Kitty Hawk Planning Board

Meeting Minutes

October 15, 2015 – 6:00pm

Kitty Hawk Municipal Building

**AGENDA**

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes: September 17, 2015
4. Administrative Report:
5. Town Council Action October 5, 2015 Meeting
6. Conditional Use Permit:
7. Fitness Center in BC-1; 4708 N. Croatan Highway
8. Shared Parking, Wendy’s; 5430 N. Croatan Highway
9. Site Plan Review:
10. Wendy’s. Site Plan for 5430 N. Croatan Highway
11. Atlantic Dentistry. Continued Discussion on the Site Plan Amendments
12. Text Amendment:
13. Conditional Zoning. The Board to review and discuss the concept of Conditional Zoning.
14. Comments:
15. Chairwoman McLean
16. Planning Board Members
17. Town Attorney
18. Planning Director
19. Public Comment
20. Adjourn

* **CALL TO ORDER/ATTENDANCE:** Chairwoman McLean called the meeting of the Kitty Hawk Planning Board to order at 6:00pm on October 15, 2015.

**PLANNING BOARD MEMBERS PRESENT:** Lynne McClean, Chairwoman; John Richeson, Vice-Chairman; Dylan Tillett, Member; Jim Geraghty, Alternate; Gary Muir, Alternate.

**ABSENT:** Bryan Parker, Member. Due to the absence of Mr. Parker, Chairwoman McClean asked Mr. Geraghty to vote on the issues at the Board Meeting.

**STAFF PRESENT:** Rob Testerman, Planning Director; Steve Michael, Town Attorney.

* **AGENDA:** Hearing no changes to the Agenda as presented, Chairwoman McClean declared the Agenda approved.
* **APPROVAL OF MINUTES:** September 17, 2015. Hearing no changes to the Minutes as presented, Chairwoman McClean declared the Minutes approved.
* **ADMINISTRATIVE REPORT:** Town Council Action from the October 5, 2015 Meeting.
* The Council has scheduled a public hearing for the medical office CUP at 5107 N. Croatan Hwy for November 2, 2015.
* **CONDITIONAL USE PERMIT:**

1. FITNESS Center in BC-1. 4708 N. Croatan Highway.

**PROPOSAL**

The Applicant is requesting approval of a Conditional Use Permit to locate a fitness center in the existing building at 4708 N. Croatan Highway. Fitness centers are permitted in the BC-1 district with a Conditional Use Permit, provided that:

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1. No promotional sales or services shall be visible from the outside of the building.
2. The building shall be designed so that any noise will be contained within the building.
3. All lighting shall meet section 42-515.
4. Any outdoor uses or facilities shall be set back or buffered so that no noise will go beyond the property.
5. Massage personnel shall be licensed by the state.

The Applicant proposes a personal training facility that would dedicate approximately 2,800 square feet to be a training area that will be used for strength training equipment, including machines, free weights and open space. The facility would employ 1-4 full-time personal trainers. The proposed operating hours will be from 6am-8pm, Monday-Saturday; 8am-5pm on Saturdays and closed on Sundays.

**BACKGROUND INFORMATION**

The subject property is presently zoned General Beach Commercial (BC**-**1)and currently houses a one-story building, formerly the NAPA Auto Parts Store. The original site plan of the building is approximately 3,500 square feet of which 2,800 square feet will be used as the training facility.

There may be renovations to the interior of the building but there are no modifications being proposed for the exterior of the building or the footprint. To the north of the property is a mixed-use residential/commercial building zoned BC-1. All other adjacent properties are various commercial uses, zoned BC-1.

**STAFF ANALYSIS:**

LOT AREA: The subject parcel is 20,000 square feet (0.46 acres) in size. The lot size meets the 15,000 square foot minimum as well as the 7’ acre maximum requirement.

LOT COVERAGE: The approved as-built shows the lot coverage to be 58%, since the time of the as-built, a small gravel area has been added in the rear of the building. The Staff measured the area and it was found to be approximately 380 square feet which would bring the total lot coverage to 59.9%.

BUILDING HEIGHT: The maximum height in the BC-1 district is thirty-five feet (35’) from the existing grade to the peak of the roof and the existing one-story building is well under the 35’ maximum.

BUILDING SETBACKS: All buildings and structures subject to setbacks were constructed to meet those setback requirements:

Setback Existing Required

Front 85 feet 15 feet

Rear 45 feet 20 feet

Sides 30 feet (south) 10 feet

20 feet (north) 10 feet

ACCESS: The subject property is currently served by one 20 foot wide ingress/egress drive off of N. Croatan Highway. No alterations are planned.

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Parking: Parking Calculations are as follows:

PARKING CALCULATIONS RATIO #REQUIRED SPACES

Fitness Center – one space

Per 150 sq. ft. of gross

Floor area 2800 sq ft/150 18.66

Existing conditions at the subject parcel have 14 paved parking spaces, including one (1) handicapped space. To the rear of the building, abutting the paved drive aisle there is existing gravel that has been used for parking in the past. Per the Staff Analysis, it was determined that there is sufficient space in the rear of the building to utilize the remaining five (5) parking spaces, provided the bin that is currently located there is either removed or relocated.

BUFFERS: No buffers are required for the proposed use.

LIGHTING: No proposal for changes to the lighting have been submitted, but, should the Applicant decide changes are necessary, a lighting plan would be reviewed administratively.

SIGNS: No sign applications have been received, but would also be reviewed administratively should any such applications be submitted.

STORMWATER MANAGEMENT: No land disturbance is occurring, as the site is using all existing features.

FLOOD ZONE: The entire subject property is located within an X flood zone which means that the building is not required to meet any particular flood elevations.

If the Board recommends approval of the Conditional Use Permit, the following suggested conditions of approval could be incorporated:

1. Trash bin located in the rear of the building to be removed.
2. Area in the rear of the building be designated for employee parking.

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 16a: Monitor and consider redevelopment l proposals for consistency with stated Town land use and development goals.

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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 uses:

1. Does not materially endanger the public health or safety,

* There is no evidence to suggest that allowing the use of this building for a fitness center would endanger public health or safety.

1. Does meet all required conditions and specifications,

* The existing building was constructed to meet all conditions and specifications; the new proposal includes no changes and will also meet all requirements.

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

* There is no evidence to suggest that the proposed use would injure the value of adjoining property, or be a public nuisance.

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

* The reuse is compatible with the surrounding zoning and commercial land uses.
* Per stated policies in the Town’s adopted use land use plan, the reuse of this business will be located on existing, commercially zoned properties.
* Planner Testerman then turned it over to the Board for any questions/comments
* Chairwoman McClean asked if any member of the Board had any questions/comments and Vice-Chairman Richeson stated that he sees on the plan a screened dumpster where the five (5) parking spaces in the rear are and Planner Testerman indicated that what is showing on the plan is where the bin is currently sitting and it is not a screened dumpster pad which can easily be relocated from that area to accommodate the parking. There are no improvements around the bin that would prevent the area to be easily converted to the parking spaces.
* Chairwoman McClean than asked for a Member of the Board to make a recommendation and Jim Geraghty made the following: ***“I recommend approval of the conditional use permit for the establishment of a fitness center located at 5107 N. Croatan Highway. The Board has found this proposal to be consistent with the Town’s adopted land use plan subject to the conditions that are set out in the Staff Report.”***
* Chairwoman McClean asked for a vote and all Members of the Board voted ‘aye’ and the recommendation was approved.
* 5.b **CONDITIONAL USE PERMIT: WENDY’S SHARED PARKING, 5430 N. Croatan Highway**
* Prior to any discussion on the Conditional Use Permit for Shared Parking at Wendy’s and the Site Plan Review (6.a), Member Tillett recused himself from participation due to the fact that he is employed by the Applicant’s engineer.
* Chairwoman McClean than asked Member Muir to vote in place of Mr. Tillett and also asked Mr. Michael if Mr. Tillett could participate in the discussion and Mr. Michael indicated ‘no.’

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* **PROPOSAL**

The Applicant is requesting approval of a Conditional Use Permit to establish a formal shared parking agreement with the adjacent property, where Wal-Mart currently exists. The Applicant is also the subject of a site plan review for the development of a Wendy’s restaurant. Parking requirements, based on the square footage of the facility, requires 25 parking spaces. Due to site constraints, only 17 spaces are available on site. The existing ABC store was developed with 25 parking spaces only 9 of which were required. The surplus parking was developed on the Wal-Mart site and used by the ABC store via a non-exclusive easement. Eight of the surplus parking spaces are being proposed to be allocated to Wendy’s in order to meet the parking requirements.

Technically, the parking spaces on the adjacent lot will not be shared as they are going to be dedicated to Wendy’s. A shared parking Conditional Use Permit is required as 42-544(k) states that any off-street parking space required by any use permitted shall be provided on the same lot with the use by which it is required or in combination with an adjacent lot, provided the Applicant has secured a shared parking agreement and a Conditional Use Permit.

The spaces will be allocated to Wendy’s and there is no issue regarding time of operation, peak season, etc. between the two businesses that are shown on the site map.

* Currently, the Town’s shared parking ordinance that allows adjacent sites requires that there be safe pedestrian access between the two sites.
* Two recommendations based on the Town’s ordinance are:

1. A crosswalk to be required across Cypress Knee Trail from the off-site parking to the Wendy’s lot.
2. The off-site parking spaces subject to this CUP be limited to employee parking only.

**BACKGROUND INFORMTION**

The subject property is 28,668.5 square feet (0.66 acre) in size and is presently zoned Beach Commercial (BC-1) and the property currently is undeveloped.

To the property to the west is also zoned BC-1 and contains the Dare County ABC store; the property to the east is zoned BC-1 and contains Carawan Seafood; to the south of the subject parcel is Wal-Mart which is zoned BC-3 and across 158 to the north is the Town of Southern Shores.

* Per the Staff Analysis, the following is proposed: The Applicant proposes 17 parking spaces on site and with CUP approval, would be allowed the use of eight (8) additional spaces that will be dedicated to their operation.

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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. The Board is asked to make a determination that the proposed agreement is consistent with the land use plan.

**CONDITIONAL USE FINDINGS**

In order to approval the application the Town Council must make findings that the proposed conditional use:

1. Does not materially endanger the public health or safety,

* In order to reduce any risk to public safety, a requirement of a crosswalk has been suggested.

1. Does meet all required conditions and specifications,

* The proposed agreement has been designed to comply with all applicable standards of the Town Code and any conditions placed on it must comply.

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

* The ABC store, will in effect, loose eight (8) parking spaces if the CUP is approved; however, they will continue to have 17parking spaces and based on parking requirements, they will continue to have a surplus of eight (8) spaces.

1. 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.
* Chairwoman McClean then indicated that she would like to see pedestrian crossing signs for the traffic on Cypress Knee Trail like the large signs on the Beach Road and the crosswalk needs to be thermoplastic and not just painted lines indicating a crosswalk so that motorists and pedestrians can clearly see the signs and the cross walk.
* Planner Testerman stated that a possibility would be a raised crosswalk which would force traffic to slow down and Chairwoman McClean stated that she also had thought of that and also add scored lines to warn motorists of what is ahead.
* Mr. Geraghty asked if there will be signage examples that the Board could recommend?
* Chairwoman McClean asked if the parking would be employee parking for Wendy’s only? And Mr. Muir indicated that he has seen that parking lot used as a park and ride for car pools or a car caravan to meet at a specific area.
* Vice-Chairman Richeson asked who would enforce the parking, Wendy’s?
* Mr. Michael indicated that Wendy’s would have to enforce that because it would be on their lot and if a problem arises, then Wendy’s would have to contact the Town for further clarification/assistance.
* Chairwoman McClean then asked the Board to make a recommendation and Mr. Geraghty made the following recommendation: ***:I recommend approval of the Conditional Use Permit to establish a formal shared parking agreement between Wendy’s at 5430N. Croatan Highway and the owner of the adjacent property at 5400 N. Croatan Highway subject to the conditions***

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***outlined in the proposed shared parking agreement. The Board has found this proposal to be consistent with the Town’s adopted land use plan subject to the three conditions added by the Staff and the Board.”***

* Chairwoman McClean asked for a vote and all Members of the Board voted ‘aye’ and the recommendation was approved.

6. **SITE PLAN REVIEW:**

a.Wendy’s. Site Plan for 5430 N. Croatan Highway.

**PROPOSAL**

The site is currently undeveloped and is 28,668.5 square feet (0.66 acre) in area and is zoned General Beach Commercial (BC-1). The proposed use is for a Wendy’s fast-food restaurant.

**STAFF ANALYSIS**:

**Lot Coverage:** Proposed improvements have been made to both parcels, the lot coverage for the Wendy’s site will be 59.3% (16,988.1 sq. ft) which is compliant with the Town’s requirement.

**Open Space:** The Wendy’s site would have 40.7% open space which meets the minimum requirement of 35%.

**Building Height:** The proposed building will only be one-story in height and will be well under the maximum height standards.

**Building Setbacks:** The setbacks are as follows:

Proposed Setbacks Required Setbacks

Front 52 feet 15 feet

Rear 63.6 feet 20 feet

Sides 36 feet (west) 10 feet

65 feet (east) 10 feet or 0 with a common wall

All buildings on site and the proposed additions presently comply with the minimum building setback requirements of 15, 20 and 10.

**Access:**  Planner Testerman indicated that he had spoken with the Engineer of the project, Michael Strader who indicated that there was communication with Wal-Mart about the easements not being in place and that the owner is okay with the proposal and Planner Testerman has forwarded documentation to that affect.

The subject property would not create a new curb cut onto Rt. 158 but instead on the south side of the property, the Applicant proposes an ingress/egress point to be created to access the internal drive that serves Wal-Mart and various other commercial developments.

**Parking:**  The minimum number of parking spaces are calculated below:

Parking Calculations Size # Required Spaces

Restaurant 1/100 sq. ft. 24.4 spaces

The Staff Report indicated that there are two (2) handicapped spaces required to meet ADA standards, but in fact there is only one (1) required, and two (2) are provided by the applicant.

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Buffer: All abutting properties are both zoned and used commercially and there is no buffer requirement for the subject property.

Waste Management: The site plan provides space for a 10’ x 20’ dumpster pad to be located at the northern end of the property.

Lighting: A lighting plan has been submitted and will be reviewed and approved administratively.

Signs: Two ADA van accessible signs are proposed as well as a stop sign at the egress point and an additional stop sign/’do not enter’ sign at the end of the one way traffic loop. No freestanding or wall sign applications have been received to date. They will be reviewed and issued administratively once submitted.

Wastewater Disposal: Approval from the Dare County Environmental Health Department for the proposed development, which proposes to tie into the existing private sewer system, will be required.

Flood Zone: The site will need an erosion & sediment control permit from the Town before the process commences and would be reviewed administratively. The subject property is presently located entirely within an X floor zone which means that the additions are not required to meet any particular flood elevation.

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. The proposed development of a Wendy’s restaurant is consistent with this designation in the land use plan.

Planner Testerman stated that on the plan it shows that when a driver comes in there is 2-way traffic and to get into the drive-thru aisle, a driver would be turning in where drivers are exiting the drive-thru.

Planner Testerman’s recommendation is to mark an area with a sign that says, “DO NOT BLOCK”.

* Planner Testerman then showed a rendering of how the proposed building would look.
* He also stated that if the recommendation is approved it should be contingent on the shared parking being approved and if the approval does not happen, a re-review of the size of the building would have to be redone regarding the variable parking spaces on the site.
* Chairwoman McClean asked what side was being projected on the screen and Planner Testerman stated that it was the east side of the building facing Croatan Highway and then projected the west side.

Chairwoman McClean asked Applicants to step up to the podium.

Michael Strader with Quible Associates, Civil Engineer for the project and Sam Nikola (sp?) who is the Franchisee.

* One of the issues that Chairwoman McClean has is the busy corner of traffic flow where the drivers are going to be picking up from the take-out window and getting on the outside lane while other driver are going to be coming down the 2-way section and trying to get onto the inside lane to get into the drive-thru. Question: how is the actual execution of maneuvering in the lot on a busy Saturday or any other busy day be addressed?
* Planner Testerman stated that he did not believe the Town’s ordinance addresses internal traffic flow. If the aisle is marked off by a “DO NOT BLOCK” sign, may be a sign alerting the drivers coming out that they could possibly face a driver turning into that lane.

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* Mr. Nekhaila stated that by the time a driver goes to the drive-thru and picks up the order it is about one minute and that would be plenty of time for the cars who are going around making the exit. He also state that the Kill Devil Hills store has the same traffic pattern as do most of the Wendy’s. All have the bypass lanes.
* Vice-Chairman Richeson stated that the Kill Devil Hills Wendy’s has an exit to a side street and one does not have to go around if one chooses not to.
* Planner Testerman stated that this may not be as initially thought as the drivers in the parking spaces are most likely to back out without getting into the exit loop. Most people using that lane will be for the drive-thru but will still have to be cognizant of others entering/exiting the lot.
* Chairwoman McClean asked if there would be a white-painted pedestrian crossing sign in front of the door and was told ‘yes.’
* Michael Strader stated that one thing that may be deceiving is the number of stacking spaces shown on the plan and that there is not a stacking requirement in the Town and that there would be no problem stripping that area or have a painted exit arrow and Chairwoman McClean thought that would be a good idea.
* Planner Testerman added that Ben Alexander reviewed the plan for the Fire Department and recommends installing a fire hydrant to the west side of the dumpster screen and would pull the water from the water line that runs across Rt. 158. There is an existing fire hydrant across Cypress Knee Trail and one of the concerns was that in the event of a fire the hoses crossing the road would block traffic.
* Chairwoman McClean had a comment on the appearance of the Wendy’s building and that there is no appearance ordinance, but that where applicable Kitty Hawk wants to maintain, where possible, the family-oriented beach town image and that the picture of Wendy’s does not look ‘beachy.’
* Mr. Nekhalia stated that the building is a contemporary and energy efficient building with the green drive that Wendy’s is very conscientious about energy consumption and its goal is to maximize the customer experience and has an open-air contemporary feel.
* Chairwoman McClean did state that it is a good looking building and will have a good open air feeling.
* Mr. Gergahty asked if there was a final outcome concerning the traffic pattern? And Planner Testerman indicated that they would be included in the recommendation that the Board would make: striping, “DO NOT BLOCK” sign, exit signs pointing to the west as the drivers exit or anything else that the Board would recommend.
* Michael Strader heard a concern about the signage in the CUP for the off-site parking spaces and assured the Board that the Applicant would be agreeable to the signage that states, “Parking for Wendy’s Employees Only.”
* Chairwoman McClean than asked a Member of the Board to make a recommendation and Mr. Heath made the following: ***“I recommend approval of the site plan for the***

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***Wendy’s restaurant located at 5430 N. Croatan Highway with conditions added by the staff report, including requirements from the fire department.”***

* Chairwoman McClean asked for a vote and Vice-Chairman Richeson seconded the motion and the recommendation was approved.

6.b. SITE PLAN REVIEW; Atlantic Dentistry Addition, 3704 N. Croatan Highway.

* Chairwoman McClean stated that this was a continuation from the September, 2015 meeting which concerned approval of the easements.
* Planner Testerman stated that after speaking with Carlos Gomez that the actual site plan is pretty well set in stone which Planner Testerman referenced to the information in the September Planning Board packet.
* He also stated that if there are any minor alterations in the future they could be handled administratively, but at this point, what was reviewed prior is what is being looked at as the addition of the building and the new parking area.
* Chairwoman McClean stated that all agreed except for the easements.
* Planner Testerman stated that the easement agreements, at this point in time, are agreed upon, and has been in contact with the attorney’s representing all of the property owners, and now it’s just a matter of getting signatures and being recorded.
* Mr. Geraghty than asked for clarification if ‘are all of the easement agreements done?’
* Chairwoman McClean asked when does the Board need to have everything done before the Board puts this on the Town Council’s agenda?
* Planner Testerman indicated that the next Council Meeting is November 2, 2015 and that the packets for that meeting will go out the Thursday before and all the information has to be to the Town Clerk by that that Wednesday afternoon. Chairwoman McClean asked Mr. Michael is he would need to re-review the documents and Mr. Michael indicated that he has reviewed them and it does what it needs to do.
* Planner Testerman stated that if the Board recommends approval, but if we do not get the signed and recorded easements by October 27, we would have to hold off for the next Council review.
* Chairwoman McClean than asked for a recommendation from a Member of the Board and Vice-Chairman Richeson made the following recommendation: ***“I recommend approval of the site plan for the existing Atlantic Dentistry office building at 3704 N. Croatan Highway subject to the conditions that all easement agreements are signed and executed and received at the Kitty Hawk Town Hall by end of business on October 27, 2015.***
* Chairwoman McClean asked for a vote and all Members of the Board indicated ‘aye’ and was approved according to the conditions.

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7. **Text Amemdment:**

**a. Conditional Zoning. The Board will review and discuss the concept of Conditional Zoning.**

* As stated at the September 15, 2015 Planning Board Meeting, the procedure follows the same as a typical rezoning would. The Applicant will submit information and an application form to the Planning Department. Staff would then prepare a Staff Report to review with the Planning Board. During the Staff Analysis, potential conditions would be determined and discussed with the Applicant. After the Planning Board reviews the application and makes a recommendation, the Town Council would schedule a public hearing and have the ultimate decision on the matter.
* The language ties the conditional zoning to the underlying conventional zoning district, meaning unless an approved condition alters it, the requirements of the underlying zoning district still apply. As noted, any conditions imposed on the rezoning must be mutually agreed upon by both parties and the Town.
* Approval of a conditional zoning is perpetually binding, unless amendments are applied for and approved by the Town. The language does specify certain items that may be administratively amended. These items are typically minor site adjustments that may not warrant a Planning Board review and public hearing. Any major amendment would be heard by Council.
* Planner Testerman indicated that the last review was in 2013 when the Town began investigating the Conditional Zoning. He also indicated that the prior Planner had crafted language and Planner Testerman did a minor amount of editing and was attached for the Board’s review.
* Chairwoman McClean put forth a hypothetical that if a property needs something that it is not zoned for, so the first thing to do would be to get it rezoned for just that property or does it go into a conditional zoning district?
* Planner Testerman, in addressing the hypothetical, indicated that the Applicant would have to apply for a conditional zoning permit but would not have to do a rezoning first. The process of establishing the conditional zoning would be reviewed by the Board and the Town Council which would be all the same.
* Chairwoman McClean then asked that ‘when a conditional rezoning request goes into effect, is that when all the adjoining property owners are notified?’
* Plannner Testerman stated that they would be notified of the public hearing by mailings and all the adjacent property owners would get a notice mailed to them and a large yellow sign would be posted on the subject property and there would be advertisements in the local newspapers two weeks prior to the hearing.
* Chairwoman McClean than asked for clarification in ‘is that just to get the conditional zoning opened up; that this is now a conditional zoned property or a property subject to conditional zoning and Planner Testerman stated ‘no’ because the particulars would not be known at that time.

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* He also stated that the notice would not have all the specific details but would be to let the public know that a public hearing dealing with the subject property to alert them should they have any concerns.
* Once the application comes in, referring to the prior example; a residential property that had commercial on one side and residential on the other and they wanted to do more commercial, but maybe the Town feels that just going to BC-1 which would not be quite appropriate for the residents in the back and on one side. A big part is that the Town and the Applicant have to mutually agree to the conditions which the CUP where the conditions are set.
* Conditional zoning gives more flexibility to get what the Town wants to see.
* Again, Chairwoman McClean asked if the first step is to get the property conditionally zoned and then after that the Applicant would come in with all of the appropriate documents.
* Planner Testerman stated that the negotiation period is between the Planning Director and the Applicant and by the time it would come to the Board, all the proposed conditions laid out and more of a negotiating period between the Board and the Applicant.
* Vice-Chairman Richeson asked if the rezoning is conditional upon the conditions set with negotiations set with the Applicant?
* Planner Testerman stated that the rezoning itself wouldn’t be rezoned and then come back; it would all be done in the same review period.
* Mr. Geraghty then asked if the site plan along with the conditional zone plan review and the conditional use be all done in the same meeting and Mr. Testerman stated that it is done simultaneously.
* Mr. Michael stated that when it gets to the Planning Board after Planner Testerman and the Applicant met and if there are other things that the Board wants them to agree to, then that would be an option. Even when sending it to the Town Council with the Board’s recommendations, the Council can still have other discussions on things they may want to happen.
* Mr. Geraghty asked if that a property just wants to go through the conditional zoning, but doesn’t have a site plan, how would that work?
* Mr. Michael stated it could be a change in use and that doesn’t necessarily need to require site plan and Chairwoman McClean asked if conditional zoning is a stand alone?
* Mr. Michael said there would have to be a plan as to what the property will be used for and the conditions that can be imposed that can make them able to use that property and for the Council to say, ‘oh, you can use that property for this purpose, subject to these conditions.’ Both sides have to agree to everything and if one side doesn’t agree then there is no conditional zoning.
* Vice-Chairman Richeson said that the uniqueness is that it can actually be more restrictive then the actual zoning ordinance and does it perpetuate a problem if the property changes hands?
* Mr. Michael stated that there would be a problem and they would have to come back in and ask for it to be changed.
* Chairwoman McClean asked if it had to be dental office to dental office and Mr. Michael indicated that it’s not usually that specific, but if they wanted to change it to a Veterinary office, they would have to come back.

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* Mr. Tillett asked is there a process where all adjacent property owners would be notified; what about across the street?
* Planner Testerman that he has been notifying people across the street and Mr. Tillett then asked if the neighboring lot was a flag lot, just a 10’ wide shot to the rear and then got large and then the neighbor after that was more or less your ‘real’ neighbor, that lot would not be notified? Planner Testerman said he would have to check the language.
* Mr. Tillett asked if there could be a radius added to the lot to say all lots within this radius shall be notified along with the adjacent lots; is that anything that has ever been done?
* Planner Testerman stated that he has seen that done for public hearings in Virginia, but is not familiar with any in NC and Mr. Tillett stated that he has seen it in Currituck county.
* Mr. Michael said that there is an expansive view of who is notified and if they are separated by a street or a canal, they would be notified.
* Chairwoman McClean stated that she has ‘rear’ neighbors and that they are separated by a drive easement. She also asked if a property owner could request that additional people be notified if they were looking for support?
* Mr. Michael that could be done, but they would know by the big yellow sign on the property.
* Mr. Geraghty also asked if the conditional zoning states what an owner can and cannot do? And Mr. Michael said not 100%.
* Planner Testerman indicated that he would get concrete examples from other localities in the State that have gone through conditional zoning; what conditions were imposed and specifically what was discussed.
* Mr. Tillett said if it’s not a good fit but there is no hard reason to say it’s not a good fit, does the Planning Board reserve the right to decline it because it’s not a good fit? And Mr. Michael said that the Board can always say ‘no’.
* Mr. Testerman discussed the timing which follows along with the same process to get to the Board and it was 30 days out but came in and looked complete, had negotiations, as long as the Applicant was comfortable with it, it would be on the next available Board meeting unless the Board tables it or makes other recommendations, then the following Council meeting would schedule a public hearing. It takes about 2-1/2 -3 months after the application is submitted or could be prolonged if the Applicant didn’t have all of the necessary documents needed.
* Vice-Chairman Richeson said there are too many gray areas right now to make a recommendation.
* Mr. Michael clarified that it doesn’t change the zoning to the district, just the adaptive ordinance says we can have conditional zoning in this district.

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* Chairwoman McClean stated that conditional zoning was introduced to NC not that long ago and it was a very new concept and the last time it was introduced the Board was very wary of it because of the newness,
* Mr. Michael stated that he is not aware of any towns on the Outer Banks that have adopted conditional zoning at this point in time.
* Mr. Tillett asked, ‘if there is a lot that has a conditional zoning on it and it changes shape through a recombination plat or some other way, what would happen?
* Mr. Michael said that it is something that has not been considered. If they wanted to recombine properties then they would have to come in and do something about the conditional zoning. And Mr. Tillett asked if the conditional zoning could hold up to the Board’s approval?’
* Mr. Michael that conditional zoning would hold to that lot provided there is another lot that ceases to exist.
* Planner Testerman stated that if a property owner obtained a conditional zoning approval for a property, then recombined to create a larger property, the conditional zoning would remain in effect for the area of the original approval, it would not expand to cover the entire property.
* Chairwoman McClean then indicated that this matter would be tabled until the next meeting while continuing to do investigative work.

8. COMMENTS:

There were not comments from any members of the Board, Town Attorney or Planning Director except for Chairwoman McClean thanking everyone for the hard work on this meeting.

9. PUBLIC COMMENT: There were no public comments.

10. ADJOURN: Chairwoman McClean adjourned the meeting at 7:15pm.

Lynn McClean, Chairwoman

Respectfully submitted by Patricia Merski, Recording Secretary