

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

The Dare County Planning Board held their regularly scheduled meeting on Monday, September 12, 2005. This meeting was held in the meeting room of the Dare County Administrative Annex located at 204 Ananias Dare Street, Manteo, NC.

### **CALL TO ORDER**

### **MEMBERS PRESENT**

Elmer R. Midgett, Jr., Chairman  
John Finelli  
Robert Lewis  
Beth Midgett

John Myers  
Ricky Scarborough, Jr.  
Joe Thompson

### **APPROVAL OF MINUTES**

John Myers pointed out a correction to be made at the bottom of page two. He stated that the (3) consecutive days should be (30). There being no other corrections, additions or deletions to be made to the minutes of the August 8, 2005 Planning Board meeting, a motion to dispense with reading those minutes and to approve them as published was made by Robert Lewis, seconded by John Myers.

Vote: Ayes – Unanimous

### ***Wanchese Zoning***

Chairman Midgett amended the agenda to move the Wanchese Zoning to the top of the list.

The Board briefly discussed a timetable for the Wanchese Zoning Map. The Board discussed an alternative date for the workshop tentatively scheduled for September 28<sup>th</sup> due to one of the Board members not being able to attend on that date.

The Board concurred Thursday, September 29, 2005 would be a better date.

Mrs. Creef told the Board that she will make sure that the meeting room is available for September 29<sup>th</sup>, and if it is not available, she will find an alternative meeting place.

### **OLD BUSINESS**

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

Mr. Coleman was present.

Senior Planner Donna Creef presented staff comments. She told the Board that this item is a conditional use permit application for a home occupation. She told the Board that Mr. Coleman operates a marine construction business and has submitted an application to operate a home office at his residence in Colington Harbour.

Mrs. Creef stated the Board tabled this item last month to allow Mr. Coleman time to review the draft CUP prepared by the Planning staff. She also stated that she verified that the CAMA permit in question at the last meeting expired on August 11, 2005 and has been renewed by the Division of Coastal Management.

Mrs. Creef noted that additional comments specifically referencing the barge were added to the draft CUP. She pointed out that all of the conditions previously established remain the same with the exception of condition #4 which has been changed to address the use of a barge.

Mr. Coleman addressed the Board and stated that he wants to make sure that the conditions of the CUP for his property are global for Colington.

Mr. Coleman told the Board that he established this business as a hobby. He stated that his wife is not employed by him, and his in-laws moved down here to be with the family. He told the Board that his father-in-law comes to his home to answer the phone, push some paperwork, open mail, and helps with the day care of his son (taking him to and from school).

Mr. Coleman told the Board that he plans to relocate his business to property he as acquired in Currituck.

In reference to the draft CUP prepared by staff, Mr. Coleman expressed concern regarding conditions #1 and #6. He stated that he doesn't want clients to visit his residence and only wants his father-in-law to be able to go to his home and work out of the office and baby sit his child.

Chairman Midgett informed Mr. Coleman that his problem is that he is doing something beyond the Ordinance. He stated that the big problem is the barge and the fact that the permit is being renewed so that the barge can remain there.

Mr. Coleman told the Chairman that is not the case and nobody has provided any evidence showing that. He stated that he moves the barge in, does a little bit of work and then moves the barge out and does something else.

Chairman Midgett informed Mr. Coleman that the draft CUP as prepared by staff is what the Board is willing to recommend. Chairman Midgett stated that if that is not acceptable then it is up to Dare County to move forward with legal remedies.

Mrs. Creef asked Mr. Coleman what his timetable is on his relocation of his business to Currituck County.

Mr. Coleman stated that it would be after the first of the year. He stated that he doesn't have an issue with anything else except for condition #1 and #6. He stated that he doesn't want clients visiting his home office. He just wants his father-in-law to be able to come to his home and be at his home without any trouble. He stated he doesn't have a problem with anything else.

Mrs. Creef explained that the reason for condition #6 is that in the past when home occupations have been requested the applicants have asked permission for clients to be able to be come to the home. Mrs. Creef told Mr. Coleman that the condition can be removed if he does not wish to have it.

Mr. Coleman reiterated that the only issue he has is with his father-in-law not being able to come to his home and work out of the home office and take care of his child. He stated he doesn't see how he is disturbing the neighborhood. He said that no employees come to his house; the entire payroll is done in Virginia.

Chairman asked Mr. Coleman if his father-in-law is an employee.

Mr. Coleman stated that his father-in-law does get a 1099 from the company.

Mrs. Creef stated that the Ordinance specifically states that the home occupation is for people who reside on the premises. She further stated that she doesn't know how to get past the definition for a home occupation for what Mr. Coleman is asking for short of the text being amended to say that a home occupation can be a family member that is employed by the business.

Mr. Coleman stated told the Board that he disagrees with what Mrs. Creef stated regarding the definition of a home occupation. He stated that in a letter dated August 1 from Mrs. Creef, she stated that the Zoning Ordinance definition clearly states that only family members or occupants of the subject property may be employed at the subject home occupation.

Mrs. Creef read verbatim what the Ordinance says. "A profession or occupation carried on by a member of a family or a member of a recognized profession residing on the premises provided that no merchandise or commodity other than that produced on the premises is sold on the premises. Provided, further that not over 25% of the total actual floor area of any structure is used for home occupation or professional purposes". She explained that it speaks to a member of the family, but it also says a member of the family residing on the premises. She stated she doesn't know how to get past that because Mr. Coleman's father-in-law doesn't reside there.

Mr. Coleman stated that if you read further into it, it doesn't mention one single thing about employees. It talks about the household member who owns the home can have the office. But it does not go into further detail exempting or allowing an employee. Mr. Coleman asked if staff could get a legal interpretation on the definition of a home occupation.

Mrs. Creef stated that she can ask the County Attorney to render a written interpretation.

Mrs. Creef stated that if she knew that Mr. Coleman was going to move all of his business over to Currituck County within the next six months, we could come to terms with this. But, she knows what she is seeing out there and knows that since this has been going on the equipment and all that use to be at the Coleman residence is now being moved throughout Colington Harbour. I further commented that if Mr. Coleman has a place in Currituck or Chesapeake, then that is where it needs to be; it shouldn't be a problem.

A motion to table based on the request of the applicant to obtain a legal interpretation from the County Attorney on the definition of Home Occupation and whether or not it allows a family member to be there that does not reside on the premises was made by John Myers, seconded by John Finelli.

Vote: Ayes – Unanimous

***The Village at Salt Creek – Frisco – Final Plat***

Ryan Simons presented staff comments. He told the Board that The Village at Salt Creek was submitted as an 8-lot residential subdivision. He stated the primary point of discussion during the preliminary plat review concerned allowing access to lot 1 from HWY. 12, which he believes would have been permitted by the Board to prevent the relocation of a utility pole guy wire which was extending into lot 2.

Mr. Simons informed the Board that NCDOT will not permit access to lot 1 via Hwy. 12 as indicated by a memo dated July 14, 2005. He stated the developer has conceded to access lot 1 via a 15' easement from Salt Creek Court across lot 2. This was not approved at the preliminary, but staff considers this change non-substantial and bears no significant impact on the subdivision design. Mr. Simons stated that if any relocation of the guy wire is required, staff request that the location be depicted or indicated on the final plat.

Mr. Simons stated he visited the site last week and found everything in place including signs. He stated he noticed that the drainage swales may need to be shaped and seeded a little bit. He provided photos of the site.

Eddie Valdivieso of Quible and Associates was present on behalf of Bobby Willis and The Village of Salt Creek. He stated Mr. Willis is aware of the need for further stabilization of the drainage swales.

Senior Planner, Donna Creef noted that a condition prohibiting the location of pool improvements within the building setback lines on the lots that front on NC 12 needs to be included with any final plat approval.

A motion was made by Joe Thompson, seconded by Robert Lewis to grant final plat approval subject to the following:

1. Language being included on the final plat and in the restrictive covenants prohibiting the location of any pool improvements with the building setback lines on the lots that front on NC 12.
2. The restrictive covenants contain language restricting commercial activities.
3. Existing roadside swales be shaped and stabilized.

Vote: Ayes – Unanimous

***Cedar Hammock Resort Travel Trailer Park – Waves – Preliminary***

This item was removed from the agenda at the request of the applicant.

***Pirates Way – Hatteras – Sketch Plan***

Senior Planner Donna Creef presented staff comments. She told the Board that this was previously submitted as a sketch plan depicting a 20' access easement. At that sketch plan review the Board advised the developer that additional area was needed to increase the road to 30' in width. Mrs. Creef stated that the developer has acquired an additional 10' easement for a portion of the property, but indicates that efforts to gain additional width near the entrance from NC 12 were unsuccessful. Mrs. Creef told the Board that the Subdivision Ordinance does allow the County to approve private roads that contain less than the standard right-of-way width of 45' if there is a determination that public safety and welfare is adequately served.

Mrs. Creef stated pointed out that the CAMA 30' buffer regulation applies to the property along the canals, and the lot design reflects this buffer area. She also noted that some of the basin was filled in conjunction with bulkhead and rip-rap work. She stated that she informed Mr. Valdivieso this area should be appropriately noted if a preliminary plat is submitted along with some geotechnical information.

Eddie Valdivieso of Quible and Associates was present to represent the developer. Also present was the property owner, Mr. Bonney.

The Planning Board discussed the proposed easement and concurred that the easement needs to be widened to 30'.

Sketch Plan not action taken.

### **Maritime Ridge – Frisco – Sketch Plan**

A motion to excuse Beth Midgett from the review of this sketch plan due to a possible family interest in this property was made by John Myers, seconded by Robert Lewis.

Vote: Ayes – Unanimous

Planner, Ryan Simons presented staff comments. He told the Board that this plan has been submitted as a traditional four lot residential subdivision. It includes a 40' shared access easement, rather than a dedicated public or private street. Mr. Simon suggested that a conservation easement be created at the rear of the property to prohibit or discourage any future land disturbing activities in that area.

Eddie Valdivieso of Quible and Associates was present to represent this proposed subdivision. Mr. Valdivieso told the Board that rather than having the potential for four driveway cuts out on NC 12 the developer is proposing this layout with a common driveway easement going down the middle of the common lot lines between lots 2 and 3. He stated lots 1 & 4 would be required to access off of the interior common access drive, and there would be one driveway out to NC 12 and then the four home sites would access off of that.

The Board discussed the following issues:

1. Requiring the road/easement area to be 30' in width, the relocation of a portion of the existing structure on the front area of the site in an effort to gain additional width for the access easement.
2. The entire length of the road improvements being of an impervious surface.
3. All of the proposed lots to contain 15,000 square feet of area exclusive of the access improvements.
4. The submission of geotechnical information on the basin area that was filled at the time a preliminary plat is submitted for review.

No action taken; item considered a sketch plan.

A motion was made by Ricky Scarborough, seconded by John Myers to bring Beth Midgett back on the board for the remainder of the meeting.

Vote: Ayes – Unanimous

**Edward W. Nunnally – Hatteras – Zoning Amendment Petition**

Senior Planner Donna Creef presented staff comments. She told the Board that this is a rezoning request submitted by Mr. Ed Nunnally to amend the Hatteras Village zoning map for two parcels located at 58401 Monitor Trail/NC Highway 12. The property is zoned R2-AH and Mr. Nunally is seeking a rezoning classification of C-2H.

Mrs. Creef told the Board that Mr. Nunnally purchased the property some time back and was working towards development of a commercial site plan and realized that the site is zoned R2-AH and was not zoned commercial and that is why he is requesting a rezoning from R-AH to C-2H.

Mrs. Creef stated that the property is classified in the Dare County Land Use Plan on the land classification map as “Community Village” which is a sub-class of the community classification. She stated that the “Community Village” applies to Hatteras Village on Hatteras Island. The purpose of this sub-classification is to identify an area where a mixture of low density residential dwellings combined with various commercial services and small retail businesses to create a business environment. Based on this language, the rezoning application is not inconsistent with this land classification.

Mrs. Creef stated that the property is bordered by C-2H to the north.

Mrs. Creef told the Board that the previous owner Mr. Linwood Quidley submitted a letter stating that the property was previously used for commercial use.

Mr. Langlauf of Quible and Associates was present representing Mr. Nunnally

Motion made by John Myers, seconded by Ricky Scarborough to schedule a Public Hearing for next month.

Vote: Ayes – Unanimous

**OTHER BUSINESS**

**SED-2 Text Amendment**

Senior Planner Donna Creef told the Board that over the course of the last several months, staff has been struggling with assisting property owners in Buxton and Frisco who own property in the SED-1 zoning district. The problems involve the strict restrictions of the SED-1 district and the prohibition on mobile homes being located within this district.

Mrs. Creef told the Board the SED-1 zoning district was adopted by Dare County in 1988 to protect the shallow aquifer that lies underneath Buxton Woods. She stated at that time that aquifer was the only water source for the Avon, Buxton, Frisco and Hatteras; and

does not serve as the source of the water down there now. The County has a reverse osmosis plant and so the need for the strict level of protection for the aquifer has been removed or was effectively removed at the time the County took over the Water Association. The need for more flexibility for the property owners of Hatteras Island has developed and hence the submission of this staff based initiative to amend the SED-1 district.

In an effort to better assist the citizens of Hatteras Island, staff is requesting the Board's consideration of the following text amendments to the SED-1:

1. The addition of mobile homes to the list of permitted uses in this district which is currently not allowed in the SED-1.
2. Wetland filling prohibition – This prohibition was included when the re-charge of the shallow aquifer was a critical issue. Staff recommends this prohibition on wetland filling be amended to allow alteration or filling in a manner consistent with, but no greater than, Corps of Engineers regulations.
3. Wetland buffer – To allow for more flexible siting of improvements on properties located in the SED-1 district, staff recommends the current 50' buffer regulation be decreased to 25'.

The majority of the Board indicated that they were in favor of amendment #1 regarding the addition of permitting mobile homes in the SED-1 district.

The Planning Board unanimously supported the amendment of the prohibition to fill wetlands.

Regarding the wetland buffer the Board concurred that there not be a wetland buffer with the understanding that the Health Department rules will still apply.

### **Adjournment**

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

Vote: Ayes – Unanimous

Respectfully Submitted,

Jacqueline J. Tillett  
Senior Administrative Support Specialist

APPROVED: December 12, 2005

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