

MINUTES OF THE DARE COUNTY PLANNING BOARD MEETING

The Dare County Planning Board held their regularly scheduled meeting on Monday, July 13, 2015. 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
Michael Barr John Finelli
Charles Read, Jr. Beth Midgett

MEMBERS ABSENT David Overton Richard "Ricky" Scarborough, Jr.

APPROVAL OF MINUTES

There being no corrections or additions to the minutes of the June 8, 2015 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

-None-

OLD BUSINESS

Public Hearing – Proposed Text Amendment, Section 22-27.3, SED-1, Special Environmental District, Mary Fulcher

Mary Fulcher, property owner, was present as well as Barry Foster and Chase Foster, potential concessionaire operators/owners.

Ricki Shepherd, a Hatteras Village resident, said changes to the SED district were proposed in 2006 and they were defeated. The use proposed tonight is clearly not allowable in the SED. The district was created to protect the aquifer and the Buxton Woods canopy. The Dare County Water Department uses shallow wells. Protecting the water supply is the essence of the SED. Ms. Shepherd asked that this request be denied.

Susan Garrett is a resident of Frisco, owns a horse, and has been riding in Buxton Woods over 30 years. She is opposed to the Planning Board granting this request. The Special Environmental District is designated as such to protect the public water supply, preserve the environment, and provide compatible, low density, residential housing. A

horse operation of the size currently advertised on their website involves a considerable amount of by-product. The tree and brush growth is very dense. Site work would take a serious toll and is inconsistent with uses in the SED-1 zone. Access to this tract is through a residential area and there will be traffic issues. The proposed service is already being provided by other businesses. Granting this would open up the SED for future commercial applications.

Christian Dunville is a Piney Ridge Road resident and previously emailed Donna Creef regarding this request. She has numerous concerns about locating a horse operation in this district including land clearing, ecological concerns, protecting county well fields, and manure disposal. There is a website for their business operating in Virginia Beach and it is already advertising a horse operation in Buxton Woods. The residents do not support this change to the SED.

Freddie Anne Davis is a property owner and resident on Piney Ridge Road. She is concerned that the proposed horse operation will affect the water supply, traffic on the private road, and the number of horses on the trails. Ms. Davis questions how clear the applicants have made their intentions and has heard their website is advertising trail rides, cottages, and private boarding.

Liz Crum said she established the first riding stable in 1986 and ran into a lot of interference at the beginning. She has successfully shown this business can be done well. It will increase tourism and she does not have a problem with it.

Barry Crum said he believes the reverse osmosis plant in Frisco provides great water and there won't be an impact on the water supply from the horses. It isn't a valid argument.

Tom Randall is a Piney Ridge property owner and resident. He doesn't believe the street can handle any type of commercial business. A car and horse can't be on the road at the same time. There is no visibility. Water lines run about 18" under the sand along the road. Phone lines have already been cut a couple times because of vehicles. There's no way this can be set up safely.

Steve Crum told the board he doubts this is a good thing. He has maintained roads and said this is happening too fast and he would like to keep things slow like they are.

Donna Creef noted for the record that we received a letter from the North Carolina Coastal Federation opposing the text amendment as well as an email from Christian Dunville.

Chairman Midgett declared the public hearing closed at 7:20 p.m.

Mary Fulcher, applicant and property owner, spoke to the Board. She said the tract is 24 acres and no wetlands will be used. She added that Sylvia Mattingly is the only person currently authorized to cross Ms. Fulcher's property. Ms. Fulcher said there is no other property large enough to meet a minimum requirement of 20 acres and that would prevent additional businesses.

Barry Foster, potential concessionaire, said the horses will not be on roads and will only be on the property and trails to the ocean. His intention is to abide by the ordinances of the community and obtain the required permits. Mr. Foster cares about the land, wants to be a good neighbor, and wants this business to be good for everybody.

Donna Creef spoke next. She clarified for those attending that this is not a variance requested for a parcel of land but a zoning text amendment to be applied to the SED-1 zoning ordinance. This will proceed to the Board of Commissioners. The Planning Board will make a recommendation either to approve or not to approve this text amendment along with a finding of consistency or inconsistency with the Dare County Land Use Plan. Land Use Plan policy number 17 addresses Buxton Woods and should be the guiding factor in making that determination.

Ms. Creef said the SED was adopted in 1988 to protect the aquifer and maritime forest in Buxton Woods. It is the most restrictive district in unincorporated Dare County and has very limited land clearing restrictions as well as wetland filling prohibitions and setbacks. Previous requests for text amendments in this district have been turned down.

Ms. Creef said Mr. Foster's website is advertising the horse business coming August 1 and is also saying there will be boarding and rental cabins in the future. That was not part of the text amendment application and not something they discussed.

Michael Barr asked how long the existing horse trail riding business has been there. Ms. Creef said a horse riding business has historically been a use in Buxton Woods since before the SED was adopted. It's not listed as one of the permitted uses. This

could be an opportunity to have the use permitted in the ordinance if the county would choose to do so.

Chairman Midgett asked Mr. Foster about the status of the permits and concessionaire approvals from the state and the National Park Service. Barry Foster said Joanne Blankenship of the National Park Service was encouraging and said the process will take another 2-3 weeks. He has not heard from the state. Donna Creef said she has been in contact with the manager of the Buxton Woods Reserve and was told the approval process could take some time.

John Finelli asked what specific services the applicant plans to provide. Barry Foster said they plan to provide horseback rides for guests to be conducted at the property in much the way it's currently being used. The horses would require shelter. There would be very low impact on the property. Ms. Creef asked how many horses they would be using. Barry Foster said there would be 10 horses.

Mr. Finelli asked if they plan to build houses on the property in combination with this use. Barry Foster said they currently have no plan to build any houses and any future plans will comply with zoning requirements.

Donna Creef said the business website indicates services to be offered that may not comply with zoning. Charles Read said there are inconsistencies in what the Planning Board is being asked to evaluate and what has been posted on the website. Chase Foster, business partner, said he is responsible for the website. The website lists services that the business is not asking to provide. He apologized and will correct this.

Michael Barr said he is concerned that there are no commercial activities permitted in the SED zoning and there have been none allowed since its inception. The fact that there may be some already there doesn't have to do with the ordinance today. Beth Midgett said she is not inclined to change the SED zoning. The intent is not only to protect the water quality but to preserve Buxton Woods.

Charles Read made a motion to recommend to the Board of Commissioners that they not approve the proposed text amendment to section 22-27.3, SED-1, Special Environmental District and further finds that the proposed amendment is inconsistent with policy number 17 of the Dare County Land Use Plan.

Beth Midgett seconded the motion.

Vote: Ayes – Unanimous

This item will be considered at the Board of Commissioners meeting on August 17, 2015.

Preliminary Plat Review, Frisco Oaks LLC, Two Lot Division, Frisco

Brian Rubino of Quible and Associates was present on behalf of the property owners.

Donna Creef told the board this was previously submitted as a sketch plan review and many details were worked out at that time. Brian Rubino said the changes discussed at the sketch plan review have been incorporated and include:

- 30' wide private right-of-way to access proposed lots 1 and 2
- 20' wide easement bisecting lots 1 and 2 to access the Gaskins property.
- Conceptual house footprints have been added
- Future septic areas have been added.

John Finelli asked what constitutes the front yard on the lots. Mr. Rubino said the area that fronts the SPS Properties lot and the Barbara Gaskins lot, the northeast property line parallel to Cardinal Street, is recognized as front yard. Mr. Finelli asked about access easements. Ms. Creef said the zoning ordinance requires a 20' easement in order to obtain a building permit. The easement most likely will remain a paper easement but will be created, and be an easement of record, when the plat is recorded.

Donna Creef said the property owner wrote and submitted an Easement Maintenance Agreement. The agreement may need to be more comprehensive and will need to be revised to meet format requirements at the Register of Deeds office.

John Finelli made a motion to approve the Frisco Oaks plat subject to the following conditions:

1. The 30' private road shall be constructed as depicted in the typical gravel roadway section provided to the Planning Board. When road improvements are completed, a letter from the project engineer certifying their construction as approved will be needed.
2. The setbacks for the lots shall be depicted on the final plat.
3. The final plat shall include all appropriate minor subdivision certificates and the flood hazard disclosure certificate.
4. The engineer shall submit documentation verifying the wetland delineation and a copy of the wetland fill permit.
5. The maintenance agreement shall include language about the 20' easement to the Gaskins property to the west of lots 1 and 2. The maintenance agreement shall also include language prohibiting any structural encroachments in the

easement area. The 20' easement shall be depicted on the final plat that is recorded in the Dare County Register of Deeds and the notes on the plat shall prohibit any encroachments into the easement area.

Beth Midgett seconded the motion.

Vote: Ayes – Unanimous

The final plat will be submitted to Donna Creef for review and recordation.

NEW BUSINESS

Conditional Use Permit Application, Cape Hatteras Electric Cooperative, Community Solar Project, Hatteras Village

Susan Flythe, General Manager, and George Price, Operations Manager, were present at the meeting.

Susan Flythe told the Planning Board this project began in 2007 when the state legislators established the Renewable Energy Portfolio Standards, or REPS Law. Cape Hatteras and the other 25 cooperatives in NC formed another cooperative called Greenco to help comply with this law. In 2014, the NC Electric Membership Corporation (NCEMC) initiated a plan to help the NC cooperatives build community solar projects. The Cape Hatteras Electric Cooperative (CHEC) must partner with the statewide organization because, as a non-profit, CHEC is not able to take advantage of state or federal energy tax credits.

NCEMC is willing to help any cooperatives in the state that want to build a community solar project in the year 2015. CHEC would like to build this project for our community to demonstrate their interest in renewable energy. They also want to share this educational opportunity with the school in Cape Hatteras. Ms. Flythe provided photos of four sites built in 2014 to that are 100 kw projects. The project in Hatteras Village would be 50 kw.

John Finelli asked how the solar panels will withstand wind. Ms. Flythe said she has been told they can be engineered to sustain a 130 mph wind. The panels do not move or have moving parts. Ms. Creef asked about the possibility of flooding. Ms. Flythe said the height is typically 6' but they can be engineered for whatever height is necessary. Ms. Creef said the property is in an AE-8 flood zone. She said utilities have different rules and may not require a building permit to be issued. Michael Barr said the county could require an elevation certificate demonstrating the panels are located above base flood elevation.

Charles Read asked what level of involvement is proposed regarding education and which schools will be included. Ms. Flythe said she spoke with the principal of Cape Hatteras High School very early in this process. They can easily give both schools access to the software and any tours provided would be guided tours.

Donna Creef asked if the project will require any type of accessory shed or supporting equipment. Ms. Flythe said there should not be anything else on the property. The Electric Cooperative personnel will need to access the property at least monthly for maintenance during regular business hours.

Ms. Creef asked if the chain link fence surrounding the site will include signage prohibiting entrance to unauthorized personnel. Ms. Flythe said an 8' high chain link fence is typical and has barbed wire on top. Ms. Creef said there will need to be a visual buffer between this and the adjacent property in the residential zone. Mr. Barr said most of the site looks like it already a vegetative buffer and Ms. Flythe said there are no plans to clear anything. Donna Creef said the side and rear property lines could use existing vegetation as a buffer and supplement with other vegetation as needed.

Ms. Creef asked about the array and panel measurements. Ms. Flythe said each array contains 60 panels of approximately 3' x 6.5' or nearly 40" x 78". Each array is 13' x 98'. Mr. Finelli asked if these are photovoltaic cells and Ms. Flythe said yes.

Donna Creef said the conditional use permit will have the following requirements in addition to those already included in the draft:

- The arrays will be designed and engineered to meet the regulatory flood elevation (base flood plus 1') and meet the wind zone requirements (130 mph).
- An as-built survey will be submitted before a certificate of occupancy is issued by the Planning Director.
- Access for maintenance and access for education and parking during school hours will be specified.
- The construction of the solar array shall commence within 12 months of the date of approval of the conditional use permit.

Michael Barr made a motion to recommend approval of the conditional use permit for the Cape Hatteras Electric Cooperative Community Solar Project as proposed by staff and subject to the following site plan revisions:

1. The title of the project as noted on the site plan should be changed from solar garden to community solar project.
2. Note 6 should be removed from the site plan.

3. Access to the site should be noted as a 12' wide gravel drive and not the 20' easement.
4. A note should be added to the site plan indicating that existing vegetation shall be used for the visual buffer adjacent to the Baum property and additional vegetation will be added to the site as needed along the portion of the site that abuts the Hatteras Island Ocean Center property that is zoned R-2H.
5. The zoning classification of the adjoining properties and the existing uses should be noted on the revised site plan.

Charles Read seconded the motion.

Vote: Ayes – Unanimous

This item will be considered at the Board of Commissioners meeting on August 17, 2015.

OTHER BUSINESS

Staff Update, Zoning in Rodanthe, Waves, Salvo

Donna Creef said she revised the lighting standards and the discontinued use of property standards. Changes were based on comments made at the Planning Board meeting on June 8, 2015 and include:

- Language addressing electronic message boards has been added.
- Reference to “gross floor area of 2,500 square feet” has been removed from the lighting standards.
- “Abandoned Sites” has been changed to “Discontinued Use of Properties”.
- Language has been added to distinguish Discontinued Use Properties from seasonally closed properties or properties for sale.
- Swimming pools, wading pools, retention basins, and ponds have been clarified.
- “Unpaid Fines shall be considered a lien on the property by Dare County and shall be paid in full before re-use of the site is authorized” has been added.

Ms. Creef also provided a very rough draft of 4 zoning districts, 2 residential and 2 commercial. She included a map showing where the districts may be located.

The proposed RWS-1 is the more restrictive residential district and applies mostly to existing, platted subdivisions with covenants. RWS-2 is the alternative residential district and allows mobile homes, accessory dwelling units, duplexes, traditional village businesses, and conditional uses.

The RWS-3 commercial district was discussed. Language has been included which states “the following uses are permitted and shall be of a non-itinerant nature”. This will address mobile food carts and temporary food stands. Charles Read asked if it would be possible to allow a limited number of food truck permits for disabled veterans organizations. This has previously been permitted in Long Island, possibly through the counties of Nassau and Suffolk in New York. Ms. Creef said she would research this.

Developments having a structure with a gross floor area of 3,000 square feet or less, or 3,000 square feet of commercial area, are permitted uses but over 3,000 square feet is a conditional use. Multi-family structures including triplexes will be included due to an existing development. The permitted and conditional uses were discussed as listed in the draft commercial zoning.

The non-conforming clause for the current S-1 zoning is set to expire in 2017. The board discussed how to address non-conformities during the development of the RWS zoning and if the existing S-1 clause could be adhered to and brought forward with the new zoning regulations.

Donna Creef explained that the S-2 commercial district is comparable to the existing S-1 zoning now in place but differentiates between permitted and conditional use reviews. Industrial uses are being tied to the high hazard group H in the NC building code which is how the zoning is now in Manns Harbor. The same 3,000 square feet is used as a qualifier for a permitted or conditional use. The language for an industrial use establishes a 75’ setback from a residential structure. We need to revise this, clarify how it will be measured, and decide if 75’ is adequate. The industrial use requires a 40,000 square feet minimum lot size.

The zoning in Rodanthe, Waves, and Salvo will continue to be scheduled at future Planning Board meetings.

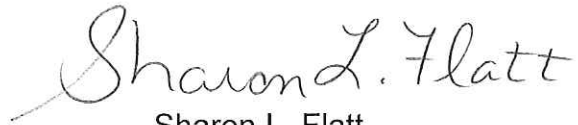
ADJOURNMENT

There being no further business before the Dare County Planning Board, a motion to adjourn was made by Charles Read and seconded by Beth Midgett.

Vote: Ayes – Unanimous

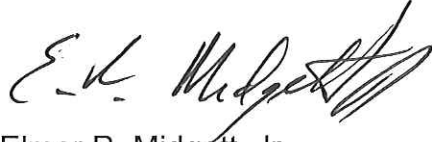
The meeting adjourned at 9:15 p.m.

Respectfully Submitted,



Sharon L. Flatt
Planning Board Clerk

APPROVED: August 10, 2015



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