

Kitty Hawk Planning Board Meeting
May 26, 2022 – 6pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. April 14, 2022
4. Administrative Report:
 - a. Town Council Action – May 2, 2022
5. Public Comment
6. Zoning Text Amendment Application:
 - a. Proposal to amend Sec. 42-250, BC-1, to allow ‘tattoo studios’ as a “Special Use”.
7. Special Use Permit Application:
 - a. 3608 N. Croatan Hwy: Applicant has requested a SUP to establish a tattoo studio at the existing commercial structure.
8. Comments:
 - a. Chairman Richeson
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director

9. Adjourn

1. Call to Order/Attendance:

Mr. Richeson called the Kitty Hawk Planning Board meeting to order at approximately 6:00p.

Members Present:

John Richeson, Chairman; Bryan Parker, Vice-Chairman; Dusty Rhoads, Member; Chuck Heath, Member; Jim Geraghty, Member; Matt Spencer, Alternate.

Absent:

Brian Meads, Alternate; Casey Varnell, Town Attorney.

2. Approval of Agenda:

Hearing no objections/corrections/additions to the May 26,2022 Agenda, the Agenda was approved unanimously.

3. Approval of Minutes:

Hearing no objections/corrections/additions to the April 14, 2022 Minutes, a motion was made by Mr. Parker to approve the Minutes and Mr. Richeson seconded and the Minutes were approved unanimously.

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4. Administrative Report:

a. Town Council Action – May 2, 2022

Mr. Testerman stated that there will be a Public Hearing for the Land Use Plan which will be held at the June Council Meeting.

5. Public Comment:

There were no members in the audience to come forward; therefore, Mr. Richeson closed the “Public Comment” portion of the meeting.

6. Zoning Text Amendment Application:

- Proposal to amend Sec. 42-250; BC-1 to allow “tattoo studios” as a “Special Use.”
Mr. Testerman began with;

The Applicant has proposed a Zoning Text Amendment that would allow, as a “Special Use” and with specific conditions, a ‘tattoo studio’ in the BC-1 District. Recently, the same language was approved in the BC-2, VC-2 and VC-3 Districts.

- **Definition – 42-1:**

- The definition of a ‘tattoo studio’ is currently in the Ordinance and means an establishment where 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.

- **Sec. 42-250(c)36-Special Uses:**

- 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 8:00pm.
 - d. The Planning Board may recommend to the Town Council and Town Council may impose any additional conditions that they determine are appropriate based on surroundings.

- **Background & Analysis:**

- Kitty Hawk currently allows tattoo studios as a ‘special use’ in the BC-2, VC-2 and VC-3 Zoning Districts under the same provisions as proposed for the BC-1 District.

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- **Background & Analysis (cont'd.)**

Since adoption, there have been no Applications for a 'special use permit' for a tattoo studio. The previous Text Amendment Application included the BC-1 District in its request but was not included in the recommendation from the Planning Board and not included in the approval from Council. The Applicant would like the request to be revisited for the BC-1 District.

- (NOTE: Mr. Testerman has included in the Staff Report the wording which is taken directly from the Zoning Ordinance for the Scope and Intent for the BC-1 and BC-2 Districts.)
- The BC-1 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 District include offices, retail and service establishments. There is a wide variety of 'special uses' permitted in the BC-1 District.
- The 'intent' of the BC-2 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 area. The commercial development of the District is meant to be characterized by medium to large size land parcels with commercial development of home center sales, cabinet and woodworking shops and marinas.
- As noted, the Town currently allows tattoo studios in the BC-2 District as a 'special use'. It should be noted that, per Chapter 42 of the Town Code, the difference between the BC-1 and BC-2 Districts per the scope and intent of each District as described above are based on sizes of the land parcels (small to medium in BC-1 and medium to large land parcels in BC-2) and the intensity of the commercially developed area (low intensity in BC-1, medium intensity in BC-2). Intensity of development typically refers to specific site conditions (density of structures in a given area, lot coverage, building height, etc.) and not the uses within that area.

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- As noted, all permitted uses in the BC-1 District area also permitted in the BC-2 District. In addition, BC-2 District allows home center sales cabinet and woodworking shops and marinas as 'permitted uses by-right.' 'Special Uses' in the two (2) Districts are largely identical as well and the only differences are in the BC-1 District are game room, clubhouses, pro-shops water tank murals, indoor ramp parks, bicycle repair and rental and vehicle rentals which are listed as 'special uses' and are not permitted in the BC-2 District. Conversely, in the BC-2 District, indoor recreation activities building contractor's offices, building supply, equipment sales, plumbing supply/equipment sales and motor vehicle dealerships are listed as 'special uses' and not permitted in the BC-1 District and the rest of the 'special uses' in the two districts are identical
- Mr. Testerman stated that the Realtor representing Mr. Hylton, who was the owner of the building in Frisco and the aforementioned memo is to be included for the record and reads as follows:
- *"I have known Anthony Hylton (Black Flag Tattoo) for four years as a tenant in a building we owned and now manage in Frisco. He leases a space next to our Colony Realty offices and his space is directly below my office on the second floor. It is worth noting that I was initially reluctant to lease the space to him as I was not sure what kind of crowd we would encounter directly beside our business. I was encouraged by one of my clients who is a dentist in Virginia to reconsider Anthony as a tenant and he explained that one of his best tenants in his office complex was a Tattoo artist right next to his space and that they had been great tenants for 20 years.*

Well after the past four years I can actually say that I had a bias toward the crowd that I thought would be attracted to a Tattoo Artist studio, I was wrong. It still amazes me how many groups of folks show up to get artwork of a seashell, lighthouses, octopus and shipwrecks. Most of the folks I see are family groups and as such we have ever had an incident with any of the patrons.

The stigmatism associated with a Tattoo studio is unwarranted as most folks have know idea what red-tape the artist has to go through to satisfy the Health Departments requirements to open I have first -hand knowledge.

This was Signed: John Head, VP of Sales and Marketing, Colony Realty Corporation 2018 Realtor of the Year, 2017 President, Outer Banks Association of Realtors."

- Mr. Testerman stated that at the August 2021 Board Meeting there was a concern about having tattoo studios in Kitty Hawk and because of the Board's concern, Mr. Testerman contacted the Dare County Sheriff's Depart and the Dare County Planning and Zoning Board to find out if there had been any issues/complaints about any of the

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County's tattoo studios and per the County feedback, there have been no incidents/complaints concerning any of the tattoo studios.

- Mr. Richeson asked if there were any questions/concerns that any of the Board had and Mr. Parker wanted confirmation that this Amendment was 'not' for rezoning and that this 'special use' would be permitted and Mr. Testerman stated, that if approved, it would be a 'special use permit' and he referred to the first three 'specific conditions' which will not change but the last one, stating that **"The Planning Board may recommend to the Town Council and Town Council may impose any additional conditions that they determine are appropriate based on surrounding."**
- Mr. Testerman also stated that a lot of the BC-1 and BC-2 Districts and all of the Commercial Districts have a lot of residential areas within those Districts and even in the BC-1 and BC-2 Districts there are areas comprised mainly of residential uses. There is however, a Section of the BC-1 District that surrounds Eckner which is mainly residential, but, if someone wanted to tear down a residence and build a tattoo studio, the Board and Council could view that differently than one already in a commercial area like the proposed Section presented at this meeting and Council could impose separate conditions for that specific example.
- Mr. Richeson stated that this is already approved in the VC District which abuts commercial and residential and that with BC-2 and BC-1 are for commercial uses and Mr. Parker stated that this proposal is actually permitted in the BC-2 District and there is no difference in the use than the size of the parcel which may be the only difference but not the business itself.
- Mr. Richeson stated that BC-1 would be better and asked the Applicants if their business was a 'small operation' and Mr. Hylton stated 'yes' and came up to the podium to answer any further questions the Board may have.
- Mr. Hylton stated that he has been in the business for 20 years and there is no stigma about tattoo studios as there had been in the past. He stated that his business has changed to a 'family industry' and that 60% of his clients are working; there is a minimum fee of \$140.00/hour and he has had nurses, doctors, lawyers and many tourists as clients.
- Mr. Hylton stated that in his 20 years he has had tattoo studios in various states and are were rated five-star. His studio adheres to all health department requirements to ensure no clients are injured or infected in any way.
- Hearing no further questions from the Board, Mr. Richeson asked for a motion to be made and Mr. Richeson made the following: ***"I recommend approval of the proposed Text Amendment to Section 42-250 adding the proposed 'special use' and associated conditions to BC-1: Sec 42-250(c)36. The Board has found this Proposal to be***

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consistent with the Town's Adopted Land Use Plan." Mr. Geraghty seconded and the motion was passed with a vote of 4-1.

7. **Special Use Permit Application:**

- a. 3608 N. Croatan Hwy. Applicant has requested a Special Use Permit to establish a tattoo studio at the existing commercial structure. (NOTE: This Application is concurrent with the Zoning Text Amendment Application to amend Sec. 42-250).
- Mr. Testerman stated that if Council approves the Text Amendment, Council will need a recommendation of the 'special use' as well; therefore, Mr. Testerman proceeded as if the Text Amendment has been approved.
- Mr. Testerman: The Applicant is requesting approval of a Special Use Permit to use an existing structure located at 3608 N. Croatan Hwy as a tattoo studio.
- The pending language as aforementioned for the Zoning Application would allow tattoo studios as a 'special use' in the BC-1 District.

Background:

- The subject property is a existing commercial structure approximately 4,700 sq. ft. in size, zoned General Beach Commercial (BC-1) located on a 53,00 sq. ft. lot.
- The abutting properties to the north and south are also zoned General Beach Commercial (BC-1); the abutting property to the north is the Coastal Animal Hospital and to the south is the CRT commercial lot. The parcels to the west of the subject property are zoned BR-1 and are occupied by single-family residences on Rabbit Hollow and across N. Croatan Highway to the east is zoned BR-1 and is occupied by several single-family residences.
- Lot coverage and building height is not being proposed to any changes or footprint of the building as this is a 'proposed use' going into an existing structure.
- Access is from the parking lot directly onto N. Croatan Highway and should the prior Text Amendment be approved; 1) separation from church, school, public park or libraries – 200 feet and none of those are within 200' of the subject parcel; 2) Separation from other tattoo studio – 400 feet. There are no other tattoo studios located in Kitty Hawk; 3) Health Department and any other applicable local and state agency approval is required and they can submit a copy of any relevant approvals to the Town.; 4) Hours of operation limited to 8am-8pm.
- Mr. Testerman stated that he is not aware if there will be any body piercing done at the studio; therefore, the Board can recommend that as a condition for piercing to be permitted as an 'accessory' to the tattoo studio use.
- The Land Use Plan designates this property as a "Commercial, Shopping and Working Area" on the future Land Use Map.
- The policies and objectives relevant to this Application are stated in the CAMA Land Use Plan: **Policy 4a:** Kitty Hawk, through its Zoning Ordinance, will continue to direct the

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placement of commercial development in areas zoned for such activities. **Policy 4e:** Kitty Hawk will review and analyze development and redevelopment proposals for consistency with the future Land Use Map included in this Land Use Plan. **Objective 16a:** Monitor and consider redevelopment proposals for consistency with stated Town Land Use and development goals.

Special Use Findings:

Per the standards of Section 2-99(b)(7), in order to approve this application, the Town Council must make findings that the proposed 'special use':

- a. Does not materially endanger the public health or safety.
 - **Tattoo studios are strictly regulated by the NC Department of Health and Human Services. Assuming the studio would be working in compliance with those regulations, there is no evidence that a tattoo studio at the proposed location would endanger public health or safety.**
- b. Does meet all required conditions and specifications.
 - **Should the associated Text Amendment be approved, the proposal would meet all required conditions and specifications.**
- c. Will not substantially injure the value of adjoining property or be a public nuisance, and
 - **Given that the existing tattoo studios in Dare County have created no issues of complaints with the Dare County Sheriff's Department, Planning Department or Health Department, there is no reason to believe that a tattoo studio at the proposed location would be a public nuisance. Staff has been unable to find any documentation indicating that a tattoo studio would substantially injure the value of adjoining properties,**
- d. Will be in harmony with the area in which it is located and be in general conformity with the comprehensive plan.
 - **The proposed use appears to be in harmony with the area in which it is located and is in general conformity with the comprehensive plan.**
 - Mr. Testerman concluded his presentation and turned it over to the Board and Mr. Richeson stated: if a recommendation is to approve and then Council does not approve wouldn't this be a moot point and Mr. Testerman stated that if Council denies the Text Amendment then there would be no need to have a Public Hearing because the 'special use' would not be allowed; but, if the Text Amendment is approved, a recommendation would be prudent for the Board to put forth.
 - The discussion then focused on the 'piercing' aspect of the tattoo studio with Mr. Geraghty wanting clarification and Mr. Testerman stated that when the Text Amendment was approved in October, 2021 a definition of a tattoo studio did not specifically mention 'piercing' and Mr. Testerman stated that in his discussion with Town Attorney, Mr. Varnell, that if the proposal is to include piercings at the same

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location then there needs to be wording in the recommendation so that any future applications for a tattoo studio that has piercing would be covered.

- The Applicant interjected and stated that, as of now, there would not be a piercer on staff and that the State of North Carolina Health Department does not cover piercings and that tattooing is the primary focus of the business.
- Mr. Richeson then asked if 'piercing' could be added as a 'special use' and Mr. Testerman stated that under the 'conditions': (d) "The Planning Board may recommend to the Town Council and Town Council may impose any additional conditions that they determine are appropriate based on surrounding." Mr. Testerman then stated that that 'condition' can be added saying either: piercing is permitted as an 'accessory' at this location at 3608 N. Croatan Hwy OR say, piercing is NOT permitted as an 'accessory' to the tattoo studio at 3608 N. Croatan Hwy. and that, if including that 'condition', it will make piercing a 'site specific condition' and if not including it as a 'specific condition' for every Application it would be under Subsection "D" and conditions can be recommended for 'site specific uses.'
- The Applicant stated that piercing would be something to have as an 'accessory', but the State does not recognize piercing and that he has spoken to Mr. Preston at the Health Department who informed the Applicant that the State is trying to put piercing into the system as a 'condition' and Mr. Parker asked if piercing can be included as a 'condition' and Mr. Testerman stated that he would have to speak with Mr. Varnell about adding it as a 'condition.'
- Mr. Geraghty asked if the Board can zone without the Health Department approval and Mr. Richeson stated that it would then have to be associated with the Text Amendment up to and including piercing.
- Hearing no further questions/comments from the Board or Applicants, Mr. Richeson asked for a motion to be made and Mr. Richeson made the following: ***"I recommend approval of the 'special use permit' for the establishment of a tattoo studio subject to those conditions listed in the associated Text Amendment to be located at 3608 N. Croatan Highway. The Board has found this proposal to be consistent with the Town's Adopted Land Use Plan."*** Mr. Heath seconded and the motion was approved by 4-1.

8. **Comments:**

- a. Chairman Richeson – thanked everyone for their work on this Amendment
- b. Planning Board Members – None
- c. Town Attorney – Absent
- d. Planning Director

9. **Adjourn:**

Hearing no further questions/comments from the Members of the Board, Mr. Richeson adjourned the May 26, 2022 Kitty Hawk Planning Board Meeting at approximately 6:45pm.

Respectfully submitted by Patricia Merski, Recording Secretary