

MINUTES OF THE DARE COUNTY PLANNING BOARD MEETING

The Dare County Planning Board held their regularly scheduled meeting on Monday, January 10, 2005. This meeting was held in the Dare County Administrative Annex building, 204 Ananias Dare Street, Manteo, NC.

CALL TO ORDER 7 PM

MEMBERS PRESENT Elmer R. Midgett, Jr. – Chairman John Finelli
 John Myers Marcia Parrott
 Richard “Ricky” Scarborough, Jr. Mary Beth Midgett
 Joe Thompson

APPROVAL OF MINUTES

A motion to dispense with the reading of the minutes of the December 13, 2004 Planning Board meeting and to approve them as submitted was made by John Myers, seconded by Joe Thompson.

Vote: Ayes – unanimous

OLD BUSINESS

Western Dare, LLC – East Lake – Preliminary Plat

Eddie Valdivieso of Quible and Associates was present to represent this preliminary plat. Also present was the developer Mr. Dale Petty.

Senior Planner Donna Creef presented staff comments. She told the preliminary plat for Western Dare, LLC was tabled last month to seek an interpretation from the County Attorney on the applicability of sections of the Subdivision Ordinance that address street access for newly proposed lots. Mrs. Creef stated that according to Ms. Mills the Subdivision Ordinance does authorize the Planning Board to recommend approval of divisions with right-of-way access less than the traditional 45’ width if justified. However, Ms. Mills stated that such access must be improved to meet the standards of the Subdivision Ordinance. Therefore, the Planning Board must first decide if they are willing to recommend approval of the 20’ easement and then decide on the level of improvements necessary for the easement.

Mrs. Creef noted that the proximity of the 20’ easement to the existing structure located on the front portion of the property was also a concern expressed last month.

The Board discussed the following issues:

1. The location of the septic tank and drainfield in relation to the 20’ easement.
2. The safety of the 20’ easement/street being only 4’ from the existing house.
3. The development of the proposed lots and the possibility of residences or a commercial project being located on the property.

4. The possibility of the conveyance of a private easement to lot 4 without Planning Board review and approval.

A motion to recommend denial of this preliminary plat was made by John Finelli, seconded by Ricky Scarborough, Jr.

Vote: Ayes – Unanimous

Collins Retreat – Roanoke Island – Final Plat

Mr. Johnnie Robbins on behalf of the Collins family was present to represent this final plat. Also present were the developers, Mr. and Mrs. Hester.

Senior Planner Donna Creef presented staff comments. She told the Board this is the final plat for Collins Retreat; a five lot division located at the end of Toler Road in the Skyco area of Roanoke Island.

The Dare County Board of Commissioners granted preliminary plat approval to Collins Retreat on February 17, 2003. A 12-month extension was granted by the Planning Board in February 2004.

Mrs. Creef told the Board she visited the site on January 4, 2005 and found the road improvements complete. She stated in lieu of test results on the road improvements, a letter from the North Carolina Department of Transportation District Engineer, Gretchen Byrum has submitted a letter indicating that they have accepted the road.

Mrs. Creef noted that comments from the County Engineer express concern regarding the dredge spoil that was placed on the property. She pointed out that Mr. Shriver recommends that the Planning Board require a geo-technical evaluation on each lot prior to the commencement of any construction activities. Based on this recommendation, Mrs. Creef suggested the following disclaimer be included on the final plat:

“The natural soil conditions on this site have been modified with the placement of fill material pumped to the site in conjunction with a waterway maintenance dredging project. These soils have not been evaluated for suitability for wastewater/septic improvements or for foundation compaction for any proposed structure. Additional engineering work may be required at the time building permits for construction on the individual lots are requested.”

Mrs. Creef recommended final plat approval subject to the inclusion of the disclaimer on the final plat recorded in the Dare County Register of Deeds.

A motion to grant final plat approval subject to the disclaimer as recommended by Mrs. Creef being added to the plat was made by John Myers, seconded by Joe Thompson.

Vote: Ayes - Unanimous

Kinnakeet Shores – Avon – Phase 19 & 21 – Final Plat

Mr. Marc Bissell was present representing this project.

Senior Planner Donna Creef presented staff comments. She told the Board that preliminary plats for phases 19, 20, and 21 of the Kinnakeet Shores Subdivision were approved in the early 1990's as part of the master phasing plan for the division. Over the course of the years they needed to do some dune building along a section of NC 12 in between Avon and Buxton. Phase 19 has been reduced from 23 lots to 12 lots. The area approved as phase 20 has been combined into the 11 lots that now compose phase 21.

Mrs. Creef stated that the reconfigured lots are based on the 12,500 minimum lot size which is the minimum lot size originally established for Kinnakeet Shores in the late 1980's. All of the lots will be connected to central water from Dare County and supplied central wastewater disposal from the privately owned wastewater treatment facility.

Mrs. Creef noted that the sequencing of the lots in phase 19 has changed and the developers have requested that the final plat be recorded without this non-sequential pattern for marketing reasons. She stated this sequencing is confusing and suggested that it might be more appropriate to renumber the lots in sequence and make a reference to the former lots.

Mrs. Creef stated that the lot design of several of the lots in Phase 21 is unusual and the building setback lines should be determined and recorded on the final plat with language stating that those are the building setback lines and they are not to be changed.

Staff visited the site on January 3, 2005 and found the road paving complete. She noted that test results on the road improvements have not been submitted. She told the Board that additional shaping and stabilization of the roadside swales is needed. Street signs and STOP signs need to be installed.

Correspondence from the Water Department indicates that the final certification from the State on the water line improvements had not been received.

If the Board is inclined to grant final plat approval Mrs. Creef suggested that it be subject to those items (release from the Water Department, satisfactory test results on the road improvements, installation of the street signs and the renumbering of the lots in a sequential fashion and the building setback lines be established on the final plat).

Mrs. Creef stated that Mr. Remaley the Fire Marshal has indicated that the fire hydrants and the roads need to be completed before construction.

Mr. Bissell addressed the Board and stated that the hydrants are now in. He further stated that the state certification has not been received due to some changes in the lots. He stated most of the water and sewer improvements were made some time ago and after they were made the developer finished reconfiguring the lots so that some of the service lines didn't match. He

stated Basnight Construction is been in the process of doing some reconfiguring and that is why that final State certification hasn't been received. He stated they are going to be doing the final testing of tomorrow.

Regarding issues identified by staff, Mr. Bissell made the following comments:

1. The developer has really proposed to keeping that non-sequential lot numbering because they have literally thousands of master plans that are circulating all over the country that have that numbering system and it is easier for them to not have to renumber them.
2. The test results on the road improvements were faxed to his office after he left this to come to this meeting.
3. The setbacks as suggested by Mrs. Creef have been included on a revised plat.

John Myers, seconded by Marcia Parrott made a motion to grant final plat approval too Kinnakeet Shores Phase 19 subject to the following conditions:

1. The submission of satisfactory test results on the road improvements.
2. Verification from the Water Department that the water line improvements have been tested and certified as required.
3. The lots in Phase 19 shall be numbered sequentially.

Vote: Ayes – Unanimous

After discussing the final plat for Phase 21 of Kinnakeet Shores, a motion to grant final plat approval to Phase 21 was made by Joe Thompson, seconded by Ricky Scarborough, Jr.

Vote: Ayes – Unanimous

NEW BUSINESS

James Franklin Bagwell, Jr. – Frisco – C.H. Fulcher Tract – Sketch Plan

Mr. Bagwell was present to represent this sketch plan.

Senior Planner Donna Creef presented staff comments. She told the Board that this site plan for Mr. Bagwell was submitted to our office before the Christmas holidays without the benefit of a CUP application or the appropriate fees. She stated she was assured on the phone twice by Rankin Surveying that the application would be submitted and we have yet to receive it. So, what you see before you tonight is a sketch plan.

Mrs. Creef stated that the unit at the front of the property depicted as storage, Mr. Bagwell or Rankin Surveying on behalf of Mr. Bagwell had submitted this same site plan that shows it as an office earlier this summer at which point she informed that that their proposal is a group development and needed to be submitted to the Planning Board for review.

Mrs. Creef stated that the unit located at the front of the property is the old “flying saucer”. This building is not certified for occupancy by the Dare County Building Inspectors. Conversations with the Chief Building Inspector, Talmadge Jones indicate the structure does not conform to the

building codes for occupancy. Mr. Jones said they can’t meet the height requirement or the load requirement for the floor, and the structure cannot be modified to meet the building codes to qualify for occupancy.

Mrs. Creef stated that Mr. Bagwell proposes the unit to be used for “storage”. The site plan identifies the unit as an “office”. She stated that staff is not inclined to approve any site plan or recommend for approval any site plan or facilitate the review of any site plan that features this unit on the property.

Mr. Bagwell told the Board that the septic tank people won’t let anything be done with it either, and other than for storage he doesn’t see anything that it can be used for.

Chairman Midgett informed Mr. Bagwell that based on what the building inspector says the Planning Board can’t do anything for him.

The Board discussed this item and concurred that the unit will not be authorized for occupancy and suggested Mr. Bagwell consider relocation of the unit.

This item was reviewed as a sketch plan; no action taken or required.

Ocean Sound, LLC – Cape Hatteras Landing – Buxton – Group Development

Mr. James Bowen of Hobbs Upchurch was present.

Senior Planner Donna Creef presented staff comments. She told the Board that the Fire Marshal has indicated in an e-mail to her that the roads and hydrants must be installed before construction. Mrs. Creef stated as part of the review and the submittal to the Planning Board she sent notice to the adjoining property owners and has been contacted by Mr. James Gray. She stated that Mr. Gray has submitted written comments and is here this evening. Mrs. Creef stated she indicated to Mr. Gray that the Planning Board would provide him an opportunity to speak three or four minutes to present his comments to the Board, and suggested that he do so prior to the presentation of staff comments and board discussion.

Mr. Gray stated that he understands that the Board doesn’t normally take comments from the public appreciates the opportunity to make a few. He told the Board he was born and raised on the property adjacent to the property in question. His great, great, grandfather bought the property in 1772. Mr. Gray expressed the following concerns:

1. The aesthetic effect of the development proposed on the village of Buxton.
2. The damaging effect of the septic disposal system on the surrounding and adjacent wetlands.

3. Possible misuse of the group housing development classification to fit into a sensitive wetlands area.
4. The dumping of 30,000 gallons of partially treated sewage affluent in the middle of the prime fresh water aquifer within Buxton, within 50 to 175 feet of active water wells.

In conclusion Mr. Gray stated the he and other neighbors feel that the construction of 41 high occupancy homes in a high density configuration on that lot is not in keeping with the village of Buxton and the forced injection of 30,000 gallons of partially treated sewage affluent into that aquifer is going to destroy it. He stated that also don't feel that Ocean Sound, LLC has the right to destroy the water aquifer in that area and he firmly believes it is going to pollute it to the point to where eventually the Health Department is going to condemn their wells and not allow them to be used.

Senior Planner Donna Creef told the Board that the Board that this property was previously submitted as a proposed subdivision and was met with resistance due to a proposed centralized drip irrigation system for wastewater treatment.

The site plan included in the Board's packet depicts the entire layout of the group housing project and the proposed phases of the development. The overall number of units is 41 with associated parking and boat basin facilities. The first phase consists of 4 units and the infrastructure necessary to serve this first phase. Approvals will be granted for each phase with amendments to the original CUP completed at the time each phase is submitted for review. Language has been included in the draft CUP that states the development of additional phases of the project shall be subject to the zoning regulations in place at the time of submittal of the additional phases.

Mrs. Creef told the Board that each of the residential units is proposed on a 40' x 60' footprint. She stated that the CUP has been drafted to indicate that all improvements, including pools and spas will be located within this footprint area. The parking can go outside of that footprint.

The roads are private as they are in all of the group housing project that we see and the maintenance will be the responsibility of the property owners. The roads should be constructed to the pavement standards of NCDOT and independent testing results completed shall be submitted upon completion. Building permits for the individual units cannot be secured until these improvements are completed and the verification documents submitted to the Planning Department.

Mrs. Creef stated that the infrastructure improvements for phase one should be completed within one year from the date of Board of Commissioner approval. State permits for sedimentation, erosion control and stormwater management will be required.

A current wetland verification map has been submitted.

Mrs. Creef stated there is an existing boat basin located on the property and she assumes these boat basins will be for the exclusive use of the property owners. Clarification on the use of the

boat basin and slips should be included on the site plan and in any homeowner's documents that are established for the development.

Mrs. Creef told the Board that written comments from Mr. Bowen focused on the private wells there. She stated that although the County does operate a reverse osmosis plant for the four villages, Avon, Buxton, Frisco and Hatteras, there is not mandatory hook-up.

Mrs. Creef stated that Mr. Gray's concerns regarding the effects of the wastewater affluent on the private wells are valid and suggested the Planning Board seek counsel of the Health Department.

Mr. James Bowen addressed the Board and stated they were not aware of the wells next door and they are aware that there is a 100' separation required from the wells. He stated that they need to go out there and survey those wells and find out where they are. He stated they are planning on a licensed soil scientist to perform a ground water mounding analysis for the septic system, but have not gotten to that phase yet. He stated the first four homes are looking to dispose of less than the 3,000 gallons per day of affluent. The water is going to be treated to reuse quality standards. He stated they are providing the 30' vegetated buffer from the wetlands or from the water.

Mr. Frank Jakobs, representing Ocean Sound LLC told the Board that the last thing they want to do is cause any problems. He also stated that he was not aware of the existing wells adjacent to the proposed development site. He stated he is looking for a sense of direction from the Planning Board. He said that they have hired a soil scientist to go on the property to do test boring to make sure that the property was suitable for sewage and for wastewater. Mr. Jakobs stated that this system is actually a treatment plant very similar to what Dare County is using for their schools and similar to what they are using down in Hatteras Landing for the ferries.

After lengthy discussion the Board concurred to consider item sketch plan to allow time for the staff to discuss the proposal with the Dare County Health Department and potential impacts on the private wells.

Buddy Foster – Hatteras – Conditional Use Permit

Due to the lack of representation this item was not reviewed by the Planning Board. This item will be place on the February 14, 2005 Planning Board agenda.

Proposed Zoning Ordinance to regulate the height of objects over 50 feet tall around the Dare County Regional Airport – Roanoke Island

Representatives from the Dare County Airport Authority were present for the review of this item.

Senior Planner Donna Creef presented staff comments. She told the Board that the Attorney for the Dare County Airport Authority, Mr. Hobbs has been working with the County Attorney,

Norma Mills on the development of an overlay district and regulations for the Airport Authority that pertain to structures that are over 50' in height.

The draft ordinance regulates structures that exceed 50' in height. The draft ordinance creates an airport overlay zone and language that will be added to the Zoning Ordinance.

All of the zoning districts on Roanoke Island have a building height limit of 35 feet. The only thing that may be impacted by this would be a transmission tower, and such a structure would be subject to review by the Zoning Board for a height variance. If a request for construction of a structure that exceeds 50' in height is submitted to the building inspector, then a tall structure certificate from the Airport Authority must be issued prior to the issuance of the building permit.

Mrs. Creef stated that all amendments to the Zoning Ordinance require review by the Planning Board prior to action to adopt the ordinance by the Dare County Board of Commissioners. Although the Planning Board has the option of conducting a public hearing on draft amendments before making a recommendation she does not feel that such a hearing is needed on this proposal since the ordinance affects only structures that exceed 50'. The Board of Commissioners, by law, must conduct a public hearing on the draft ordinance before the overlay zone and regulations can be enacted. Mrs. Creef stated staff doesn't have any concerns about it and doesn't see any conflicts with the Zoning Ordinance.

Mr. Robert Hobbs, Attorney for the Airport Authority addressed the Board. He told the Board the presentation in the packet included not only the text of the proposed ordinance but also an executive summary that the Chairman, Connie Brothers prepared that might help streamline the Board's review of this presentation. He stated there is a provision already in the Ordinance that was adopted in 1978 for a height restriction but it is basically obsolete as far as language goes. He stated it does not meet with current FAA requirements and his impression is that it is rarely if ever enforced just because of the way it is structured.

Mr. Hobbs stated that the Airport Authority is highly dependent upon the State of North Carolina through the Department of Transportation Division of Aviation for funding for improvements at the airport, and these grants basically pay for 90% of the improvements to the airport and the local part (Dare County) is typically 10%. Therefore, the State has recently stated that airports must update or have imposed a height restriction ordinance that is modeled upon the FAA model ordinance in order to continue receiving these 90% grants which allow the airports to remain open and relieves Dare County from having to pay very much towards those improvements just up to the 10% level.

Mr. Hobbs stated this Ordinance would replace the existing 1978 ordinance, and adds a provision to Chapter 22 of the Code of Ordinances Zoning section so that persons receiving the Zoning Ordinance book will be made aware of this height restriction ordinance.

A motion to recommend approval of the zoning amendments for the Dare County Regional Airport was made by Marcia Parrott, seconded by John Myers.

Vote: Ayes – Unanimous

Mr. Hobbs pointed out a few minor corrections to be made to the draft Ordinance. One being on page 2 (the Dare County Regional Airport Height Restriction Zoning Ordinance 2004); obviously that will need to be changed to 2005. Also page 9 about half way down in paragraph # 3 there is a reference to a statute that should be 63-35 instead of 63-035.

H.I. Enterprises, LLC – Salvo Landing and Marina – Salvo – Conditional Use Permit

Senior Planner Donna Creef presented staff comments. She told the Board that HI Enterprises, LLC has submitted a site plan and CUP application for a residential group housing development in Salvo, NC. The site currently functions as the Salvo Market Marina and consists of two structures which are proposed for demolition to accommodate the development. The property is zoned S-1 which allows all uses. The development of the group housing site plan is regulated by Section 22-31 of the Dare County Zoning Ordinance.

Mrs. Creef briefly discussed the following issues:

Site modifications - Mrs. Creef stated that they will need to fill a portion of the existing boat basin on the site to accommodate the 15 units proposed. An engineered plan on the fill activities to address the soil compaction and location of structural improvements will be necessary.

Proposed Improvements - Mrs. Creef noted that the developers are proposing a total of 15 residential units located on 40' x 60' footprints. She stated it appears they have been sited in compliance with the 20 foot separation standard of Section 22-31. She suggested those individual measurements be depicted on the site plan. A total of 6 bedrooms per unit are proposed. The locations of the pool improvements should be discussed with the developer to determine if such improvements will be located within the 40' X 60' footprint. The site plan depicts parking spaces for each unit in conformance with the Dare County Zoning Ordinance.

Paved Road improvements – Mrs. Creef stated paved road improvements to access the units will be constructed. Emergency turnarounds have been provided adjacent to units 13 – 15 and units 10 – 11. Mrs. Creef told the Board that comments from the Fire Marshal indicate fire hydrants will be installed as discussed with himself and the County Engineer. Although the roads will be private they should be constructed to NCDOT pavement standards and verified by independent testing once they have been completed.

Stormwater - The site plan depicts a proposed stormwater retention basin behind unit 13. A state stormwater management permit will be required for the site. This permit should be secured before work on the site commences.

Boat basin – Mrs. Creef stated that the proposed modifications to the existing boat basin will require a CAMA major permit which is a lengthy review. She stated she assumes the boat basin and boat slips will be for the exclusive use of the property owners, and a note to this effect should be included on the site plan and in the homeowner's documents.

Wetlands – Mrs. Creef stated an up-to-date wetlands verification map signed by the Corps of Engineers should be submitted.

Completion of the improvements – Staff has included language in the draft CUP stating that all infrastructure improvements (roads and waterlines) should be completed within one year of the date of approval by the Board of Commissioners. As built surveys of the road improvements should be submitted to the Planning staff once they are complete. Individual as-built surveys on the residential units will also need to be submitted to the planning staff once the construction of those is complete and have certificate of occupancy's on the individual units.

Mr. Bowen of Hobbs Upchurch told the Board that they are aware that they have to provide a CAMA major permit and have been working with Dennis Hawthorne. He stated they are now aware that they need to have a fill plan coordinated with the County Engineer. Mr. Bowen stated there will be a State Wastewater Permit prior to the commencement of construction.

The Board discussed a location for parking boat trailers, the removal of the underground gas tanks on site, the migration of the affluent for the development, lighting, and fencing around the pool improvements, outdoor amplification devices, and water source for the adjoining properties

County Engineer Steve Shriver commented that he wants a plan for a controlled fill and then ideally after the fill is in place he would like to have the area tested for bearing and so forth.

After lengthy discussion John Myers made a motion; seconded by John Finelli to recommend approval subject to the following:

1. A copy of the covenants being submitted to the Planning staff for review. The covenants shall address lighting improvements, fencing around the pool improvements and outdoor amplification devices.
2. The Planning staff shall research the potable water source for the adjoining properties to determine if the adjoining properties are connected to the Dare County water system.
3. Removal of all improvements associated with the fuel tanks and the submission of certification from the Environmental Protection Agency before the construction of the roads and wastewater improvements.
4. Submission of an engineered plan for the fill activities associated with the existing boat basin. The engineered plan shall be submitted to the County Engineer for review prior to the item being submitted to the Dare County Board of Commissioners.

Vote: Ayes – Unanimous

OTHER BUSINESS

Senior Planner Donna Creef introduced the new Dare County Planner Ryan Simon. She told the Board that he began work on January 3rd.

ADJOURNMENT

There being no further business before the Dare County Planning Board a motion to adjourn was made by John Finelli, seconded by John Myers.

Vote: Ayes – Unanimous

This meeting adjourned at approximately 9:45 PM.

Respectfully Submitted,

Jacqueline J. Tillett
Senior Administrative Support Specialist

APPROVED: February 14, 2005

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