

MINUTES OF THE DARE COUNTY PLANNING BOARD MEETING

The Dare County Planning Board held its regularly scheduled meeting on Monday, April 8, 2002. This meeting was held at 204 Ananias Dare Street, Manteo, NC.

CALL TO ORDER 7:00 P.M.

MEMBERS PRESENT Elmer R. Midgett, Jr. – Chairman
John Myers, III
Jon Britt
Marcia Parrott
Jim Kinghorn

MEMBERS ABSENT Mary Aldridge
Joe Thompson

APPROVAL OF MINUTES

There being no additions or deletions to be made to the minutes of the March 11, 2002 Planning Board meeting, a motion to dispense with reading them and to approve them as submitted was made by John Myers, seconded by Marcia Parrott.

Vote: Ayes – unanimous

PUBLIC HEARING

Richard & Charlene Cohen – Colington – Zoning Amendment Petition

Planning Director Ray Sturza presented staff comments prepared by Donna Creef. Mr. Sturza stated that last month the Planning Board instructed staff to schedule a public hearing on the proposed amendment to the VC-2 zoning district as request by Richard and Charlene Cohen. This amendment would add retail garden shops and landscaping businesses to the list of conditional uses allowed in the district.

Mr. Sturza noted that during the Board's discussion last month, it was noted that a definition for landscaping business was needed. Staff submitted for the Board's review a draft definition for retail garden shop and landscaping business as well as some conditions to include in the text amendment. Staff supports the proposed amendment and feels that the addition of the two uses to the list of conditional uses for the VC-2 district is consistent with other uses currently allowed in the VC-2 district.

There were no public comments rendered on this proposed amendment.

John Myers made a motion to recommend approval the proposed amendment to the Dare County Board of Commissioners as submitted by staff with the deletion of size dimensions for the greenhouse. Marcia Parrott seconded this motion.

Vote: Ayes – Unanimous

OLD BUSINESS

None

NEW BUSINESS

Philip J. Hinton (NCDOT) – Zoning Amendment Petition

Mr. Philip Hinton, NCDOT General Services Division and Jack Cahoon were present for the review of this petition.

Planning Director Ray Sturza presented staff comments prepared by Donna Creef. He told the Board that the Department of Transportation has submitted an application to amend the text of the R2-A zoning district to add “government owned dormitories” to the list of conditional uses for the district. He stated that NCDOT is considering the purchase of property in Hatteras Village to build a group housing or a dormitory style structure for employees of the ferry operations down at Hatteras.

Comments submitted by Donna Creef indicate that the R2-A district permits a mixture of uses such as residential structures, campgrounds, real estate offices and resident businesses. Fire stations, schools and other public buildings are listed as conditional uses, however, staff felt it was best to specifically list government dormitories since the function of the building is different from what is traditionally thought of as a “public building”.

Staff recommended the Planning Board schedule a public hearing on the proposed text amendment for their meeting in May.

Mr. Philip Hinton told the Board that there is a tract of land being evaluated for the construction of a potential crew dormitory for members who operate the Ferry Divisions at Hatteras. He stated that there are a number of conditional uses identified in the Dare County Zoning Ordinance, government buildings being one of those, schools and some other uses. He stated that the ordinance does not specifically list dormitories as a permitted or conditional use.

Mr. Hinton, after researching the issues, provided staff with a definition for “dormitory”. He stated that the definition is very restricted in its use and would not allow for any opportunity or potential for damaging adjacent properties in anyway.

Mr. Jack Cahoon explained the work schedule of the employees of the Ferry Division and told the Board that for several years DOT has been trying to secure property for the construction of a housing unit for employees that work at the Hatteras Ferry Division. He stated that during the winter employees are located in Dare County from Kill Devil Hills, Kitty Hawk, Manns Harbor, Stumpy Point, Manteo and Wanchese that have license to operate our Ferry’s. He stated that most of them can’t afford to live in Hatteras for that period of time without some help.

Mr. Cahoon stated the State has been leasing a place for 4 years at a cost of about \$30,000 a year right next to other homes and hasn’t had any complaints or problems with anyone.

After discussion the Planning Board concurred that a public hearing is not necessary and stated that they felt comfortable forwarding a recommendation to the Board of Commissioners without conducting a Public Hearing.

Board member Jim Kinghorn stated that he would like to see the definition include language that would preclude the dormitory from being used to house prisoners.

A motion was made by Jon Britt to recommend approval of the proposed text amendment with the addition of language that would prohibit the dormitory from being used to house prisoners, this motion was seconded by John Myers.

Vote: Ayes – unanimous

Osprey Ridge Subdivision (formerly Four Seasons West Subdivision) – Duck – Preliminary

Planning Director presented staff comments in the absence of Mrs. Donna Creef, Assistant Planner.

Mr. Sturza stated that the Board has reviewed this before as Four Seasons West Subdivision. He stated that it has been resubmitted with a new name Osprey Ridge Subdivision, and since receiving preliminary plat approval by the Board of Commissioners the development group has changed. The new developer is known as Ambrosia Group and has submitted a revised subdivision plat for the site. The subdivision features the same layout and lot sizes as the former Four Seasons West Subdivision except the previously approved amenity area is now proposed as lot 7. The change in the amenity area triggered the need to resubmit and re-review.

Mr. Sturza noted that a new driveway permit from NCDOT has been issued to the Ambrosia Group, and the NC Sedimentation and Erosion Control Permit has been transferred as well.

Mr. Sturza stated that the developer is working with the NC Division of Water Quality concerning the stormwater permit. As of today the stormwater management permit for the project hasn't been issued by the State. Mr. Sturza informed the Board that there is some question about the transition and as to whether or not the state's regulatory agency is in fact in the process of implementing some administrative procedures on that state of limbo between the two. Every permit that was issued in the prior applicants name needs to be switched over and this is one of the ones that haven't been switched over.

Mr. Sturza pointed out that a note should be added to the plat stating that the division will be served by central water from the Dare County regional system and that no private wells will be used on the lots for purposes of potable water.

Staff recommended a favorable report be forwarded to the Dare County Board of Commissioners subject to the resolution of the stormwater management permit for the division and a note concerning private wells be added to a revised plat.

Chairman Midgett asked the developer, Mr. DeGabrielle if he has a stormwater permit.

Mr. DeGabrielle informed Chairman Midgett that he does not have a stormwater permit.

Chairman Midgett stated that due to the absence of a stormwater permit the Planning Board is not willing to take any action and recommends that the Ambrosia Group come back when the stormwater permit has been secured.

Mr. DeGabrielle stated that there is still a permit in effect on the property.

Chairman Midgett told Mr. DeGabrielle that is the understanding of the Planning Board and staff that there is not a permit in effect on the property.

Mr. Sturza stated that Mr. Tankard from the State of North Carolina told staff that the Ambrosia Group does not have a stormwater permit.

Mr. DeGabrielle stated that he spoke to Robert on Friday and received a letter in late March from Donna Creef that indicated that there were problems transferring the plan. He stated that he has letters in his file and asked Mr. Sturza if he was in possession of the letter he faxed to Donna Creef when he bought the property on the 1st, asking for a transfer of the permits. He stated that he was never informed of anything other than the fact that the permits would be transferred, and on Friday when he talked to Robert he indicated that the existing permit was still in place, and he wanted a new stormwater plan. Rick House has talked to him since that time and told him we were bringing a plan over tomorrow morning.

Chairman Midgett informed Mr. DeGabrielle of a fax received from First Coast Group to the State requesting that the permit be cancelled.

Mr. DeGabrielle explained to Chairman Midgett that according to State and Federal law concerning copyrights, any permit obtained on property that somebody else owns belongs to that property.

Chairman Midgett told Mr. DeGabrielle that he doesn't have a permit with his name on it tonight, and this is a scrap that this Board does not wish to get in. He further stated that if he doesn't have a stormwater permit with his name on it tonight then the Planning Board is not willing to move forward. He stated the previous developer was required to have all of his permits before he came before the Board and that is the process.

Mr. DeGabrielle thanked the Chairman Midgett for his input and asked if there is any indication that the permit had been cancelled?

Chairman Midgett stated the only thing submitted is something from the previous developer.

Mr. DeGabrielle asked if there is anything from Mr. Tankard stating that the permit is in fact in place and is still active on the property and has not been cancelled?

John O'Connor, Attorney for Mr. DeGabrielle stated he has been involved in this case with the Federal Court and various other lawyers. He stated that it is his understanding that the original project was approved and it would have been approved subject to, or pursuant to the State statute 153A-354(1) that where the land owner in this case was originally the Estate and later became Mr. DeGabrielle once he made an offer and was accepted. When the project was approved, he was the landowner. He stated that the people who were putting this thing forward were the agents of the landowners. So under that statute, because it is a site-specific development plan, it becomes vested. He has the right; any landowner has the right to pursue that development plan. Now, what's happening here is somebody, First Coast Group is trying to muddy the water. There is a permit in place and it has not been taken away. There is an application in there we've sent other site plan in for a review but what I suggest that if you could review plan and if there is a problem before it comes to the Board of Commissioners if they don't have the stormwater permit that is acceptable then the Commissioners can simply

Chairman Midgett stated that he is willing to review this development as a sketch plan, but not willing to take action on it tonight.

Mr. DeGabrielle stated that the roads, water and everything are going in at this particular time. He stated there are letters from the day after we closed on this property from Mr. Tankard's office telling him that we closed on the property and asking them to transfer the permit in your file. There is a letter from their attorney four days later telling them the exact same thing and never a word about this.

Mr. DeGabrielle stated, last week on Monday, when they were notified with it we called Robert Tankard, he told us that in fact these people have said we want to withdraw the approval and it was not withdrawn by the state. It is still not withdrawn by the State. The permit is in effect on our land. If I went to your home and got a building permit on your home-site who owns it, you own it as the landowner that is what the state law says. WE are proceeding to be able to develop the property and would hope that you could at least review the plan and pass it on to the Commissioners. If we don't have a stormwater plan in effect which is what Donna told us on Friday, the commissioners would say hey turn it down. We have done a new stormwater permit.

Mr. O'Connor pointed out that First Coast Group has brought an action in Federal Court and has asked the Federal Court to enjoin them from doing this. The Federal court has declined to do so. He stated all the Board has is a fax from First Coast Group saying that they asked the state to withdraw the permit. The permit is still in effect.

Mr. O'Connor stated that the Ambrosia Group is asking, because of the time considerations, the Board considers the plan, send it to the Board of Commissioners, and if they don't have an acceptable permit for the Board of Commissioners they can always deny it. Otherwise, it is going to cost an enormous amount of time and money on our part simply because of the facts.

Ray Sturza told the Board that what we are really talking about here is a paper chase. He stated that there was a subdivision plat approved based on a certain design that included a number of lots in which work is ongoing and work has not been stopped. He stated that the regulatory agency that has a problem with it is the one that either is or is not honoring a previous permit. All

that being said, the redesign is what you the Board has under consideration tonight and the redesign is what doesn't have a permit because it hasn't been submitted yet. He stated that he doesn't know how the Ambrosia Group could possibly have a permit for the redesign because what was approved was the previous design. He stated there really isn't much left to discuss except for the fact that until the stormwater management permit for the redesign is secured this division doesn't need to move forward.

A motion to table this plat due to the absence of a confirmed stormwater management plan was made by Jon Britt, seconded by John Myers.

Vote: Ayes - Unanimous

Ocean Isle Estates – Avon – Final Plat

Ray Sturza presented comments prepared by Chief Planner Donna Creef. He told the board this final plat for Ocean Isle Estates, which is located in Avon on the site of the former Castaways Inn Hotel, which has since been demolished and removed. Staff visited the site on April 2, 2002 and found that the improvements had been installed as proposed.

The division received preliminary plat approval from the Dare County Board of Commissioners on January 22, 2002. This approval was subject to the following conditions:

1. The setbacks for lot 18 and 22 shall be depicted on the plat and language shall be included in the covenants stating that these setbacks shall not be varied.
2. All lots shall be accessed from Ocean Isle Loop (note 11 on plat) and in covenants.
3. Ocean Isle loop shall be constructed to NCDOT standards and satisfactory comments from NCDOT shall be submitted at the time of final plat review.
4. No structural improvements, including pools, shall be located within the side yard setback area along NC 12 on lots 14, 15, 25, and 26.

Mr. Sturza told the Board that previous comments from the Health department indicate that the wells located on the site needed to be removed according to State abandonment rules. Verification of this work should be submitted to the planning department. The Health Department has also requested that the plat depict that the pond was filled. Documentation that the former pond should be submitted directly to the health department.

The road improvements have been installed and NCDOT comments on these improvements are attached.

Mr. Sturza stated that conversation earlier today with Mr. Fred Parker indicated that the concerns of the health department have been satisfied, the abandonment of the wells has been properly achieved, and the pond issue has been resolved to his satisfaction.

Mr. Sturza pointed out that note 14 on the plat should be revised to state no private wells shall be used as a source of potable water. Staff also requested that the covenants contain language prohibiting the use of private wells for water.

Mr. Sturza stated that there is an ongoing issue of the placement of certain advertising devices and Mrs. Creef indicates in her written comments that marketing of the site once recorded, the developers are advised that sandwich board signs, open house flags, model home flags, and other materials will not be allowed at the site.

Staff recommended final plat approval subject to the submission of the revised covenants.

A motion to grant final plat approval was made by Marcia Parrott, seconded by Jon Britt and John Myers.

Vote: Ayes – Unanimous

OTHER BUSINESS

Discussion of amendments to Sign Ordinance

Planning Director Ray Sturza reminded the Board that the County Commissioners have tasked the Planning Board and staff with revisions to the Zoning Ordinance that pertains to signs.

He told the Board that there are at least two regulatory initiatives or actions that we have been charged by the Board of Commissioners to deal with. He stated that he has been trying to figure out a way that the Board and staff can actually achieve some of these things on a timetable that is not overwhelming. He stated that he wanted to share with the Board a number of points about changes to the sign ordinance that he thinks are going to be pertinent in order to move forward.

Mr. Sturza stated given the volatile nature of the issue and the constraints on time, he recommends contracting with an independent consultant to address the following scope of issues:

1. Directional off-site signs for commercial properties not located on a principle transportation route such as NC 12.
2. Standards for freestanding signs on-site, such as size in square feet, height, lighting, mounting devices, etc.
3. Standards for signage affixed to structures, particularly shopping centers where structures are located a considerable distance from the transportation route resulting in a proliferation of temporary signs.
4. Standards for temporary signs if deemed desirable.
5. Standards for incorporating “message boards” into the design of freestanding onsite signs.
6. Timetable for a draft ordinance
7. Timetable for review by a community based review team
8. Timetable for review by Planning Board and consideration for adoption by the Board of Commissioners.
9. Definition and date of amortization period for signs rendered non-conforming by the adoption of a new ordinance.

Mr. Sturza stated he wanted to share this concept with the Board and see if the Board feels like we hit the scope of the issues there and see if you can appreciate the difficulty of the mission and why staff is probably going to go outside for some help. If we can find some, there may not be any vendors interested in this particular challenge.

Board members concurred this is a project that will need some outside help.

Discussion of Group Developments/Density

Ray Sturza told the Board that the Board of Commissioners has scheduled a public hearing for April 15, 2002 to consider a moratorium on group developments. He explained that the purpose of the moratorium is to allow the Planning Board and staff time to study the issue of group developments in particular density of group housing developments and multi-family projects.

Board discussed this issue at length and concurred to recommend the adoption of a moratorium.

A motion to recommend the adoption a moratorium on group development/multi-family projects was made by John Myers, seconded by Marcia Parrott.

Vote: Ayes – Unanimous

Jon Britt asked what happens with what we did today with Osprey Ridge being that Duck becomes a Town in May.

Ray Sturza told him that he doesn't know the answer to that. He stated that he could get an answer for him. He also stated that he thinks, what started with the County ends with the County. He stated that there is an inter-governmental agreement that has been executed between Dare County and the interim Duck council that answers those questions, but he is not exactly sure what the verbiage of it was.


There being no further business before the Board a motion to adjourn was made by John Myers, seconded by Jon Britt.

Respectfully Submitted,



Jacqueline J. Tillett
Senior Administrative Support Specialist

APPROVED: May 13, 2002



Elmer R. Midgett, Jr.
Chairman Dare County Planning Board