

**KITTY HAWK PLANNING BOARD
MINUTES
Regular Meeting, June 13, 2013 – 6:00 p.m.
Kitty Hawk Municipal Building**

AGENDA

1. Call to Order / Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. May 16, 2013 - Regular Meeting
4. Administrative Report:
 - a. Town Council Action from June 3, 2013 Meeting
5. Conditional Use Permit:
 - a. The Wright Place Child Care (2nd Floor Apartment) – 4009 N. Croatan Highway
6. Site Plan Review:
 - a. Hurricane Mo's (Parking Lot Expansion) – 120 E. Kitty Hawk Road
7. Text Amendment:
 - a. Section 42-250(c)(34), Vehicle Rental
8. Subdivision:
 - a. Madelynn's Hen House, LLC, Emeline Lane – 3 Lots
9. Comments:
 - a. Chairman Northen
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director
10. Public Comment
11. Adjourn

1. CALL TO ORDER / ATTENDANCE

Chairman Northen called the meeting to order at approximately 6:00 p.m., followed with roll call by Planner Heard.

PLANNING BOARD MEMBERS PRESENT: Oscar Northen, Chairman / Craig Garriss, Vice Chair
Jeff Pruitt / Don Stallman / Lynn McClean, Alternate / John Richeson, Alternate

PLANNING BOARD MEMBER ABSENT: Richard Fagan

STAFF PRESENT: Joe Heard, Director of Planning & Inspections / Steve Michael, Town Attorney

In Fagan's absence, Alternate Richeson was appointed to serve as a voting member.

2. APPROVAL OF AGENDA

Hearing no changes, the Chair declared the agenda approved as presented.

3. APPROVAL OF MINUTES:

a. **May 16, 2013 - Regular Meeting.** As a minor point, McClean referred to page 10, under Planning Board Action, indicating the subject address needs to be corrected, with the Planner acknowledging he would make said amendment.

Along with the change as noted, **Chairman Northen declared the draft minutes for May 16, 2013 approved as submitted.**

4. ADMINISTRATIVE REPORT:

a. **Town Council Action from June 3, 2013 Meeting.** As a very brief summary of planning items before the Council at its last meeting, Planner Heard noted the following:

- Rezoning applications - the property at 108 W. Sibbern Drive and another at 926 W. Kitty Hawk Road were both scheduled for public hearings to be held July 1, 2013.
- The Town received some updates on stormwater management projects and information regarding ocean outfalls.

5. CONDITIONAL USE PERMIT:

a. **The Wright Place Child Care (2nd Floor Apartment) – 4009 N. Croatan Highway.** This request for a conditional use permit was summarized by Planner Heard, following the outline of his June 13, 2013 memorandum detailing the staff's review. Said memo is entered into this record of review by the Board:

Proposal

The applicant has submitted a conditional use permit application to convert the existing office/storage space on the second floor of the building at 4009 N. Croatan Highway to an apartment, per the standards of the Beach Commercial (BC-1) zoning district. The proposed apartment would contain two bedrooms and be initially occupied by an employee of the day care center that occupies the ground floor.

Background Information

The subject property is presently zoned Beach Commercial (BC-1) and contains a two-story building that was originally constructed as Bert's Surf Shop, was used for many years as a home furnishings store, and has been used since 2010 by The Wright Place Child Care Center. The Wright Place Child Care Center has a current child care license from the N.C. Department of Health and Human Services, Division of Child Development and Early Education. The license presently permits up to 90 children at this location. The Wright Place operates Monday – Friday, 7:00 a.m. – 6:00 p.m.

The two adjoining properties to the north are also zoned BC-1. The parcel with frontage on N. Croatan Highway contains the Kitty Hawk Car Wash. The parcel fronting Lindbergh Avenue contains a single-family residence. The adjoining property to the south is zoned BC-1 and contains Max's Bagels. The property to the west across N. Croatan Highway is zoned Beach Commercial (BC-2) and contains Guy C. Lee building materials/lumberyard. The two properties across Lindbergh Avenue to the east are also zoned BC-1, but are used for single-family residential purposes.

Staff Analysis

Proposed Use: Two bedroom, second floor apartment. Permitted as a conditional use in the BC-1 district.

Lot Area: The subject parcel is 39,000 square feet (0.9 acre) in size, which is a conforming lot size (minimum 15,000 square feet/maximum 4 acres) for the BC-1 district. The Zoning Ordinance also states, "Commercial lots shall be sufficient size to meet requirements of the county health department, to provide adequate siting for structures, and to provide parking, loading, maneuvering space for vehicles as required..." It appears that the property is large enough to accommodate the existing day care center

and the additional apartment.

Lot Coverage: The existing lot coverage is 21,467 square feet (55.0%). The applicant does not propose to change the existing lot coverage. So, the coverage will remain below the maximum allowable lot coverage of 23,400 square feet (60%).

Open Space: 45.0% of the parcel would remain as open space. This percentage exceeds the minimum requirement of 35%.

Building Setbacks: No changes are proposed to the exterior of the existing building. The building will remain in its present location and configuration.

	<u>Proposed (Existing)</u>	<u>Required</u>
Front	78 feet	15 feet
Rear	193 feet	20 feet
Sides	37 feet (north)	10 feet
	10 feet (south)	10 feet

All minimum building setback requirements are met by the proposal.

Access: The property would maintain its current ingress and egress from an existing driveway 22' in width off of N. Croatan Highway. The existing 14' wide drive at the rear of the property accommodates only one-way traffic exiting onto Lindbergh Avenue. No changes are proposed to these existing access drives.

Internal Circulation: Traffic is two-way within the front parking area and access drive at the front of the property. All traffic alongside the building is one-way heading east to the exit onto Lindbergh Avenue at the rear of the site. A child drop-off/pick-up lane is located adjacent to the building and can stack up to three vehicles at a time. Morning drop-off times range from 7:00-10:30 a.m., with a peak time of 8:15-8:45 a.m. Afternoon pick-up times range from 4:00-6:00 p.m., with a majority occurring between 5:00-5:30 p.m. The layout appears to be adequate for serving the pick-up/drop-off needs of the day care center. The proposed apartment would not impact the traffic circulation of the site.

Parking: The conversion of the second story space from day care offices to the two-bedroom apartment actually reduces the amount of required parking. So, the proposed change would conform to the Town's minimum parking standards (see calculations below).

The attached site plan shows twelve (12) parking spaces located in front of the building. Fourteen (14) additional angled parking spaces are accessed from the one-way drive along the northern side of the property. At least three (3) additional vehicles can be stacked in the drop-off area. Counting all of these improvements, the site has 29 existing parking spaces.

The Kitty Hawk Zoning Ordinance does not list a parking requirement specifically for day care centers. When evaluating the parking requirements for this site in 2010, the Planning Board reviewed standards from other communities on the Outer Banks and elsewhere in North Carolina. At the recommendation of the Board, Kitty Hawk Town Council assigned a minimum parking standard of one parking space per 300 square feet for the day care center. (NOTE: This standard is consistent with the minimum parking requirements set in 2009 for the Ocean View Preschool/Day Care at 5118 Lindbergh Avenue)

<u>Parking Calculations</u>	<u>Ratio</u>	<u># Required Spaces</u>
5,470 sq. ft. day care center	1 per 300 sq. ft.	18.2 spaces
Two bedroom apartment	1 per bedroom	2.0 spaces
TOTAL (Minimum Parking Required)		20.2 spaces
		(rounds up to 21 spaces)

Under this standard (one parking space per 300 square feet), the site is required to have a minimum of 21 parking spaces. As noted above, 29 existing parking spaces are available, which exceeds the minimum parking standards.

Wastewater Disposal: The existing septic field is located in the grassed area to the rear of the property. The applicant plans to use the existing septic system to address the needs of the day care center and apartment. The Dare County Department of Environmental Health has issued a permit for approval of the septic system to accommodate the day care center with a maximum of 70 children and the two bedroom apartment.

State Child Care Standards: The Wright Place Child Care Center has a current child care license from the N.C. Department of Health and Human Services, Division of Child Development and Early Education (DCDEE). The license presently permits up to 90 children at this location. If the apartment is approved, the number of children permitted would change to match the Health Department permit (maximum of 70 children).

The DCDEE requires that the apartment be physically separated from the day care facility. The stairway to the second floor was walled off from the ground floor and given a separate entrance when

the day care center was established in 2010. So, the DCDEE has already approved the conversion of the second floor to an apartment.

Building/Fire Code: Additional improvements may be necessary to comply with standards of the N.C. Building Code and N.C. Fire Code. Specific improvements will be identified and addressed prior to the issuance of a building permit.

Prior Approval - 2010

At its meeting on October 4, 2010, the Kitty Hawk Town Council voted unanimously (4-0) to approve a conditional use permit to establish The Wright Place Child Care Center with a maximum of 96 children in the existing building at 4009 N. Croatan Highway, subject to the following conditions:

1. The site plan must be amended to show the proposed playground area, dumpster screening, and other changes to the existing site.
2. Compliance must be achieved with all building and fire code requirements before issuance of a Certificate of Occupancy for the day care center.
3. Approval for the septic system must be obtained from the Dare County Environmental Health Department prior to issuance of a building permit.
4. Information from a licensed engineer documenting the adequacy of the stormwater management facilities must be provided prior to issuance of a building permit.
5. A separate permit must be obtained for all signs on the site.
6. The use of any existing external lighting or installation of new external lighting must be reviewed and permitted by the Planning & Inspections Department.

NOTE: The applicant has complied with all of the listed conditions.

At that time, the second floor of the building was permitted for use as offices and storage associated with the day care center.

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 existing and proposed uses of the property are consistent with this designation.

Staff Comments

Should the Planning Board recommend approval of this application, staff asks that the Board members consider the following condition:

- Compliance must be achieved with all building and fire code requirements before issuance of a Certificate of Occupancy for the second floor apartment.

Planning Board Action

The Planning Board has been asked to provide the Town Council with a recommendation regarding the conditional use permit to establish a second story apartment.

Should the Board decide to recommend approval of the proposed use, the motion could be worded in the following manner:

"The Board has found this proposal to be consistent with the Town's adopted land use plan. I recommend approval of the conditional use permit to establish a second story apartment above the existing day care center at 4009 N. Croatan Highway, subject to the following conditions: [LIST CONDITIONS]"

Conditions can be recommended as necessary to address concerns and improve the compatibility of the proposed use with surrounding areas.

Directions to the Subject Property

From Kitty Hawk Post Office, N. Croatan Highway & Kitty Hawk Road, drive approximately 0.3 miles north on N. Croatan Highway. 4009 N. Croatan Highway (The Wright Place) is located on the right, just past Max's Bagels.

Present for this discussion representing the Wright Place was Patricia Riley, the business owner and applicant.

VC Garriss addressed the number of children permitted at the day care, asking if there would be any hardship to restrict the proposed use's shared septic with the day care use to only

70 children and not the "up to 90 children" for which the license grants. Riley indicated there would be no concern with the 70-child restriction, as the highest number of children at one time has only been 70 children, even with the after school programs or during the summer season. Currently, 68 children are enrolled.

Stallman asked if there would be any problem if the apartment is used as a public rental, and Planner Heard replied that such a use would be allowed. The staff memo states the initial intent is to rent the apartment to an employee, although the same is not a requirement and is something the Town cannot enforce.

No other questions were posed by Board members.

Upon hearing no other comments or questions, **VC Garriss moved that the Board has found this proposal to be consistent with the Town's adopted land use plan and recommended approval of the conditional use permit to establish a second story apartment above the existing day care center at 4009 N. Croatan Highway. The vote carried unanimously, 5-0.**

6. SITE PLAN REVIEW:

a. Hurricane Mo's (Parking Lot Expansion) – 120 E. Kitty Hawk Road. Planner Heard highlighted the staff's review of the proposed parking lot expansion, as detailed in the memorandum dated June 13, 2013, which is entered into this record:

Proposal

The applicant is requesting approval of a site plan proposing to expand the existing parking area at Hurricane Mo's, 120 E. Kitty Hawk Road. The proposed expansion would add 25 new, paved parking spaces on newly acquired property to the north of the existing parking area. The proposed parking area has a single drive aisle 22 feet in width with a row of parking spaces on each side. There is no expansion of the business or addition to the existing building associated with this project.

Background Information

In response to concerns with the existing system, the owners of Hurricane Mo's have been working with the Dare County Environmental Health Department to improve or replace the existing septic system. As part of this project, the owners recently completed a property swap with the Humphries' property to the west that resulted in the acquisition of approximately 0.63 acre to the north (rear). This new area was attached to the original Hurricane Mo's parcel and is now proposed for development with a new septic system, parking area, and stormwater management improvements.

The subject property is approximately 1.24 acres in size and presently zoned Beach Commercial (BC-1). The property presently contains a 3,180 square foot restaurant. The adjoining property to the east is also zoned BC-1 and is presently vacant. This property contains a driveway accessing the Smith property to the north. The Smith property is zoned BC-1, but is developed with a single-family residence, separate cottage, and storage building. Abutting the subject property to the west is a large commercial property zoned BC-1. The building on this property is oriented toward N. Croatan Highway and contains several retail/service businesses and an apartment. Across E. Kitty Hawk Road to the south are two (2) properties also zoned BC-1. One contains the Kitty Hawk Post Office and the other contains the Black Pelican restaurant.

Previous Approvals

The subject property was originally approved for use as a smokehouse and seafood market in 1984. In 1992, the building and property were expanded to accommodate a change of use to a take-out restaurant. A second phase of the restaurant involved an addition to the building, seating, and expansion of the parking lot.

Staff Analysis

Proposed Uses: The use of the subject would not change. The property would continue to be used

as a restaurant, with no expansion proposed. Restaurants are a permitted use in the Beach Commercial (BC-1) zoning district.

Parking: The subject property presently contains 26 marked parking spaces. The amount of parking for the property is presently nonconforming as a minimum of 32 parking spaces is presently required to serve the current restaurant (see parking calculation below). The proposed project would add an additional 25 parking spaces, for a total of 51 spaces, and bring the property into full compliance with the Town's parking standards.

Parking Calculation

	<u>Sq. Ft.</u>	<u>Calculation</u>	<u># Parking Spaces</u>
Restaurant	3,180	1 space/100 s.f.	31.8
TOTAL			(rounds up to 32 spaces)

Three (3) of the turfstone parking spaces encroach into the eastern side setback. These spaces are shown on site plans dating back to 1993.

The subject property presently contains two (2) ADA accessible parking spaces. The increase to 51 parking spaces would trigger the need for a third ADA accessible parking space under the standards of the Americans with Disabilities Act (ADA). The site plan needs to be amended to show the location of this space in close proximity to the entrance of the restaurant.

Buffer: A buffer 50 feet in width is required for commercial development (including parking) that abuts a residential zoning district. Although one of the adjoining parcels is used residentially, all of the surrounding properties are zoned Beach Commercial (BC-1). Therefore, a buffer is not required to be provided in this circumstance.

Stormwater Management: To accommodate the additional stormwater runoff to be generated by the proposed parking lot addition, the applicant's engineer has designed a stormwater management system including a detention basin located to the southeast of the new parking area. The Town has retained a consulting engineer to review the stormwater plans and calculations. His comments should be available by the Planning Board meeting.

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 expansion of the parking area is consistent with this designation in the land use plan.

Planning Board Action

The Planning Board has been asked to provide the Town Council with a recommendation regarding the site plan for the proposed expansion of the parking area.

Should the Board decide to recommend approval of the proposed site plan, the motion can be worded in the following manner:

"I recommend approval of the site plan for the expansion of the parking area for Hurricane Mo's restaurant at 120 E. Kitty Hawk Road with the condition that the site plan be amended prior to Town Council consideration to comply with parking standards of the Americans with Disabilities Act."

Changes or conditions can be recommended as necessary to address concerns and improve the compatibility of the proposed use with surrounding areas.

Directions to the Subject Property

From Kitty Hawk Post Office, N. Croatan Highway & Kitty Hawk Road, head east on Kitty Hawk Road. The subject parcel is located halfway down the block on the left.

As the Planner reviewed the application's proposal, a site plan (revised June 11, 2013) was displayed on the projector screen for reference. Other items not listed in the staff report which were provided to the Planning Board were:

- Two letters (dated June 10, 2013 and June 12, 2013) from Anlauf Engineering, PLLC, serving as a consulting engineer on behalf of the Town of Kitty Hawk.
- A revised site plan (dated June 11, 2013) prepared by Coastal Engineering, the engineer for the applicant.

Representing Hurricane Mo's was Mitch Halloran, an engineer with Coastal Engineering. Also present was Jeff Ashworth, the business owner.

The Planner noted one of the differences between the site plan in the application's package and the revised site plan before the Board at this time. The applicant has removed three of the spaces that were in the existing parking area (leaving a total of 48 parking spaces). The importance of such to this review is the staff report notes the total parking is 51 spaces under the proposal, which requires a third ADA accessible handicapped parking space. By reducing the number of parking spaces, the applicant is only required to have two ADA accessible spaces, which is accommodated on the existing site.

Referencing the June 12, 2013 letter from Anlauf Engineering, Planner Heard noted the letter lists three instances how the stormwater plan fails to comply with Town standards, and he offered brief explanations:

- On the issue of the stormwater basin's depth, there is a 24" requirement in the ordinance for a separation of the bottom of the basin and the water table, which is sometimes challenging in the local environment. A provision allows for the same to be reduced to 12", for an infiltration basin. The plan as proposed goes all the way down to 6". Upon consultation with the applicant's engineer, the reason given for such is that the basin is not an infiltration basin – the standard does not apply to the subject basin, and the Town does not have a similar standard for the type of basin which has been designed for the subject location.
- Regarding drainage area delineation, the ordinance asks for an outline of a drainage area – the entire area that drains to the proposed stormwater management basin. The reason why the subject one does not apply is because, in this case, the applicant is only required to provide stormwater management for the new parking area. In other words, they are not required to resolve drainage issues that exist in the whole surrounding area and are not required to resolve or address any existing nonconformities or any existing drainage issues on the site. With the improvement, however, the applicant is only required to accommodate the amount of drainage and stormwater being created by the new parking area.
- As to provisions for the operation and maintenance of the proposed stormwater system, a simple note could be added to the site plan. The proposed system is not a complicated stormwater system, just a simple pond, which may need cleaning out every now and then.

The Chair asked how serious the Town's concern is with accepting the 6" proposed basin, and the Planner reiterated the type of proposed basin is not covered by Town ordinance and there is nothing to prevent it being approved as proposed. The rationale for why the separation exists is not because of a water quantity issue but a water quality issue, and the thought behind the separation of 24" is to filter out pollutants and particles which could potentially negatively impact groundwater, particularly in a larger application. Heard also reiterated, *"in this case, it does not actually apply."*

The Chair then posed what must be done with regard to the three noted issues of noncompliance in order for the application to go forward.

Planner: *"There's not really a mechanism ... it's not really a waiver ... the Town can't really waive any of these requirements. They either comply or they don't, and it's not a case where the Town can go in after the fact and force the owner to do something or make an improvement. So, it is important for the Board and the Council to think about those things, to think about why they are noted as not meeting the standard. Two of them are simply informational – it's not that the design is deficient – it's just some information and whether you feel they have provided enough information or not. So, I say that is certainly under the prerogative of the Board and ultimately the Town Council. The other one has to deal with the*

interpretation on the type of pond that has been designed in this case, and again, the applicant can speak to that."

Chair: "We are all familiar with the project and we are all very concerned about the parking. As a customer, I've often had problems there, as have others, so I'm certainly happy to see them address the parking issue. I just want to make sure there is nothing standing in the way that the Town can or cannot work around ... that's what I'm leading up to."

Planner: "Just one other thing to note, I guess I didn't mention it specifically in here, but as we discuss concerns about stormwater management, the pond, as it's designed, this stormwater basin is actually designed above and beyond the standard as far as managing the 4.3", as it will actually manage 5.1", so it's actually capable of holding ..., the capacity of the pond actually exceeds the Town's minimum standards, so that might help in other ways as well."

With a further question by Pruitt, Planner Heard explained what is required is that the applicant show the whole drainage basin for the subject area and how the same functions. However, the applicant is not required to address the whole drainage basin due to the type of proposal – they are only required to deal with the runoff from the parking area (which they are showing on the site plan), although the applicant is not showing everything the ordinance says is required to be shown. It is up to the Board to determine if the intent of Item 5 is met.

As to Item 4, Pruitt asked, "this retention pond that we're talking about, meets all the State requirements and we're going beyond what would be required for this ... this property, correct?"

Heard: "It meets all the requirements in regard to holding enough water. The capacity of the pond exceeds the minimum requirements that we have as a Town"

Pruitt: "... and the procedure"

Heard: "... the question has to do with the depth ... how close, how far down ... again, the capacity, they've gone down to within 6" of the mean water table, and so the question arises, you know, we have some standards in there for how deep an infiltration pond can be"

Pruitt: "... so this is"

Heard: "... and that's the key point there, and again, the applicant's engineer can explain that better than I can as far as the difference between the two"

Pruitt: "... it's kind of talking about a new tank that has never been addressed by anybody before here?"

Heard: "It's not addressed specifically ... we don't even have a standard for that type of basin."

Pruitt: "But, it is an accepted State-wide basin?"

Heard: "The applicant can explain that better than I can."

Richeson posed, "on what Jeff said, basically, this is stormwater retention – it's not designed, per say, as an infiltration basin. It's totally water. There's no outlet to accept any kind of lateral groundwater flows through the sand."

Heard: "That's correct, and that's one of the big differences on the original site plan and the revised plan, and what they've done is they've significantly increased the size of this basin because there was no outlet. The original plan met the minimum standards for what they had to capture, but because there was no outlet, there was nowhere for it to go, it would have to run off, they were required to manage 4.3", and that's a whole lot more, so they had to change the design and increase the capacity of this pond because the water's not going anywhere else, so it accommodates that."

With the Chair's invitation, Mitch Halloran with Coastal Engineering, the applicant's engineer, elaborated:

"The purpose behind an infiltration basin is to account for lots of water via infiltration, and below the basin itself, the 2' below the basin, you can account for 20% of the porosity of the soils and eliminate that from the basin as a loss, and that's how you reduce and account for infiltration in your design, but if you don't have that 2' separation, you can't account for that, and, therefore, we have not.

"So, we have not only provided a barring of water in a basin with no point of discharge, inclusive of infiltration itself, but provided the plus 4.3" of storage. If we had the 2' of vertical separation, we could count infiltration as a loss from the basin and only have to retain, I believe, 1.5". On this particular site, there is no point of discharge, just because of the nature of the site. There is no drainage ditch on E. Kitty Hawk Road that we can contribute to."

The Chairman inquired if there would be any problem with bringing the delineation and the maintenance plans into conformity before the application would be forward to Council, and Halloran explained, with regards to the delineation of the basin, *"that basin could encumber this area that's on W. Kitty Hawk Road, that contributes to that low point of E. Kitty Hawk Road ... the delineation of that basin would be pretty much ... it could be vast. It wouldn't be site specific – it would be offsite. It would be the post office, Rooftops, and for a project of this caliber, it's probably not feasible to do."*

Richeson and McClean indicated to the Chairman they had no questions at this point.

When Pruitt expressed his concern as being the proposed maintenance plan for the basin complying with all State requirements, Halloran indicated the State does not have jurisdiction because of its size. After an inaudible question by Stallman, further comments were offered, *"it will infiltrate, we just cannot account for infiltration on calculations because we don't meet the 2' of vertical separation, so the ground [... inaudible ...] because it's on beach sand, so you have to provide more storage."*

At this point, Chairman Northen called for a recommendation, and **VC Garriss moved to recommend approval of the site plan for the expansion of the parking area for Hurricane Mo's restaurant at 120 E. Kitty Hawk Road. Upon call for the vote, the motion carried unanimously, 5-0.**

7. TEXT AMENDMENT:

a. Section 42-250(c)(34), Vehicle Rental. Planner Heard reviewed with the Board this text amendment request, as detailed in his staff memorandum dated June 13, 2013, which is entered into this record:

Proposal

The applicant's proposal would add the following wording as subsection 42-250(c)(34) of the Town Code:

"(34) Jeep rentals, subject to the following conditions:

- a. Jeep rentals are only permitted as a secondary or accessory use to a primary commercial use on the subject property.*
- b. No more than seven (7) rental jeeps can be on the property at any time.*
- c. The rental jeeps cannot be high occupancy vehicles (more than 8 seats).*
- d. Renters will not be permitted to leave their personal vehicles on the premises during the period of rental."*

Background Information

Presently, jeep or other types of vehicle rental operations are not permitted in the Beach Commercial (BC-1) zoning district. Although several local businesses offer loaner or courtesy cars to customers having vehicles repaired, Planning & Inspections staff is unaware of any businesses in town that are renting vehicles at this time.

Staff Analysis

The standards I was able to find deal with larger, stand-alone vehicle rental businesses (Avis, Budget, Hertz, etc.). After reviewing a number of ordinances relating to vehicle rentals from other communities, standards are often used to address the following concerns:

- Location where vehicles can be parked or displayed
- Screening/buffering of area where vehicles are located
- Lighting

The applicant has proposed limiting the rental vehicles to jeeps. The Planning Board may want to consider if these standards should allow a broader range of vehicles. In other words, is there a particular benefit to limiting vehicle rentals to jeeps only?

If keeping the limitation to jeeps only, the Board may want to define the term "jeep." Jeep is a brand name of automobiles now owned by the Chrysler Corporation. However, a definition for the type of vehicle commonly referred to as a jeep could be worded as follows: "Jeep means a small, rugged utility vehicle with four-wheel drive."

To be consistent with other standards in Kitty Hawk's ordinance, the Board members may want to consider additional conditions concerning where parking of the rental vehicles can be located and maintaining minimum parking requirements on site. Sample wording could be as follows:

- All rental vehicles must be correctly parked within approved parking spaces on site.
- Only parking spaces in excess of the minimum required can be used to park rental vehicles.

Vehicle Rental Requirements - Other Local Communities:

Manteo:

No specific requirements.

Nags Head:

No specific requirements.

Kill Devil Hills:

No specific requirements.

Southern Shores:

No specific requirements.

Duck:

No specific requirements.

Dare County:

Permitted use where allowed. No listed conditions or standards.

Currituck County:

Automotive Sales & Rentals - Uses primarily involving the sales or rental of automobiles, trucks, recreational vehicles, or travel trailers, shall comply with the following standards:

- (a) The use shall be located on a lot of at least 40,000 square feet in area and a minimum lot width of 125 feet;
- (b) The use shall not have more than one vehicle display pad for every 100 feet of street frontage. The vehicle display pad may be elevated up to two feet above adjacent displays or grade level;
- (c) Vehicle displays may not take place within required setbacks and shall include a Type A perimeter landscaping buffer between the display area and the street;
- (d) Vehicle display areas shall be surfaced with concrete, asphalt, or other permanent surfacing material other than crushed stone;
- (e) No vehicles or other similar items shall be displayed on the top of a building;
- (f) All lights and lighting shall be designed and arranged so no source of light is directly visible from any adjacent property; and
- (g) Light repair and service functions are permitted as an accessory use provided all repair-related activities take place within an enclosed building.

Previous Request for Vehicle Rental Use - Beach Ready Auto Repair

NOTE: This section outlines a recent decision concerning a vehicle rental business proposed as part of

an expansion project at Beach Ready Auto Repair. It is important to note that the decision outlined below was for a specific proposal at a specific site, not a text amendment that would apply to all properties in the BC-1 zoning district.

At its meeting on February 4, 2013, the Kitty Hawk Town Council considered a proposal from Beach Ready Auto Repair to add vehicle rentals as part of a proposed expansion project at 500 Sand Dune Drive. Although the Council members voted unanimously to approve a conditional use permit to expand the existing motor vehicle repair and service business, they specifically added a condition that a vehicle rental operation is not permitted.

The Town Council members mentioned the following concerns as rationale for denying the proposed vehicle rental operation:

- Vehicle rental is not an accessory use to a vehicle repair business.
- The applicant did not define a limit on the number of rental vehicles.
- The rental operation could potentially cause problems with the amount of parking on the site.
- If approved, it would be difficult to enforce a limit on number of vehicles.

Consistency w/ Land Use Plan

The Town's adopted CAMA Land Use Plan does not, specifically or generally, address the issue of vehicle rental businesses.

As part of its recommendation, the Planning Board is asked to make a determination whether the proposed text amendment is or is not consistent with the adopted CAMA Land Use Plan.

Planning Board Action

The Planning Board is asked to provide the Town Council with a recommendation regarding the text amendment proposal.

Should the Board decide to recommend approval of the proposed text amendment, the motion could be worded in the following manner:

"I recommend approval of the proposed text amendment allowing jeep rentals as a conditionally permitted use in the Beach Commercial (BC-1) zoning district, subject to the following conditions: [LIST CONDITIONS]. The Board has found this proposal to be consistent with the Town's adopted land use plan."

The Planner added that since his memorandum was written, consideration has been given to another restriction which would be consistent with Town standards: no vehicle maintenance on site. Maintenance of vehicles could create environmental hazards, and such work should be done in a more appropriate location where a full-care facility is set up.

Chairman Northen pointed out a concern is the proposed text would allow any business in the BC-1 district to be able to rent cars, and the Planner replied such is correct, with the way the text language is drafted.

As to legal problems with restricting rental use to a specific type of vehicle, Attorney Michael explained to the Chairman he has never heard of such a restriction nor has heard of a proposal for the same. It may be more appropriate to restrict a vehicle by its type, such as a four-wheel drive which sits "x" number of people. Chairman Northen indicated he is more concerned with opening the proposed use to the entire district, and the Planner reiterated the text amendment is drafted in a way the proposed use has to be an accessory or a secondary use. An accessory use, typically, means there is a relationship between the use, something which is customarily associated with the type of business on the property. The term "secondary" refers to a use which is not necessarily closely tied with the primary use, where two different types of uses are conducted. The way the text language is also drafted allows the primary use to be any type of business.

Richeson inquired if the definitions should be clearly stated, as to what is meant by "accessory" and "secondary," referring to the previously denied request for a rental use. Planner Heard noted the Town Code already has a definition in place for "accessory," but the difference with

the subject request is, in order to meet the applicant's needs, this would not be something considered an "accessory" use to his business, so the proposed text includes the broader term "secondary use," meaning it is not the primary use of the property. Another key word being incorporated is "commercial," because there are a number of properties in the BC-1 zone which are used residentially, and it would not be desirable to have a residence conducting vehicle rentals.

When Richeson posed, "so what I'm hearing is if it's a secondary use, it doesn't have to be defined," the Planner deferred to the Town Attorney, with Michael explaining, "they're saying you can have this business with your primary business as a secondary business, a secondary use of that property ... that's it. It means any business in this district. If they decided they wanted to rent these vehicles, they can do that as a secondary use of their property."

Richeson: "So, the business that recently undertook an expansion, they could come back to the Board and say, 'now we still want to rent vehicles'"

Michael: "... as a secondary use"

Richeson: "... and if this is passed, it would have to be allowed"

Heard: "... yes, sir. First of all, the conditional use permit that was approved for Beach Ready Auto Repair specifically states they cannot have vehicle rentals. They have a condition on it, and again, what is being proposed is a conditional use, so anybody who wants to do this has to come to the Board and Council – it's not an administrative process.

"So, in other words, they have the right to come back to you and the Council and say, 'you know, we're two years down the road ... maybe they've changed their minds ... maybe they have some other reasons why it would be viewed differently at that time' They have a right to ask, but, ultimately, the Board and Council can still deny that request if they felt there were concerns about it."

Richeson: "They can stipulate the conditions?"

Heard: "That's correct."

Further discussion by Planner Heard noted the proposed language, if adopted, would not supersede the current approved conditional use permit for the request which was denied – they would have to come back in for a new conditional use permit in order to establish a rental use on the property.

Stallman: "How could you say, 'no?'"

Heard: "If the Town had certain concerns, the impact, they would look at the amount of traffic, look at the parking at the site, look at other types or any other things you could look at with a site plan or permit and if it would cause a hardship"

Stallman: "... if this would be done, and an auto rental of some sort is allowed as a conditional use in BC-1, and we have a place in BC-1 who wants to rent vehicles and one of their conditions is that they can't, something has to take precedence there."

Michael: "They can come back in and say, 'it's not an accessory use – it's a secondary use,' and they could apply for a conditional use under that theory, if this ordinance is adopted."

Stallman: "So, they have a path, a clear path and their current condition as an accessory use would not stand in the way?"

Michael: "If they came in and asked for it under a secondary use, they can ask that."

At this time, the applicant and owner of Kitty Hawk Car Wash, Gene Martin, was invited by the Chairman to join the discussion. Martin indicated he had nothing to add and welcomed questions by the Board.

VC Garriss stated he is glad to see any business offer services which help the citizens of Kitty Hawk, although he is aware of some traffic congestion at certain times at the subject location. The proposed use says the rental vehicles would be picked up and dropped off

outside the carwash business hours, VC Garriss noted, but he inquired how such would be enforced so there would be no undue added traffic congestion to vehicular flow off/on US 158 and within the property. Martin said the carwash operates from 9:00 a.m. to 6:00 p.m., and pick up for rental vehicles would be between 8:00 a.m. – 8:30 a.m., with returns after 6:00 p.m. Patrons would not be leaving their personal vehicles behind while renting another vehicle. Martin offered he feels his business would not be creating any more congestion than what area businesses do, pointing out he is a stand-alone business without any shared parking or a direct neighbor. In response, Pruitt reminded the applicant the Board is being mindful of how the text amendment would apply district-wide, not just for his property, with Martin responding the Board and Town Council would be reviewing each future request individually and could approve or deny based upon a location's suitability for the use, even restricting the number of vehicles. Any use, once approved, not abiding by conditions set could be then be addressed by the Town's Codes Enforcement Officer.

McClean indicated she has concerns envisioning every beach commercial business seeing the profitability with vehicle rentals, and if there is no business tie-in relationship required with the secondary rental use, it could open the door, for example, to restaurants even offering jeeps for rent. Martin countered with how a restaurant business would not necessarily already be set up in such a way that renting vehicles would be feasible, reiterating reviews by the Town for the secondary use could be somewhat site specific.

Richeson inquired if there would be a business logo on the rental vehicles, and Martin replied, "no." The next question relating to signage Richeson directed at the Planner, noting vehicles with a logo would have to be considered under signage regulations, and Heard stated the Town does permit a business vehicle with advertising to be parked in a location on the site where it can be seen.

Upon question by Attorney Michael as to what type of vehicles the applicant considers to be a "jeep," Martin stated, "a four-wheel drive, four-door vehicle to be used in the sand," not limited to, for example, a Chrysler product. The more appropriate vehicle would be a five-door vehicle (having a door to the rear with additional rear seating), such models as Suburbans and Explorers, larger SUVs. Other four-wheel drive vehicles which could qualify would be small pickup trucks. McClean noted her Jeep Wrangler has only two doors, and Martin offered he is envisioning the use of the newer models which have four doors with a utility gate at the rear.

The Attorney explained his reasoning for the questions posed: *"The reason I ask you is, I suspect if we adopted something so specific, we would probably be hearing from the Federal Trade Commission and be in violation of the anti-trust laws, and would probably hear from some of the automobile manufacturers around here that we have said 'you can only rent certain types of vehicles' in our town, and that would be anti-competitive, and we would have an issue with that. So, I'm not talking about your concept ... I'm talking about how it is characterized here as to what exactly you are wanting to rent."*

Martin: *"Again, I was looking to a smaller, four-wheel drive vehicle."*

VC Garriss: *"I think you're confusing ... because, when you say 'jeep,' I'm thinking Jeep Wrangler or CJ ... that's what I'm thinking. I'm not thinking Ford Explorer"*

Martin: *"... that's why I'm specific on the, like on the Chrysler product, but that size for that type of vehicle"*

VC Garriss: *"... that's not what your application said"*

Martin: *"... that's what I would be noticing ... four-door jeeps, that would be what I'm looking to purchase, four-door, four-wheel drive jeeps, and I don't know how to adopt that into the Town's language, but that would be specifically what I'm looking to do. I'm not looking*

to rent Hondas, you know, I'm not looking to rent full-size pickup trucks, luxury SUVs, vans or anything else. I'm looking to rent jeeps. "

Chairman: "Joe, I have a quick question, just a 'yes' or 'no.' The conditional zoning that we looked at last month, could that have been used for something like this?"

Heard: "No, sir. This could apply across the whole zoning district"

Chairman: "... we couldn't have limited it to a site with a condition ...?"

Heard: "... you could use it for that purpose, if a conditional zoning proposal was adopted, you could limit a business and put conditions on it specifically, but it's similar to what this is proposing anyway, though."

Chairman Northern asked for further questions by the Board, wrapping discussion to call for a recommendation.

Stallman: "Well, I would like to say, I don't doubt that you would run this business great, but that's secondary to what's in front of us, and that is, do we want to recommend 'automobile rental' as a conditional use in the BC-1 in Kitty Hawk? I think, if we do that, I don't think we should put conditions on it like you can only rent jeeps or you can only rent 'whatever,' it has to say, 'vehicle rental.' So, when we take this up, if we want to do this, that's what we have to look at – do we want to open up Kitty Hawk to be rentals, not just his jeep rental, and that's my take on what we're looking at tonight."

After a pause when the Chair requested a recommendation, **Pruitt moved to recommend disapproval of the proposed text amendment allowing jeep rentals as a conditionally permitted use in the Beach Commercial (BC-1) zoning district, indicating the Board has found this proposal to not be consistent with the Town's adopted land use plan. The motion carried unanimously, 5-0.**

Chairman Northern pointed out to the applicant he has the right to go before the Council and present everything again as Council deliberates the application along with the Planning Board's recommendation, and Martin acknowledged, "yes, sir, thank you."

8. SUBDIVISION:

a. Madelynn's Hen House, LLC, Emeline Lane – 3 Lots. As outlined in the staff memorandum dated June 13, 2013, Planner Heard reviewed with Board members the details of the request for subdivision. A copy of the proposed final plat was used during the summary. Said memo is entered into this record of review:

Proposal

The applicant has submitted a final plat for the Madelynn's Hen House, LLC subdivision. The plat proposes the subdivision of an existing 6.14 acre property on the northern side of Emeline Lane into three (3) lots. No new roads are being proposed as part of the subdivision. All of the lots would gain access from the existing driveway into the subject property.

As no physical improvements (road/utilities) are necessary to accommodate the subdivision, there is no need for consideration of a preliminary plat. So, the applicant has submitted a final plat for approval at this time.

Staff Analysis

Zoning: The subject property presently contains a single-family residence (which will remain on Lot 3) and is zoned Village Commercial (VC-2), which allows single-family residential development, but also permits a variety of commercial activities.

Lot Size: The minimum lot size in the VC-2 district is 15,000 square feet. However, lots to be used for commercial purposes must be of sufficient size to meet applicable development standards, which may require larger lot sizes in certain instances.

The proposed lots have the following sizes:

Lot 1 – 2.86 acres

Lot 2 – 2.22 acres

Lot 3 – 0.96 acre

Wetlands: For the purpose of calculating lot size, wetlands defined under the N.C. Coastal Area Management Act (CAMA) are excluded. However, wetlands designated by the Army Corps of Engineers (ACOE) are included in the lot size calculations. The presence of CAMA wetlands on Lots 1 and 2 resulted in minor reductions in the overall lot size for these parcels.

A large majority of the subject property consists of ACOE wetlands (4.60 of the 6.14 acres). However, the applicant has divided the property in such a manner that each of the three (3) proposed lots contains over 16,000 square feet of uplands. Therefore, each lot meets the minimum lot size requirement without including the wetland areas.

Lot Width: The minimum lot width is 75 feet, measured at the front building setback line on each parcel. Lot 1 and Lot 3 each have over 75 feet at the front lot line, maintain at least a 75 foot width throughout the lot, and widen further in the area of the probable building pad.

Lot 2 has over 75 feet of width for nearly 400 feet, then narrows to a width of 50 feet as the lot bends to the west. Afterward, the lot widens significantly to a width of over 150 feet in the area of the probable building pad.

Road Frontage: All lots in a subdivision must have a minimum road frontage of twenty-five feet (25') on cul-de-sacs and fifty feet (50') in all other situations.

All three of the lots have at least fifty feet (50') of frontage on an existing public road, Emeline Lane, and comply with these standards.

Lot 1 – 75.66 feet frontage

Lot 2 – 75.37 feet frontage

Lot 3 – 156.86 feet frontage

Road Standards: Emeline Lane is an existing, State-maintained road with a road width of approximately eighteen feet (18') and a right-of-way width of sixty feet (60').

No new roads are being proposed as part of the subdivision.

Building Setbacks: Residential development in the VC-2 district is required to comply with the minimum building setback standards of the VR-1 zoning district.

The following minimum setback requirements apply in the VR-1 district:

<u>Dwelling Size (sq. ft.)</u>	<u>Side Setback (ft.)</u>	<u>Front & Rear Setbacks (ft.)</u>
3000 and under	10 feet	25 feet
3001-3500	12.5 feet	25 feet
3501-4000	15 feet	25 feet
4001-5000	17.5 feet	25 feet
5001-6000	20 feet	25 feet
6001 and over	25 feet	25 feet

The setback chart in Note 14 should be amended to note that the above-listed standards only apply to residential development.

The following minimum building setback standards apply to commercial development in the VC-2 district:

<u>Front Setback (ft.)</u>	<u>Side Setback (ft.)</u>	<u>Rear Setback (ft.)</u>
15 feet	10 feet	20 feet

An additional note should be added listing the above-listed setback standards for commercial development.

Utilities: A septic permit must be obtained from the Dare County Environmental Health Department prior to the issuance of a building permit for each lot.

An existing water line runs alongside Emeline Lane in front of the subject properties. Approval for a water tap and water line must be obtained from the Dare County Water Department prior to the development of each lot.

Overhead electrical lines are already in place to the existing residence on the subject property. As the other two homesites are in close proximity, it should not be difficult to extend the existing electrical service.

Easements: The final plat shows two (2) types of easements on the subject properties:

1. A 30 foot wide access easement extends along the eastern and northern boundaries of Lot 1. This easement narrows to 20 feet in width as it bends to the south and crosses over Lot 2.

It appears that this access easement is intended to envelop the existing driveway that will

provide access to the probable building area toward the rear of each lot. However, the existing driveway extends outside of the 30 foot easement in several locations. If the intent of the easement is to provide legal access through use of the existing drive, then this easement will need to be widened or relocated in places to encompass the actual location of the drive.

2. The plat notes describe utility easements ten feet (10') in width along the front of each property and five feet (5') in width along the sides of each property.

Staff Comments

Staff asks that the Planning Board consider the following conditions if recommending approval of the final plat for Madelynn's Hen House, LLC:

- The minimum setback chart in Note 14 should be amended to note that the standards only apply to residential development.
- An additional note should be added listing the minimum setback standards for commercial development.
- The proposed access easement should be widened or relocated to encompass the existing driveway into the property.

If recommended by the Planning Board, these conditions should be addressed on a revised final plat prior to Town Council consideration.

Planning Board Action

The Planning Board has been asked to review the final subdivision plat and provide a recommendation to Town Council.

Should the Board decide to recommend approval of the final plat, the motion could be worded in the following manner:

"I recommend approval of the final plat for the Madelynn's Hen House, LLC subdivision that divides an existing 6.14 acre property on Emeline Lane into three (3) lots, subject to the following conditions: [LIST CONDITIONS]. These conditions must be addressed on a revised final plat prior to consideration by Town Council."

Directions to the Subject Property

From Kitty Hawk Post Office, N. Croatan Highway & Kitty Hawk Road, drive approximately 1.0 mile west on W. Kitty Hawk Road. Just after the Unitarian Universalist Church, turn left onto Herbert Perry Road. Go 0.2 mile. Continue straight onto Emeline Lane (Herbert Perry Road turns to the left). The proposed subdivision is located just ahead on the right. The first driveway on the right is the driveway shown on the plat.

On the issue of the presence of wetlands, Planner Heard highlighted, with the layout proposed encompassing upland areas, each lot could stand alone and meet Town standards for minimum lot size. Also, even if the wetlands were removed, each of the three lots could comply with the minimum lot size requirements. Regarding the easement, it was pointed out the driveway meanders outside of the easement at several points. The applicant needs to consider broadening the width of the easement to accommodate the driveway, or move the easement in a manner it encompasses the access easement.

Stallman inquired about what the Town's fire department has to say regarding access to the subject location, and Heard indicated the department has reviewed the application from two points of view: from a water line and fire hydrant issue, as well as access. There was no comment of concern given regarding the accessibility to the private driveway.

After the Planner's summary, the applicant was invited to join the discussion. Present on behalf of the applicant was William Jones, surveyor. The property owner, Cathy Monroe, was also in attendance.

With several questions to pose, the Chair asked the applicant if the surveyor would have any problem adding the notes to the final plat, and Monroe said, "no." As to the roadway and the easement needing to be addressed, Jones stated the easement was platted before the

road was built, adding there would be no problem with correcting the issue. VC Garriss indicated his only concern deals with the easement, to which acknowledgement is being given it will be corrected.

Stallman clarified if the lots are proposed to be used residentially, and Monroe said houses will be built upon the properties.

When McClean light-heartedly asked, "Who's Madelynn?," Monroe explained she was struggling to come up with a name, and upon remembering that a chicken house at the property had a sign on it, "Madelynn's Hen House," the name stuck. Madelynn is the name of her granddaughter.

With hearing no other questions and with noting this would be Stallman's last meeting, the Chair asked if Stallman could have the honor of offering this meeting's final recommendation. **It was then moved by Stallman to recommend approval of the final plat for the Madelynn's Hen House, LLC subdivision that divides an existing 6.14 acre property on Emeline Lane into three (3) lots. Upon call for the vote, the motion carried unanimously, 5-0.**

9. COMMENTS:

a. Chairman Northern.

Recognition of Don Stallman's Service to the Planning Board. The Chair recalled he became a member of the Town's Planning Board at the same time Stallman did, offering, *"it has been a pleasure and an honor to work with you, and I want you to know you will be missed."* With hoping just retirement from the Planning Board and not from service with the Town is in the future for Stallman, Chairman Northern commented about how Stallman's questions regarding applications and planning issues *"have always been right on target, and I appreciate that, and I appreciate your service, and once again, you will be greatly missed."*

Stallman said in response that it has been his pleasure to serve with the Board and he thanked the Chair for his kind remarks.

Afterwards, a loud round of applause was given, showing appreciation by all. Along with the other Board members, Pruitt echoed appreciation and thanks to Stallman for his many hours and years of service to the Town.

b. Planning Board Members. No other comments were made by Board members.

c. Town Attorney. Nothing was addressed by the Attorney.

d. Planning Director.

Conditional Zoning. The Planner noted the Board has spent time at several of its last meetings discussing a conditional zoning concept, and a draft ordinance had been requested to be developed. However, the Town Manager has informed the planning staff Council does not wish to pursue the conditional zoning concept at this time, thus the Planning Board will not be seeing further information regarding the alternative planning tool, at least in the immediate future.

Church of the Outer Banks. Regarding the proposal reviewed last month, the applicants have informed the Town alternative locations are being considered, although a formal withdrawal of the application has yet been made.


New Members Appointed. Heard noted Town Clerk Lynn Morris would be attending next month's meeting to swear in new members and reappointments.

10. PUBLIC COMMENT

There was no public comment.

11. ADJOURN

With no other items, **the Chair declared the meeting adjourned at approximately 7:55 p.m.**

A handwritten signature in cursive script, reading "Oscar Northen", is written over a horizontal line.

Oscar Northen, Chairman

Attachments: None

Minutes Transcribed and Respectfully Submitted By: Betty Moore Williams