

**CURRITUCK COUNTY
BOARD OF ADJUSTMENT MEETING
September 14, 2006**

The Currituck County Board of Adjustment met on September 14, 2006 at 7:30 p.m. in the Historic Currituck County Courthouse. The following members were present: Larry Etheridge, Aubrey Dowdy, Carol Bell, and Earl Wemer. Absent: Ralph Jones, Paul Beaumont, and Donald Ferebee. Donna Voliva, Planner, and Ike McRee, Attorney, were also present.

Mr. Etheridge called the meeting to order and announced a quorum had been met with Mr. Wemer as the voting alternate. None of the members disqualified themselves from voting on any of the items on the agenda.

APPROVAL OF MINUTES

Ms. Bell motioned to approve the August 10, 2006 minutes as presented. Mr. Wemer seconded the motion and the motion passed unanimously.

BOA 06-17 SMALL GROUP PROPERTIES LLC: CONDITIONAL USE PERMIT FOR OUTDOOR STORAGE OF MATERIALS (USE 2.200 – OUTDOOR STORAGE/DISPLAY) ASSOCIATED WITH A PROPOSED WATERFRONT IMPROVEMENTS CONTRACTOR BUSINESS LOCATED AT 113 BALLAST ROCK RD. WITHIN BALLAST ROCK SUBDIVISION, PIN 0124-000-068I-0000, POPLAR BRANCH TOWNSHIP.

Donna Voliva, Lyn Small, and Dave Holton appeared before the board and were sworn in.

Mrs. Voliva presented the following case analysis to the board:

BOARD OF ADJUSTMENT CASE ANALYSIS

| | |
|------------------|----------------------------|
| Meeting Date: | 9-14-06 |
| Case Number: | BOA 06-17 |
| Applicant: | Small Group Properties LLC |
| Owner: | Same |
| PIN: | 0124-000-068I-0000 |
| Address: | 113 Ballast Rock Road |
| Zoning District: | General Business (GB) |
| Township: | Poplar Branch |

Request:

Conditional Use Permit to allow storage and display of materials outside of a fully enclosed building in a General Business (GB) zoning district, Currituck UDO-Section 1310, Use Table Number 2.200.

Narrative:

1. The property is within Ballast Rock Commerce Center.
2. According to the applicant, "Lyn Small Marine Construction Services is a full-service waterfront improvements contractor offering design and construction of water-dependent facilities (bulkheading, boat docks, lifts, ramps, etc.). The hours of business are Monday through Friday 7 a.m. to 6 p.m. A normal days' activities include work crews arriving at the shop each business day to pick up equipment and materials and then proceed to the job site. All administrative work will take place in the offices in the building. The shop will be used for small equipment maintenance and storage. Other areas of the property will be used for the storage of materials and equipment including piles, lumber, vinyl sheet piles, trucks, trailers, a backhoe, and a fork life. There are no retail operations associated with this facility."
3. This is a permitted use in the GB zoning district with a conditional use permit.
4. The Technical Review Committee reviewed this request on August 16, 2006 and imposed the following requirements:

Zoning

1. REQUIRED PLAN CORRECTIONS:
 - a. The fence, if greater than six feet, must maintain a 20 foot setback from the street right-of-way of Ballast Rock Road.
 - b. A 15' (depth) concrete apron shall be installed at each driveway.
 - c. A 10' x 35' site triangle is required at each driveway.
 - d. 20% of the total vehicular area shall be shaded with deciduous trees.
2. SUGGESTED PLAN CORRECTIONS:
 - a. The applicant shall address road maintenance for the private road since it is accessed by other owners as well.
 - b. Staff suggests additional evergreen plantings along the solid fence for a visual buffer.
 - c. Staff recommends a type b bufferyard and a 15' setback for all outdoor storage.

Fire Marshall

1. The location of the fire hydrant/s are not clearly indicated.
2. Fire hydrants must be located so that no more than 400' of hose is required to reach all portions of all structures. This is measured as hose is pulled from the back of the fire truck, not a straight line.
3. All fire apparatus access must be capable of withstanding 75,000 lbs with an all weather driving surface.
4. All fire apparatus access must be at least 20' wide.

5. Any security gates must have at least a full 20' wide opening.
6. Any fire department connections for sprinkler systems must be indicated.

Water Department Comments:

1. County water will serve this property. The site plan is approved.

Public Works/Soil and Water Comments

1. Soils are Munden (moderately well drained soils that have moderate permeability).
2. Site Map is 1800' too far south, revise accordingly.

Building Inspector

1. Must comply with 2000 International Fire Code Section 1909 "Exterior Storage of Finished Lumber Products"

1909.1 General. Exterior storage of finished lumber products shall comply with this section.

1909.2 Exterior lumber storage. Exterior lumber storage shall be arranged to form stable piles with a maximum height of 20 feet. Piles shall not exceed 15,000 cubic feet in volume.

1903.3 Fire apparatus access roads. Fire apparatus access roads in accordance with Chapter 5 shall be located so that a maximum grid system unit of 50 feet by 10 feet is established.

1903.4 Security. Permanent lumber storage areas shall be surrounded with an approved fence. Fences shall be a minimum of 6 feet in height.

Exception: Lumber piles inside of buildings and production mills for lumber, plywood, and veneer.

1903.5 Fire Protection. An approved hydrant and hose system or portable fire-extinguishing equipment suitable for the fire hazard involved shall be provided for open storage yards. Hydrant and hose systems shall be installed in accordance with NFPA 24. Portable fire extinguishers complying with Section 906 shall be located so that the travel distance to the nearest unit does not exceed 75 feet.

Conditional Use Permit Criteria and Staff Findings:

(The Board must find that the applicant meets all criteria in order for a Conditional Use Permit to be approved.)

In granting a Conditional Use Permit, the Board of Adjustment may attach to the Permit such reasonable requirements in addition to those specified in this Ordinance as will ensure that the development in its proposed location:

- (a) **will not endanger the public health or safety;**
- (b) **will not injure the value of adjoining or abutting property;**
- (c) **will be in harmony with the area in which it is located;**
- (d) **will be in conformity with the Land Use Plan, Thoroughfare Plan, or other plan officially adopted by the Board of Commissioners; and,**

- (e) **will not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities.**

Following is the staff Suggested Findings for each criteria (as is required by the UDO).

1. **COMPLETENESS OF THE APPLICATION**

Suggested Findings:

1. The application is complete.

2. **COMPLIANCE WITH ORDINANCE REQUIREMENTS**

Suggested Findings:

1. The use is allowed pursuant to Section 1310, Table of Permissible Uses, Use Number 2.200 of the Currituck County UDO.
2. The applicant's proposal will be required to maintain compliance with all UDO requirements and any additional requirements of the Board of Adjustment.

- (a) The proposed use **will not** materially endanger the public health or safety for the following reasons:

Suggested Findings:

1. There will be no manufacturing or processing at the facility.

- (b) The proposed use **will not** substantially injure the value of adjoining or abutting property for the following reasons:

Suggested Findings:

1. The use is allowed pursuant to Section 1310, Table of Permissible Uses; Use Numbers 2.200 of the Currituck County UDO.
2. The surrounding land uses include:

| | | |
|----|---|----------|
| a. | North: Vacant/Guy C Lee Bldg Material | Zone: GB |
| b. | South: Hines Commercial Park | Zone: HM |
| c. | East: Vacant/SAMPAT Professional Center | Zone: GB |
| d. | West: Single family dwelling/Vacant | Zone: C |

- (c) The proposed use **will** be in harmony with the particular neighborhood or area in which it is to be located, but only if proper visual screening is installed.

Suggested Findings:

1. The surrounding properties are zoned General Business, Heavy Manufacturing, and Commercial.
2. Outdoor storage is a permitted use in the GB zone.

- (d) The proposed use **will** be in general conformity with the Land Use Plan, Thoroughfare Plan, or other plan officially adopted by the Board of Commissioners.

Suggested Findings:

1. The 1990 Land Use Plan classifies the property as "Limited Transition". According to the 1990 Land Use Plan "The limited transition class is to provide for development in areas that will have some services, but are suitable for lower densities than those associated with the urban transition class..."
 2. The proposed use conforms to the approved county plans.
- (e) The proposed use **will not** exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, and law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when applicable facilities are adequate. Such facilities must be in place or programmed to be in place within 2 years after the initial approval of the sketch plan. In the case of subdivision and multi-family development at the sketch plan/special use, preliminary plat or final plat stage, the Board of Commissioners may establish time limits on the number of lots/units available for development to assure adequate public facilities are available in accordance with Section 2015.

Suggested Findings:

1. The proposed use will not exceed the county's ability to provide adequate public facilities.

Staff Comments and Recommendation :

Staff recommends approval of this request subject to all of the Technical Review Committee comments and also making the following requirements for approval:

1. The applicant shall address road maintenance for the private road since it is accessed by other owners as well.
2. Staff suggests additional evergreen plantings along the solid fence for a visual buffer.
3. Staff recommends a type b bufferyard and a 15' setback for all outdoor storage.

DISCUSSION

Mr. Small said that he was in agreement with all Technical Review Committee comments and staff recommendations.

Dave Holton, Management Resources Ltd, represented SAMPAT which is an adjoining business. Mr. Holton asked for a Type A or a greater Type B buffer yard for the eastern property line that adjoins his clients property. He submitted the following letter:

September 12, 2006

Ms. Tammy Glave, Department of Planning
Currituck County Board of Adjustment
Currituck, North Carolina

Professional Services.

Exceptional Results.

*An unparalleled capability
to transfer challenges into
assets, opportunities &
delivered solutions.*

*RE: Small Group Properties request for conditional use permit
before the Currituck Board of Adjustment; Sept. 14, 2006.*

Dear Ms. Glave:

*The Rava Group, an adjoining property owner to the above
referenced property, has asked that I respond on their behalf to the
applicant's request for a conditional use permit.*

Dave Holton

*The Rava Group does not object to the permit nor to the proposed
use of the property. However, we do object to the granting of this
conditional use permit without requiring an opaque bufferyard on the
side of the property facing Rava Group's property (Sampat
Professional Office Park).*

President - CEO

Post Office Box 2185

*Sampat has invested substantially in creating a professional center of
which Currituck County will be proud. The Rava Group did not
simply build another metal building, but instead is providing a high
quality, well-constructed office park. We believe that it would be in
everyone's best interest to require this applicant to install an opaque
bufferyard on the Rava property line.*

Kitty Hawk

North Carolina

*As you know, the UDO requires a bufferyard so that "neighboring
properties are shielded from any adverse external effects of that
development..." While the current standards require the applicant to
install only a Type "C" Bufferyard, the UDO clearly acknowledges the
uniqueness of individual areas and states that the standards of the
table in Section 505 are "suggested" and "establish a presumption
and should be flexibly administered in accordance with Section 507."*

27949-2185

Tel 252-449-7580

Because...

- Sampat will be an upscale office environment and the
professionals occupying this area should not have to be
subjected to having an eye-sore out their rear windows; and*
- because Currituck County is realizing the importance of the
"view from the highway" throughout the County; and*
- because the applicant's intended use of the property (outdoor
storage of [marine construction] materials) can very definitely
have an adverse effect on neighboring properties;...*

Fax 252-449-7581

We hereby respectfully request that the applicant's request for a conditional use permit be granted, with the prerequisite that a Type "A" – Opaque Bufferyard toward the Sampat Professional Park be a requirement of this approval.

This will allow the applicant to use the property as he deems proper, yet also provides some assurance that this open storage lot will not adversely affect the adjoining office park and the view from the highway. As we don't want to unduly burden the applicant, we are willing to suggest that the "twenty-five (25) feet minimum width" as normally required of a Type "A" Bufferyard be reduced to fifteen (15) feet.

As for the potential problem of dust, we request that "all" parking and storage areas of vehicles and equipment (trucks, graders, trailers, backhoes, etc.) be parked-stored on compacted gravel surface and that it be stipulated that should dust become a problem; the applicant will have to address the problem promptly.

We believe that our request is reasonable and beneficial for all concerned. Thank you for consideration. Please feel free to contact me if you have any questions about anything discussed herein.

Respectfully submitted,

Dave Holton

Dave Holton

cc: Mr. Raju Uppalapati, Rava Group

Mr. Lynn said he would use Russian Olives and trees for a more dense Type B buffer along the shared property line.

ACTION

Mr. Wemer motioned to approve the conditional use permit subject to the TRC comments, findings of fact, and with the following conditions:

1. The applicant shall address road maintenance for the private road since it is accessed by other owners as well.
2. A Type B bufferyard shall be required along the north east property line.
3. Outdoor storage shall maintain a 15' setback from all property lines.

Ms. Bell seconded the motion and the motion passed unanimously.

OLD BUSINESS

The following letter was submitted to the board:

September 5, 2006

Currituck County Board of Adjustment
Attn: Larry Etheridge, Chairman
P.O. Box 70
Currituck, NC 27929

Re: Laura Umphlett

Dear Chairman Etheridge:

I am writing on behalf of the Currituck County Board of Commissioners to request the Board of Adjustment rehear Mrs. Laura Umphlett's application to amend the approved conditional use permit for BOA 97-14 PrimeCo Communications to allow a single family dwelling to be constructed within the fall zone of the tower. Mrs. Umphlett appeared before the Board on May 11, 2006, regarding this application, at which time the amendment was denied.

The Order denying the amendment referred to Section 1403(19)(a) of the Currituck County Unified Development Ordinance. This Section states that "towers and antennas shall be required to maintain a one (1) foot setback from front, side and rear property lines for every one (1) foot of tower height." The County interprets this provision as not being a prohibition on structures within the fall zone of the tower. In addition, Section 1403(19)(e) states that the "one foot setback for every one foot in height shall be maintained from existing dwellings on adjoining properties." This provision protects the neighboring properties, not the property on which the tower sits. Again, it is the County's interpretation that if the owner of the property on which the tower sits would like to place a structure within the fall zone, it would be allowed under our current UDO because it is not specifically prohibited.

Regarding Mrs. Umphlett specifically, the Board of Adjustment placed a condition on her conditional use permit that there be a 185' buffer (fall) zone around the communication tower. The Board's decision in May further emphasized your Board's interpretation of the condition to not allow any structures within this buffer zone. The Board of Commissioners respectfully requests that you rehear Mrs. Umphlett's request in light of the County's interpretation of the UDO.

Should you have any questions or concerns, please contact me at 252-232-2075 ext. 276. Thank you for your consideration.

Sincerely,

Katherine F. McKenzie

cc: Board of Commissioners
Dan Scanlon
Sarah Keifer
Ike McRee

DISCUSSION

Mr. McRee advised that the board had no legal authority to re-hear this case unless there had been a significant change in the case. There appears to be no change in the case. Based on case law, the board's decision is res judicata rendering the case closed and can not be reheard. The applicant should have appealed the board's decision to the Superior Court and was advised of the same. Since the appeal period has ended, this is no longer an option.

The board discussed that the Board of Commissioners can amend the UDO to make it clear that structures are allowed within fall zones of towers, but Mrs. Umphlett's requirement is one of the approved conditional use permit and an ordinance amendment would not change this permit condition.

ADJOURNMENT

There being no further business to discuss, Mr. Wemer motioned for adjournment. Ms. Bell seconded the motion and the motion passed unanimously. The meeting adjourned at 8:00 p.m.

Respectfully Submitted,

Tammy D. Glave /s/

Tammy D. Glave
Planner