

MINUTES OF THE DARE COUNTY PLANNING BOARD MEETING

The Dare County Planning Board held their regularly scheduled meeting on Monday, December 9, 2013. This meeting was held in the Dare County Board of Commissioners meeting room located at the Dare County Administrative Building, 954 Marshall C. Collins Drive, Manteo, NC.

CALL TO ORDER 7:00 pm

MEMBERS PRESENT	Elmer R. Midgett, Jr. – Chairman	John Finelli
	Michael Barr	Dan Oden
	David Overton	

MEMBERS ABSENT	Richard “Ricky” Scarborough, Jr.	Beth Midgett
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APPROVAL OF MINUTES

There being no corrections or additions to the minutes of the November 11, 2013 meeting of the Dare County Planning Board, Michael Barr made a motion to approve the minutes as submitted. David Overton seconded this motion.

Vote: Ayes – Unanimous

PUBLIC COMMENT

Ava Johnson spoke first. Her home is located about 10'-15' off the back fence of Bill's Marine at 1640B Colington Road. She is concerned about the operation of Bill's Marine as it relates to safety, health, and privacy:

1. Westbound traffic is obscured by boats and cars when trying to enter Colington Road.
2. There is noise pollution from operating boat engines, including half the weekend (when she is off work) and evenings.
3. Ms. Johnson said the fumes from the motors give her headaches and she is concerned for her grandson who has asthma.
4. There is a lack of privacy. People at Bill's Marine can look into her dining room window from the boats. She can hear their conversations. She now leaves her windows down and curtains drawn.

Terri Nunemaker of 1640 Colington Road spoke next about Bill's Marine. She made the following points:

1. There has been a lack of compliance from Bill's Marine with their conditional use permit and with setback regulations.
2. Bill's Marine has not installed an adequate solid wood or composite fence as required by their conditional use permit.

3. There are noise and fumes from dry-running outboard motors 5-6 days a week. This could be prevented by running the motors in a 200-300 gallon tank to mute the extremely loud noise.
4. She requests "No Parking" signs on each end of Bill's Marine road frontage for safety. It is dangerous to enter Colington Road.

Maynard Outlaw has property adjacent to Bill's Marine and was the third speaker. He submitted photos of vehicles parked between Colington Road and the fenced area of Bill's Marine. Mr. Outlaw said the following:

1. He believes Mr. Meyer is using the land adjacent to Colington Road as a staging area for dropping off and picking up boats and trailers. This poses a danger for himself, his family, and any visitors when they try to enter or leave Mr. Outlaw's property.
2. He would like "No Parking" signs at both ends and in front of Bill's Marine.
3. He does not want boats allowed in front of Bill's Marine.
4. He read the following, saying it was written by Mr. Meyers: "Vessels on display outside of fence will follow DOT rules of not blocking any range of site or right-of-way." He said this is not the case.
5. Bill's Marine has four parking areas [spaces] that Mr. Meyer and his employees use. His wife consistently parks in the handicapped spot.
6. Bill's Marine needs a staging area. Since the fence was installed, people just leave boats outside the fence.
7. He has been woken a number of times as early as 4 a.m. by people picking up their boats to go fishing. This is happening about 20' from his home.

Sandra Outlaw of 1672 Colington Road was the next speaker and said the following: She leaves for work 8:15 every morning and often cannot see to pull onto Colington Road because of boats, trailers and cars parked at Bill's Marine. She once asked a man sitting in a truck parked at Bill's Marine to help her because she could not see to enter the road. Her 80 year old mother visits for coffee in the morning and leaves approximately the same time and under the same conditions.

The Public Comment portion of the meeting closed at 7:15 p.m.

OLD BUSINESS

Bill's Marine – Request for Reconsideration of VC-2 Text Amendment to Allow Boat Sales

-AND-

NEW BUSINESS

Request for Amendment to Conditional Use Permit issued to Bill's Marine

William Meyer and Kaitlyn O'Malley of Bill's Marine were present at the meeting.

Donna Creef addressed both topics related to Bill's Marine in one staff document provided to the Planning Board and began to address both topics to the Planning Board.

Donna gave the Planning Board 25 pages that were handed to her by Terri Nunemaker just before the meeting started. Each page asks the same questions regarding topics such as the noise and safety issues at Bill's Marine and the answers were completed by 25 individuals. Some included attachments. They appear to convey the same theme as what has been heard during tonight's public comment. In addition to that, the Board was provided documents at Ms. Nunemaker's request which included information from the Board of Commissioners meetings on May 20, 2013 and July 15, 2013 when Bill's Marine appeared before them. Ms. Nunemaker also submitted a letter that was given to the Planning Board.

A letter from a gentlemen in support of Bill's Marine is also included in the file provided to the Planning Board.

In 2010, the Village Commercial Zoning District was amended to allow boat repairs and boat storage at the request of Mr. Meyer and a Conditional Use Permit was issued to Bill's Marine. In 2013, Mr. Meyer asked for an amendment to the VC-2 text to allow boat and boat trailer sales. The Planning Board recommended approval of the text amendment to the Board of Commissioners last May. From the time the Planning Board made their recommendation until the time the Board of Commissioners met, neighbors of Bill's Marine came forward and submitted information that has been copied to the Planning Board tonight. The Board of Commissioners indicated to Donna Creef that Mr. Meyer had 30 days to comply with his conditional use permit. Ms. Creef said she would not schedule this before the Board of Commissioners for reconsideration of the text amendment until she was convinced Bill's Marine was compliant with the conditional use permit. Mr. Meyer became compliant for a time.

In October 2013, Ms. Creef observed boats being parked outside of the fence in front of Bill's Marine. She sent a letter asking Mr. Meyer to have the boats removed. Mr. Meyer visited Ms. Creef and told her he decided to park the boats there to increase his business and he had an agreement with the adjoining property owners for this. Ms. Creef told Mr. Meyer he would need to revise his conditional use permit to see if Dare County would allow it. Mr. Meyer submitted this as a formal request. In addition to revising the conditional use permit to allow parking boats outside of the fenced area, Bill's Marine asked that we reconsider the VC-2 text

amendment to allow the sale of boats and trailers. There is an area on a drawing indicating in green where they would like to locate those boats.

Ms. Creef told the Board this is a separate issue from what has been heard this evening and what has been addressed in staff comments regarding dropping off boats and parking boats outside of the hours of operation and possibly in the right of way. It is blocking the line of sight. Mr. Meyer has been repeatedly advised, in writing, that he should not have boats parked there. This pattern of non-compliance is the reason why Ms. Creef cannot endorse Mr. Meyer's request to revise his conditional use permit.

Ms. Creef continued, saying the sale of boats in the VC-2 zoning district appears to be consistent with the village commercial text but the operational issues occurring at Bill's Marine make it very difficult to recommend the text amendment. Mr. Meyer has previously told Ms. Creef he is not selling boats there and she does not know for a fact that he is. She has observed two boats on the property without registration numbers that appear to be for sale.

Bill Meyer of Bill's Marine approached and Chairman Midgett spoke to him. Chairman Midgett reminded Mr. Meyer that he signed the conditional use permit and agreed to abide by the conditions of the permit but is not compliant. There are problems with a line of sight issue and neighbors are complaining of privacy and noise issues. Chairman Midgett said it is up to Mr. Meyer to insure his customers do not leave boats in unauthorized areas.

Mr. Meyer said boats that have been repaired and are awaiting pickup are placed in the back of the business. He said he does not encourage customers to drop off boats after business hours. Mr. Meyer said he can put up no parking signs or whatever is deemed necessary. Mr. Meyer said he sells boats, motors and trailers. His biggest problem is running out of places to put them. There were delays in completing the site plan primarily because of a lawsuit about property lines. After this was resolved in April 2013, the fence and gates were installed.

Chairman Midgett explained that Bill's Marine needs to do everything required of the conditional use permit, not some of the things, and selling boats is not allowed. It is a violation of the conditional use permit.

Mr. Meyer said he was not aware of any language that precluded him from selling boats and he is not trying to defy the Board. Now he understands selling boats is not allowed. Mr. Meyer said he sells any number of retail items at Bill's Marine including bait and soda, and in his mind, retail is retail.

Mr. Meyer said he has no control over where his customers pull up and drop off their boats. He added that there are a lot of boats that show up in front of his property and he doesn't know who owns them until they call the next day. It would be bad for business to have them towed away but if it is required, he will.

Mr. Meyer referred to the photos submitted by Ms. Creef showing four or five boats parked out front. He said they are all located at least 25' off the road and do not cause a problem. He feels they are positioned far enough off the road and are safe. Mr. Meyer said it greatly affects the appearance of his business if he is not allowed to have at least one boat on display.

Regarding the noise associated with repairing some of the engines, Mr. Meyer said the newer, four-stroke engines are very quiet and don't cause a problem. He did get a barrel to run some of the motors in but it would cause a hardship if he were required to back boats up to a 200 or 300 gallon tank. The main problem is that the motors are at different heights. He generally uses earmuffs to start the motors and tries to keep them as far away as possible from neighbors. He moved boats away from the fence when Mr. Nunemaker approached him about people in the boats looking over the fence.

Kaitlyn O'Malley submitted photos to the Planning Board and began to read a letter she had prepared. The letter said Bill's Marine does not want to defy the conditional uses set forth or disrupt the lives of surrounding neighbors but wants to develop a family business that offers much needed services to the surrounding community. The letter continued by addressing the businesses that are being operated by their neighbors. Chairman Midgett interrupted Ms. O'Malley to tell her the agenda items before the Board that evening did not include her neighbors' businesses.

Ms. O'Malley believes the complaints caused by customers picking up boats after hours will stop now that the property has a fence. She asks all customers to drop their boats off only during business hours but there are customers who need repairs and drop them off when the business is closed. Ms. O'Malley and Mr. Meyer live in Colington and whenever they see a boat dropped off out front, they pull it around back right away.

Ms. O'Malley said she would not mind working with Ms. Creef to establish a staging area where boats can be dropped off. Ms. O'Malley said the storage yard fence is a solid wood fence that probably sits an additional 10' from where the displayed boats are. She believes any line of site issue may be where the fence starts because that is where the bend in the road starts.

Mr. Finelli said the various zoning districts have a list of permitted and conditional uses. Boat sales are not listed in the VC-2 district and that is why it was not addressed in the conditional use permit. Mr. Finelli did vote to recommend an amendment to the VC-2 text in May 2013 but he suggests Mr. Meyer end boat sales now. The Board of Commissioners was extremely upset the conditional use permit wasn't followed.

Mr. Barr asked if Bill's Marine is now in compliance and Ms. Creef responded that it varies from day to day. Mr. Barr said the site plan shows the fence located 2' off the right-of-way but the fence is actually 20' from that location. The gravel area between the fence and the edge of the road can be removed and replaced with grass and no parking signs. Ms. Creef said while she was working with Mr. Meyer this summer she authorized changing the angle of the fence to allow a better line of sight. The depiction on the site plan Mr. Barr is looking at is not an accurate depiction.

Ms. Creef is concerned about revising the conditional use permit to allow boats to park out front. She said a very explicit number of spaces would need to be allotted for boats to be parked there. Ms. Creef said she explained to Mr. Meyer last October that he needs to tell her the number of spaces he wants allotted for parking boats and a size limit for the boats to allow us to proceed with the request.

Mr. Barr raised the concern that having boats parked in front of the fence will encourage other people to park their boats in the same area. Ms. Creef agreed and said a "No Parking" sign would help. Mr. Barr said it is his opinion that everything should be behind the fence and Ms. O'Malley asked if that means they can move the fence out. Ms. Creef said if the site plan is going to be changed, she recommends tabling this item until a registered surveyor can depict exactly what is located on the property. Mr. Barr said his opinion would be to have Mr. Meyer provide a new site plan for review by the Planning Board. Chairman Midgett told Mr. Meyer the matter can be tabled pending review of a new site plan but that doesn't guarantee approval of the requested amendment to the conditional use permit.

Mr. Finelli asked if the Planning Board should wait for the decision of the Board of Commissioners regarding the VC-2 Text Amendment to allow boat sales. Ms. Creef said Mr. Meyer needs to comply with his conditional use permit before she would be willing to approach the Board of Commissioners again regarding the proposed VC-2 Text Amendment.

Mr. Overton said it may be that Mr. Meyer does not have enough property to do what he is trying to do at Bill's Marine. He told Mr. Meyer that he drives by Bill's Marine at 3 or 4 in the

morning many times. His suggestion is that Mr. Meyer contact an attorney and a surveyor to proceed with his requests.

Regarding Agenda Item 5a:

OLD BUSINESS, Bill's Marine – Request for Reconsideration of VC-2 Text Amendment to Allow Boat Sales:

Donna Creef reminded the Board that in May 2013, they voted in favor of recommending approval of this to the Board of Commissioners. The Board of Commissioners has not yet taken any action.

Michael Barr made a motion to recommend approval to the Board of Commissioners for a Village Commercial 2 Text Amendment to allow the sale of boats, boat motors and trailers. Ricky Scarborough seconded the motion.

Vote: Ayes – Unanimous

Regarding Agenda Item 6a:

NEW BUSINESS, Request for Amendment to Conditional Use Permit Number 3-2010 issued to Bill's Marine:

John Finelli made a motion to table the request for an amendment to Bill's Marine Conditional Use Permit Number 3-2010 pending submission by Bill's Marine of a current survey that has been sealed by a North Carolina surveyor or engineer.

Michael Barr seconded the motion.

Vote: Ayes – Unanimous

Donna Creef addressed all present and said the cutoff for submission for the January Planning Board meeting is Monday, December 16, so this item will not be on the January 2014 agenda. When this item is scheduled, all interested parties will be contacted.

Sketch Plan Review, Henry Russell Grant Subdivision, Frisco

Henry Russell Grant was present at the meeting.

Donna Creef addressed the Board. The proposed sketch plan appears similar to a preliminary plat but Mr. Grant said it has not been surveyed. All of the proposed lots have frontage on Highway 12 and no new street improvements are needed. There is a large wetland area to the back and a conservation easement has been noted. Verification of the wetland line will be required. There is a ditch along the rear of the lot lines in the wetland area. The highland area

of each of the lots is depicted in excess of 15,000 square feet as required in the S-1 zoning ordinance. The 15,000 square feet has to be classified as suitable for septic tank ground absorption wastewater treatment systems.

Mr. Grant addressed the board. He and his surveyor developed the sketch plan based on the original plat.

Chairman Midgett asked how the A. J. Fulcher Heirs will access their property. Mr. Grant replied he is not sure, possibly Henry Lane or what is called Central Drive. Mr. Grant spoke with one of the A. J. Fulcher heirs and they came to an agreement on splitting a piece of property in the back but there are other members in the family who do not agree.

Ms. Creef asked if the lots or property have been evaluated by the Health Department. Mr. Grant said Lot C had a septic evaluation and was approved for a three bedroom structure and lots A and B were evaluated by Scott Stone, a soil scientist, in 2003-2004.

Chairman Midgett asked if the preliminary plat would need wetlands evaluations and Ms. Creef replied yes, the whole property would need to be verified by the Army Corps of Engineers. Ms. Creef said she would also encourage Mr. Grant to have the Health Department evaluate the property.

Mr. Barr said a separate plat will be required, signed by the Army Corps of Engineers, showing the delineation of the wetlands. He continued by adding the plat should show the following: the uses of adjoining properties; waterline locations, meters, and connections; flood zone information; utility and storm easements; and any necessary easements (utility, storm, ditch maintenance). Ms. Creef asked if the ditch connects to any navigable water and Mr. Grant said he doesn't believe it does. If so, Ms. Creef said CAMA will require a 30' buffer.

Mr. Finelli asked what the purpose of the Conservation Easement is and Mr. Grant said that was a trade. To get the 1,500' fill area on Lot C, a 15,000' easement was needed. Mr. Grant said this has been recorded at the Register of Deeds with Dare County. Mr. Barr said that should also be indicated on the plat and Ms. Creef asked Mr. Grant to provide a copy of the easement. Mr. Grant asked the Board if he needs to add an easement at the back of the property. Mr. Barr said if the ditch is functioning as a drainage source, a drainage easement down each of the property lines may be appropriate. Ms. Creef said the NC Division of Coastal Management's CAMA Office in Elizabeth City will make determinations regarding the ditch.

Mr. Finelli pointed out the certificate on the sketch plan indicating this property is listed as a minor subdivision. Ms. Creef explained that this doesn't necessarily have to be declared as a minor or major subdivision since no road improvements are required.

Consideration of the Henry Russell Grant Subdivision is a sketch plan review at this time and no formal action was taken. Ms. Creef will be sending Mr. Grant a letter summarizing the topics discussed tonight.

Preliminary Plat Review, Miller and Pentecost Subdivision, Buxton

Attorney Chris Seawell was present at the meeting on behalf of the property owners.

Donna Creef began the discussion. The proposed Miller and Pentecost Subdivision is located on Rocky Rollinson Road. The property is being subdivided under court order. The current configuration of the property is divided in two by Rocky Rollinson Road but has one PIN number. The largest portion of the property, located on the north side of the road, is being ordered to be subdivided. The property on the other side of Rocky Rollinson Road is not under consideration tonight and is not involved in the court ordered subdivision. Both lots exceed the minimum lot size for new subdivisions. There is a house on proposed lot 1. The lot lines have been configured so no non-conformities are being created. The flood zones are indicated and the lot sizes exceed the minimum lot sizes in the R-2A zoning district.

Mr. Seawell addressed the Board next. He said this has been ongoing for a number of years and has been resolved in Judge Tillet's court with a settlement agreement. The settlement agreement requires the Estate of Pauline Rollinson to own the whole piece of property but some of the people who were involved in the settlement will be deeded the eastern half of the property while others will own the western half as well as the property across Rocky Rollinson Road. Because of this, the property was surveyed and needs to be divided so the court can enter an order as to who gets what piece of property.

Mr. Barr said the body of water in front of Lot 2 does appear to be connected to the sound and asked if there are CAMA setbacks that will be applied to that lot. He also asked if any wetlands are located on the site. Mr. Seawell said there are wetlands at the back part of the property but he is not sure if the ditch goes to the sound. Ms. Creef said there is language in the subdivision ordinance stating "portions of these lots may be in the CAMA setback" and we will need that note on the final plat.

Mr. Barr said the control points and control corner need to be identified and labeled on the final plat. He said the 700' property line between lots 1 and 2 show a computed corner at the

back but there is no actual property corner being set. Ms. Creef added that the proper certificates need to be on the final plat.

Mr. Barr made a motion to recommend approval of the preliminary plat for the Miller and Pentecost Subdivision subject to the following conditions:

1. The final plat should include a note indicating the presence of wetlands along the estuarine shoreline and the disclaimer from the subdivision ordinance about the CAMA areas of environmental concern.
2. The correct certificates for recordation should be included on the final plat.
3. The control points need to be identified (geodetic reference) and labeled on the final plat.
4. The computed corner needs to be designated on the northern end of the dividing line of lots 1 and 2.

Mr. Finelli seconded the motion.

Vote: Ayes – Unanimous

OTHER BUSINESS

Revisions to Dare County Flood Prevention Ordinance – Freeboard Regulations

Ms. Creef told the Planning Board this is a proposed amendment to the Dare County Flood Damage Prevention Ordinance to add a freeboard requirement of 1-foot. The NC State Building Code currently has a 1-foot freeboard requirement that has been taken out by the Building Code Council beginning this January. The 1-foot freeboard requirement has been in effect since March 2012. Dare County participates in the Community Rating System (CRS) and we need to do certain activities to retain our rating at a class 8 or possibly raise that to a class 7. Adopting the 1-foot freeboard will help Dare County earn points toward its CRS certification. A presentation which included the 1-foot freeboard information was made to the Board of Commissioners last Monday and a public hearing on the proposed freeboard requirement has been scheduled for January 6, 2014. A recommendation is needed from the Planning Board because this is a proposed revision to the Land Use Ordinance.

Mr. Finelli made a motion to recommend approval of the proposed amendment to the Dare County Flood Damage Prevention Ordinance as drafted by staff to add a freeboard requirement of 1-foot and further moves that the Planning Board finds the proposed amendment to be consistent with the policies of the Dare County Land Use Plan.

Mr. Overton seconded the motion.

Vote: Ayes – Unanimous

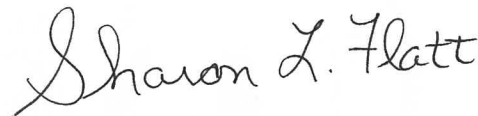
ADJOURNMENT

There being no further business before the Dare County Planning Board, a motion to adjourn was made by Ricky Scarborough and seconded by David Overton.

Vote: Ayes – Unanimous

The meeting adjourned at 8:52 p.m.

Respectfully Submitted,



Sharon L. Flatt
Planning Board Clerk

APPROVED: January 13, 2014



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