

**CURRITUCK COUNTY
BOARD OF ADJUSTMENT REGULAR MEETING
January 12, 2012**

REGULAR MEETING

The Currituck County Board of Adjustment met on January 12, 2012 at 7:30 p.m. in the Historic Currituck County Courthouse. The following members were present: Bryan Bass, David Palmer, Christian Conner, Theresa Dozier, Donald Ferebee, and Cameron Tabor. The following member was absent: Ralph Jones. Brad Schuler, Planner; Tiffany Sanders, Planning Technician; and Benjamin Gallop, Board of Adjustment Attorney; were also present.

Mr. Bass called the meeting to order and announced a quorum had been met with four regular members and two alternate members. Mr. Tabor was called upon to act as a voting member. Ms. Dozier was excused.

ELECTION OF CHAIRMAN

Mr. Conner moved to nominate Bryan Bass as Chairman. Mr. Ferebee seconded the motion and the motion passed unanimously.

ELECTION OF VICE-CHAIRMAN

Mr. Ferebee moved to nominate Christian Conner as Vice-Chairman. Mr. Palmer seconded the motion and the motion passed unanimously.

APPROVAL OF DECEMBER 8, 2011 MINUTES

Mr. Palmer motioned to approve the December 8, 2011 minutes with no changes. Mr. Ferebee seconded the motion and the motion passed unanimously.

BOA 11-13 ARNEY, THOMAS E.: Conditional use permit to allow automobile sales & service located at 369-383 Caratoke Hwy in Moyock, Tax Map 9, Lots 30-33, Moyock Township.

Mr. Schuler appeared before the board and was sworn in.

Mr. Schuler presented the following case to the board:

BOARD OF ADJUSTMENT CASE ANALYSIS

Meeting Date:	January 12, 2012
Case Number:	BOA 11-13
Applicant/ Property Owner:	Thomas E. Arney
PIN:	0009-000-0031-0000 0009-000-0032-0000

**Minutes are not official until approved by the board.*

0009-000-0033-0000
0009-000-0034-0000
Address: 369 Caratoke Highway
371 Caratoke Highway
373 Caratoke Highway
383 Caratoke Highway
Zoning District: General Business (GB)
Township: Moyock

Request

Conditional use permit to allow automotive sales, repair, and service in a GB zoning district, pursuant to the Table of Permissible Uses of the Currituck County Unified Development Ordinance.

Narrative

1. On July 8, 2010, the Board of Adjustment upheld the administrator's decision in case BOA 10-01 Arney, Thomas E: Appeal of administrator's decision that operation of a commercial business is being conducted without a conditional use permit and is in violation of Chapter 2 of the UDO, Section 2.5.

The BOA denied BOA 10-04 Arney, Thomas E: conditional use permit to allow automobile sales located at 369-383 Caratoke Hwy in Moyock, Tax Map 9, Lots 30-33, Moyock Township due to the request not meeting the following requirements:

- a. The conditions proposed meet or exceed the minimum requirements of this ordinance.
- b. The conditional use will not endanger the public health or safety.
- c. The conditional use will be in conformity with the Land Use Plan and other officially adopted plans.

Attached are the orders for the two cases.

2. In this request, the proposed site plan has been updated showing required parking and drive aisles, setbacks, and reduced lot coverage. However, it still does illustrate required stormwater management.

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. Following is the staff suggested findings for each criterion (as is required by the UDO).

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 this will ensure that the development in its proposed location meets the following:

- (a) The application is complete.**
 - 1. The application is complete.

- (b) The proposed use is among those listed in the Table of Permissible Uses as a conditional use indicated with a “C.”**
 - 1. The proposed use is among those listed in the Table of Permissible Uses as a conditional use indicated with a “C.”

- (c) The conditions proposed meet or exceed the minimum requirements of this ordinance.**
 - 1. The proposal would meet this finding on condition that the site plan is resubmitted to the Technical Review Committee for approval.

- (d) The conditional use will not endanger the public health or safety.**
 - 1. The proposal would meet this finding on condition of display and parking areas being located a minimum of 50 feet from the existing well on site until it is abandoned.

- (e) The conditional use will not injure the value of adjoining or abutting property and will be in harmony with the area in which it is located.**
 - 1. The proposed location is around commercially zoned property. The use will not injure the value of the adjoining property and will be in harmony with the area.

 - 2. The surrounding land uses include:

a.	North:	Undeveloped	Zoning District: GB
b.	South:	Commercial	Zoning District: GB
c.	East:	Shingle Landing	
		Subdivision	Zoning District: CD-R
d.	West:	Commercial	Zoning District: GB

- (f) The conditional use will be in conformity with the Land Use Plan and other officially adopted plans.**
 - 1. The conditional use is in conformity with the Land Use Plan and other officially adopted plans.

 - 2. The 2006 Land Use Plan classifies this property as Full Service within the Moyock subarea. Nonresidential uses within the Full Service Area should preserve the existing community character in scale, architectural style, materials, landscaping, and site design.

3. Land Use Plan policies that are relevant to this use:

POLICY TR6: HIGHWAY 158/168 shall receive special attention concerning the proper development of land and properties adjoining and/or accessing this critical area.

POLICY CD5: Incompatible or poorly planned COMMERCIAL ENCROACHMENT within or immediately adjoining existing residential areas shall be prohibited. Such incompatible encroachments often include, but are not limited to, large-scale commercial uses or automobile-oriented commercial uses such as service stations, car lots, car washes, drive through restaurants, and the like. (Also see Policy HN9)

POLICY CD7: Attractive, environmentally beneficial LANDSCAPING shall be provided by new commercial or office developments, and in the rehabilitation and upgrading of existing developments. Appropriate BUFFERING or other effective DESIGN FEATURES may be employed to allow less intensive forms of commercial and office development to adjoin existing or planned residential uses.

POLICY CA1: The important economic, tourism, and community image benefits of attractive, functional MAJOR HIGHWAY CORRIDORS through Currituck County shall be recognized. Such highway corridors, beginning with US 158 and NC 168, shall receive priority attention for improved appearance and development standards, including driveway access, landscaping, buffering, signage, lighting and tree preservation.

POLICY ML4: Currituck County recognizes that the appearance and traffic moving function of the NC 168/ US 158 CORRIDOR is of exceptional importance to both the near term quality of life and long-term economic prospects for residents and property owners in the Mainland Area. The Transportation and Community Appearance policy sections of this plan shall be implemented to give priority to this issue.

(g) The conditional use will not exceed the county's ability to provide adequate public facilities.

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

TRC/Staff Recommendation:

The Technical Review Committee and staff recommend **conditional approval** of this request subject to the findings of fact as presented above and the following conditions:

1. A site plan shall be resubmitted to and approved by the Technical Review Committee prior to issuance of the conditional use permit.

2. Display and parking areas shall be located a minimum of 50 feet from the existing well on site until it is abandoned.
3. Only automobiles for sale, display, or repair shall be stored on the site.
4. The site must operate in accordance with the final site plan approved by the Technical Review Committee.
5. All improvements to site shown on the approved site plan must be completed within 6 months of the conditional use permit issuance date.

DISCUSSION

Mr. Tabor asked about staff's recommendation number five. He asked if the conditional use permit (CUP) was able to be granted prior to fulfilling the recommendations by staff.

Mr. Schuler stated the applicant would want to get the CUP prior to doing any site improvements.

Mr. Tabor asked if the CUP would be in effect if the improvements were not completed.

Mr. Schuler said he would have to show what the improvements were as proposed and as long it met

Mr. Gallop stated that if the requirements of the CUP weren't met then permit could then be revoked.

Mr. Conner asked how long it would take for the TRC committee to review the new site plan.

Mr. Schuler stated the TRC process usually takes about a month for review.

Mr. Gallop questioned the requirement for storm water management

Mr. Palmer asked could there be a condition for the storm water management.

Mr. Schuler recommended that staff should review all requirements of the permit at the same time.

Mr. Ferebee asked was it customary to obtain the conditional use permit prior to any site improvements.

Mr. Schuler stated it was a unique situation and felt there was a need to work with the applicant.

Mr. Gallop explained that if the applicant meets the requirements then the conditional use permit could be issued but if the requirements were not met the application was usually denied. The conditions are usually put on the permit only after the application has complied with the ordinance requirements. He recommended to continue the

hearing until after the applicant could go before the TRC committee to present a new storm water management plan.

Mr. Palmer asked if the applicant would have to submit a new application and pay a fee for the TRC review or would it just be a continuous review.

Mr. Schuler stated it would just be a continuation review of his application.

Mr. Palmer questioned the TRC submittal process.

Mr. Schuler stated he couldn't give an exact time frame but typically, the TRC review was about a month from the time an application was submitted. He stated that if an application was submitted by January 26, 2012 it would be heard at the February 2012 TRC meeting.

Mr. Gallop stated that after reading the consent judgment, Mr. Arney would be in violation of the consent judgment if he were to accept a continuance by the BOA.

Mr. Tom Arney appeared before the board and was sworn in.

Mr. Arney stated he drew up a new plan in order to meet all the requirements as previously stated during his prior CUP application process. He has plans with Mr. Eric Weatherly to meet him on site to correct the storm water issues. He stated that the storm water issues were only for one of the subject properties.

Mr. Bass asked about permitting conditional use permits prior to all the conditions being met.

Mr. Schuler stated that the applicant's site plan needed to be updated.

Mr. Palmer asked if any work been done on the property located at the lot addressed as 371 Caratoke Highway.

Mr. Arney said there had been no work done to the property since he originally purchased it. He stated he has had no issue with storm water drainage in the past. He explained his intent for all improvements beyond what was required by the County. He felt that he had more restrictive requirements than other car lots in the county.

Mr. Palmer asked about the requirement for the drainage plan on 371 Caratoke Highway. He asked if gravel was considered an impervious surface.

Mr. Shuler stated the gravel was placed on that property after Mr. Arney purchased the property and due to the amount Mr. Weatherly was requiring a drainage plan. He stated that all vehicular area was considered impervious.

Mr. Bass questioned the consent judgment.

Mr. Gallop read section 11.8.1.E.18 from the Unified Development Ordinance about extraordinary circumstances.

Mr. Conner moved to close the public hearing. Mr. Ferebee seconded the motion and the motion passed unanimously.

ACTION

Mr. Conner moved to approve the conditional use permit based on section 11.8.1.E.18 of the UDO regarding extreme circumstances based on the consent order which states the applicant can not be granted a continuance. The applicant must submit a revised site plan to the TRC committee by January 26, 2012 and complete the five requirements as recommended by staff. Mr. Palmer seconded the motion and the motion passed unanimously.

ADJOURNMENT

There being no further business to discuss Mr. Ferebee motioned for adjournment. Mr. Tabor seconded the motion and the motion passed unanimously. The meeting adjourned at 8:36 p.m.

Respectfully Submitted,

Tiffany B. Sanders/s/

Planning Technician