

Minutes of the Tuesday, September 19, 2023, meeting of the Kill Devil Hills Planning Board held at 5:30 p.m. in the Town Hall Meeting Room, 102 Town Hall Drive, Kill Devil Hills, North Carolina.

Members Present: Chairperson Howard Buchanan, Becky Breiholz, Michael Lowack, Sandie Markland, Natalie Painter, and Ron Seidman, II

Members Absent: T. Dillon Heikens

Others Present: Cameron Ray, Assistant Planning Director; Ryan Lang, Senior Planner; and Jennifer Stecher, Deputy Town Clerk

Call to Order

At 5:30 p.m., Chairperson Howard Buchanan called the Tuesday, September 19, 2023, meeting of the Kill Devil Hills Planning Board to order and welcomed everyone present, including new member Sandie Markland.

Agenda Approval

Sandie Markland moved to approve the agenda for this meeting, as presented. Ron Seidman seconded the motion, which was approved by a unanimous, 5-0, vote.

Approval of the Minutes of the July 18, 2023 meeting

Becky Breiholz moved to approve the July 18, 2023 meeting minutes, as presented. Natalie Painter seconded the motion, which was approved by a unanimous, 5-0, vote.

Public Comment

Greg Bodmer at 904 Ninth Avenue - Mr. Bodmer had concerns regarding stormwater management and the finished grade of the proposed Tenth Avenue Site Plan that will be higher than his house. Mr. Bodmer wanted to know if impact studies have been or will be done for the proposed Tenth Avenue project and how it will affect the surrounding properties.

Response to Public Comment

Cameron Ray, Assistant Planning Director, clarified that the Tenth Avenue Site Plan proposed does not require a zoning change, and the site plan is a permitted use.

Ongoing Business

New Business

1. Zoning Amendment Request – 153.180(D) Commercial Zone Site Requirements: Exceptions – Previously Platted Use(s) as an Exception to Minimum Lot Size Requirement

The Town received an application for a Zoning Amendment Request submitted by Quible & Associates on behalf of Wright Shores Association Inc. The request is to amend 153.180(D) Exceptions to Commercial Zone Site Requirements to allow uses listed on original subdivision plats to be exempted from the Commercial Zone site requirement for a minimum lot area of 15,000 square feet.

Assistant Planning Director Cameron Ray explained that Town Zoning regulations include site requirements in each zoning district to include standards for lot dimensions, lot area, Density, lot coverage, stormwater runoff, and land disturbance. In all zoning districts, the minimum lot area requirement for development is 15,000 square feet. However, all districts have an exception to this requirement to allow single-family development on lots less than 15,000 square feet if platted on or before June 14, 1983. For example, the majority of Avalon Beach Subdivision was recorded with lots 5,000 square feet and because they were recorded before the date mentioned above, each lot can be developed with one single-family dwelling. There is no exception to the minimum 15,000-square-foot lot size requirement for commercial developments.

Several concerns about the request as presented included allowing for commercial uses on lots smaller than 15,000 square feet, allowing greater vesting than what is already adopted, not considering Town-wide effects for unknown platted use in the entire commercial zone, setting a precedent for other zoning districts, and limiting the Town's ability to regulate land uses.

Currently, the lot area requirement for all uses other than single-family dwellings is 15,000 square feet. Many factors were considered in deciding the lot area minimum of 15,000 square feet with the effect of commercial developments/uses such as bulk, density, noise, light, traffic, stormwater management, and open space. Much of the Town was platted on lots smaller than 15,000 square feet; however, these lots are primarily all single-family residential lots, as was the intended use. The current lot size requirement was adopted when commercial development on smaller lots no longer met the vision of the Town. Allowing commercial uses on lots smaller than currently required will create inconsistencies in the enforcement of Town regulations.

The amendment requested that previously platted uses on a subdivision plat be allowed to have a vesting in perpetuity. This is not aligned with the Town's zoning ordinance, which vests a final subdivision plat two years from the date of approval; if vesting has expired, all new or amended zoning regulations will apply. This is consistent with the statutory requirements under N.C.G.S. 160D-108, Permit Choice and Vested Rights. This vesting of rights ensures that the property owner can reasonably have time to secure all permitting, while also protecting the Town's ability to regulate land uses as things change.

The application notes that this amendment request is justified and promotes public health, safety, and general welfare by referencing and considering the property that is currently owned by Wright Shores Association, Inc. It is important to note that this amendment request is for the

entire Commercial Zoning District in the Town and not a site-specific amendment. The application states that the subdivision plat for Wright Shores Section Two, dated 1973, illustrated parking on the parcel along Fourth Street. A majority of the Town subdivisions were platted prior to 1983 (the date the ordinance allows for exception to lot size) and without extensive research, Staff cannot estimate how many parcels this amendment will affect. In reference to Wright Shores Section Two, this was a subdivision approval from 50 years ago and since the time of the plat, the Town has reasonably adopted additional regulations to meet the needs of the community with sound planning including a minimum lot size of 15,000 square feet for commercial developments. Additionally, there is concern that if approved in the Commercial Zone, precedents would be set for all other zoning districts that also have previously platted uses.

There are numerous items that are in the application that focus on two properties in Wright Shores Subdivision, with primary emphasis on just the Fourth Street parcel, but do not consider the Town-wide effects. The application addresses site-specific items that are more appropriate to be considered by the Board of Adjustment in a request for a Variance, where the applicant can offer evidence that there is unique hardship at this property for the use of a parking area.

Through 160D Article 7 of the North Carolina General Statutes, Towns have the ability to adopt Zoning Regulations to promote public health, safety, and general welfare. Allowing previously platted uses to be exempt from current zoning regulations goes against the intent of the NC general statutes and Town regulating authority. This precedent undermines past planning efforts, zoning ordinances, and the Town's ability to regulate.

Staff recommended the Planning Board forward the Zoning Amendment Request to 153.180(D) Commercial Zone Site Requirements: Exceptions – Previously Platted Uses(s) as an Exception to Minimum Lot Size Requirement to the Board of Commissioners with the attached consistency statement recommending denial.

The applicant was represented by Michael Strader, an engineer with Quible & Associates. Mr. Strader asked the Planning Board on behalf of the applicant to postpone this item in order to refine the language in the Zoning Amendment Request with the help of Town staff and in order to present at a future Planning Board meeting. Mr. Strader has already completed preliminary designs that meet all requirements and realizes that it will take some time to consent to agreeable terminology. Mr. Ray confirmed that the applicant can apply for an extension and has one year to gather information about their request.

The group discussed various scenarios and timelines for the applicant and ultimately came to a unanimous decision.

Mike Lowack moved to forward the proposed Zoning Amendment Request – 153.180(D) Commercial Zone Site Requirements: Exceptions – Previously Platted Use(s) as an Exception to Minimum Lot Size Requirement, to the Board of Commissioners with an unfavorable recommendation, with the consistency statement. Mr. Seidman seconded the motion, which was denied by a unanimous, 5-0, vote.

2. Site Plan Review – 901 Tenth Avenue in the Light Industrial Two Zone – Proposed 33-Unit Multi-Family Apartment Building and associated site improvements

The site plan submitted by Run Hill Commons LLC, proposes the construction of a 33-unit multi-family Apartment Building, consisting of (27) two-bedroom units and (6) three-bedroom units, 75 parking spaces, and associated site improvements. The proposed multi-family development is a permitted use in the Light Industrial Zone 2 (C) *Multi-family*. The meeting packet includes the Commercial Site Plan Application, proposed site plan, proposed architectural, and floor plan layouts, applicant's response to Staff's Tech 2 comments, and willingness to serve from KDHWTP, LLC. The applicant has addressed most of Staff's initial technical review comments, however, there are some listed items that remain to be addressed.

Staff recommended that the Planning Board forward the site plan to the Board of Commissioners with a favorable recommendation after the listed items have been addressed.

The project engineer for the site plan, Michael W. Robinson, was present at the meeting to address questions and concerns.

The members asked questions regarding paper streets, permeable pavement maintenance, fire safety, parking rules, site plan notations, and the intention of the site plan.

Mr. Robinson said much consideration was given to stormwater management on this project and its effects on adjacent properties. A combination of new and existing vegetation, permeable pavers over sand, two upwelling basins, as well as piping around the perimeter of the site are some of the ways the plan aims to manage stormwater. Assistant Planning Director Cameron Ray noted that despite the naturally existing higher grades of the proposed site the Engineer was able to create a management plan that will be able to manage far more stormwater capacity per volume than the Town's ordinance requires.

Mr. Robinson answered questions to help adjacent property owners understand the stormwater management plan that will avoid flooding of the adjacent properties. Mr. Robinson confirmed that mature trees will be removed but the plan aims to save some vegetation on the south end. Mr. Robinson noted his phone number is on the site plans and offered audience members to call him at any time regarding questions or concerns about the site plan.

Mr. Lowack moved to forward the proposed Site Plan – 901 Tenth Avenue in the Light Industrial Two Zone – Proposed 33-Unit Multi-Family Apartment Building and associated site improvements, to the Board of Commissioners with a favorable recommendation once the existing conditions have been met. Mr. Seidman seconded the motion, which was approved by a unanimous, 5-0, vote.

3. Special Use Site Plan Review – Bermuda Bay P.U.D.-Section 200A – Amend Site Plan for Covered Pavilion with Storage Room

The Special Use Site Plan Review - Bermuda Bay P.U.D. Master Plan Section 200A in the Government and Institutional Zone was submitted by SAGA Construction. The proposed plan includes an addition of a 1,213-square-foot covered outdoor pavilion with an enclosed storage room adjacent to the new Somerset Apartment Buildings Section 200-A. The Planned Unit Development is a special use in the Government and Institutional Zone 153.267(B). The packet included the site plan application, revised Bermuda Bay Master Plan sheets, and building plans showing the floor layout and architectural.

Staff recommended approval of the revised Planned Unit Development Bermuda Bay Master Plan as presented.

Mr. Seidman moved to forward the proposed Special Use Site Plan – Bermuda Bay P.U.D.-Section 200A – Amend Site Plan for Covered Pavilion with Storage Room, to the Board of Commissioners with a favorable recommendation as presented. Becky Brieholz seconded the motion, which was approved by a unanimous, 6-0, vote.

Public Comment

Response to Public Comment

Board Member Comment

Mr. Lowack asked the board members for their feedback about the cottage court on the oceanfront and would like to send something to the BOC to eliminate the possibility of something in the future. Staff said at the next Planning Board meeting the group would be reviewing recommendations for cluster homes and cottage courts regulations.

Adjournment

There being no further business before the Planning Board at this time, Ms. Painter moved to adjourn the meeting. Ms. Breiholz seconded the motion, which was approved by a unanimous, 5-0, vote.

It was 6:20 p.m.

Submitted by:

Jennifer Stecher
Administrative Assistant/Deputy Town Clerk