

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, January 4, 2016
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 December 7, 2015 Council Minutes
 - b.) Revenues and Expenses Report for November 2015
 - c.) Governor's Crime Commission Grant.
 - d.) Local Firefighter's Relief Fund Board of Trustees
 - e.) Award of Service Firearm and Badge
6. Items Removed from the Consent Agenda
7. Public Hearings
 - a.) Conditional Use Permit: Application for a Conditional Use Permit to allow construction of a medical office at 5201 North Croatan Highway.
 - b.) Conditional Use Permit: Shared parking agreement between Art's Place at 4624 N. Virginia Dare Tr., and the adjacent property, a proposed take-out/delivery pizza business to be located at 4622 North Virginia Dare Trail.
 - c.) Text Amendment: Staff initiated proposed text amendment to insert language into the Zoning Ordinance that would allow the Town to utilize the concept of "conditional zoning."
8. Planning
 - a.) Site Plan Review/Revised site plan application for East Coast Game Rooms to build an accessory storage warehouse in the rear of the property at 3928 North Croatan Highway.
 - b.) Site Plan Review/Revised site plan application for Atlantic Dentistry and Sweet Frog's to build additions to both Atlantic Dentistry and Sweet Frog's, creating a common wall and parking/drive aisle improvements.
 - c.) Call for Public Hearing/Text Amendment: Application for a text amendment that would allow vehicle rentals in the BC-2 district under certain conditions.
 - d.) Call for Public Hearing/Conditional Use Permit: Application for a conditional use permit to allow a vehicle rental business at 500 Sand Dune Dr., Units A & B.
 - e.) Call for Public Hearing/Conditional Use Permit: Shared parking agreement between the proposed Wendy's location at 5430 N. Croatan Hwy., and the adjacent Shoreside Shopping Center, located at 5400 N. Croatan Hwy.
 - f.) Call for Public Hearing/Conditional Use Permit: Application to issue a formal approval of the existing sewage treatment plant located at 5400 N. Croatan Hwy, Shoreside Center, as well as approval for the proposed Wendy's to tie into the existing system.
9. Unfinished Business
 - a.) Drainage Improvements in the Rabbit Hollow Area
10. Reports or General Comments from Town Manager

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11. Reports or General Comments from Town Attorney
 - a.) Easement Update/Next Steps Under Council Direction
12. Reports or General Comments from Town Council
 - a.) Appointment to the Albemarle Rural Planning Organization Technical Coordinating Committee
13. Public Comment
14. Adjourn

COUNCIL MEMBERS 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 Steve Michael, Management Assistant Melody Clopton, Finance Officer Charlene Allen, Town Planner Rob Testerman, Police Chief Joel Johnson, Fire Chief Lowell Spivey and Public Works Director Willie Midgett

1. CALL TO ORDER

Mayor Perry called this meeting to order at 6 p.m. and welcomed everyone in the audience and those that may watch the meeting on television later in the week. He noted it is a new year, there is a new town manager and staff has recommended a new seating arrangement around the dais.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

3. APPROVAL OF AGENDA

Mayor Perry announced two changes to the agenda: removal of item 8(b) and an appointment of the town manager to the Regional Planning Organization under item 12.

Councilman Bateman made a motion to approve the agenda as amended. MPT Garriss seconded the motion and it passed unanimously, 5-0.

4. PUBLIC COMMENT

No one came forward to speak at this time.

5. CONSENT AGENDA

a.) Approval of December 7, 2015 Council Minutes. *(An affirmative vote for the consent agenda will approve these minutes.)*

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b.) Revenues and Expenses Report for November 2015. *(An affirmative vote for the consent agenda will acknowledge this report.)*

c.) Governor's Crime Commission Grant. The police chief is requesting permission to apply for a no-match law enforcement grant to obtain active shooter kits for each officer. The grant amount is not to exceed \$24,500. *(An affirmative vote for the consent agenda will grant this request.)*

d.) Local Firefighter's Relief Fund Board of Trustees. As required in G.S.58-84-30 the governing body shall appoint two members to the Local Board of Trustees. The fire chief is recommending that Don Stallman be reappointed to a two year term. Term of office to expire January 2018. *(An affirmative vote for the consent agenda will approve this recommendation.)*

e.) Award of Service Firearm and Badge. G.S. 20-187.2 allows a governing body the authority to award a retiring member of law enforcement his service firearm and badge. Police Officer III Jimmy Ray Watts will be retiring February 1, 2016 and it is requested the council award his badge at no cost to him and his service firearm for \$1.00. *(An affirmative vote for the consent agenda will approve this request.)*

MPT Garriss made a motion, seconded by Councilwoman McClean, to approve the consent agenda. It passed unanimously, 5-0.

6. ITEMS REMOVED FROM THE CONSENT AGENDA

No items were removed from the consent agenda.

7. PUBLIC HEARINGS

a.) Conditional Use Permit: Application for a Conditional Use Permit to allow construction of a medical office at 5201 North Croatan Highway.

Councilwoman McClean made a motion, seconded by Councilman Bateman, to open the public hearing. The vote was unanimous, 5-0.

Town Clerk Morris administered the oath to Planning Director Rob Testerman, Engineer Michael Strader and each of the speakers that made comments during this hearing.

Planning Director Testerman reviewed the following staff report shaded in gray.

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Proposal

The applicants are requesting approval of a conditional use permit to develop a 5,992 square foot professional office building (6,857 square feet including porches). The site is currently undeveloped. It is the owner's intention to occupy one unit as Beach Medical Center and lease the remaining unit to a separate, compatible use.

Proposed Conditional Uses

Specifically, approval for the following type of conditional use is being sought as part of this application:

42-251(c)7 - Hospitals, clinics and medical offices

Background Information

The subject property is presently zoned Beach Commercial (BC-2) and is presently undeveloped. The property has 365 feet of frontage on N. Croatan Highway, is 147 feet in depth at its deepest point and approximately 50 feet in depth at its narrowest point. In total the lot is 41,627.28 square feet (.96 acre) in area.

Directly abutting the subject properties to the north is developed multi-occupant commercial parcel zoned BC-2 owned by Bermuda Greens Association. Further to the north is Rite Aid Pharmacy also zoned BC-2. To the south are two commercial uses, including Ambrose Furniture and an office building. Further to the south is the Kitty Hawk Station building which was recently approved for a Conditional Use Permit for medical offices/clinics and all are zoned BC-2. To the west, across North Croatan Highway, is the group of medical offices, medical clinics, and pharmacy comprising the Sentara Kitty Hawk Medical Center. To the east are eight (8) single family residences fronting Lindbergh Avenue, all zoned Beach Hotel (BH-1).

Staff Analysis

Proposed Uses: Medical offices. Medical offices are presently permitted as conditional uses in the Beach Commercial (BC-2) district.

Lot Area: The subject parcel is 41,627.28 square feet (0.96 acre). The size of the lot have sufficient acreage to accommodate the proposed structures, parking, septic systems, and other development standards. The minimum lot size in the BC-2 district is 15,000 square feet.

Lot Coverage: Including the proposed buildings, sidewalks, parking, access drives, and drive aisles, the proposed lot coverage is 22,526 square feet (54.11%). The proposal is compliant with the maximum lot coverage requirement of 60% for the MS-1 district.

Building Height: The maximum height in the BC-2 district is thirty-five feet (35') from the existing grade to the peak of the roof. The elevations indicate that the height of the building will be compliant with this limitation.

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Building Setbacks: Per the table below, it appears that all of the buildings will comply with the Town's current minimum building setback standards for the MS-1 district.

<u>Setback</u>	<u>Proposed</u>	<u>Required</u>
Front	15.5 feet	15 feet
Rear	57 feet	20 feet
Sides	193 feet (north)	10 feet
	15.5 feet (south)	10 feet

It should be noted that the required front yard setback is being shown on the west side of the property fronting North Croatan Highway. Although the entrances to the building will be on the east side, this configuration of setbacks allows for the 20 foot rear setback to provide further separation from the single family residences to the east of the proposed development.

Access: The subject property proposes one 22 foot wide ingress/egress drive off of Byrd Street. The applicant also proposes to provide connection from Byrd Street to North Croatan Hwy. Currently Byrd Street dead-ends at the intersection with Ride Lane. NCDOT encroachment permits will be necessary to construct the Byrd Street connection. The roadway is required to be built to NCDOT standards.

A single internal drive aisle provides access to all parking spaces. This drive also serves as a fire lane for the property and complies with the N.C. Fire Code.

It should be noted that a request has been put in to change the address from the current 0 Byrd Street to a North Croatan Hwy address.

Parking: The parking calculations for each building are as follows:

<u>Parking Calculations</u>	<u>Ratio</u>	<u># Required Spaces</u>
Medical Office/Clinic		
4 doctors, 11 employees	5 per doctor, 1 per employee	31 spaces
TOTAL (Minimum Parking Required)		31 spaces required

The applicants' site plan shows a total of 31 paved parking spaces accessed by the drive aisle, which meets the minimum required. All parking spaces must be striped as outlined on the site plan.

ADA standards require a minimum of two (2) handicapped accessible parking space which have been included in the proposal to make the parking ADA compliant.

Loading Zone: The applicant has provided a loading zone of 12'x25'. Section 42-547 of the Zoning Ordinance states that a typical loading space should be a minimum of 12' x 25'.

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Buffers: The Zoning Ordinance requires buffers between commercial zones and abutting residential zones. The eastern edge of the property abuts eight single family residential uses which are located in the Beach Hotel (BH-1) district. The BH-1 district is a commercial zoning district, therefore no buffers are required. However, the applicant has proposed to include a "Type C" buffer surrounding the entire development. A "Type C" buffer is defined as a 50 percent opaque vegetative screening buffer of a minimum width of five feet that will reach a height of three feet in two years. The buffer may include a stabilized soil berm as part or all of the required height. The buffer shall include local evergreen trees planted not more than 20 feet on centers and which shall reach a height of six feet in three years.

Waste Management: The applicant proposes to utilize a bulk container which will be located on a 10'x10' concrete dumpster pad and will be screened.

Lighting: A lighting plan for the site must be submitted and approved by the Planning & Inspections Department prior to the issuance of a building permit. Such plan must comply with the standards of Section 42-515 of the Zoning Ordinance.

Signs: The property will be permitted to have its own freestanding sign up to 48 square feet in size. Additional signage (wall signs, window signs, etc.) is permitted up to a maximum of 100 square feet (including free standing signs) for all signage on the property. All signs will be permitted by the Planning & Inspections Department.

Water Service: The Fire Department has thoroughly reviewed the site plan and proposed development. The Fire Code requires two hydrants with average spacing of 450 feet for a fire flow of 2,250 GPM. The plan calls for a new hydrant at the southwest corner of the property. There are two existing hydrants that can be counted as secondary hydrants. The Fire Department will need verification that the new hydrant can meet the flow of 2,250 GPM.

Water service will be supplied via Dare County Water System. All water improvements shall be in accordance with Dare County standard water specifications and details.

Wastewater Disposal: The proposed building will be served by an on-site septic system. A construction permit from the Health Department requiring a more detailed design and layout must be obtained prior to issuance of a building permit for each building. The approximate location and layout of the system is shown on the attached site plan.

Flood Zone: The subject property appears to be located nearly entirely within an X flood zone. There is a portion of the property at the southern end that falls within the AE-9 zone. Although the flood zones are not shown on the site plan, it appears that a portion of the building falls within the AE-9 zone, which means the entire building would be required to meet the Town's flood protection ordinance regulations for that zone.

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Land Use Plan

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the property as a "Commercial, Shopping, and Working Area" on the future Land Use Map.

The following 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 placement of commercial development in areas zoned for such activities.

POLICY 4b: Kitty Hawk encourages the continued existence and development of locally owned businesses and encourages commercial building designs, color designs, and construction materials and methods that reflect Kitty Hawk's coastal village character.

OBJECTIVE 13e: Seek ways to provide and ensure a safe environment for pedestrians in commercial areas; to minimize pedestrian-vehicular conflicts in commercial areas; and, to improve circulation patterns in commercial areas

As part of its review, the Planning Board is asked to determine if the proposed development is consistent with the policies and objectives outlined in the Land Use Plan.

Conditional Use Findings

Per the standards of Section 42-99(b)(7), in order to approve this application, the Town Council must make findings that the proposed conditional use:

a. does not materially endanger the public health or safety,

If all of the required State and other permits are obtained, then the authorized agencies will have reviewed and permitted the driveway designs and locations, septic systems, water lines, and erosion and sediment control plan. Therefore, it can be presumed that these improvements will be made in a safe manner.

b. does meet all required conditions and specifications,

The proposed use and site development will comply with all applicable standards of the Town Code.

c. will not substantially injure the value of adjoining property or be a public nuisance, and

The subject property is located between a wide highway and existing developed commercial and residential properties so the proposed development will have little direct impact on the surrounding area.

d. will be in harmony with the area in which it is located and be in general conformity with the comprehensive plan.

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Per stated policies in the Town's adopted land use plan, the development of these businesses will be located on existing, commercially zoned properties

Staff Comments

Staff asks the Town Council to consider the following conditions:

- Type C vegetative buffer shall be maintained.
- All necessary state, county and local permits (stormwater, septic, water, DOT encroachment, etc.) must be obtained prior to issuance of a building permit.
- A separate sign permit must be obtained for all signs to be erected on the site.
- All exterior site lighting must be included in the calculations for a final lighting plan to be approved prior to the issuance of a building permit.
- An as-built survey for the subject properties, height certification for each building, and elevation certificate for each building must be submitted and approved prior to the issuance of a final Certificate of Occupancy.

In addition to the conditions listed above, the Planning Board recommended the addition of a condition to require a metal gate to prevent Byrd Street from becoming a thoroughfare, but to allow easier and faster access for emergency personnel to access properties between the highways in that vicinity. This recommendation was based on the concern that opening the street through to 158 would cause congestion in the Byrd Street residential area and more potential for an incident at the intersection with North Croatan Hwy.

Planning Board Recommendation

At its November 12, 2015 meeting the Planning Board unanimously (5-0) recommended approval of the Conditional Use Permit with the above listed conditions, and the additional condition discussed by the Board.

Planning Director Testerman explained if the metal swing gate is approved the applicant will have to install two hydrants instead of one because the two existing hydrants on Lindbergh would not be counted as secondary hydrants.

Perry: *Steve, if the applicant puts a road in, as soon as he puts it in, does it belong to the Town?*

Michael: *The Town has to accept it and it has to meet Town standards.*

Perry: *But there is no waiting period.*

Michael: *No. It is your street already.*

Perry: *I just want to make sure the record shows how it works.*

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Garriss: *One of the concerns I have heard from people living close by and neighboring businesses is the stormwater runoff and flooding. What can you do to assure us and make these people feel better that that is not going to be a problem for them?*

1. Michael Strader, Quible and Associates and Engineer of Record: *For this project we have to acquire a High Density Stormwater Permit and I am required to store an inch and a half of runoff. In this particular case we evaluated the whole surrounding area and see some of the existing issues that are already occurring to the east. What we have chosen to do is store much more than what we are required to. We are storing about eleven inches of stormwater runoff for this particular property so I can assure you that there will be no additional impact from this particular proposed development. It will not impact any of the existing issues that may be already occurring.*

Perry: *Page 1 of the drawing shows a retaining wall and on page 3 it calls it a silt fence. Which is it?*

Strader: *There is a proposed retaining wall at least 5 feet from the rear property line. As a part of the Soil Erosion Sedimentation Control Permit we are required to ensure there is no sediment that moves off the property so we are proposing to have a silt fence during construction.*

Bateman: *How is someone going to work underneath this building if there is water underneath it all the time?*

Strader: *We are required to have certain separation from that mean high water table so we are promoting infiltration. I am providing at least a 5 foot clearance to get underneath the building for any cleaning and removal of sediment that may occur over time.*

Bateman: *It is designed so the water goes underneath and the water seeps down into the ...*

Strader: *It is infiltration, not a wet basin. It is designed to be a dry retention basin and it will draw down ...*

Bateman: *If you have a ton of water do you have any intentions of having sump pumps or anything there?*

Strader: *No sir.*

Bateman: *Was it your client's intention to have the gate put up or was that from the planning board?*

Strader: *That is not the applicant's intention.*

Bateman: *I have a real problem with that.*

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Perry: *I do too but we are still in the hearing so we will discuss that when we get to our part.*

Pruitt: *Can you explain why there was a need to connect the roads together instead of just having the driveway go out to the bypass.*

Strader: *There are a number of things that led to that. The first being the building needs to be where it is located furthest to the west because there is a delineated wetland that is just to the east of the building. Basically where we are building a parking lot. In order to permit the filling of the wetland we needed to bring the building forward because we cannot design a stormwater retention facility within a delineated wetland even once it is filled. The construction needed to move west. Since the parking is to the east of the building and the entrance is so close to Byrd Street we thought it would be required to connect the through street.*

Another thing that led to it is during high traffic periods I cannot imagine making a left turn in front of Byrd Street onto the bypass so in an effort to discourage folks from doing that we connected Byrd Street so any southbound maneuvers can happen. Come out of the site, go east on Byrd and then hit NC 12.

Hearing no further questions from council, Mayor Perry opened the hearing to comments from the public.

2. Clyde Hargrave, 5206 Lindbergh Avenue, Kitty Hawk, NC: *I am here representing my wife and other folks in the neighborhood. Let me point out some things we have discussed and the concerns we have. This thing has kind of been dropped on us at the last minute. We were not aware of it until last week. We did not get any kind of notice before the planning board meeting so we did not have an opportunity to speak up then or have any input into it. I understand now that you do not advertise but that would have helped us. In any regards we got a letter last week so we jumped on this thing at the last minute.*

Let me point out the water issue. As you all well know it has been a problem over there for years. I have owned that property since 2001 and I have seen floods there four times. As much as 38 inches of water under my house. We are concerned that the retaining wall is going to cause a damming effect. What water that comes onto our lots now will hit that wall and back up further on our property or either further to the south and go around the corner down there on Byrd Street. The gentleman with the engineering firm addressed the water problem and the retainage of 11 inches of water on that site. That addresses just the water on that site. It still does not do anything about the water that is on our property or the water going around that retaining wall and down onto Byrd Street and Ambrose Furniture. Those areas over there. It is going to be more water as far as I can tell. That water is not getting into this retaining pond. There is no means for it to get in there. It is not shown to go in there. So the wall is a problem.

Also what is the wall to be constructed of? What is the appearance of it?

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We have concerns about the placement of the building. I would rather have the building back up to our property and act as a buffer rather than a parking lot with 31 cars out there and lights glaring at our back door.

I heard him say that the placement of the building was driven by the fact that he could not build over the wetlands area. However they are filling in the wetlands area with 4, 5, 6 feet of fill and pavement so it is beyond me why they could do that to the wetlands but they cannot put the building there and the pond under the building and parking out in front. So that is another issue we have.

Lighting obviously is a problem we are concerned with. Lights staring at the back of our houses.

We have a parking lot out in front of us now with the beach access and now it looks like we are going to have one behind us as well.

We understand that we are not going to stop this project. We do not want to stop the project. We would much rather have this than a convenience store or a hamburger joint that is operating 24/7 but we would like some consideration as to what our concerns are and take a look at them. How you can help us by placing the building elsewhere, discussing what to do about lighting, that sort of thing. That's all I have.

Perry: *I will ask the engineer about the damming effect. Tell us about the damming effect or if there is one. They are only required to maintain a certain amount of water on the property not off the property so they do not have any control over that. The placement you already have an answer to that. I am not sure we can do anything about that but the damming effect or the kind of material for the retaining wall. Can you answer that?*

Strader: *Yes sir. If the topography is moving from east to west there is going to be some amount of water that is shedding from the drain fields and it will migrate ... it looks like some of it does migrate to the west. The applicant is not in a position to be designing stormwater improvements for all those off site areas that are going onto his property. We did pull the retaining wall back a distance of at least 5 feet from the property line and we added a row of buffering trees. Hopefully that will help with transpiration. As far as materials of the wall it will probably be treated lumber. It is not very tall from what I can remember.*

Perry: *Will a retaining wall cause a damming effect in addition to what already exists? We are well aware of how that place floods. We have put in sumps and we are even thinking about adding a pipe for pumping. What does your retaining wall add to or does it add to anything beyond the applicant's property?*

Strader: *No sir. There is not really a damming effect because the water can still migrate to the south. That looks likely where it would tend to go in this case.*

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Perry: *Everybody understand that? Then there was a question about lighting. Rob, lighting under our code has to be situated and of a character that does not illuminate off the property. Is that correct?*

Testerman: *Correct.*

Perry: *Administratively is the way you will handle that?*

Testerman: *Right. When that comes in we will review it and make sure it meets all the standards in the zoning ordinance.*

Bateman: *Is there a possibility you could make it small, lower lighting? That way it would not reflect on the adjacent properties at all since it is basically a daylight business.*

Strader: *Yes. Dr. Wilkinson can probably attest to this. It is a daytime business, we are not trying to illuminate the parking lots. We are not retail and not trying to promote traffic at night time hours. I think I can speak for him when I say we are definitely for low key lighting something just for security purposes.*

Perry: *Have you answered most of your questions?*

Hargrave: *Yes, but I still have a couple more. The placement of the building. Why this site cannot be flipped? The building here and the parking at 158 like every other business up and down 158.*

Strader: *We would like to have done that. We have looked at a number of scenarios and we had to work with the corps in permitting the fill of this wetlands. We had a delineated wetland pocket and with the size of the building that is being proposed ... can the building be over top of the wetlands? Yes. But we still have the stormwater issue to deal with. The State of North Carolina will not permit a stormwater management pond within delineated wetlands or where delineated wetlands had been permitted to be filled so that puts the stormwater right where it is in the plan. We have to have a parking lot so there is not a way to do what we are being asked to do there.*

Perry: *You are constrained by current government regulation.*

Strader: *Yes sir.*

Hargrave: *You can fill the wetlands and pave over it, but you cannot build over it.*

Perry: *He can build over it but he cannot put a retention ...*

Hargrave: *... cannot put a water retention pond underneath.*

Perry: *Right. That is your government at work.*

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Strader: *We did ask the question. We recognize it looks like it could be turned into constructive wetlands but we are not able to permit such.*

Perry: *I think we have answered everything. Did anyone else sign up?*

Hargrave: *I still maintain that water is going to dam up. It is going to move south. It is not coming back up on this property into the retention pond. It can only make matters worse down the street.*

Perry: *I understand.*

Hargrave: *Thank you. One other thing. I have some letters from Marge and Dan Fields at 5210 and the residents at 5208. They could not be here and they asked us to pass those on to you.*

Perry: *Thank you.*

Bateman: *Instead of a retaining wall could you possibly have rip rap and slope it down. That way the water is going down instead of having a retaining wall ...*

Strader: *With the kind of height of 3 and up to 4 feet there ... so we have 10 feet at the back of the curb I believe. It is a matter of getting back down to grade over the course of that 10 feet. If I recall you cannot fill within 5 feet of the property line. Then that means we have 5 feet to scrape down. I do not know of a product that will allow us to lose the 4 feet within a 5 foot distance.*

Hargrave: *As far as the makeup of the wall we would prefer to see some type of poured block or something like that rather than a formed concrete or formed section of block ... would be much be much more attractive.*

3. Jack Greene, 5209 Lindbergh Avenue, Kitty Hawk, NC: *My back porch basically faces directly into the area between the two houses so I would be seeing the wall ... from the back of the house I would be seeing the parking lots and all that stuff. I would be impacted by any water flow that would go through or any lighting situation that would be there.*

My son is a geological engineer and I called him and I sent him these plans. He said it was extremely unusual for anyone to put any kind of a holding basin underneath a building but I see the engineer has told us they did not feel there was any other place to do this in this area.

One of the things I am concerned about is after ... I have owned this house since 1999. I have seen Hurricanes Isabelle and Katrina. I had 42 inches of water in my basement area but when it rains ... and what they have is a second drainage area and I am not quite sure if they feel that the area from the roof tops and the parking lots will be sufficiently taken care of by the underground basin. Or what do they call that, the holding tank so to speak, but it just ... and I would like to get the engineer to explain to me how that thing is built and what is in it? What happens if there is more water than the 11 inches that comes to that area? Along with the second level which I would like

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to know since they put it in there. Where did they anticipate the water would come from for that? It appears to me there is no pumping or anything from these plans that go anywhere but to the side of the building and then right down Byrd Street. So I am thinking that that is something nobody wants in that area and we know it's a big problem there but I am feeling that if they have a bad nor'easter or something you are going to get more than that amount of rain and if they are thinking that that second storage level is going to be sufficient to hold all the water ... and then ... but they have already stated that it is just going to be overflow down Byrd Street so I am really concerned about that for a lot of reasons because it is going to flood Byrd Street. It is going to flood up and it floods across my street. My house is right next to the parking lot on Byrd Street there so I would like to ask the engineer exactly how that thing is built under there and a little more questions in regard to why the second drainage area is put there and where do they think that water is going to come from and then where, if there is a lot of rain water, it is going to go.

Perry: *We are not going to get into a structural dissertation while we are in a public hearing. You can do that on your own whenever he is available to you. We have a set of plans, they are engineered with a stamp on them, so we are going to have to take it at the engineer's word that basically this will do what he says, within the rules and regulations set forth by the State on stormwater retention. As far as getting into the mechanics of how they do that ... it is not the first. There are other examples I understand up around Corolla and other places where this has been done. This is the first time I have heard of it and it kind of blew me away but there it is. They have a right to do certain things and they only have to retain a certain amount within that property. And they are doing more than that so we have to listen to that as well.*

Greene: *Okay. We spoke about the lighting and I hope it will be very limited since it is probably an 8 a.m. to 6 p.m. place of business and it does not need much. I would hope we would not have these lights glaring basically into our houses.*

The one other situation I would like to discuss once again is there any recourse to flipping the building over the other way so all the people that are walking in there are not looking at all our houses? I drove up and down Kitty Hawk on 158 and there is not one building that has its back to 158. They are doing this to this unique piece of property I understand that but it seems like it is an exception and it is just a little strange the way it is. Especially as Clyde reiterated they can pave the parking lot. Maybe there is something they can actually petition or something like that in this unique case and see if they could flip it over and put the building the other way. I do not know about those things but it is something that I think should at least be looked into.

Perry: *Well he has made a pretty good explanation to me already of why he cannot do that. Do you have anything further?*

Greene: *No. That's it. Thank you very much.*

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3. Steve Rodriguez, 5204 Lindbergh Avenue, Kitty Hawk, NC: *Good evening. My family's property is 5204 Lindbergh. I think the medical facility is something we need and I think we all agree. I also serve as Vice-Chairman of the Outer Banks Hospital so I know there is a need for medical offices on the Outer Banks to serve the constituency down here.*

The engineer talked about the retention pond ... where the wetlands ... there is nothing that says the building had to go over top of that filtration. Again, we would ask why the building cannot be set back. There is nothing in the rules and guidelines that says a building has to set upon the retention pond. Parking lots normally do sit upon the retention ponds so that is one question I would ask. I think we are kind of getting off track saying that it is because of the government. What he is saying is, if you listen to him, is that that is the only place you can put the retention area. It is outside of the wetlands.

The concerns they have is drainage from the back of the lots. If it was wetlands, that it is a low area, so they are draining their lots ... are drained to the back. If you fill it in where do you think the water is going to go? It is going to go back on the landowners and it is going to create a problem. I know that he can only go up to 5 feet but if it is 6 feet above the ground that is existing out there now the back yards of those residences where do you think the water is going to go? I mean it is simple.

So we are asking about the orientation. That is why you hear it over and over. What are we doing about the orientation? Why are our properties fronted once by a parking lot that serves the Town ... then we are being sandwiched by parking lots. That is the problem.

Traffic impact. I think we are in agreement we would like to see a fence or a barrier up there so we can stop inflow. Do you know what the traffic impact is going to be like on a Saturday and Sunday? People cutting in and out. You are going to create a dangerous situation for the folks that are parking in that parking lot and utilizing the public beach.

I'll get back to the water runoff. The lowest point on that site plan is the southeast corner. The southeast corner is where it backs up to the residences. You have an overflow of your water where is it going to back up? It is going to back up on the residences. Again, the water is being pushed off. The bottom of the retention pond you are talking about. Elevation is 9. Most of those yards around there are at a 9 elevation so that retention pond underneath the ground fills up, filtrates ... where is it going to leach? It is going to leach to its lowest part. You think it is going to leach back out to the 17 or 19 grading out there on the road? No. It is going to leach back into the people's back yards. What is that going to do to their septic tanks? Has anybody looked at that?

We are running into issues and I wish we had had an opportunity to ask early in the planning stages. I feel like now they are playing catch up and I feel like they are putting your backs up against the wall to make a decision that could impact your residents along there that have been paying their property taxes and I know the owner has paid his property taxes for the time that he has owned it.

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Has a hydrology impact study been done for the residents who live along there? I have not heard anybody speak about a hydrology impact study.

And probably the last thing is, is this something that can be continued? That you can continue until we get these answers resolved? I still think you have a lot of lingering questions out there and I would ask for a continuance until we can get these issues resolved. I would like to ask our residents too, for those that support the idea of making a continuance, to stand up. I think on short notice, especially over the holidays, to try and come out and say look this is impacting us and we are being impacted in a negative way.

Those are some of the concerns I have. I have been down here for the last 7 years and you have talked about what you are going to do from the parking lot impact. The rainwater. We get half an inch of rain and our streets flood. I know he has designed for 11 inches but I am telling you if this thing fills up it is going to leach and it is going to run to its lowest part which is in these folks back yard. So those are the questions I have and I wish you the best of luck in making your decision.

4. Betty Lou Riffe, 5218 Lindbergh Avenue, Kitty Hawk, NC: *I am kind of in a Catch 22 situation. I worked with Dr. Wilkinson for 12 years and I love him dearly. Wilk kidded me for those 12 years that he was going to put a crematorium in there.*

My house is right next to Outer Banks Furniture on a lot and a half. Our taxes are \$2,644. I got a parking lot right here and I am going to have a parking lot right there.

Hurricane Sandy killed us. Blew a hole in the wall through the stairwell. We took on 3 feet of water, our power boxes were pulled and we sat there for 2 weeks.

I love Wilk. Don't get me wrong, I love him and I do not begrudge him for wanting to build a building there but I do not want to look at the back of his building. I converse with Evonne his practice manager almost daily.

I don't want to pay \$2,644 a year in taxes and look at a bunch more lights. He saved my trees. I begged them because I did not want to look at the medical center that was already existing over there.

We have a pool and we thought we were going to put it back in the rental program this year. So not only will we have construction ... and as a renter moving in am I going to want to hear bang, bang, bang, bang, bang, bang, all day long? No I am not going to want to hear that. That is what it will be like.

And I just have a problem ... I don't begrudge him putting the building in but yes can we flip it around such as was said? I wish we had had more notice about things and that was with me conversing with the individuals and being relatively on top of it.

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Him saving my trees. He knows I have a big mouth and he knows he was probably wise in saving my trees because I probably would have been in there sooner.

I'm not being mean I'm just being very concerned. That water ... my septic is in my back yard, right? My pool is elevated by 2 feet but my septic is right there. My kid used to dig in the yard and reach water at 3 feet so where is all that water going to go? It is going to go right back to us. We live permanently in that home since we had it in the rental program and now we are back out of the rental program and have lived there probably nine years consistently. When it rains it comes up that road and it will stop about, just beyond Jack's house, a little bit further north than that. And then it doesn't usually reach our house until a bigger flood type of thing. We have an empty lot across the street from us. We have a parking lot there and he's got the parking lot there and it's like Jack said we are going to be surrounded by concrete right? I understand it is zoned commercial. I get that. I'm sure there's some zoning as far as the retention wall or whatever.

I am in agreement with the rest of the individuals here. I think it should be a continued and some kind of a better absorption to go that way and the water does not go in that lot which he owns it goes up hill slightly from our property already on its own. This wetlands they are talking about. It isn't a wetland. It's a little tiny puddle in there and now that they've dug all the trees out around ... and the water is just a tiny little bit right there. It's not extensive, it's minor, it is a little hole. I have walked all through there with all the trees down and when the trees were all there.

I don't know. I just think a continuance would be a wise thing and I don't want to begrudge Wilk building his building. I do not want to look at the back of his building. I do not want a whole bunch of lights shining in our property that we're trying to sustain an income with a rental home and other folks have privately owned homes and some of the rental homes ... bunch of feral cats everywhere. Why don't they worry about the feral cats? I don't know. Sorry if I beat this to death for everybody but I just wanted to drive my point home. Thank you.

Perry: *Thank you. Does anyone else wish to speak?*

5. Jim Olcheski, 5121 Lindbergh Avenue, Kitty Hawk, NC: *Although my property is not adjacent to where this building would be going in, I am a couple of houses down, I understand everybody's drainage concerns. I am sure you all will do whatever is best. We can't halt progress and there are way worse things that could go in there than a medical center obviously. My concern is with the traffic if you have Byrd Street go all the way through. I do not think a gate is a good answer. I think similar to what was on Lillian Street where you had a barricade. It is highly visible and it can be removed if it has to be. The problem with the gate is they get left open or ... we have all seen the traffic back up on Lindbergh and Highway 12 in the summertime. I think definitely you should not have Byrd Street go through.*

There were no other speakers.

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MPT Garriss “so moved” to return to regular session. Councilman Bateman seconded and the motion was unanimous, 5-0.

Perry: Council, you have heard a lot. More than we usually get. I suggest we table this until the next meeting to give us all a chance to digest what we have heard tonight.

Garriss: I agree. I think the people here tonight have brought up some good questions and I would like to hear some answers and see if something can be done. Maybe the engineer can go back to work. I agree with tabling to the next meeting.

MPT Garriss made a motion to table this until the February 1st council meeting. Councilwoman McClean seconded the motion and it passed unanimously, 5-0.

Bateman: Just for clarity I would also like the engineer to look at what he has heard and see if there is any way to alleviate some of these concerns.

Perry: Folks, let's be honest. It is zoned the proper way and if it meets certain standards then there are things that we have to accept. Property rights do have a place so we will be considering that as well. We have listened to you. We have heard you and we will ask the engineer to do some more looking but in the end property rights have their place. We will have to take that into consideration.

b.) Conditional Use Permit: Shared parking agreement between Art's Place at 4624 N. Virginia Dare Tr., and the adjacent property, a proposed take-out/delivery pizza business to be located at 4622 North Virginia Dare Trail.

Bateman “so moved” go into public hearing. Councilman Pruitt seconded the motion and it passed unanimously, 5-0.

Town Clerk Morris administered the oath to Planning Director Testerman and to Mr. Hunt before he made his comments. The following staff report in the shaded area was reviewed with council.

Proposal

The applicant is requesting approval of a conditional use permit to establish a formal shared parking agreement between the existing commercial establishment, Art's Place, and the proposed Art's Firehouse Pizza. The proposed Art's Firehouse Pizza would occupy 1,000 square feet of the building located to the south of Art's Place and is to be used for a takeout/delivery pizza operation. As per Town parking standards the takeout/delivery business would require a total of eight (8) parking spaces (8 spaces per 1,000 square feet). The Town's parking standards for restaurants require one (1) space per 100 square feet of gross floor area therefore the existing Art's Place is required to have 9 parking spaces (883 square feet).

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Currently, between the two properties, there are 18 existing parking spaces which leaves a surplus of one (1) space when looking at the two uses. As the two parking lots are connected, and the buildings are no more than a few feet away from each other, safe pedestrian access from site to site is not an issue.

As shown on the site plan, parking spaces P2, P3 and P4 on 4622 N. Virginia Dare Trail are shorter than the rest, and shorter than is required by the ordinance. Those three parking spaces are partially in the right-of-way of N. Virginia Dare Trail. For new construction this would not be permitted, however, these spaces are existing nonconformities that have been used in the past as parking spaces and will likely continue to be used as parking spaces regardless of the outcome of the conditional use permit. It is staff's opinion that approval of the shared parking agreement would not increase the nonconformity on site, however, should a situation ever arise that NCDOT needed to widen N. Virginia Dare Trail at that particular location, it is feasible that those three parking spaces could be lost.

The site currently contains no ADA compliant parking. As part of the request, the applicant is proposing to install one ADA compliant space to serve both locations. ADA parking requirements call for one (1) ADA compliant space for parking lots that range between 1-25 spaces.

Conditional Use Standards

The following conditions of approval have been submitted by the applicant:

1. Four of the surplus parking spaces shall be shared by Art's Firehouse Pizza.

The following conditions of approval are being recommended by staff:

1. Parking areas in either location must be used strictly for parking and cannot be blocked off for games.
2. If any other portion of the southern building, 4622 N. Virginia Dare, is to be utilized for any use, additional parking will be required and must be addressed at that time.
3. An as-built survey must be submitted to the Town.

Background Information

The subject properties are 10,000 square feet each in size and presently zoned Beach Commercial (BC-1).

The abutting properties to the north, south, and east are also zoned BC-1 and contain Wink's to the north, the Saltaire Cottages to the south, and a residential use and vacant lot to the west. The abutting properties to the east are zoned BR-1 and contain one residential unit and a vacant lot.

Staff Analysis

Proposed Use: Shared parking.

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Parking: As discussed above, the applicant proposes four (4) parking spaces on site, and with CUP approval, would be allowed the use of four (4) additional spaces that currently exist on the Art's Place site.

Land Use Plan

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the subject property as a "Commercial, Shopping, and Working Area" on the future land use map. As part of its review, the Planning Board is asked to make a determination that the proposed agreement is consistent with the land use plan.

Conditional Use Findings

Per the standards of Section 42-99(b)(7), in order to approve this application, the Town Council must make findings that the proposed conditional use:

a. does not materially endanger the public health or safety,

Creation of a formal parking agreement between the two operations would not be any danger to public health or safety, provided condition 1 is adhered to.

b. does meet all required conditions and specifications,

The proposed agreement has been designed to comply with all applicable standards of the Town Code.

c. will not substantially injure the value of adjoining property or be a public nuisance, and

There is no evidence to indicate that approval of the shared parking agreement would injure adjoining property values or be a public nuisance.

d. will be in harmony with the area in which it is located and be in general conformity with the comprehensive plan.

The proposed shared parking agreement has no impact on land use and is not applicable to the comprehensive plan.

Planning Board Recommendation

At its November 12, 2015 meeting, the Planning Board unanimously recommended approval, with the conditions listed in the staff report, as well as conditions that a) parking bumpers be installed to delineate spaces, and 2) No parking signs be placed on the south side of the building to the north of Art's Place (same ownership). This is intended to direct parking into the actual parking spaces, and deter parallel parking along the building to the north.

Perry: *I think you alluded to it but I want to nail it down. The parking that is being added basically is halfway on State owned property.*

Testerman: *The parking they are asking to be included in the shared parking agreement is parking that is already there.*

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Perry: *I understand but that is not Town sanctioned parking and what I care about is the Town sanctioning parking on non-entity owned property. The property they want included in this is partially or wholly owned by the State of North Carolina?*

Testerman: *It looks like the back ends of three parking spaces by our Town standards would be in the DOT right-of-way.*

Perry: *I don't know if you remember it or not, you might not have been here, but basically the same situation came up on a site plan up by Islander Flags. They were able to do something else but we did not approve that particular part of the parking because it was Town sanctioning parking on public property and I have a problem with that.*

1. David Hunt, 4816 Lindbergh Avenue, Kitty Hawk, NC: *I live almost directly behind this property. The parking issue seems to be the Town's only concern. I don't really have any comment on that but I definitely am in favor of the site plan. I think that particular area could use a little more revitalization and I think the owners of Art's have done a good job of sprucing that building up. I think the town should always try to be pro-business as much as possible. Anybody that wants to expand or create commerce should be encouraged to and I hope the Town can work out the parking with the State.*

With no one else wishing to speak, **MPT Garriss made a motion to go back in regular session. Councilman Bateman seconded and it was unanimous, 5-0.**

Bateman: *Those 3 parking spaces have been there since I was a little kid. I understand your concern and I agree but I don't think we should penalize them just because part of the parking is in the right-of-way. It was a bookstore when Wink had it years ago and those 3 parking spaces were right there.*

Pruitt: *Your concerns are, are we doing something that is going against the code or not legal. I wasn't here with the Islander Flags so explain to me a little better why there would be a problem by letting them continue to use a non-conforming parking place.*

Perry: *It is not a matter of continuing to let them use it. It's a matter of the Town's sanctioning the use of it in the sense that we are setting a precedent for others to ask the same thing.*

Garriss: *And it is not ours.*

Perry: *It is not ours and it is not theirs.*

McClean: *How much of the parking spaces are on DOT property? You said the back end. Are we talking one foot, two feet, will a car fit there without hanging over?*

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Testerman: *I believe it is 3 or 4 feet of the back end. From the property line to the front edge of the parking space it is probably 16 feet.*

Bateman: *Do they have to have those 3 parking spaces to make this work?*

Testerman: *I think it is 2 of the 3.*

Bateman: *If it's 2 of the 3 couldn't you turn those parking spaces into parallel parking?*

Testerman: *I don't think you would be able to get the 2 parallel parking there because our parallel parking spaces have to be 22 feet long and 10 feet wide. You could fit one parallel space in there and it would come to 16 total spaces which would be one shy of the need for a restaurant and the take out delivery.*

McClean: *Could we condition them to have signage that compact cars only or no vans or no trucks and make an exception for the short parking places?*

Perry: *Always think about how you are going to enforce it.*

Bateman: *My next question would be of the attorney. What are we doing here by doing this?*

Michael: *We can approve it but DOT could come take it away from them at any time. It has been used for a very long time apparently and it's possible they could go to DOT and get permission but your approval doesn't mean that DOT has approved it.*

Pruitt: *Could we be in a situation of putting the Town in the wrong by permitting this?*

Michael: *You can't permit it on DOT's right-of-way unless they let it happen. DOT can come and tell them to stop parking there any time they want.*

Pruitt: *If they were to get in touch and DOT did not have a problem would that somewhat solve this with other councilmembers?*

Perry: *If the majority of you vote for it, it is not a problem.*

Pruitt: *I don't want to vote for something and have them think they've got it made in the shade and then the State comes by soon as they put a sign up and says they were never notified and they don't want parking there.*

Perry: *You have been asked to make a decision on it tonight. If you vote on it and DOT comes and takes it away from them that's between them and DOT, right? Do I hear a motion?*

Councilman Bateman made a motion to grant approval of the proposed Conditional Use Permit to allow the establishment of a formal shared parking agreement between 4622 and 4624 North Virginia Dare Trail subject to conditions included in the staff report as recommended by the Planning Board. The Town Council finds that the proposed use is consistent with the Town's adopted CAMA Land Use Plan and finds it to be in the public's best interest. MPT Garriss seconded the motion and it passed 4-1. Mayor Perry voted no.

c.) Text Amendment: Staff initiated proposed text amendment to insert language into the Zoning Ordinance that would allow the Town to utilize the concept of "conditional zoning."

Councilman Bateman made a motion to go into public hearing. The motion was seconded by Councilwoman McClean seconded the motion and it passed unanimously, 5-0.

Planning Director Testerman presented the following staff report in the shaded gray area.

In 2013 the Town began investigating a practice known as Conditional Zoning. To my knowledge the previous Planner presented information to the Planning Board, but it never made it to the Town Council. The concept of "conditional zoning" gives the Town the ability to approve a rezoning with certain limitations or conditions. Staff has been directed to review the concept once again. I have attached the same documentation that was provided in 2013 by the previous Planning Director with the addition of two "real world" examples.

The attached information includes:

Draft conditional zoning language

Portion of a PowerPoint presentation outlining the general concepts of conditional zoning.

An article by David Owens of the UNC School of Government concerning the use of conditional zoning and other related concepts.

Copy of answers emailed to initial questions posed by Town Council members

Examples of conditional zoning applications that other localities have reviewed.

Conditional zoning is simply a rezoning with conditions attached. These conditions must be mutually agreed upon by both the Town and the applicant and can put in place more strict regulations than the underlying zoning district. The use of conditional zoning could be particularly useful in transition areas, such as where a commercial zone ends and a residential zone begins. For example, suppose the lot owner of the residential lot abutting the commercial district wishes to rezone to commercial. With conditional zoning the uses could be restricted to a less intense use, such as office space. The reasoning would be that with residential lots on the other side of the subject parcel a less intense commercial use may be desired to transition into the residential district, as opposed to allowing any use currently allowed within the commercial district. Any conditions imposed on the property would run with the land and would require a public hearing to amend any approved conditions. Utilizing conditional zoning provides flexibility that would not be possible under conventional zoning districts. It can also address specific concerns, mitigate potential negative impacts, and soften transitions between residential and non-residential land uses.

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Conditional zoning increases certainty about the type of development that will occur on a site, as the approved site plan and/or development standards cannot be modified without rezoning approval by the Town Council.

The concern about “spot zoning” with regards to conditional zoning should be no greater than when dealing with traditional rezoning applications. Each application would be reviewed on a case by case basis. During that review, staff, the Planning Board and Town Council will be reviewing to ensure that the requested zoning change would be compatible and consistent with existing zoning.

With regards to the two examples provided the first is an application to rezone a residential area in Wilmington to a conditionally zoned “Community Business” district. As you can see on page PH2-11 of the staff report, after review of the proposal, and negotiations with the applicant, the planning staff and Planning Commission recommended conditional approval, with a list of conditions to be met. Examples of conditions that may go beyond a traditional rezoning request include: existing protected trees not impacted by site improvements shall be preserved or mitigated; permitted uses are restricted to shopping center uses and a two-story office and retail building; the proposed building will have see-through windows along a certain street front to avoid the appearance of blank walls.

The second example is from the City of Greensboro and involves properties that were already conditionally rezoned and they are seeking a new conditional rezoning to amend existing conditions. All properties are currently “CD-RM-12”, two of the properties had the following conditions:

1. Building materials will consist of not less than 50% brick, stone and/or other masonry building materials.
2. Density shall be limited to a maximum of 130 dwelling units.
3. Buildings shall not exceed 2 stories in height.
4. A six foot tall opaque fence shall be installed, where permitted, along the northern property line, parallel to Silver Creek Drive. Where the fence impacts required tree conservation areas it must be installed by hand with non-motorized equipment.

The other two properties that are a part of the application had the following existing conditions:

1. Building materials will consist of not less than 50% brick, stone and/or other masonry building materials.
2. Density shall be limited to a maximum of 80 dwelling units.
3. Buildings shall not exceed 2 stories in height.

The current application is seeking to change the conditions on all four properties to the following:

1. Building materials will consist of not less than 50% brick, stone and/or other masonry building materials.
2. Buildings shall not exceed 3 stories in height

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3. Tract A, consisting of addresses 3516-3520 Lewiston Rd., will have a maximum density of 80 dwelling units. Tract B, 3525 & 3527 Lewiston Rd., will have a maximum density of 128 dwelling units.

It appears as though during negotiations there was trade off regarding building height versus density. As previously noted, both the Town and the applicant have to agree on the conditions for a conditional zoning, so it would seem that middle ground was found in the 3 stories and density of 80 and 128 dwelling units.

Todd Okolichany, Planning Director for Asheville, NC expressed to me that recently they have encouraged applicants to prepare and submit their own list of potential conditions to be considered by City Council in addition to the staffs own list of conditions that they feel would be important to consider.

Ron Satterfield, Assistant Planning Director with the City of Wilmington also noted that their elected officials seem to prefer conditional zoning versus traditional rezoning because they have an opportunity to see a site plan, discuss particular uses, and condition the approval. He did note that because each parcel zoned CD is, in essence, a separate zoning district and has its own set of zoning regulations, that staff has found that it can be cumbersome in some instances.

Mr. Satterfield also provided the following link, which takes you to the video archives of Wilmington's meetings, if you would like to view a discussion on a conditional zoning application. The attached example can be found in the October 6 City Council meeting.

http://www.wilmingtonnc.gov/city_manager/GTV8/meeting_video_audio_archive/city_council_archive.aspx

Planning Board Recommendation

At its November 12, 2015 meeting, the Planning Board unanimously recommended approval of the proposed text amendment to add language into the Kitty Hawk Zoning Ordinance that would allow the practice of conditional zoning.

Pruitt: *Do we have anywhere in Kitty Hawk that has the example you first showed?*

Testerman: *Not that I am aware of.*

Pruitt: *I did not think we did. Most likely what we would probably see is the one that's on the corner that is BR-1 and across the street that could be BC-1. I see where, as you say, it makes for a smoother transition but it seems to me we will just be pushing the transition further down the street. If someone all of a sudden gets to go from BR-1 to BC-1 then the next guy is going to say how about me? Then the next guy and then the next thing you know we are conditionally looking at every house that wants to turn into a medical building. Could that be a scenario?*

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Testerman: *Yes.*

Pruitt: *So once we start conditionally zoning ... I mean are we talking about just one lot or conditionally zoning the whole town?*

Testerman: *It would most likely just be done lot by lot because I don't think the town will initiate any massive re-zonings. It would all be based on applications.*

McClean: *I had the chance to look at this for quite a while and if you consider it would be more of an opportunity ... it gives us the opportunity, if it's appropriate for the location, to zone a particular place and not have to worry that it's going to also happen over on the other end of a commercial district where it may not be appropriate.*

Hearing no other questions or comments from council or the audience Mayor Perry asked for a motion to return to regular session.

Councilman Bateman made a motion and Councilwoman McClean seconded, to return to regular session. The vote was unanimous, 5-0.

Pruitt: *If I'm hearing this right we could have a council that is really pro changing the Outer Banks, or Kitty Hawk in particular, and they could pick and choose, with the right applicant, to put commercial businesses in every zone in Kitty Hawk if the council, staff and property owner agree. That's what I took out of this.*

Perry: *I tend to agree with what you're saying.*

Pruitt: *We could probably have a 7-11 in Kitty Hawk Village.*

Perry: *It's possible.*

Pruitt: *With the wrong council and the wrong applicant it seems to me we could end up with businesses in places that were never intended.*

Perry: *Let me give you my take on it. Is this a benefit or not? I looked at Kitty Hawk and the way Kitty Hawk is developed. It's not developed as some town that was pre-planned or scoped out. It was developed over a long period of time with all kinds of grandfathered spot zoning already in place. Example: concrete plants in the middle of a residential area and heavy concrete trucks using roads that were never intended to be used for it. Asphalt plants.*

We had an issue where we were writing a regulation not to allow internet gambling and what we learned was if we had allowed internet gambling then all the places that are already zoned, because they were hotels and motels before but are now residential, suddenly that would have allowed some of those houses to become internet gambling sites. This kind of has the same flavor

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to me. Only it is conditional with restrictions but it is still spot zoning. Kitty Hawk is spot zoned already all over the place and I do not want to add any more to it.

Those are my thoughts and I am not inclined to approve this for that reason. If we were a different community, had developed in a different way, I would look at it in a different way, but we are not. We are not a big community. We are small and all I see is adding more conflict if we allow things like this to occur.

Hearing no further comments or questions, **Councilman Bateman made a motion to deny approval of the proposed text amendment to add Subsection 21-201 to the Kitty Hawk Town Code establishing the use of conditional zoning. MPT Garriss provided a second and it passed unanimously, 5-0.**

8. PLANNING

a.) Site Plan Review/Revised site plan application for East Coast Game Rooms to build an accessory storage warehouse in the rear of the property at 3928 North Croatan Highway.

Planning Director Testerman reviewed the proposed site plan with council. The staff report is in the shaded area.

Proposal

The applicant has submitted a site plan, floor plans, and building elevation drawings in requesting approval for the construction of a new storage building as an accessory use to the existing furniture store on the property at 3928 N. Croatan Highway. The building is proposed to be located in the rear of the existing showroom.

The building is proposed to be approximately 50 feet in depth and 100 feet in length (5,000 square feet). The building would be one story and approximately twenty (20) feet in height. The warehouse would house excess furniture that is unable to fit within the existing building. The proposal calls for a metal building on a concrete slab.

Section 42-525 of the zoning ordinance states that “metal buildings which are visible from Croatan Highway or N. Virginia Dare Trail will be approved only if the fronts, sides, and back are architecturally treated with nonmetal facades. Existing or proposed vegetated or material buffers, screens or fences which obstruct the visibility of the building from adjacent property owners shall not be an acceptable alternative to providing a nonmetal façade. The planning board must approve the method in which a building is architecturally treated.” It goes on to state that the town may approve metal buildings which are not visible from Croatan Highway or N. Virginia Dare Trail.

The site currently has ingress and egress from one existing 24' wide drive off of N. Croatan Highway. In addition to the new building there will be seven (7) new parking spaces added at the

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warehouse including one handicapped space. The new internal traffic flow would also create a safer means for delivery trucks, who currently have to pull past the access drive, while still on N. Croatan, then reverse into the parking lot, and around the lot to the loading dock. The existing dumpster pad would be relocated from its current location to directly behind the existing showroom.

Background Information

The subject property is presently zoned Beach Commercial (BC-2). The property presently contains a furniture store with driveway access from N. Croatan Highway.

The adjoining property to the south is zoned Beach Commercial (BC-2) and contains La Fogata Mexican Restaurant. The abutting property to the west is also owned by La Fogata Restaurant, of a strip approximately six (6) feet in width, directly abutting the subject parcel is zoned BC-2, the remainder is zoned BR-2. The two adjoining parcels to the north are both zoned BC-2, the parcel fronting 158 is currently a vacant lot, while the other houses a multi-tenant commercial building. Across Croatan Highway to the east is Sanya sushi bar, and a portion of the Kitty Hawk RV Park, both zoned BC-1.

The subject property is located entirely within an X flood zone, which means that the new building is not required to meet any particular flood elevation.

Staff Analysis

Proposed Use: Storage warehouse as an accessory use to the existing furniture store. Permitted as a uses of right in the BC-1 district.

Lot Area: The subject parcel is 55,741 square feet (1.28acres). This size exceeds the minimum lot size (15,000 square feet) and is less than the maximum lot size (7acres) for the BC-2 district.

Lot Coverage: Total existing lot coverage is 17,844 square feet (32%). The proposed lot coverage, with the new building, parking and drive aisles would be 30,663 square feet (55%). This figure complies with the maximum allowable lot coverage of 30,756 square feet (60%).

Open Space: 45% of the parcel would be considered open space. This percentage exceeds the minimum requirement of 35%.

Building Height: The overall height of the one-story building is proposed to be approximately twenty (20) feet in height. The roofline of the proposed building would comply with maximum height requirements of thirty-five feet (35') from original grade.

Building Setbacks:

	<u>Proposed</u>	<u>Required</u>
Front	65 feet	15 feet
Rear	55 feet	20 feet
Sides	20.5 feet (south)	10 feet
	21 feet (north)	10 feet

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All minimum building setback requirements are met by the proposal.

Access: The property will continue to utilize the existing 24' wide ingress and egress drive off of N. Croatan Highway. No changes are proposed.

Parking:

The minimum number of parking spaces is calculated below:

<u>Parking Calculations</u>	<u># Required Spaces</u>
Retail furniture store 1/300sq. ft.	18.73 spaces
Accessory warehouse	2
2 spaces/each 3 employees on largest shift	
TOTAL	20.73 spaces (fraction rounded up to 21 spaces)
The site plan contains 25 parking spaces which meets the requirements for the proposed uses.	

Dumpster: A screened dumpster pad containing one dumpster would be relocated to an area immediately behind the existing furniture store.

Buffers: Abutting properties are all zoned BC-2. The BR-2 district begins approximately six feet westward of the property line of the subject property's border. Strict interpretation of the ordinance would not require a buffer, as they are required between commercial and residential districts, and that transition is on the adjacent property. If a buffer is desired, a Type A or B buffer would be appropriate.

Lighting: To date, no new exterior lighting plans have been discussed with staff. Should the applicant desire to place new lighting, a lighting plan will be required to be submitted, and will be reviewed and approved administratively, should it meet the requirements of Sec. 42-515

Signs: No new signage has been proposed at this time, if the applicant applies for new signage, it will be reviewed administratively.

Water Service: As requested by the fire department a new hydrant is being installed on the west side of N. Croatan Highway in the southeast corner of the subject parcel.

Wastewater Disposal: All wastewater will be treated via on-site septic. At the time this staff report was being drafted, the applicant had not provided a letter that the proposed layout and location are acceptable to the Dare County Department of Environmental Health. No building permits will be issued without Health Department approval.

Stormwater Plan: As the project would add more than 10,000 sq. ft. of built upon area a stormwater permit will be required prior to and building permits being issued.

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Land Use Plan

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the subject property as a "Commercial, Shopping, and Working Area" on the future Land Use Map. As part of its recommendation the Planning Board is asked to determine whether the proposed development is consistent with the goals and objectives outlined in the land use plan.

Planning Board Recommendation

The Planning Board reviewed the site plan at its December 17, 2015 meeting, and by unanimous vote, recommended approval of the site plan for East Coast Game Rooms at 3928 N. Croatan Highway. As part of their review, they determined that their opinion is that the intent of Section 42-525 was to restrict metal buildings along road frontage on Rtes. 158 and 12. Because the proposed building is set towards the rear of the lot, behind the existing building, the building should not be required to be architecturally treated with non-metal facades.

Bateman: *I disagree with the Planning Board. I think the façade should be there. The intent of the ordinance was to have any metal building that is visible from the roadway to have façade on the front, back and sides and if you ride by there this building is going to be visible from the roadway.*

Testerman: *That is how it is worded. It does not specify a distance from the roadway. Metal buildings which are visible.*

Pruitt: *That was my question. In your planning experience do you believe this is going to be visible from by bypass?*

Testerman: *Going in different directions it would be less visible than others but it would be visible.*

Pruitt: *So Section 42-525 would have to be amended as presented with the Planning Board's recommendation.*

Testerman: *Right.*

Perry: *And that was the intent? You were on the Planning Board when that was done right?*

Bateman: *Right.*

Perry: *It was the intent if it is visible. I have had some people complain about the strip mall on Sand Dune Drive and about the metal building near there that is used for laundry. You can see them.*

Bateman: *They built one before they changed the ordinance. Outer Banks T's was made to do it.*

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Bateman: *I rode by and went back and forth and it is visible. My point is it is not fair to allow the individual down the street that we made façade his whole building and then let someone come and not do it. The intent was if you can see it from the street for it to be done.*

Hearing no further comments or questions, **Councilman Pruitt made a motion to grant approval of the revised site plan for East Coast Game Rooms to include an accessory warehouse building architecturally treated with non-metal façade at 3928 North Croatan Highway. Councilwoman McClean seconded the motion and it passed unanimously, 5-0.**

b.) Site Plan Review/Revised site plan application for Atlantic Dentistry and Sweet Frog's to build additions to both Atlantic Dentistry and Sweet Frog's, creating a common wall and parking/drive aisle improvements.

**Removed from the agenda at the applicant's request.*

c.) Call for Public Hearing/Text Amendment: Application for a text amendment that would allow vehicle rentals in the BC-2 district under certain conditions.

MPT Garriss made a motion to set a public hearing for the Town Council meeting on February 1, 2016 regarding the proposed text amendment to add vehicle rentals as a conditional use in the BC-2 zoning district. Councilman Pruitt seconded the motion and it passed unanimously, 5-0.

d.) Call for Public Hearing/Conditional Use Permit: Application for a conditional use permit to allow a vehicle rental business at 500 Sand Dune Dr., Units A & B.

Councilwoman McClean made a motion, seconded by MPT Garriss, to set a public hearing at the Town Council on February 1, 2016 to consider a Conditional Use Permit application to allow a vehicle rental business at 500 Sand Dune Drive until A and B.

e.) Call for Public Hearing/Conditional Use Permit: Shared parking agreement between the proposed Wendy's location at 5430 N. Croatan Hwy., and the adjacent Shoreside Shopping Center, located at 5400 N. Croatan Hwy.

Councilman Bateman made a motion to set a public hearing for at the Town Council meeting on February 1, 2016 to consider a conditional use Permit application to allow a formal shared parking agreement between 5430 North Croatan Highway and 5400 North Croatan Highway. Councilman Pruitt seconded and the motion passed unanimously, 5-0.

f.) Call for Public Hearing/Conditional Use Permit: Application to issue a formal approval of the existing sewage treatment plant located at 5400 N. Croatan Hwy, Shoreside Center, as well as approval for the proposed Wendy's to tie into the existing system.

Councilman Bateman made a motion, seconded by Councilwoman McClean, to set a public hearing at the Town Council meeting on February 1, 2016 to consider a Conditional Use Permit application to formally approve the existing sewage treatment plant and allow the proposed Wendy's restaurant to utilize the system at 5400 North Croatan Highway. Councilwoman Klutz seconded and the motion was unanimously approved, 5-0.

9. UNFINISHED BUSINESS

a.) Drainage Improvements in the Rabbit Hollow Area

Public Works Director Midgett: *This is a small drainage project that should be put in to help capture water coming off of the roadway instead of it rolling down the driveways going onto the property and in the residences. At the October meeting you asked me to get a signed agreements from the property owners and at this time we have two signed ones. The other two have issues with the wording of the consent agreement. They have all been notified and they all say they are okay with the project it is just the wording of the agreement that they do not agree with.*

Perry: *All work will be done in the town owned right-of-way?*

Midgett: *Yes and it really is an extension of an existing system that is already there.*

Perry: *I understand the engineer could be present to help supervise and make sure we stay where we need to be?*

Midgett: *Yes sir.*

Perry: *Steve have we met enough legal requirements in notification and such that we are on safe legal ground?*

Michael: *Yes.*

Bateman: *We are going to cut driveways. How about if we cut sprinkler systems?*

Michael: *That is why we wanted the consent agreements. If we cut one we will fix it. We just did not want to have issues later on after the project is completed.*

Perry: *The bottom line is if we do something then we are liable. Always keep it on Town right-of-way and if the engineer is going to help Willie supervise to make sure the contractor does not get off base we need to do this.*

Stating the need for this is not in question and just trying to make sure every duck is in its right row, **Mayor Perry made a motion that we direct the public works director to proceed with construction of the proposed drainage project for the Rabbit Hollow area at an estimated cost not to exceed \$26,000. The motion was seconded by MPT Garriss and it passed unanimously, 5-0.**

10. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER

Manager Stewart thanked the governing body for giving him the opportunity to serve as the manager and he looks forward to working with them, staff and the residents of Kitty Hawk. He also thanked staff for the warm welcome he received. He noted his wife is from the area and the plan is to stay for a while, at least until his children finish high school.

11. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY

a.) Easement Update/Next Steps Under Council Direction

Michael: *I am going to give you an update on where we are and where we need to be looking towards going on the beach nourishment project. The clerk told me as of today we still have 57 properties we do not have easements for. We will go through another round of contacting those folks and seeing if we can get some more easements.*

The next steps will be to notify those folks with a 30 day notice that we are going to condemn the easements on their property. There is a process of sending certified letters, telling them what we are going to do, telling them what the estimated value of what we are taking is and describing exactly the easements that we are taking. After that 30 days we have to tell them we are going to file a lawsuit to condemn the easement and after the 30 days we give them a date that we are going to file the lawsuit. It is sort of a drop dead date that if we do not have something by then we are going to file this lawsuit.

We will prepare a lawsuit, file it, and also file a memorandum of action in the clerk's office because when you do this you get immediate title to the property. This is a quick take procedure and is one of the special condemnations set out in the statutes. Kitty Hawk, Kill Devil Hills and Duck all have the benefit of being able to use this procedure. You will have to pay the filing fees and make a deposit with the court for whatever the appraiser considers the value of that easement to be. We do not know what that is going to be but we think it's going to be a fairly low number.

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The owner has a right to defend the action and ask for a hearing on what is fair market value for whatever it is that we are taking. They also have the right to apply for an injunction to stop our condemnation. Their chance of getting an injunction are pretty minimal because they cannot really show irreparable harm. There are still 18 condemnation cases from Nags Head pending and we have 57 outstanding right now.

Perry: *We are not quick taking the whole property. Whatever part of easement is needed to pump sand on the beach.*

Michael: *That is correct.*

Perry: *Once that sand is pumped on the beach who owns the piece we took?*

Michael: *Any land that is created above the mean high water mark belongs to the State.*

Perry: *Once that happens, we take the easement, we pump the sand and if that is at the back of a house ...*

Michael: *That is not above the mean high water mark. The mean high water mark is an imaginary line where the high tide goes over an average of 18.6 years. That is how the U.S. Supreme Court decided to define it. It is not very helpful but that is what they did and that line is not going to move. Everything on the east side of that line will belong to the State and everything on the west side of that line still belongs to the landowner. That is their land, we are not taking it. There are public trust rights in that dry sand beach that is not ownership but the public has a right to use it and we are not taking that.*

Perry: *The line that you are talking about is established by the engineer doing the beach nourishment.*

Michael: *That is correct. They are going to show us what the mean high water mark is and that is where the property line is going to be.*

Perry: *If we pumped sand and we went west of that line ...*

Michael: *We are putting sand on private property but it is public trust property. The Court of Appeals recently rendered a decision which has delineated all that and cleaned it up a lot. It is a really good decision that came out.*

Perry: *For the people that are listening and watching it is public trust versus private property.*

Michael: *That is correct. Even though people may own the dry sand beach, because it's above the mean high water mark and is the beach and has been used in perpetuity by the public, it is subject to public trust rights and the public has a right to go on that property, access and use it.*

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Perry: *I know that's a lot for you to absorb but it's important that you do and we get that to the public.*

McClean: *A couple hundred people have already signed the agreements and they basically are agreeing to the same thing happening to the property that is going to happen to the 57 that have not signed.*

Michael: *Correct.*

McClean: *And the 57 that have not signed does it impact any of their houses?*

Michael: *Does what impact their houses?*

McClean: *The easement does not impact their house. It just impacts an area between their house and the ocean.*

Perry: *Right. We cannot pump sand under somebody's house and we are not going to pump sand under houses.*

Michael: *Our work will be east of the structures.*

McClean: *Some of the people who do not sign may look at their property and say there's more sand here and that's the only difference they are going to see?*

Perry: *They will not own it.*

McClean: *Right. But if they did not know where their property line was and didn't really care then nothing would have changed.*

Pruitt: *Their beach property in front of their house is going to increase once the sand is put there but they are not going to be able to do anything ... no matter how big the beach gets. They are going to say look at all this beach can I put a barn out there? But they can't because it is going to be State owned.*

Perry: *Once it goes east of whatever line the engineer establishes it will not be their land. And public trust is different than private property. What direction do we need to give you tonight?*

Michael: *You need to tell us to go ahead and get up with an appraiser to try and get some idea of how much money we are talking about having to deposit for these easements. You need to tell us to go ahead and start contacting these folks with a letter saying we did not get your easement and we would like for you to send it in. If it comes from us this time instead of the Town maybe they will mail it in.*

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Saying the letter needs esquire behind it, **Mayor Perry made a motion to direct the legal team to do all the things he said needed doing. Councilman Pruitt seconded and the motion passed unanimously, 5-0.**

Michael: *When we come back in February that is when we will be saying it is time for you to tell us to start the proceedings.*

12. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL

a.) Welcome to Town Manager Stewart

The councilmembers welcomed Manager Stewart to Kitty Hawk and MPT Garriss noted he is happy to know his children are very young so he should be here for a while.

b.) Albemarle Rural Planning Organization Technical Coordinating Committee

Mayor Perry moved to appoint Town Manager Andy Stewart to the Albemarle Rural Planning Organization Technical Coordinating Committee also known as TCC. MPT Garriss seconded the motion and it passed unanimously, 5-0.

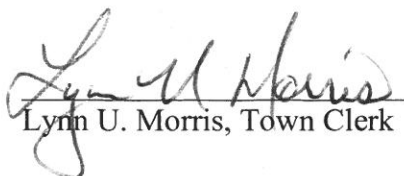
13. PUBLIC COMMENT

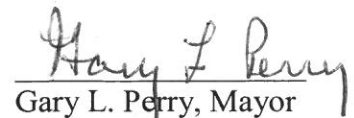
There were no further public comments.

14. ADJOURN

Councilman Bateman made a motion, seconded by MPT Garriss, to adjourn the meeting. The vote was unanimous, 5-0. Time was 8:06 p.m.

These minutes were approved at the February 1, 2016 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor