Department, Ocean Rescue, Kitty Hawk Police Department, Dare County Emergency Medical Services, the NC Highway Patrol (State Police) and the Dare County Sheriff's Department to protect the citizens and visitors of Kitty Hawk."**
- **OBJECTIVE #15e: Develop location, density and intensity criteria for new and existing development and redevelopment including public facilities and infrastructure so that they can better avoid or withstand natural hazards."**
- Also, as part of the review, the Planning Board is asked to determine the consistency of this Zoning Amendment with the Adopted CAMA Land Use Plan.
- Mr. Testerman stated that the map shows this as low-density residential and the proposed goals and objectives stated are consistent with the CAMA Land Use Plan.
- Mr. Richeson stated that he feels that the goals are consistent with **15c and 15e** and due to the growth of the Town, these are necessary.
- Mr. Testerman stated that at this time the building plans are at the conceptual stage but there is a plan to have a bay to house an emergency vehicle and possibly a fire truck from time to time and these changes could also improve the insurance rates and response times.
- Mr. Richeson, hearing no further questions/comments from the Board, he asked for a motion to be read and Mr. Rhoads made the following: ***"I recommend approval of the proposal to rezone the properties at 4907, 4911, 4915 and 4919 N. Croatan Highway from BR-1 to MS-1. 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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7. Zoning Amendment:

- a. Proposal to amend Sec. 42-446(e) to match the maximum lot coverage language from the MS-1 District to the language in the Beach Commercial Zoning Districts allowing a maximum lot coverage physical area of 72%, provided permeable pavement is used on site.
- Mr. Testerman began with the **Proposal:** In 2018, the Town Council adopted language that allows for a physical covered area of up to 72% in the Commercial Zoning Districts in Town. The proposed language below would extend the same allowance in the MS-1 District.
- **42-446(e):** The maximum allowable lot coverage by principal use and all accessory structures is 60%. **Use of permeable pavement shall allow a maximum lot coverage physical area of 72%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to or better than the represented performance of the approved pavement.**
- Mr. Testerman stated that the Staff Report shows the following definitions that were added and/or amended to the Zoning Ordinance in 2018 that relates to this Text Amendment for the Board to review: ***Lot Coverage, Lot Coverage Physical Area, Permeable Pavement, Permeable Pavement Confinement, Permeable Pavement Failure and Permeable Pavement Operation, Maintenance, Testing and Repair.***
- Mr. Testerman stated in the **Background,** for the proposed language be added which would allow for additional physical lot coverage for property owners who wish to use permeable paving materials which meet the requirements listed in the relevant definitions. The permeable paving methods allow stormwater to infiltrate through the paving system. Currently, Kitty Hawk offers this bonus for using these materials in the BC-1, BC-2, BC-3, VC-1, VC-2, VC-3 and BH-1 Districts,
- The concept of this Text Amendment is that in no case would any property owner be able to exceed the current level of lot coverage (60% for commercial), regarding the standard lot coverage considerations (structures, decks, pools, impervious concrete). Should a Property Owner use permeable pavement as defined in the proposed definition, they would then be able to use this material to exceed the current lot coverage by 12% in commercial zones.
- Mr. Testerman then gave the following example: **A Property Owner submitting a commercial site plan could potentially show 60% standard lot coverage and up to 12% permeable pavement coverage. Or, the site plan could indicate 50% standard lot coverage and up to 22% permeable pavement coverage or any other combination that totals 72% or less lot coverage of the physical area and does not exceed 60% standard lot coverage.**
- Mr. Testerman stated that in 2018 there was concern regarding 'clogging' which means, 'clogging of pervious pavement occurs when foreign materials restrict the ability of the water to flow through the pervious pavement.

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- To continue, this could come in the form of soil or sand that is blown by wind onto the surface or brought to the surface by stormwater runoff. If this 'clogging' is to occur and it blocks the water from flowing through the material, it is effectively no longer pervious. As written, should any permeable pavement become clogged, it would be considered a permeable pavement failure and by Ordinance, the Town could require the issue to be remedied.
- The proposed use of permeable pavement, as defined in the proposed language, is consistent with the regulations and guidelines for permeable pavement installations per the NC DEQ Stormwater Design Manual. NC DEQ recognizes the use of permeable pavement as a best stormwater management practice consistent with Low Density Development (LID) which encourages on-site retention, infiltration and treatment of stormwater. Allowing Property Owners additional physical coverage areas may prove to be an incentive to use this material on their properties, thus, indirectly encouraging the implementation of this BMP. Having the permeable pavement rated at 100% pervious in the most intensely developed scenario (60% standard coverage and 12% permeable pavement for commercial) there would be no additional runoff to account for. It would be logical to assume that in most cases, if a Property Owner is developing a site plan utilizing permeable pavement, it would be used for as much of the pavement as possible which would likely mean reduced standard lot coverage and a decrease in runoff versus maximum standard lot coverage utilization.
- Mr. Testerman stated that there are other towns in Dare County that allow lot coverage bonuses in various forms; i.e., Duck, Kill Devil Hills, Nags Head and Manteo.
- Mr. Testerman noted that he was approached by a citizen with an additional consideration. Currently, the Town requires a 50' buffer from the Residential Zones to the commercial structures in the BC-1 district and the citizen it might be appropriate to implement this into the MS-1 District.
- From the conceptual plan, this may not necessarily work with this building but to get past that it would have the 50' setback reduced in the property that butts up to a deeded recreational use; in this case, butts up to the golf course. The intent of the 50' setback is to separate commercial uses from residential houses; therefore, there is not a need as the property backs up to the golf course. Mr. Testerman also clarified that this isn't the proposal that he is putting forward, but if there is further interest by the Board or Council regarding the aforementioned statements, he would bring that forward for further review, but, what is currently being proposed is the "lot coverage."

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- Mr. Geraghty stated that there have been other, similar plans before the Board in past years that mainly focused on permeable pavement in residential zones and not in commercial zones and Mr. Testerman stated that the Builder was looking at the residential aspect and the Application was for the residential and commercial zones and when it was presented to Council their concerns were regarding the out-of-state property residential owners between the highways and that the maintenance may not be kept up which would eventually cause clogging and that would then become impervious and be difficult to have the out-of-state property owners comply.
 - Some comments from the Board Members were: the residential side of this should be re-reviewed; materials are now more advance and this may be difficult to enforce if only in MS-1; and Mr. Testerman again stated that the plan was conceptual lot coverage had yet to be determined.
 - Hearing no further questions/comments from the Board Members, Mr. Richeson asked for a motion to be made and Mr. Richeson made the following: ***"I recommend approval of the proposed Text Amendment to amend Sec. 42-446(e) allowing the same lot coverage bonus for permeable pavement in the MS-1 District as is currently permitted in the Town's Commercial Districts. The Board has found this Proposal to be consistent with the Town's Adopted Land Use Plan"***; Mr. Parker seconded and the motion was passed unanimously.
8. **Comments:**
- a. Chairman Richeson – Thanked the Board for their hard work
 - b. Planning Board Members – no comments
 - c. Town Attorney – Absent
 - d. Planning Director -no comments
9. **Adjourn:**
Hearing no further comments, Mr. Richeson adjourned the October 14, 2021 Planning Board Meeting at approximately 6:33pm.

Respectfully submitted by Patricia Merski, Recording Secretary.,