

## **MINUTES OF THE DARE COUNTY PLANNING BOARD MEETING**

The Dare County Planning Board held their regularly scheduled meeting on Monday, August 8, 2005. This meeting was held in the meeting room of the Dare County Administrative Office Annex located at 204 Ananias Dare Street, Manteo, NC.

### **CALL TO ORDER 7:00 PM**

**MEMBERS PRESENT** - Elmer R. Midgett, Jr., Chairman  
Joe Thompson  
Robert Lewis  
John Myers, III  
John Finelli  
Ricky Scarborough, Jr.

**MEMBERS ABSENT** - Mary Beth Midgett

### **APPROVAL OF MINUTES**

There being no additions or deletions to be made to the minutes of the July 11, 2005 planning board meeting, a motion was made by John Myers, seconded by Robert Lewis to dispense with reading them and to approve them as submitted.

Vote: Ayes – Unanimous

### **OLD BUSINESS**

#### ***Robert J. & Mae B. Lunden – Colington – VC-2 Text Amendment***

Senior Planner Donna Creef presented staff comments. She told the Board that last month there was an initial discussion about the request submitted by Mr. and Mrs. Lunden to amend the text of the VC-2 zoning district to add bed and breakfast homes to the list of permitted uses. During that discussion, Mrs. Creef noted that some concerns were raised regarding the current definition of bed and breakfast homes for the commercial district the possibility of creating boarding houses. The Board instructed the Planning staff to draft a definition for a large bed and breakfast home to address concerns regarding the operations of boarding houses.

Mrs. Creef told the Board that she researched numerous county government ordinances for definitions of bed and breakfast homes and/or boarding house. She further stated that she researched the Building Code as well for guidance. She told the Board that the building code makes no distinction between a bed and breakfast home and a boarding house. However, the main difference in other county government definitions is the length of stay associated with a bed and breakfast home and a boarding house. Mrs. Creef stated that bed and breakfast homes are intended for short-term accommodations whereas boarding houses traditionally offer rooms for rent on a month-to-month or long-term basis. Based on that information, Mrs. Creef provided a draft definition of large bed and breakfast homes for the Board's review and consideration as follows:

*Large bed and breakfast home: A single family dwelling that consists of a single dwelling unit together with the rental of not more than \_\_\_\_ guest rooms on a daily or weekly basis to tourists, vacationers, or transients not to exceed a stay of 14 consecutive days. Guest rooms in a large bed and breakfast home shall not be rented on a month-to-month or long-term basis. The provision of meals if provided at all is limited to the breakfast meal and the bed and breakfast operation is conducted by persons who own and reside in the dwelling unit with the assistance of not more than the equivalent of one full-time employee. There shall be no cooking facilities allowed in the individual guest rooms.*

She explained that she left the number of guest rooms blank intentionally in an effort to get feedback from the Board.

Board member Robert Lewis commented on the length of the stay. He stated that the vacation rental act, which most of the vacation homes here on the Outer Banks is under consideration to be a vacation number less than 89 days. If you go up to 90 days or more that is considered a long-term rental or a permanent rental versus 89 days. Mr. Lewis stated that he is not suggesting 89 days as the number.

Mr. Lewis expressed the concern regarding allowing the use as a permitted use on the already congested Colington corridor. He stated that he supports the idea of bed and breakfast's in the area in general, but is not real sure it needs to be done without the infrastructure, i.e. the widening of Colington Road to handle the additional traffic.

Board member John Myers commented that he doesn't see a problem and would support the five (5) bedroom scenario. He also stated that he thinks 90 days is a reasonable time limit.

Board member Ricky Scarborough commented that 89 days doesn't seem to be a problem.

Board member Joe Thompson stated that he is not sure if he likes the 89 day time limit because looking at the economy it seems to him that one of the most in demand housing needs is short term for seasonal rentals for working in the summer time. He stated that the 89 days fits in with that time-frame, but if times change and the economy changes there could be someone who looks at that bed and breakfast and looks at it as a boarding house type of thing to bring in seasonal rentals because you can charge a premium and stack as many Eastern European kids in there as you can for the season. He stated that he doesn't mind 89 days total annually, but I would say consecutively it shouldn't be more than 2 weeks or 30 days maximum.

John Myers, seconded by Joe Thompson, made the motion to recommend approval of the text amendment to add bed and breakfast homes as a permitted use in the VC-2 zoning district. The Board concurred to endorse the following definition of large bed and breakfast home as part of this amendment request:

*Large bed and breakfast home: A single family dwelling that consists of a single dwelling unit together with the rental of not more than five (5) guest rooms on a daily or weekly basis to tourists, vacationers, or transients not to exceed a stay of thirty (30) consecutive days. Guest*

*rooms in a large bed and breakfast home shall not be rented on a month-to-month or long-term basis. The provision of meals, if provided at all, is limited to the breakfast meal and the bed and breakfast operation is conducted by persons who own and reside in the dwelling unit with the assistance of not more than the equivalent of one full-time employee. There shall be no cooking facilities allowed in the individual guest rooms.*

Vote: Ayes – 6 (Midgett, Thompson, Myers, Finelli, & Scarborough)  
Noes – 1 (Robert Lewis)

## **NEW BUSINESS**

### ***Christopher D. Coleman – Colington – Conditional Use Permit***

Mr. Coleman, the applicant, was present.

Senior Planner Donna Creef presented staff comments. She told the Board that earlier this year, the Planning Department received a request from the Colington Harbour Association to investigate an alleged violation of the R-4 zoning at 360 Soundview Drive, property owned by Mr. Christopher Coleman. Mrs. Creef told the Board as a follow-up to this complaint, staff sent letters to Mr. Coleman. She told the Board that Mr. Coleman responded and acknowledged that he did in fact operate an office for his Marine Construction business at his home. Mrs. Creef told the Board that Mr. Coleman's family members, who do not reside at the house, work in the office. She stated that home occupations are allowed as a conditional uses in the R-4 zoning district. As a result, Mr. Coleman has submitted an application for a Conditional Use Permit in an effort to respond to the violation notice.

Mrs. Creef provided a draft conditional use permit to address identifying several conditions for discussion by the Board, as follows:

*Condition #1 – “No employees or other family members employed by any business owned and/or operated by the petitioner or the petitioner’s family shall work at the residence. Parking for no more than two company-owned vehicles operated by the petitioner or other family members that permanently reside on the premises, not to exceed two company-owned vehicles, may be located on the site.*

Response – Mrs. Creef told the Board that Mr. Coleman is an employee of the business; his wife is also an employee of the business, therefore it seems appropriate that there would be two employee vehicles or two company owned vehicles in the driveway. Mrs. Creef stated she has been visiting the site on an almost a daily basis and there is generally more than two vehicles there. She stated that there are photographs on file that she has taken and also some from the Harbour Association demonstrating the number of vehicles on the property. Mrs. Creef told the

Board that the definition of a home occupation clearly states that only the people who reside in the house are authorized to work in the house. It doesn't speak to family members who may reside in the neighborhood and come there to work. She noted that in one of the letters sent to us

from Mr. Coleman stated he uses his office as a "satellite office" which is staffed by his father-in-law. Mrs. Creef stated that unless his father-in-law lives at the residence he can't be authorized to work there. Based on research in the tax office, Mrs. Creef stated she believes Mr. Coleman's father-in-law lives on a street over and does not reside at 360 Soundview Drive. She stated that other arrangements for Mr. Coleman's father-in-law will need to be made. One suggestion made, was the issuance of another home occupation for the father-in-law's residence. However, only one application for a CUP was submitted which is for the Coleman's personal residence located at 360 Soundview Drive.

*Condition #2 – "No parking for employees shall be permitted on the premises. Employees of any business operated by the petitioner shall not visit the residence to receive job assignments, pick-up supplies or equipment, or pick up wages or payments for services rendered."*

Response by staff – Mrs. Creef pointed out that by definition a home occupation is for the residents of the subject property and the scope of such occupation should not detrimentally impact the neighborhood or generate impacts inconsistent with residential neighborhoods. She stated that the photographs submitted by Colington Harbour indicate that employees and numerous company-owned vehicles visit the site of the Coleman residence. Mrs. Creef stated that this practice has been verified by monitoring of the site by planning staff. She noted that the intent statement of the R-4 zoning district references "low vehicular traffic flows" and this draft condition is designed to reflect this statement and ensure activities that are consistent with a residentially zoned area and the R-4 zoning district.

Mrs. Creef told the Board that based on discussions with Mr. Coleman and his business operations, these draft conditions may be modified and other conditions may be identified for inclusion in the CUP. Mrs. Creef told the Board that Mr. Coleman's father-in-law spoke with the Planning Director after he received one letter.

Mrs. Creef noted that the intended scope of the home occupation is not one that will allow full operations of a business to take place at 360 Soundview Drive, or other employees, even family members, to operate the business from Soundview Drive or any other location within the Colington Harbour Subdivision.

*Condition #3 – "No signage shall be posted on the property or attached to the residence".*

Response – Mrs. Creef stated she could not find any regulation in the Zoning Ordinance that addressed signage at a home occupation.

*Condition #4 – "No equipment, fuel tanks, fuel, materials, trailers, barges, or other machinery associated with any business operated by the petitioner shall be located on the premises or in the*

*waterway located adjacent to the Coleman site or any other waterway within the Colington Harbour Subdivision”.*

Response – Mrs. Creef stated that photographs from the Colington Harbour Association depict heavy equipment, cranes, and a barge located at the Coleman residence previously, and has been verified by the planning staff over the past weeks. She noted that on one occasion, an 18-wheeled truck with trailer was parked adjacent to the Broadbay Drive residence. She stated that Mr. Coleman was issued a CAMA permit for work on his personal property, however, that permit has expired.

*Condition #5 – “There shall be no deliveries of lumber, equipment and/or other materials associated with marine construction or other types of construction activities to the premises. This condition shall not be interpreted to prohibit deliveries of office supplies or other non-construction materials and supplies from the US Postal Service, United Parcel Service, Federal Express or other commercial delivery services.”*

Response – Mrs. Creef stated that the delivery of lumber and materials is inconsistent with the R-4 residential zoning and the intent of low vehicular traffic flows. She told the Board that Mr. Coleman has an arrangement with the Colington Harbour Association for the deliver of lumber to the Colington Harbour Association marina site and this arrangement should continue.

*Condition #6 – Customers and prospective clients of the petitioner may visit the home office to discuss their projects. However, at no time shall more than three clients be received at the premises. Parking for clients outside of the right-of-way shall be provided at the premises.*

Responses – Mrs. Creef stated that there is nothing in the definition of home occupation that precludes the visiting of clients to a home occupation. She noted that in previous conditional use permits issued for home occupations, similar conditions to address the number of clients visiting a site have been included.

*Condition #7 – “The Planning Department staff shall monitor the site. The applicant shall be notified in writing of any violation of the Conditional Use Permit. Appropriate measures to correct any violation identified by the Dare County Planning Department shall be made upon receipt of notice. Failure to correct any violations may void this Conditional Use Permit and may result in the assessment of civil penalties as provided for in Chapter 10 of the Dare County Code of Ordinance and/or any other legal remedy available to Dare County.”*

Response – Mrs. Creef noted that a condition of monitoring and violation is included in each Conditional Use Permit that is issued by the County. The draft language seems appropriate and is consistent with other previously issued Conditional Use Permits.

Mrs. Creef told the Planning Board that discussions with Mr. Coleman and his business operations, these conditions may be modified and other conditions may be identified for inclusion in the Conditional Use Permit. Pending review of the CUP and discussion of the

pertinent issues by the Planning Board and the petitioner, staff feels authorization of the draft CUP would not be inconsistent for a home office. However, certain aspects of the home office activities currently being conducted without authorization are clearly contrary to the intent of the R-4 zoning district. These include the delivery of materials and supplies, multiple vehicles on the site, and apparent use of the home by persons other than the occupants of the house.

Mr. Coleman commented that for the most part he feels that the cart is being put before the horse. He stated that a letter was sent back to Planning regarding the CAMA permit which does not expire until August 13<sup>th</sup>. He stated that the pictures before the Board are people working on the project at his house which is perfectly legal. He stated that there are a lot of assumptions being made. He stated he sent a letter dated July 15<sup>th</sup> to Mr. Sturza with a copy of the application for this and a copy of the CAMA permit. He addressed the issue of the barge and stated that the barge was on his property when he was having work done there; he said it has now moved to another project.

Chairman Midgett informed Mr. Coleman that the conditions identified by staff will exist should a Conditional Use Permit be issued for a home occupation. He asked Mr. Coleman if he want to proceed or come back next month.

Mr. Coleman indicated that he would like to put it on the table to give him an opportunity to look at those conditions.

John Myers, seconded by Robert Lewis, made a motion to table this application to allow the applicant additional time to review the conditions outlined in the Draft Conditional Use Permit prepared by staff.

Vote: Ayes - Unanimous

**Stephen G. Basnight, Jr. & Carolyn G. Basnight – Roanoke Island – Preliminary Plat**

Stephen G. Basnight, Jr. and Stephen G. Basnight III were present for the review of this preliminary plat.

Present representing this preliminary plat was Ray Meekins of Seaboard Surveying and Planning.

Ryan Simons presented staff comments. He told the Board that the Basnight's have submitted a preliminary plat for a 4 lot residential subdivision outside of Manteo. He stated that there is an existing cemetery depicted on the plat. He stated that the cemetery is completely fenced in and some sort of easement or access to the cemetery should be indicated on the plat.

Mr. Simons told the Board that no road improvements are proposed for the subdivision; therefore no stormwater management plan is required. However a lot coverage data table should be included on the plat.

Mr. Simons told the Board that according to Senior planning staff, it has normally been the policy of the planning board to discourage flag lots which are longer than 200'. The flag portion depicted on lot 4 is almost 240' which may be at topic for discussion. Mr. Simons stated it should also be noted that when access along this flag lot is installed it should be remembered that the Zoning Ordinance requires a minimum width of 12'.

Mr. Ray Meekins told the Board that he did a survey of the cemetery and presented a recorded plat. He said the only indication of any access is the gate on the east side of the cemetery itself which is depicted on the recorded plat. He told the Board that historically the Basnight property has been heavily wooded and has never been used for access, and at the time he did the survey of the cemetery there was no physically track in and out. He stated not many people go in and out of there, but one can see where the gate is and where the intended access is. He stated he was told verbally that the access was always from the highway straight up to the east side. So he doesn't think it has anything to do with the Basnight property other than it is an adjoining parcel. Mr. Meekins stated it would be inappropriate for him to draw an access where he doesn't know where it is or should be.

The Planning Board briefly discussed the flag lot and concurred there would be no problem with it as currently depicted on the plat.

Ricky Scarborough asked about trash pickup for that flag lot.

Chairman Midgett noted that a dumpster site needed to be depicted somewhere. Mr. Meekins indicated that a dumpster site would be located at the front right corner of lot 3.

A motion to recommend preliminary plat approval subject to the following was made by Robert Lewis, seconded by Ricky Scarborough

1. Lot coverage table be included on a revised plat.
2. Dumpster site be indicated as stated by Mr. Meekins.
3. A note being added to the plat indicating that the access to lot 4 should be a minimum width of 12'.

Vote: Ayes – Unanimous

## **OTHER BUSINESS**

### **Wanchese Zoning**

Lorraine Tillett was presented to answer any questions regarding the Wanchese Zoning Proposal.

The Planning Board discussed the following items regarding this zoning proposal:

1. Accessory dwelling units

2. Non-conforming uses
3. Lot coverage.

Chairman Midgett asked that the Board think about the lot coverage issue. He stated that he will get some board members together to ride around the Village of Wanchese with Lorraine so they can see what is what on the ground in comparison with the proposed ordinance.

Chairman Midgett stated this item will be included on the September 12, 2005 agenda.

### **ADJOURNMENT**

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

Vote: Ayes – Unanimous

This meeting adjourned at approximately 9:30 PM.

Respectfully Submitted,

Jacqueline J. Tillett  
Senior Administrative Support Specialist  
Dare County Planning Department

APPROVED: September 12, 2005

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