



**Planning Board
Agenda Packet**

October 12, 2021

Work Session

5:30 PM

Call to Order - 6:00 PM

- A) Pledge of Allegiance & Moment of Silence
- B) Ask for Disqualifications
- C) Announce Quorum Being Met
- D) Approval of Agenda

Approval of Minutes for September 14, 2021**Old Business****New Business**

- A) **PB 21-20 Baxter Station:** Allied Properties, LLC, is requesting conditional rezoning of 53.43 acres, owned by Jarvis Harvest, LLC, from Agriculture Zoning District to Conditional Mixed Residential Zoning District to allow 80 single-family detached lots within an age-restricted community located in Moyock on the south side of Baxter Lane adjoining Baxter Lane Estates to the east and Hidden Oaks to the south, Tax Map 9, Lot 25A, Moyock Township.

Announcements**Adjournment**



CURRITUCK COUNTY NORTH CAROLINA

September 14, 2021

Minutes – Regular Meeting of the Planning Board

WORK SESSION

The Currituck County Planning Board held a work session at 5:30 PM in the Historic Courthouse Board Meeting Room with six board members present. Staff members present were Kevin Kemp, Development Services Director; Tammy Glave, Senior Planner; Jennie Turner, Senior Planner; and Cheri Elliott, Clerk to the Board. The board members were briefed concerning the agenda items and the work session concluded at 6:02 PM.

CALL TO ORDER - 6:00 PM

The Planning Board met for a regular meeting in the Board Meeting Room of the Historic Courthouse, 153 Courthouse Road, Currituck, North Carolina.

Attendee Name	Title	Status	Arrived
C. Shay Ballance	Chairman	Present	
Garry Owens	Vice Chairman	Present	
K. Bryan Bass	Board Member	Present	
David Doll	Board Member	Present	
Lynn L. Hicks	Board Member	Absent	
Thomas Hurley	Board Member	Present	
Juanita S. Krause	Board Member	Present	
Kevin Kemp	Development Service Diirector	Present	
Tammy Glave	Senior Planner	Present	
Jennie Turner	Senior Planner	Present	
Cheri Elliott	Clerk to the Board	Present	

Chairman Ballance called the meeting to order at 6:02 PM.

A. Pledge of Allegiance & Moment of Silence

Chairman Ballance asked everyone to stand for the Pledge of Allegiance and a moment of silence.

B. Ask for Disqualifications

Chairman Ballance asked if any board member had a conflict of interest with any item for consideration on the agenda. There were no conflicts noted.

C. Announce Quorum Being Met

Chairman Ballance announced a quorum bring met with six board members present.

Communication: Planning Board Minutes - September 14, 2021 (Approval of Minutes for September 14, 2021)

D. Approval of Agenda

Chairman Ballance asked if there were any changes needed for tonight's agenda. Mr Bass motioned to approve as presented. Vice-Chairman Owens seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	K. Bryan Bass, Board Member
SECONDER:	Garry Owens, Vice Chairman
AYES:	C. Shay Ballance, Chairman, Garry Owens, Vice Chairman, K. Bryan Bass, Board Member, David Doll, Board Member, Thomas Hurley, Board Member, Juanita S. Krause, Board Member
ABSENT:	Lynn L. Hicks, Board Member

APPROVAL OF MINUTES FOR AUGUST 10, 2021

Chairman Ballance asked if there were any changes needed for the August 10, 2021 meeting minutes. Mr. Doll motioned to approve as presented. Ms. Krause seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	David Doll, Board Member
SECONDER:	Juanita S. Krause, Board Member
AYES:	C. Shay Ballance, Chairman, Garry Owens, Vice Chairman, K. Bryan Bass, Board Member, David Doll, Board Member, Thomas Hurley, Board Member, Juanita S. Krause, Board Member
ABSENT:	Lynn L. Hicks, Board Member

E. Planning Board Minutes - August 10, 2021

OLD BUSINESS

There was no old business discussed.

NEW BUSINESS

A. PB 21-17 Hugh S. Miller, IV:

Tammy Glave presented the staff report along with a PowerPoint presentation, she explained the two different ways to rezone property according to the Unified Development Ordinance (UDO): Conventional and Conditional. Conventional Rezoning cannot have conditions applied with it as governed by the North Carolina State Statute. She reviewed slides for the rezoning context map, aerial photography, and land use plan classification, wetlands, etc. Density comparisons were explained along with the Barco-Coinjock-Airport subarea. Ms Glave gave the eleven standards used to decide on approval of amendments and said staff was concerned about standard #9 Adequate Facilities since the property is in the Central Elementary School District and there are currently only 24 seats available. Ms. Glave presented slides showing Planning Staff's concerns for this property having conventional rezoning instead of conditional zoning and said staff recommends denial of the request.

Chairman Ballance asked if the board members had questions for staff.

Mr. Hurley asked about how the conditions are set for the conditional rezoning and Ms. Glave said the conditions are agreed to by both the Applicant and the Board of Commissioners.

Ms. Krause asked questions about the utilities available for the property and Ms. Glave said county water was available.

Sam Miller came before the board to present his case. He said they are reducing the General Business zoning on the front side of the property to straighten the property line and to have access coming into the property from Caratoke Highway. Mr. Miller went over reasons to not do conditional rezoning and referenced UDO 2.4.5 Modifications. He said if a condition has a conflict, then we must start over. Mr. Miller said by his calculations the most lots available on the land is 90. He has hired a consultant to work with the Army Corps of Engineers concerning the wetlands and there are about 50 acres of wetlands; due to this and a utility easement that runs through the property, will probably only get 80 lots. He said they will not be cutting down the trees in the wetlands since this is an expense for nothing; no houses can be built there. There is a boat ramp with sound access on the rear side of the property that will be utilized. Mr. Miller addressed the school capacity issues, saying the Preliminary Plat approval process is necessary whether the zoning is conventional or conditional and the Board of Commissioners could ask for certain phasing at that time which would limit the number of potential students. He also said another checkpoint would be the required Special Use Permit. Mr. Miller referenced UDO 2.4.8 Subdivision Standards and said they must also follow the Currituck County Stormwater application process. He said they have not had any negative community feedback concerning his application.

Chairman Ballance asked if the board had questions for the Applicant.

Mr. Bass asked Ms. Glave to clarify the differences with conventional zoning and conditional zoning. Ms. Glave said conventional zoning does not have conditions, but the conditional zoning has a conceptual plan and allows conditions.

Discussion was held between Mr. Miller and Ms. Glave concerning changes of conditions that would require the application process to start over. Ms. Glave said changing of lot lines would require the process to start over, but shifting of a sidewalk, in her opinion, could be approved by the Director and would not require the process to start over.

Ms. Krause said she is concerned about the school capacity. Mr. Kemp gave the anticipated school construction dates:

Construction start date, Moyock Elementary - January 2022

Construction completion date, Moyock Elementary - August 2023

Land has been purchased for new elementary school with a completion date of 2025

Mr. Miller gave the student ratio for his project at 20 students for the 80 lots created.

Mr. Hurley asked Mr. Miller how he would be impacted if he had to re-apply as a conditional rezoning and Mr. Miller said he would lose a lot of time; it would add four months to the process.

Public comment was opened and closed with no one wishing to speak.

Chairman Ballance said the Land Use Plan Classification for the property is Full Service which is the most intense within the county.

Chairman Ballance asked for a motion

Mr. Bass moved to **approve PB 21-17** because the request is consistent with below Land Use Plan policies.

Policy HN1 Currituck County shall encourage development to occur at densities appropriate for the location. LOCATION AND DENSITY FACTORS shall include whether

the development is within an environmentally suitable area, the type and capacity of sewage treatment available to the site, the adequacy of transportation facilities providing access to the site, and the proximity of the site to existing and planned urban services.

Policy CD1 NEIGHBORHOOD SERVING COMMERCIAL DISTRICTS should be encouraged to locate where a collector or secondary street intersects with a street of equal or greater size. Appropriately designated, small-scale businesses may also be near other neighborhood serving facilities such as schools and parks.

The request is reasonable and in the public interest because:

- Part of the property is designated as Full Service in the Land Use Plan.
- The Land Use Plan indicates that the Barco-Coinjock-Airport subarea has many of the ingredients in place to become a significant community center for the mainland.

Mr. Hurley seconded the motion and the motion passed 5-1 with Mr. Doll voting nay.

RESULT:	RECOMMENDED APPROVAL [5 TO 1]	Next: 10/4/2021 6:00 PM
MOVER:	K. Bryan Bass, Board Member	
SECONDER:	Thomas Hurley, Board Member	
AYES:	C. Shay Ballance, Chairman, Garry Owens, Vice Chairman, K. Bryan Bass, Board Member, Thomas Hurley, Board Member, Juanita S. Krause, Board Member	
NAYS:	David Doll, Board Member	
ABSENT:	Lynn L. Hicks, Board Member	

B. PB 21-16 Currituck County Housekeeping Text Amendment:

Jennie Turner gave the staff report, gave the text amendment review standards, said staff recommends approval, and gave the suggested Consistency Statement.

Chairman Ballance opened and closed the public hearing with no one present to speak. Chairman Ballance asked for a motion.

Mr. Doll moved to approve PB 21-16 because the request is consistent with POLICY HN8 of the 2006 Land Use Plan.

And it is required by the recent changes to G.S. 160-D.

Vice-Chairman Owens seconded the motion and the motion carried unanimously 6-0.

RESULT:	RECOMMENDED APPROVAL [UNANIMOUS]	Next: 10/4/2021 6:00 PM
MOVER:	David Doll, Board Member	
SECONDER:	Garry Owens, Vice Chairman	
AYES:	C. Shay Ballance, Chairman, Garry Owens, Vice Chairman, K. Bryan Bass, Board Member, David Doll, Board Member, Thomas Hurley, Board Member, Juanita S. Krause, Board Member	
ABSENT:	Lynn L. Hicks, Board Member	

C. PB 21-19 Outer Banks Ventures, Inc. LUP Amendment:

Jennie Turner presented the staff report with a PowerPoint presentation (prior to the meeting, Ms. Turner handed out a letter from the Corolla Civic Association which stated their concerns for the pending development). She said the Land Use Plan Amendment is a legislative decision that cannot have conditions attached to it and must be either approval or denial. Ms. Turner gave the background information; originally the applicant applied for an Amended Sketch Plan/Special Use Permit for 36 dwellings. Staff reviewed the application

and found that a Land Use Plan Amendment was necessary to add additional Full Service area. Ms. Turner reviewed the applicant's statements of justification for their request on page 40 of the agenda packet, gave the suitability factors, gave review standards, the consistency statement, and said staff recommends approval.

The board asked questions concerning the use of the property. Discussion was held about the stormwater pond; the County has an easement for Whalehead to discharge stormwater into the pond.

Mark Bissell, with Bissell Professional Group, came before the board to represent the Applicant. He gave information on the surrounding area; three sides of the development are adjacent to commercial development. He presented a PowerPoint presentation showing the plan for the development. Mr. Bissell said there will be 36 units, 1 unit per acre; a restaurant with connecting walkways to a boat dock. Mr. Bissell referenced the Seaside Market located beside the development and said he believes they will receive benefits from the development since the plans include improvements to the parking area by striping, bumping curbs, providing for trucks to turn around, and having a second way out of the parking area. Mr. Bissell presented additional slides to support the development and said the development is consistent with the Land Use Plan policies.

Chairman Ballance asked if the board had any questions.

Discussion was held about the additional steps if this Land Use Plan Amendment (LUP) is approved in order to do the development.

Ms. Turner went over the plan for the proposed development and apologized for not having it in the agenda packet.

Discussion was held on whether the land could be developed without the LUP Amendment and on the wetlands.

Chairman Ballance opened the public comment.

Andy Krause spoke in opposition of the development due to the proximity of wetlands. He gave information on the Submerged Aquatic Vegetation (SAV) and its importance to the surrounding wildlife. He said the Tundra Swans feed on this and if the SAV disappeared they will as well. He said Currituck loses 70 acres of marsh every year. He referenced Project Save Currituck Sound, a report written by East Carolina University, which talks about the SAV. Mr. Krause also spoke of the erosion factors.

Mr. Hurley stated the wetland are not being disturbed from the development. Mr. Krause said the runoff from the development will affect the wetlands and will destroy the SAV.

Carla Gazzola came before the board. She introduced herself along with her business partner, Marcia Hornstein. She said they own a business near the potential development and gave their concerns about the parking and stormwater runoff since it is an intense problem at TimBuck II. She said a lot of grading and drainage go nowhere so buildings 1 and 2 go under water frequently with the rainwater having nowhere to go. She said they are not for or against the development, but just want the parking and water runoff situation taken seriously as to not add to the existing problem.

Mr. Bissell gave his response saying they have an approved wetlands delineation and that the County has 5 million gallons per day going into the pond from Whalehead. He said the proposed development's stormwater is a drop in the bucket compared to the existing amount already going into the pond.

Chairman Ballance asked Mr. Bissell if they would make efforts to ensure the stormwater drain off goes into the pond. Mr. Bissell said they would, and they would also filter the water.

Chairman Ballance said the parking calculations are more extensive now than when Timbuck II was constructed. Mr. Bissell said they will not harm their situation, will have

adequate parking, and will take care of the drainage.

Chairman Ballance closed the public hearing with no one else wanting to speak.

Chairman Ballance asked for a motion.

Ms. Krause moved to deny PB 21-19 Outer Banks Ventures Land Use Plan Amendment because the request is not consistent with the Land Use Plan because:

The area is designated Conservation on the Future Land Use Map and the requested amendment will allow more intense development in an area outside of existing Full Service designation.

Mr. Doll seconded the motion which resulted in a tie vote with Vice-Chairman Owens, Chairman Ballance, and Mr. Hurley voting nay. The request is **denied** as it did not receive approval by a majority vote as stated in the Currituck County Planning Board Rules of Procedure.

RESULT:	RECOMMENDED DENIAL [3 TO 3]	Next: 10/4/2021 6:00 PM
MOVER:	Juanita S. Krause, Board Member	
SECONDER:	David Doll, Board Member	
AYES:	K. Bryan Bass, Board Member, David Doll, Board Member, Juanita S. Krause, Board Member	
NAYS:	C. Shay Ballance, Chairman, Garry Owens, Vice Chairman, Thomas Hurley, Board Member	
ABSENT:	Lynn L. Hicks, Board Member	

ANNOUNCEMENTS

Kevin Kemp introduced Anna Cherry saying she is a recent University of North Carolina graduate hired as the County's new Code Enforcement Officer.

Mr. Kemp gave the following updates:

1. Family Subdivision Text Amendment was denied by the Board of Commissioners by a 4-3 vote.
2. The Campground Text Amendment continues with a work session on Monday.
3. The Campground Text Amendment which was recommended approval by this board is being brought back by the Board of Commissioners.
4. The County Manager search continues. The Board of Commissioners voted last week to keep Ike McRee as the acting County Manager. They have also decided to use a firm to find suitable candidates since there are currently over 40 openings in the state for County Manager positions.

ADJOURNMENT

Chairman Ballance opened the floor for adjournment. Mr. Bass motioned to adjourn the meeting. Mr. Doll seconded the motion and the meeting adjourned with a unanimous vote at 8:22 PM.



Currituck County Agenda Item Summary Sheet

Agenda ID Number – 3254

Agenda Item Title: PB 21-20 Baxter Station:

Submitted By: Tammy Glave – Planning & Community Development

Item Type: Legislative

Presenter of Item: Tammy Glave

Board Action: Action

Brief Description of Agenda Item:

Allied Properties, LLC, is requesting conditional rezoning of 53.43 acres, owned by Jarvis Harvest, LLC, from Agriculture Zoning District to Conditional Mixed Residential Zoning District to allow 80 single-family detached lots within an age-restricted community located in Moyock on the south side of Baxter Lane adjoining Baxter Lane Estates to the east and Hidden Oaks to the south, Tax Map 9, Lot 25A, Moyock Township.

Planning Board Recommendation:

Staff Recommendation: Approval with Conditions

TRC Recommendation: Approval with Conditions



**STAFF REPORT
PB 21-20 BAXTER STATION
CONDITIONAL ZONING
PLANNING BOARD
OCTOBER 12, 2021**

APPLICATION SUMMARY

Property Owner: Jarvis Harvest LLC Charles T. Busby PO Box 88 Maple NC 27956 (Per Tax Record and NC Sec'y of State) Jarvis Harvest LLC 701 Blue Point Drive Wilmington NC 28411 (Per Application)	Applicant: Allied Properties LLC 417 Caratoke Hwy Unit D Moyock NC 27958
Case Number: PB 21-20	Application Type: Conditional Rezoning
Parcel Identification Number: 0009-000-025A-0000	Existing Use: Cultivated Farmland
Land Use Plan Classification: Rural*	Parcel Size (Acres): 53.43
Moyock Small Area Plan Classification: Full Service	Zoning History: RA-20 (1974), A (1989); AG (2013)
Current Zoning: AG (Agricultural)	Proposed Zoning: C- MXR (Conditional – Mixed Residential)
Request: Conditional zoning to allow 80 single-family detached lots within an age-restricted community located in Moyock on the south side of Baxter Lane adjoining Baxter Lane Estates to the East and Hidden Oaks to the south, Moyock Township.	

*Requires a Land Use Plan amendment.

SURROUNDING PARCELS

	Land Use	Zoning
North	Commercial, Residential Subdivisions (Windswept Pines, Georgias Vineyard, etc.)	GB, AG, C-MXR
South	Residential Subdivision (Hidden Oaks)	C-SFM
East	Residential Subdivision (Baxter's Lane Estates)	C-SFM
West	Vacant, Railroad	GB

Attachment: 1 Baxter Station C-MXR Staff Report (PB 21-20 Baxter Station Conditional Zoning)

REQUEST HISTORY

In 2019 the developer proposed a conditional zoning to Planned Development – Residential (PD-R) for this property. The proposal contained 103 single-family dwelling units and 44 duplex dwelling units with a minimum lot size of 10,000 square feet and the construction of an on-site wastewater treatment plant. The Planning Board recommended denial of that request because it was inconsistent with the 2006 Land Use Plan and the Moyock Small Area plan. This proposal was also determined to be incompatible with surrounding subdivisions and neighborhoods. Additionally, the proposed neighborhood would be served by Moyock Elementary School which was over capacity. For these reasons, the request was not reasonable or in the public interest. The developer withdrew the request in June 2020, prior to it being considered by the Board of Commissioners.

NARRATIVE

The applicant is now proposing an age-restricted residential community containing 80 single-family dwelling units. All units are proposed to be occupied by occupants 55 years of age or older. Before the issuance of the first building permit for the first dwelling unit, the developer will record a restrictive covenant in the homeowners' association documents restricting the age of the occupants accordingly. The restrictive covenants will require certifications of age of all household occupants at least once every two years and provide enforcement of violations. Outlined in the attached letter dated December 1, 2020, from the applicant's attorney, Currituck County can accept age restrictive covenants as legally enforceable conditional zoning conditions. According to the applicant's attorney, restrictions that comply with federal and state law "prevents school-aged children from occupying units."

Per the County Attorney, the current department of HUD standards define age restricted or an age restricted community as: (i) a community intended and operated for occupancy by persons 55 years of age or older; (ii) a community where at least 80% of the units have at least one occupant who is 55 years of age or older; (iii) the community must publish and adhere to policies and procedures that demonstrate the intent to operate as "55 or older" housing and (iv) the community must comply with HUD's regulatory requirements for age verification of residents. The applicant is proposing zero occupants less than 55 years old.

The properties along Baxter Lane have historically dealt with stormwater runoff and flooding issues. As part of the conditional zoning request, one condition the developer is offering is to help address drainage in this area. The Baxter Lane Ditch will be improved, and on-site stormwater storage will be provided, including berms as necessary, to address the 100-year storm on the Baxter Station property. An undersized culvert will be replaced at Baxter Lane Extension, assuming the County obtains right of entry onto all private properties. Currituck County's Soil and Stormwater Manager is confident that the proposed improvements will help alleviate stormwater runoff issues along Baxter Lane and adjoining properties. There is also a waterline under the undersized culvert that must be addressed, and the developer is working directly with Public Utilities to rectify that situation. Since these improvements are conditions proposed by the applicant, should the Board of Commissioners agree to the conditions, these improvements are bindings on the land and will become a part of the preliminary plat/use permit requirements.

The amenities plan for the 55 and older community includes a dog park and a waterfront garden with landscaping, walking paths, a pergola, and seating. (See attached amenities plan.)

Since the 2006 Land Use Plan classifies the property as Rural in the Moyock subarea, a Land Use Plan amendment is required to reclassify the property as Full Service to develop at the desired density of 1.49 units per acre. Since the more specific Moyock Small Area Plan classifies this area as Full Service,

the amendment to the LUP is consistent with the policies and guidance offered in that plan. G.S. 160D-605 provides that “[i]f a zoning map amendment is adopted, and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required.”

ZONING DISTRICT DENSITY COMPARISON

This rezoning request will result in a substantial density increase for the property. Please note that this is raw data and assuming ideal conditions with no limitations on the property (soil suitability, infrastructure placement, etc.). These numbers should be used for general reference purposes only.

AG (Existing)	17 lots	23 lots
Conservation	Minimum lot size 30,000 sf	Minimum lot size 30,000 sf
Subdivision Required	50% open space	60% open space
(Currently Allowed)	Max Density: .33 u/ac	Max Density: .4 u/ac
MXR Request	80	
Assuming Full Service	15,000 sf minimum lot size	
LUP Map Amendment	30% open space required; 38% proposed	
	Max Density: 2 u/ac with 1.49 u/ac proposed	

COMMUNITY MEETING

A community meeting on this version of the plan was held on July 20, 2021, at the Eagle Creek Pavilion. There were approximately 14 neighboring property owners in attendance. Most questions centered around drainage issues and plan for improvements, lot size/subdivision layout, poor soils, and general development in Moyock.

CONDITIONS OF APPROVAL

Only conditions mutually agreed to by the owner(s) of the property to be conditionally zoned and the Board of Commissioners may be approved as part of a conditional zoning district. If the Board wishes to add additional conditions of approval, the applicant must agree to the new conditions for the conditions to be valid. The property owner and applicant are offering two proposed conditions that the Board must agree to:

1. Regarding Age Restriction: The use of the property shall be limited to an age-restricted residential community where all units are occupied by occupants fifty-five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners' association documents restricting the use accordingly, requiring occupants to certify the age of all household occupants at least once every two years, and providing for enforcement of such restriction.
2. Regarding Drainage Improvements: Drainage improvements will be provided as follows:
 - a. Perform modeling of the Baxter ditch to its outlet on the Jarvis (Landing) property.
 - b. Based on model results, make improvements to Baxter Lane ditch along the Baxter Station property boundary, including widening, deepening, laying back side slopes and putting on proper grade. Improvements to be completed prior to putting first plat phase of subdivision to record.
 - c. Record an easement along the Baxter Station part of the ditch to provide access for ongoing maintenance.

- d. Include a provision in the covenants of Baxter Station that clarifies that the HOA will have the responsibility to maintain the Baxter Lane ditch through the subdivision at least annually, and budget for funding within the HOA dues structure to assure that ongoing maintenance is funded.
- e. Model the Baxter Station to manage the 100-year storm event and provide stormwater storage, including berms as necessary, to prevent runoff from Baxter Station during the 100 year storm event from adversely impacting offsite properties.
- f. If Currituck County is able to obtain the necessary right of entry agreements, the existing undersized culvert at Baxter Lane Extension will be replaced with a properly sized culvert set at the proper grade.

There is waterline under the undersized culvert on Baxter Lane Extension. Public Utilities is requesting the following condition:

- 3. That the developer will lower or move the waterline located at the end of Baxter Lane to provide proper separation to the new drainage culvert. Public Utilities must approve the construction plan prior to work beginning on the culvert/waterline.

LAND USE PLAN

The 2006 Land Use Plan classifies this site as Rural within the Moyock subarea. The policy emphasis for the Moyock subarea is managing the increased urban level of growth that this area is sure to experience over the next decade and beyond. In areas where on-site wastewater is proposed, and other county services are limited, development density should be limited to 1-2 units per acre. The proposed development plan may be considered consistent with the Moyock subarea emphasis, but this consideration does not change the 2006 Land Use Plan land use classification of the subject property. This signifies a discrepancy with the UDO dimensional standards for the MXR district. * **The following land use plan policies are relevant to the request:**

Policy HN1	Currituck County shall encourage development to occur at densities appropriate for the location. LOCATION AND DENSITY FACTORS shall include whether the development is within an environmentally suitable area, the type and capacity of sewage treatment available to the site, the adequacy of transportation facilities providing access to the site, and proximity of the site to existing and planned urban services.
-------------------	--

**Prior zoning map amendments (2015 and 2018) adopted by the BOC placed emphasis on the Moyock Small Area plan future land use map classifying this property as Full Service. A zoning map amendment, PB 18-23 effective May 6, 2019, placed emphasis on the CAMA Land Use Plan. The decision emphasizes the 2006 Land Use Plan as the controlling document and the relation to the UDO dimensional standards for the MXR district signifies a discrepancy between the two plans and requires a Land Use Plan map amendment.*

MOYOCK SMALL AREA PLAN

The Moyock Small Area Plan identifies this site as Full Service. Full-Service designations are focal points in the community where high amounts of activity occur. Typical densities in Full-Service designations range from 1.5 – 3 units per acre depending on surround land uses.

Policy FLU1	Promote compatibility between new development and existing development to avoid adverse impacts to the existing community. This is achieved through design and includes larger setbacks, landscaped or forested strips, transition zones, fencing, screening, density and/or bulk step downs, or other architectural and site planning measures that encourage harmony.
--------------------	---

Staff Concerns

- Participating in the HUD regulated program for age-restricted communities is a voluntary action. Should the developer choose not to participate in the HUD age-restricted community program, an amended conditional zoning district will be required.
- There are concerns for school capacity should the developer chose to no longer participate in the age-restricted community.
- It is understood that the intent is for the HOA to be responsible for enforcing the age restriction requirement, but it should be noted that enforcement actions often fall to the county and staff enforcement of the age-restriction would be very difficult, even if legally permissible.

RECOMMENDATION

Technical Review Committee Comments

The Technical Review Committee reviewed this conditional zoning request and identified the following comments:

1. The 2006 Land Use Plan identifies this property as Rural within the Moyock subarea. The policy's emphasis for the Moyock subarea is managing the increased urban level of growth that this area is sure to experience over the next decade and beyond. In areas where on-site wastewater is proposed, and other county services are limited development density should be limited to 1-2 units per acre.
2. The Moyock Small Area Plan identifies this site as Full-Service. This designation identifies areas where there will be significant public investment in infrastructure, and thus can support higher density of development.
3. The UDO dimensional standards in the MXR zoning district provide the maximum density of 2 units per acre in the Full-Service area and 1 unit per acre in the Limited-Service Area. The UDO does not provide density allocation for property in the Rural land use classification. The MXR zoning district purpose provides more intense development density and uses than the areas typically identified as the Rural land use classification.
4. Prior zoning map amendments, including the amendments in 2015 and 2018, placed emphasis on the Moyock Small Area plan allowing for the full-service development density of 2 units per acre. However, a zoning map amendment, PB 18-23 with an effective date of May 6, 2019, placed emphasis on the 2006 Land Use Plan as the approved CAMA plan. That decision, if applied to this property, would not meet the county UDO since this area is identified as Rural with no development density allocated.
5. Based on the 2019 decision, an amendment to the 2006 Land Use Plan land use map (Rural to Full-Service) is necessary for this increase in development density to be allowed under the UDO.
6. Conditional zonings are legislative decisions of the board and not controlled by any one factor. In determining whether to adopt or deny a proposed request, the board may consider the standards in UDO, Section 2.4.3.C.
 - a. Is consistent with the goals, objectives, and policies of the Land Use Plan, other applicable county-adopted plans, and the purposes of this Ordinance;
 - b. Is in conflict with any provision of this Ordinance, or the County Code of Ordinances;
 - c. Is required by changed conditions;
 - d. Addresses a demonstrated community need;
 - e. Is compatible with existing and proposed uses surrounding the land subject to the application, and is the appropriate zoning district and uses for the land;
 - f. Adversely impacts nearby lands;
 - g. Would result in a logical and orderly development pattern;
 - h. Would result in significant adverse impacts on the natural environment—including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment;

- i. Would result in development that is adequately served by public facilities (e.g., streets, potable water, sewerage, stormwater management, solid waste collection and disposal, schools, parks, police, and fire and emergency medical facilities);
- j. Would not result in significantly adverse impacts on the land values in the surrounding area; and
- k. Would not conflict with the public interest and is in harmony with the purposes and intent of this Ordinance.

Technical Review Committee Recommendation

Provided adequate public facilities are available to serve the proposed development, the Technical Review Committee recommends approval of the conditional zoning application subject to the following conditions (must be agreed upon by the county and the applicant):

1. The 2006 Land Use Plan future land use map must be amended to identify the property as Full-Service as part of the motion for approval.
2. Regarding Age Restriction: The use of the property shall be limited to an age-restricted residential community where all units are occupied by occupants fifty-five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners' association documents restricting the use accordingly, requiring occupants to certify the age of all household occupants at least once every two years, and providing for enforcement of such restriction.
3. Regarding Drainage Improvements: Drainage improvements will be provided as follows:
 - a. Perform modeling of the Baxter ditch to its outlet on the Jarvis (Landing) property.
 - b. Based on model results, make improvements to Baxter Lane ditch along the Baxter Station property boundary, including widening, deepening, laying back side slopes and putting on proper grade. Improvements to be completed prior to putting first plat phase of subdivision to record.
 - c. Record an easement along the Baxter Station part of the ditch to provide access for ongoing maintenance.
 - d. Include a provision in the covenants of Baxter Station that clarifies that the HOA will have the responsibility to maintain the Baxter Lane ditch through the subdivision at least annually, and budget for funding within the HOA dues structure to assure that ongoing maintenance is funded.
 - e. Model the Baxter Station to manage the 100-year storm event and provide stormwater storage, including berms as necessary, to prevent runoff from Baxter Station during the 100 year storm event from adversely impacting offsite properties.
 - f. If Currituck County is able to obtain the necessary right of entry agreements, the existing undersized culvert at Baxter Lane Extension will be replaced with a properly sized culvert set at the proper grade.
4. That the developer will lower or move the waterline located at the end of Baxter Lane to provide proper separation to the new drainage culvert. Public Utilities must approve the construction plan prior to work beginning on the culvert/waterline.
5. Should the development stop participating in the voluntary HUD regulated age-restricted community program, an amended conditional zoning request must be approved prior to those less than 55 years old occupying a dwelling unit.

CONSISTENCY STATEMENT

A conditional zoning is a legislative decision of the Board of Commissioners. In determining whether to approve or deny a conditional rezoning the Board of Commissioners shall adopt a written statement of consistency.

The conditional zoning request is consistent with and amends the 2006 Land Use Plan by designating this property as Full-Service on the future land use map because the amendment recognizes and implements the Full-Service designation of the Moyock Small Area Plan adopted by the Board of Commissioners.

The request is reasonable and in keeping with the changed conditions acknowledged by the Moyock Small Area Plan and addresses the demonstrated community need of providing a Full-Service area.

CONDITIONS OF APPROVAL

Only conditions mutually agreed to by the owner(s) may be approved as part of a conditional zoning district. Conditions shall be limited to those that address conformance of development and use of the site with county regulations and adopted plans and that address the impacts reasonably expected to be generated by the development or use. No condition shall be less restrictive than the standards of the parallel general use zoning district.

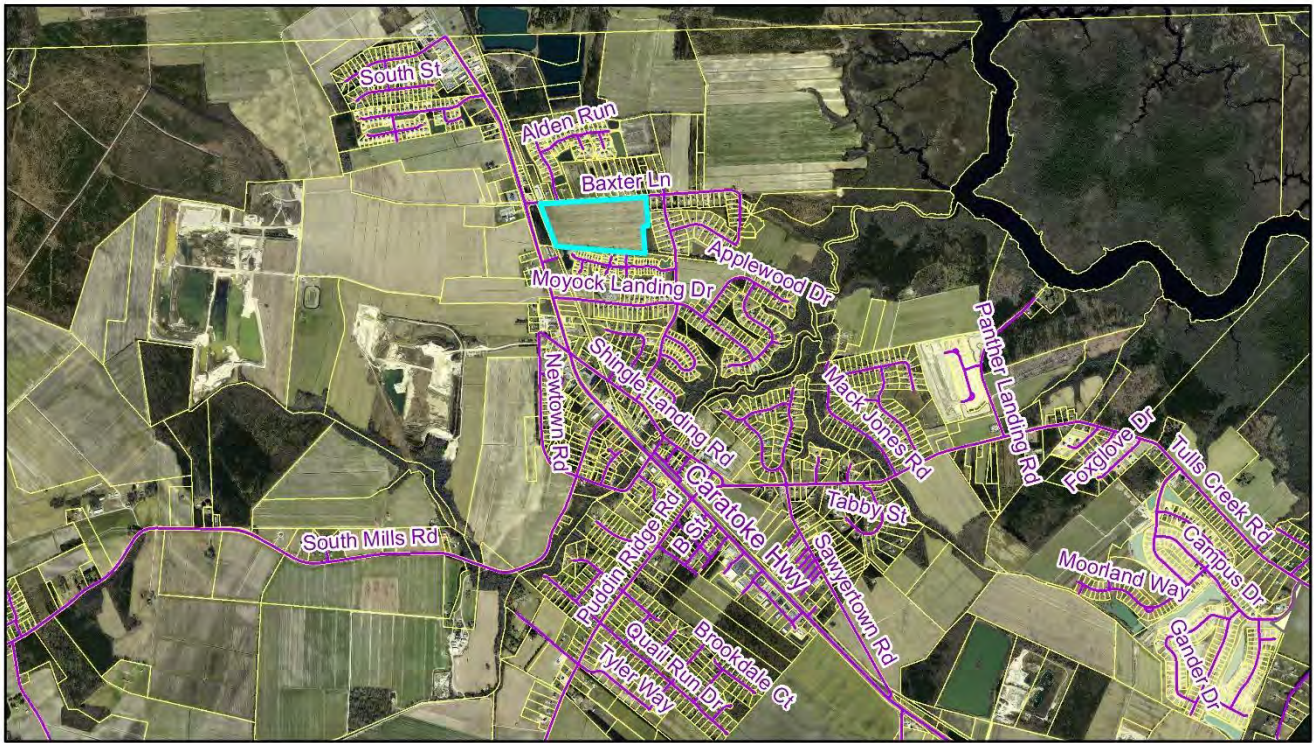
Agreed upon conditions of approval:

1. Regarding Age Restriction: The use of the property shall be limited to an age-restricted residential community where all units are occupied by occupants fifty-five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners' association documents restricting the use accordingly, requiring occupants to certify the age of all household occupants at least once every two years, and providing for enforcement of such restriction.
2. Regarding Drainage Improvements: Drainage improvements will be provided as follows:
 - a. Perform modeling of the Baxter ditch to its outlet on the Jarvis (Landing) property.
 - b. Based on model results, make improvements to Baxter Lane ditch along the Baxter Station property boundary, including widening, deepening, laying back side slopes and putting on proper grade. Improvements to be completed prior to putting first plat phase of subdivision to record.
 - c. Record an easement along the Baxter Station part of the ditch to provide access for ongoing maintenance.
 - d. Include a provision in the covenants of Baxter Station that clarifies that the HOA will have the responsibility to maintain the Baxter Lane ditch through the subdivision at least annually, and budget for funding within the HOA dues structure to assure that ongoing maintenance is funded.
 - e. Model the Baxter Station to manage the 100-year storm event and provide stormwater storage, including berms as necessary, to prevent runoff from Baxter Station during the 100-year storm event from adversely impacting offsite properties.
 - f. If Currituck County is able to obtain the necessary right of entry agreements, the existing undersized culvert at Baxter Lane Extension will be replaced with a properly sized culvert set at the proper grade.

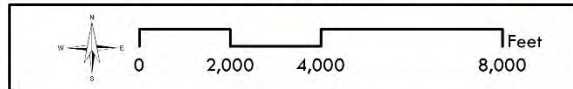
Technical Review Committee recommended condition that must be agreed upon by the applicant and the county:

1. That the developer will lower or move the waterline located at the end of Baxter Lane to provide proper separation to the new drainage culvert. Public Utilities must approve the construction plan prior to work beginning on the culvert/waterline.
2. The 2006 Land Use Plan future land use map must be amended to identify the property as Full-Service as part of the motion for approval.
3. Should the development stop participating in the voluntary HUD regulated age-restricted community program, an amended conditional zoning request must be approved prior to those less than 55 years old occupying a dwelling unit.

THE APPLICATION AND RELATED MATERIALS ARE AVAILABLE ON THE COUNTY'S WEBSITE
Board of Commissioners: www.co.currituck.nc.us/planning-board-minutes-current.cfm



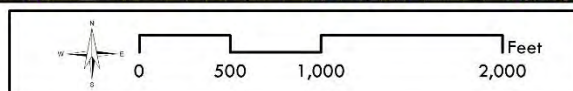
PB 21-20 Baxter Station
C-MXR
Context Map



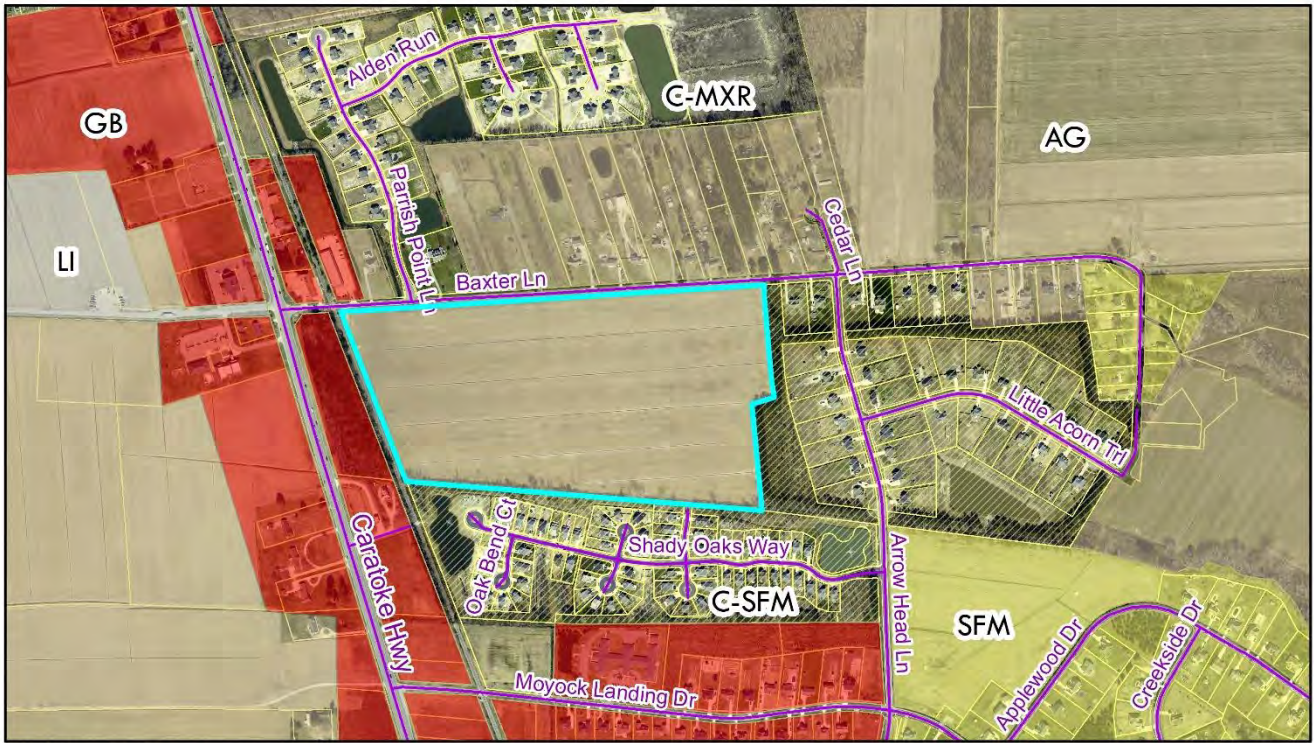
Currituck County
Planning and
Community Development



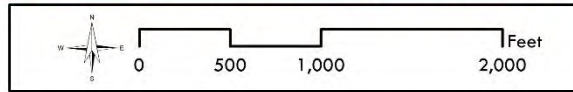
PB 21-20 Baxter Station
C-MXR
2020 Aerial Photo



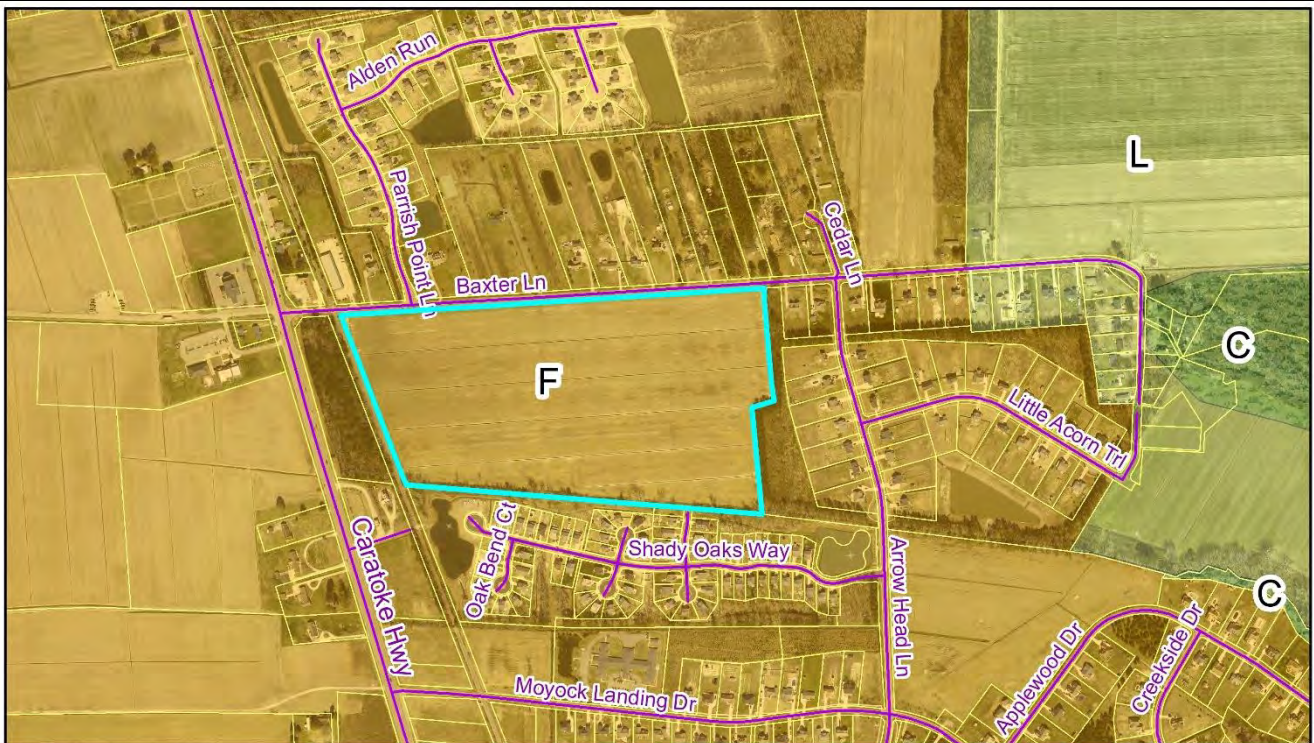
Currituck County
Planning and
Community Development



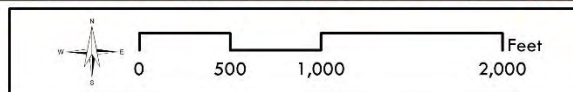
PB 21-20 Baxter Station
C-MXR
Zoning



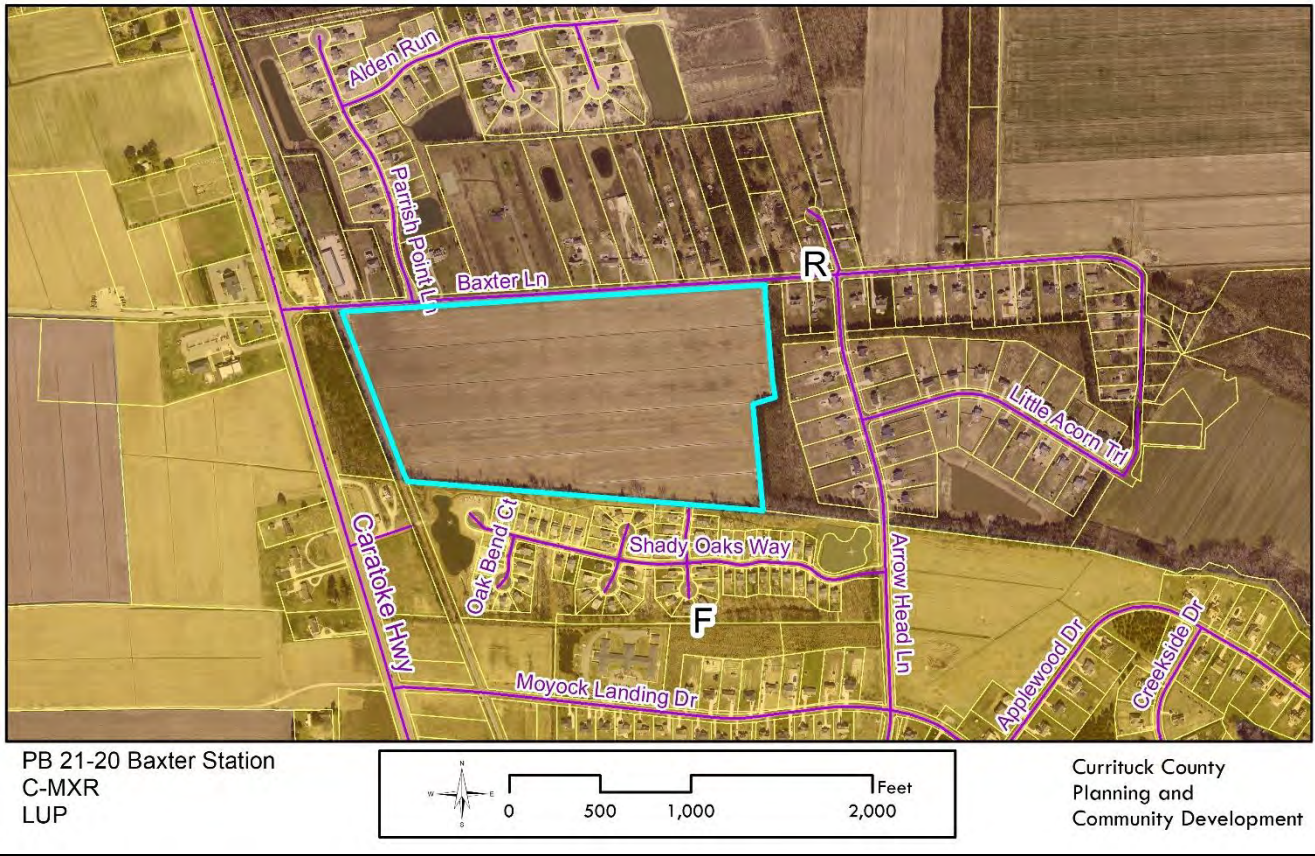
Currituck County
Planning and
Community Development



PB 21-20 Baxter Station
C-MXR
Moyock SAP



Currituck County
Planning and
Community Development



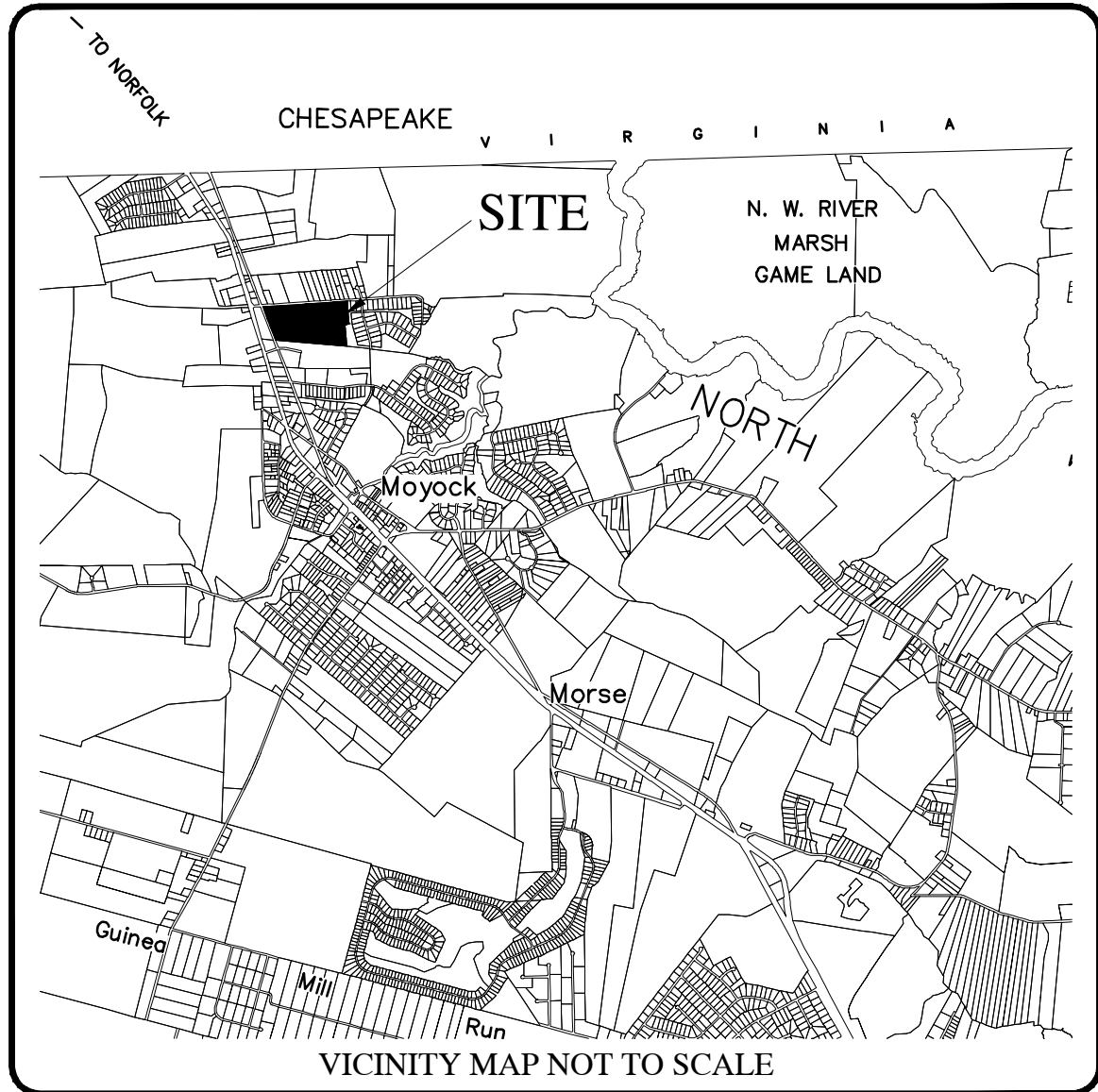
BISSELL
PROFESSIONAL GROUP
Bissell Professional Group
Fits License # C-8946
3512 North Crofton Highway
P.O. Box 1068
Kitty Hawk, North Carolina 27949
(252) 281-3266
FAX (252) 281-1780

COVER SHEET, DEVELOPMENT
NOTES & SITE LOCATION

BAXTER STATION MXR

PRELIMINARY MASTER PLAN

Attachment: 2 8-24-21 4671-MASTER-PLANS (PB 21-20 Baxter Station Conditional Zoning)



I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY DESCRIBED HEREON, WHICH PROPERTY IS LOCATED WITHIN THE SUBDIVISION REGULATION JURISDICTION OF CURRITUCK COUNTY, THAT I HEREBY FREELY ADOPT THIS PLAT OF SUBDIVISION AND DEDICATE TO PUBLIC USE ALL AREA SHOWN ON THIS PLAT AS STREETS, UTILITIES, ALLEYS, WALKS, RECREATION AND PARKS, OPEN SPACE AND EASEMENTS, AND THAT I SPECIFICALLY RESERVE THE RIGHT TO REVOKE AND TO MAINTAIN ALL SUCH AREAS UNTIL THE OFFER OF DEDICATION IS ACCEPTED BY THE APPROPRIATE PUBLIC AUTHORITY OR HOME OWNERS' ASSOCIATION. ALL PROPERTY SHOWN ON THIS PLAT AS DEDICATED FOR A PUBLIC USE SHALL BE DEEMED TO BE DEDICATED FOR ANY OTHER PUBLIC USE AUTHORIZED BY LAW WHEN SUCH USE IS APPROVED BY THE APPROPRIATE PUBLIC AUTHORITY IN THE PUBLIC INTEREST.

I HEREBY CERTIFY THAT THE PRIVATE STREETS SHOWN ON THIS PLAN ARE INTENDED FOR PRIVATE USE AND WILL REMAIN UNDER THE CONTROL, MAINTENANCE AND RESPONSIBILITY OF THE DEVELOPER AND/OR A HOMEOWNER'S ASSOCIATION AND ACKNOWLEDGE THAT SOME PUBLIC SERVICES MAY NOT BE PROVIDED DUE TO THE PRIVATE NATURE OF THE ROAD(S).

I, MICHAEL D. BARR, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED AND DESCRIPTION RECORDED IN BOOKS REFERENCED); THAT THE RATIO OF PRECISION AS CALCULATED IS 1: 10,000 AND VERTICAL ACCURACY IS $\pm 0.05'$; THAT THE GLOBAL POSITIONING SYSTEM (GPS) OBSERVATIONS WERE PERFORMED TO THE GEOSPATIAL POSITIONING ACCURACY STANDARDS, PART 2: STANDARDS FOR GEODETIC NETWORKS AT THE 2-CENTIMETER ACCURACY CLASSIFICATION (95% CONFIDENCE) USING REAL TIME KINEMATIC AND TRADITIONAL TRAVERSE. THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. THAT THIS PLAT MEETS THE REQUIREMENT OF G.S. 47-30 SECTION F-11-C-1 AND FURTHER THAT IT MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56. 1600)."

----- L-1756
SIGNATURE

1. PROJECT NAME: BAXTER STATION
2. APPLICANT: NORTH-SOUTH DEVELOPMENT GROUP, LLC.
417-D KARATOKE HIGHWAY
MOYOCK, NC 27958
3. OWNERS: JARVIS HARVEST, LLC
701 BLUE POINT DRIVE
WILMINGTON, NC 28411
4. PROPERTY DATA:
ADDRESS: BAXTER LANE, MOYOCK, NC 27958
PIN: 0009-000-025A-0000
RECORD DOCUMENT(S): D.B.1421, PG: 801
ACREAGE: 53.52 ACRES
PROPERTY ZONING:
EXISTING: AG (AGRICULTURAL)
PROPOSED: C-MXR
5. F.I.R.M. DATA:
ZONE "C" PER F.I.R.M. MAP NOS. 3721802200 K, CID 370078, HAVING AN EFFECTIVE DATE
DECEMBER 21, 2018. USE OF LAND WITHIN A FLOODWAY OR FLOOD PLAIN IS SUBSTANTIALLY
RESTRICTED BY CHAPTER 7 OF THE CURRITUCK COUNTY UNIFIED DEVELOPMENT ORDINANCE.
6. THIS PROPERTY CONTAINS NO ACOE "404" JURISDICTIONAL WETLANDS.
7. A 10' EASEMENT FOR UTILITIES AND DRAINAGE ALONG REAR AND SIDE PROPERTY LINES AND A
15' EASEMENT FOR UTILITIES AND DRAINAGE ALONG FRONT PROPERTY LINE IS HEREBY
ESTABLISHED.
8. EXISTING CONDITION INFORMATION BASED ON A COMBINATION OF THE FOLLOWING:
 - 2012 AERIAL IMAGERY OBTAINED FROM NCONEMAP.COM
 - FIELD TOPOGRAPHIC SURVEY DATA BY BISSELL PROFESSIONAL GROUP.
 - ELEVATIONS ARE REFERENCED TO NAVD 1988 VERTICAL DATUM.
9. ALL UTILITIES ARE TO BE UNDERGROUND.
10. NEAREST HYDRANT (WBL01) FLOW REPORTED AT 1,146 GPM. DESIGN FIRE FLOW IS 1,000 GPM
FOR SINGLE FAMILY RESIDENCES BASED ON STRUCTURES HAVING LESS THAN 4,800 SQ. FT. AND
NOT OVER 2-STORIES HIGH.

LOT AREAS: VARY FROM APPROXIMATELY 15,000 TO 19,400 SQUARE FEET.

TRACT SUMMARY:	
TOTAL AREA OF TRACT:	53.5 AC. APPROX.
AREA SUMMARY:	
PROPOSED LOT AREA:	27.8 AC. APPROX.
PUBLIC PROPOSED R/W AREA:	5.3 AC. APPROX.
REQUIRED OPEN SPACE TOTAL=30% (0.3*53.52):	16.1 AC. APPROX.
OPEN SPACE PROVIDED:	20 AC. (±38%) APPROX.
# OF PROPOSED LOTS:	80 (1.49 LOTS/ACRE)

PROPOSED RIGHT-OF-WAY WIDTHS (FT.):	VARIABLE (100' - 40')
PROPOSED PAVED ROADWAY WIDTH:	SEE DETAIL SHEET
LINEAR FOOTAGE PUBLIC ROADWAY:	5,500 L.F. ±

_____	RIGHT-OF-WAY
_____	PROPERTY BOUNDARY
_____	ADJOINING PROPERTY LINE
_____	EASEMENT LINE
_____	CENTERLINE OF ROADWAY
•	SET IRON ROD
○	EXISTING IRON ROD
○	EXISTING IRON PIPE
□	EXISTING CONCRETE MONUMENT
N/F	NOW OR FORMERLY
TWP.	TOWNSHIP
P.C.	PLAT CABINET
SL	SLIDE
D.B.	DEED BOOK
M.B.	MAP BOOK
	PAGE
SQ.FT. or S.F.	SQUARE FEET
M.B.L.	MAXIMUM BUILDING LINE
AC or AC.	ACRES
P/O	PART OF
TYP.	TYPICAL
N.T.S.	NOT TO SCALE
O.S.	OPEN SPACE
R/W	RIGHT-OF-WAY

	EXISTING DITCH CENTERLINE
	EXISTING DITCH TOP OF BANK
	PROPOSED SWALE W/ FLOW ARROW
	PROPOSED SWALE HIGH POINT
	EXISTING WATER LINE
	PROPOSED WATER LINE (SIZE AS NOTED)
	EXISTING FIRE HYDRANT
	PROPOSED FIRE HYDRANT
	PROPOSED WATER VALVE
	EXISTING FORCE MAIN SAN. SEWER
	EXISTING GRAVITY SAN. SEWER
	PROPOSED SANITARY SEWER MANHOLE
	EXISTING SANITARY SEWER MANHOLE
	PROPOSED CATCH BASIN
	EXISTING CATCH BASIN
	PROPOSED STORM SEWER PIPE
	EXISTING STORM SEWER PIPE
	PROPOSED EDGE OF WATER
	EXISTING EDGE OF WATER
	PROPOSED SIDEWALK
	EXISTING SIDEWALK
	PROPOSED EDGE OF PAVEMENT & BACK OF CURB
	EXISTING EDGE OF PAVEMENT & BACK OF CURB
	PROPOSED OVERHEAD ELECTRIC LINE
	EXISTING UTILITY POLE
	BACK OF CURB
	EDGE OF PAVEMENT
	EXISTING
	PRIVATE

I HEREBY CERTIFY THAT THE PUBLIC STREETS SHOWN ON THIS PLAT ARE INTENDED FOR DEDICATION AND HAVE BEEN DESIGNED OR COMPLETED IN ACCORDANCE WITH AT LEAST THE MINIMUM SPECIFICATIONS AND STANDARDS OF THE NC DEPARTMENT OF TRANSPORTATION FOR ACCEPTANCE OF SUBDIVISION STREETS ON THE NC HIGHWAY SYSTEM FOR MAINTENANCE.

I HEREBY CERTIFY THAT THE SUBDIVISION SHOWN ON THIS PLAT IS IN ALL RESPECTS IN COMPLIANCE WITH THE CURRITUCK COUNTY UNIFIED DEVELOPMENT ORDINANCE AND, THEREFORE, THIS PLAT HAS BEEN APPROVED BY THE CURRITUCK COUNTY TECHNICAL REVIEW COMMITTEE AND SIGNED BY THE ADMINISTRATOR, SUBJECT TO ITS BEING RECORDED IN THE CURRITUCK COUNTY REGISTRY WITHIN 90 DAYS OF THE DATE BELOW.

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

I HEREBY CERTIFY THAT ALL IMPROVEMENTS REQUIRED BY THE CURRITUCK COUNTY UNIFIED DEVELOPMENT ORDINANCE HAVE BEEN INSTALLED IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS PREPARED BY BISSELL PROFESSIONAL GROUP, AND SAID IMPROVEMENTS COMPLY WITH CURRITUCK COUNTY SPECIFICATIONS.

REGISTRATION NUMBER

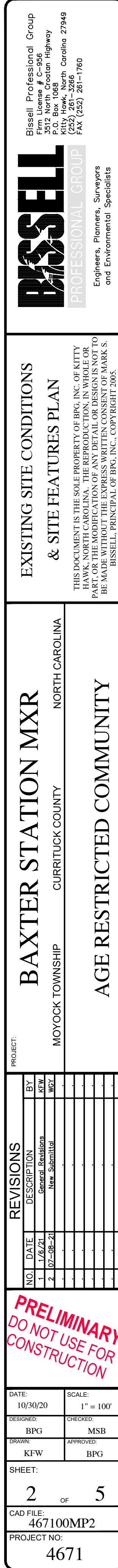
PROJECT:

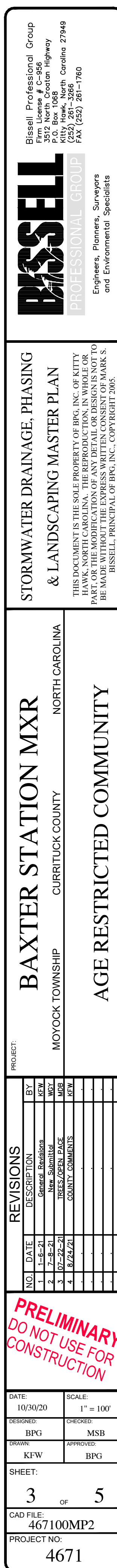
[illegible]

1 OF 5

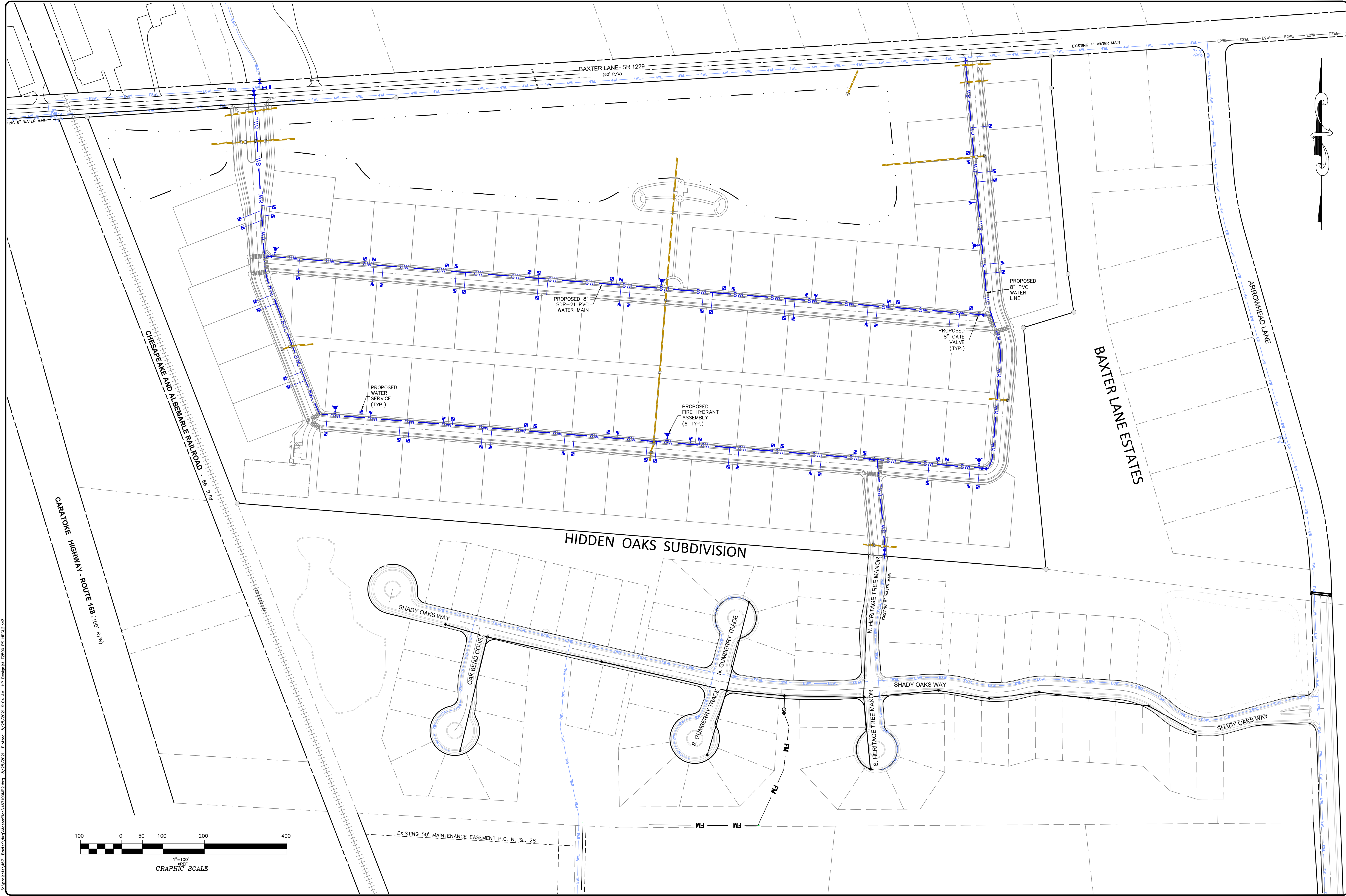
CAD FILE:
467100MP2

PROJECT NO:
4671





S:\projects\4671_Baxter\4671-MasterPlans\467100MP2.dwg 8/29/2021 8:04 AM HP Designer: T2500 PS HP03.dpc3



REVISIONS		BY	DATE	DESCRIPTION
1	6-14-21	General	6-14-21	General
2	7-4-21	New	7-4-21	Submitted

PRELIMINARY
DO NOT USE FOR
CONSTRUCTION

DATE:	6/14/19	SCALE:	1" = 100'
DRAWN:	BPG	CHECKED:	MSB
APPROVED:	KFW	APPROVED:	BPG
SHEET:	4	OF	5
CAD FILE:	467100MP2	PROJECT NO.:	4671

PROJECT:		BAXTER STATION MXR		NORTH CAROLINA	
MOYOCK TOWNSHIP		CURRITUCK COUNTY		MOYOCK TOWNSHIP	
PRELIMINARY MASTER PLAN		WATER MAIN EXTENSION & WATER SERVICE PLAN		BISSELL PROFESSIONAL GROUP	

BISSELL
PROFESSIONAL GROUP
Engineers, Planners, Surveyors
and Environmental Specialists
BisSELL Professional Group
Firm License # C-966
P.O. Box 1068
P.O. Box 1068
City of Raleigh, North Carolina 27649
Tel: (919) 871-1700
Fax: (919) 871-1700

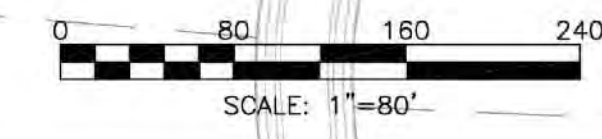
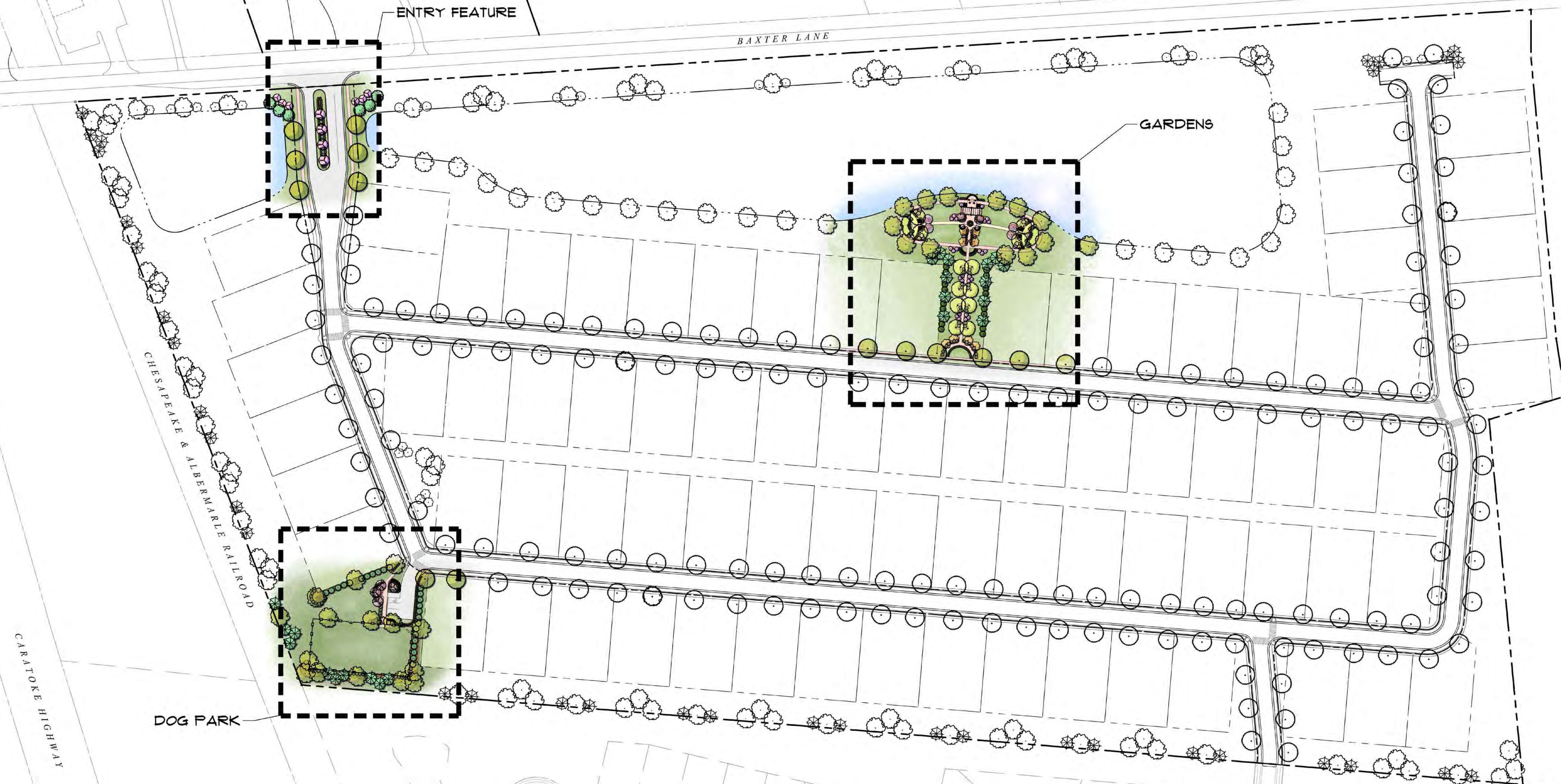


Baxter Station Amenities

Overall Master Plan

Currituck County, North Carolina
July 1, 2021

O:\Projects\Quality of Currituck\QUC012 - Baxter Amenity Design\Cadd\Prelim\Baxter Station Amenity Design 02.dwg, Plotted By: Eric-PC, Plotted: Jul 07, 2021 - 3:57pm



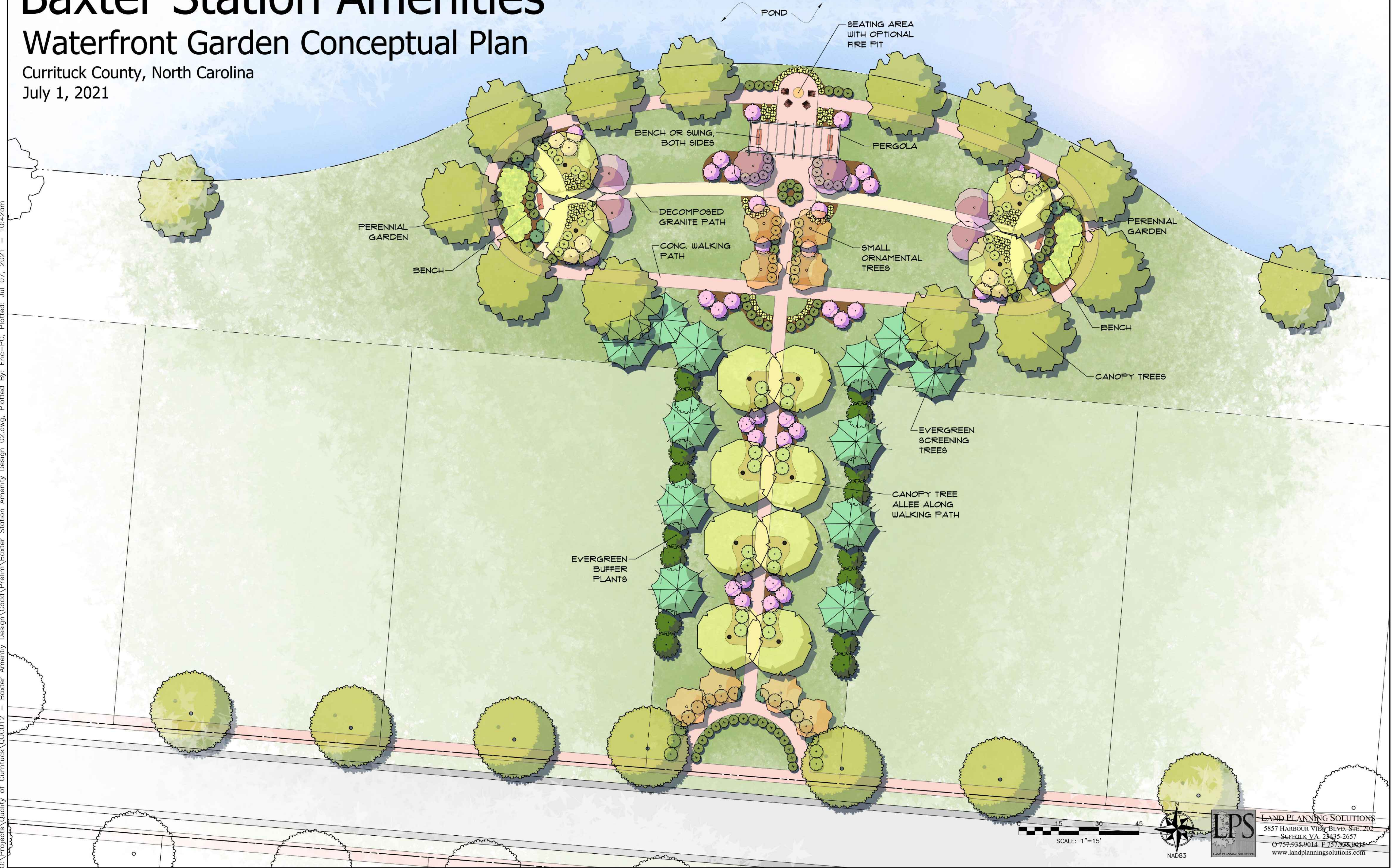
LAND PLANNING SOLUTIONS
5857 HARBOUR VIEW BLVD. STE. 202
SUFFOLK VA. 23435-2657
O 757.935.9014 F 757.935.9015
www.landplanningsolutions.com

Baxter Station Amenities

Waterfront Garden Conceptual Plan

Currituck County, North Carolina
July 1, 2021

O:\Projects\Quality of Currituck\QUC012 - Baxter Amenity Design\Cadd\Prelim\Baxter Station Amenity Design 02.dwg, Plotted By: Eric-PC, Plotted: Jul 07, 2021 - 10:42am

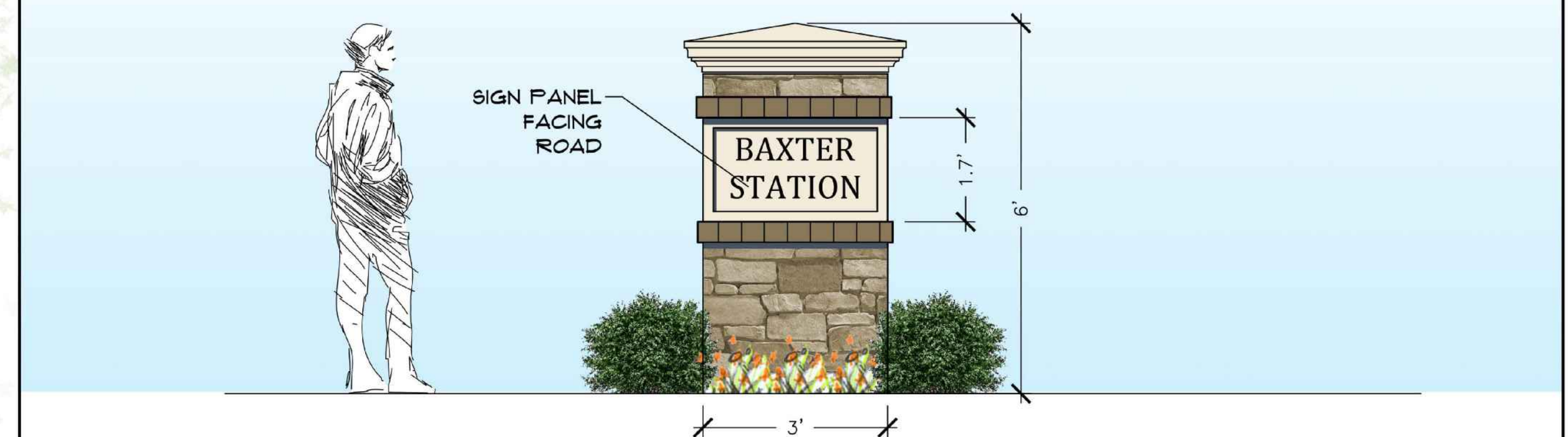
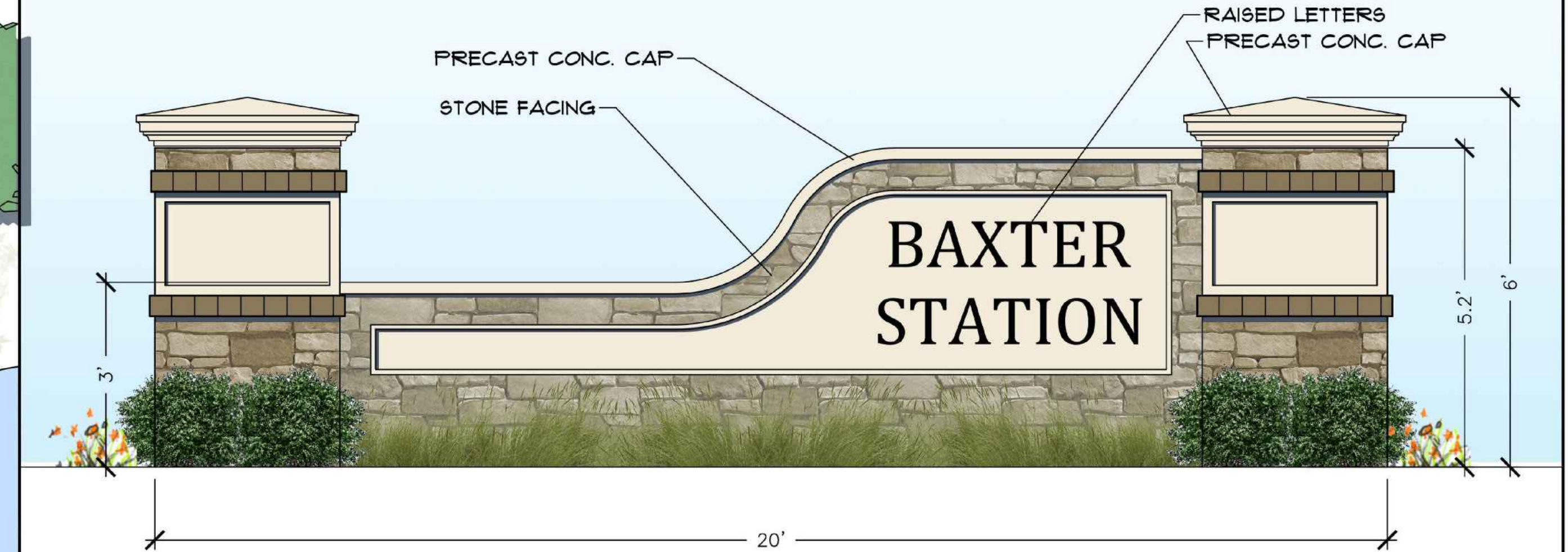
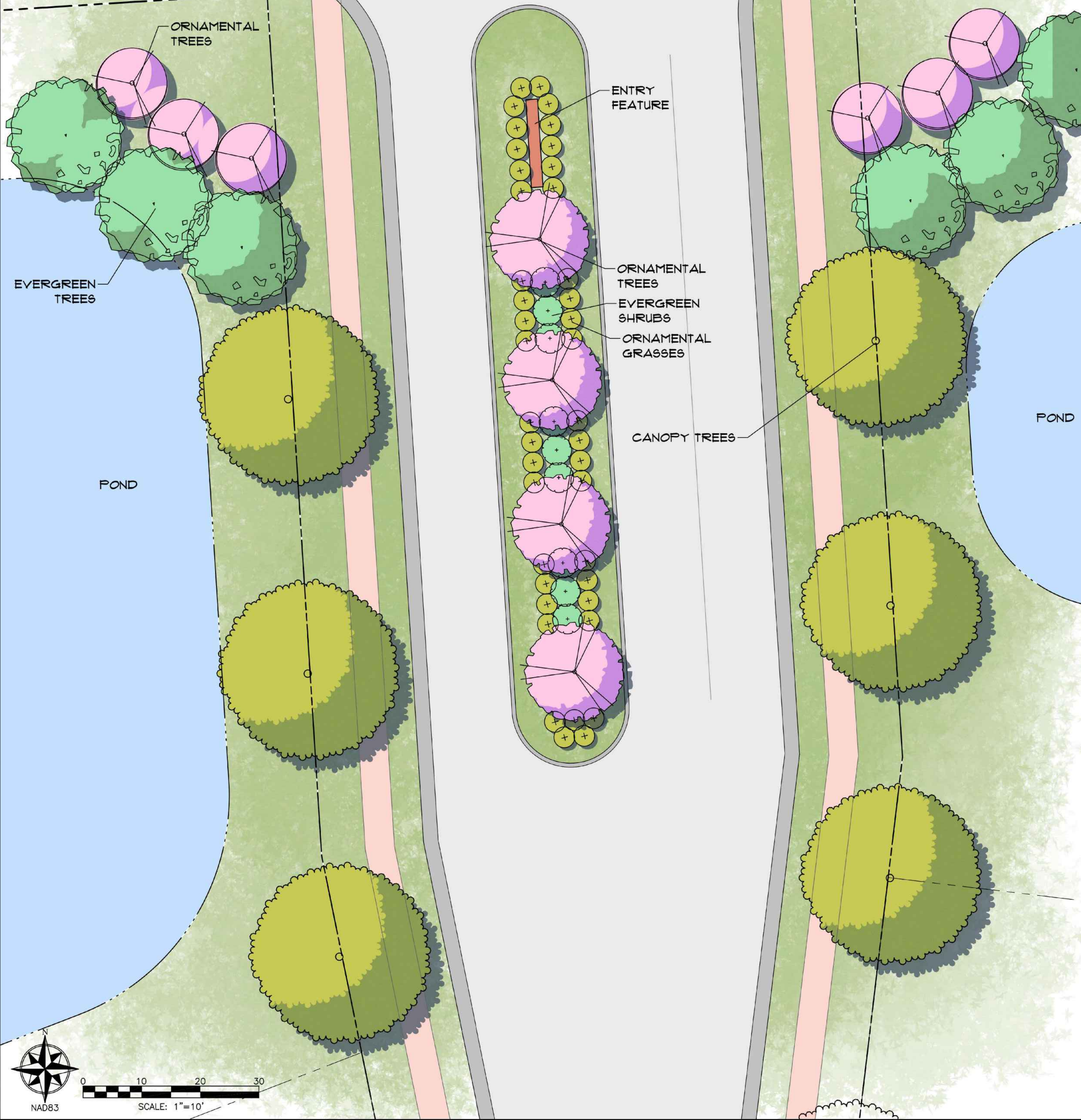


Baxter Station Amenities

Entry Feature

Currituck County, North Carolina
July 1, 2021

O:\Projects\Quality of Currituck\QU0012 - Baxter Amenity Design\Cadd\Prelim\Baxter Station Amenity Design 02.dwg, Plotted By: Eric-PC, Plotted: Jul 07, 2021 - 3:46pm



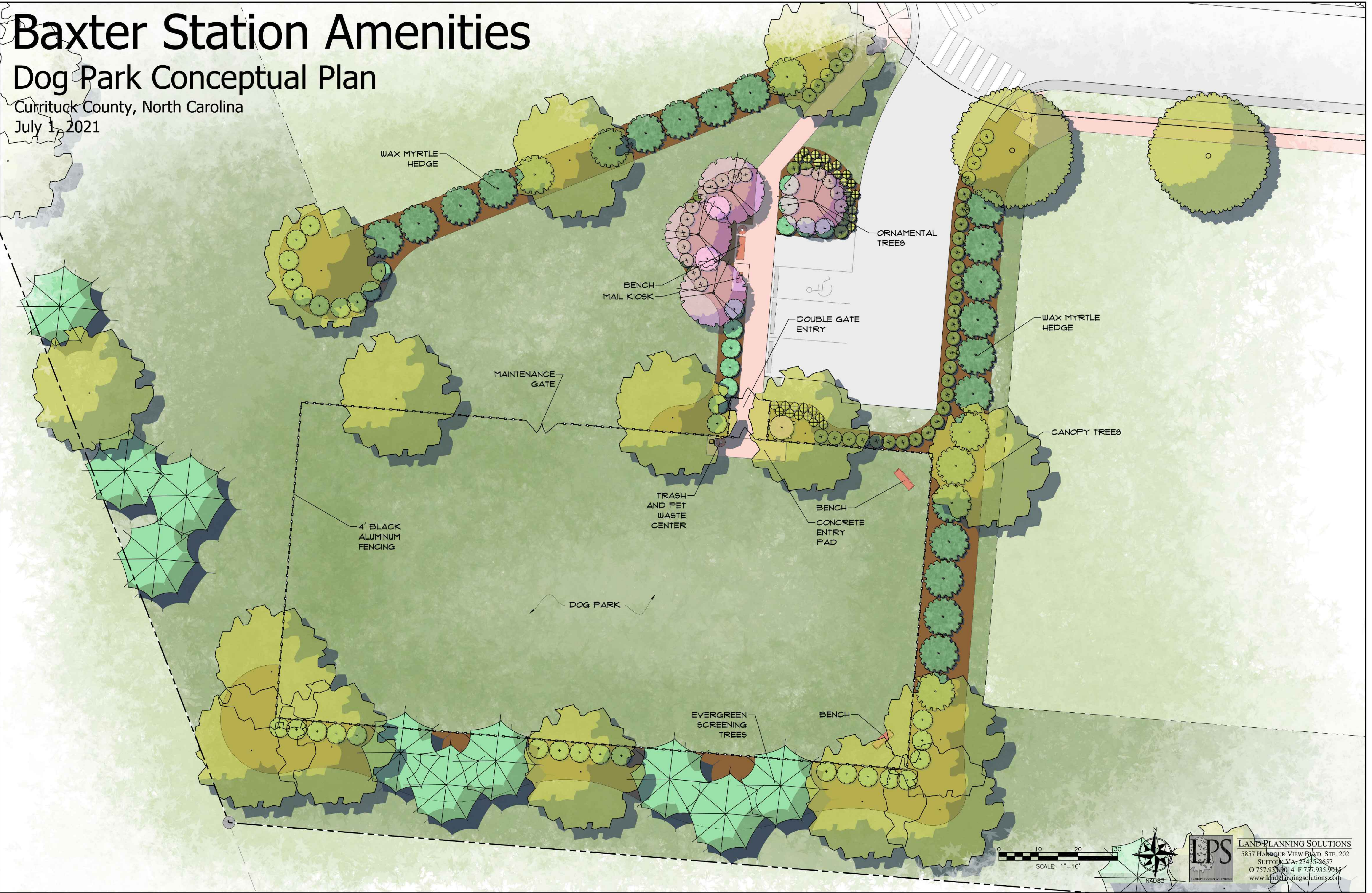
Conceptual Entry Feature

Baxter Station Amenities

Dog Park Conceptual Plan

Currituck County, North Carolina
July 1, 2021

O:\Projects\Quality of Currituck\QUC012 - Baxter Amenity Design\Cadd\Prelim\Baxter Station Amenity Design 02.dwg, Plotted By: Eric-PC, Plotted: Jul 07, 2021 - 9:30am



LPS LAND PLANNING SOLUTIONS
5857 HARBOUR VIEW BLVD. STE. 202
SUFFOLK, VA 23435-2657
O 757.935.9014 F 757.935.9015
www.landplanningsolutions.com



Currituck County

Department of Planning
 Post Office Box 70
 Currituck, North Carolina 27929
 252-232-3055
 FAX 252-232-3026

MEMORANDUM

To: Mark Bissell, Bissell Professional Group
 Justin Old, Allied Properties LLC

From: Planning Staff

Date: ~~August 11, 2021~~ September 8, 2021

Re: PB 21-20 Baxter Station C-MXR, TRC **Resubmittal** Comments

The following comments have been received for the September 8, 2021 TRC re-submittal meeting. *New comments are underlined and in italics.* The item is scheduled for the October 12, 2021 Planning Board meeting. TRC comments are valid for six months from the date of the TRC meeting.

(TRC – Please reference the 8/26/2021 memo (attached) from Mark Bissell, PE, for complete responses to your TRC comments.)

Planning, Tammy Glave, 252-232-6025 (No new comments)

Reviewed with comments:

1. The County Attorney must provide comment on the enforcement of age restrictions.
2. This development is within the LUP Rural designation, which is not allowed as proposed. An LUP amendment to reclassify the property as Full Service is required and the LUP amendment will run simultaneously with the conditional zoning request. Additional advertising requirements are necessary for an LUP amendment that may delay hearing dates. Staff supports the LUP amendment to Full Service at this location and it is Full Service in the Moyock Small Area Plan.
3. The project will be reviewed for compliance with subdivision regulations upon preliminary plat/use permit submittal.

Currituck County Building Inspections, Bill Newns (252-232-6023) (No new comments – Per applicant all items in the Fire notes and Inspections notes sections will be addressed at the SUP and/or Construction Drawing stages.)

Approved with comments:

Fire notes

1. Fire hydrants must be within 500' of all road frontages.
2. Maintain 20' width for streets
3. Provide "no street parking" signage at street entrances, cul de sacs, private alleys (where alley is part of fire access) provide "no parking signage at fire hydrants".
4. Mark fire hydrant's locations in the center of road/street with blue reflectors.
5. Dwellings greater than 4800 sq. ft. and/or greater than 2 stories will be calculated using the ISO commercial method.
6. Dwellings 4800 sq. ft. and no greater than 2 stories may use setbacks as indicated in the ISO method to determine Needed Fire Flow.

Inspections notes

7. Cluster mailbox units must be accessible (accessible route, reach ranges).
8. Accessible routes must be provided to all amenities such as pools, boardwalks, piers, docks, and other amenities within the development. Plans must be designed to the 2018 NC Building Code design loads and structures must meet ADA requirements.
9. Curb cuts at vehicular traffic areas and pedestrian crossings must be ADA compliant and have detectable warning devices installed.
10. Soil engineering reports for footings will be required for lots that have fill placed on them where the footings do not rest at a minimum of 12" below grade on undisturbed natural soil. Site preparation, the area within the foundation walls shall have all vegetation, topsoil and foreign material removed.
11. Compaction testing will be required for slabs and thickened footing areas that exceed 24" of fill. Fill material shall be free of vegetation and foreign material. The fill shall be compacted to ensure uniform support of the slab, and except where approved, the fill depths shall not exceed 24 inches for clean sand or gravel and 8 inches (203 mm) for earth.
12. Amenities must be ADA compliant.

Currituck Soil and Stormwater, Dylan Lloyd (252-232-3360)

Reviewed with comment:

- ~~1. Agreement for improvements on Baxter Ditch, including culvert replacement and realignment at end of Baxter Lane, shall be included in construction drawings.~~
- ~~2. Collector Swales are open space area and shall not be fenced in, blocked by man-made features or used as storage by any resident.~~
- ~~3. Space 2' x 2' protection berm from collector swales as to allow for 3:1 slopes.~~
- ~~4. The existing undersized culvert along Baxter Lane extension shall be replaced in concurrence with the underlying 2" waterline being relocated.~~
5. TRC comments from August have been addressed to the department's satisfaction with the exception to the Right of Entry being granted by owner / owners for the undersized culvert at the end of Baxter Lane to allow the

developer to coordinate with the county in performing this conditional request. The County Attorney's office has reached out to an heir of the original development's owner. Please call Soil and Water office with any further questions.

Currituck County Utilities, Will Rumsey & Dave Spence (Will Rumsey 252-232-2769; Dave Spence 252-232-2769)

Reviewed with comment:

1. ~~We ask as we usually do to please increase the 2" water main that ties into Baxter Ln to a 4".~~
2. How will the waterline located at the end of Baxter Lane with the drainage culvert sitting on top of it be corrected?
3. 2 inch to 8 inch waterline extension has been addressed. Would like to know plan for lowering culvert pipe and waterline at some point.

Currituck County GIS, Harry Lee (252-232-4039) (No new comment)

Reviewed without comment.

Currituck County Parks and Recreation, Jason Weeks (252-232-3007)

Approved with comments:

1. Two potential liability issues to be noted for the developer:
 - Public fire pit in the waterfront garden area may not be the best idea.
 - I would recommend that in the dog park the area be divided into two sections to maintain separation of small and large dogs.

Currituck County Economic Development, Larry Lombardi (252-232-6015) (No new comments)

Reviewed with comments:

1. Popular Activities in 55+ Communities- out of curiosity: Where's the pickle ball courts, Bocce courts? A community space to meet either indoors or outdoors, i.e., for yoga, conferences meeting, arts & crafts? Per applicant: Pickle ball and bocce courts are not proposed at this time, but there will be a community space for outdoor gatherings as shown on the waterfront garden conceptual plan. Also, there will be an extensive network of walkways and a dog park.

NC Division of Coastal Management, Charlan Owens (252-264-3901) (No new comment)

Reviewed without comment.

Albemarle Regional Health Services, Joe Hobbs (252-232-6603) (No new comment)

Reviewed with comment:

1. OWNER/DEVELOPER NEEDS TO CONSULT WITH KEVIN CARVER RS(252-232-6603) CONCERNING SEPTIC SYSTEM APPROVAL FOR EACH LOT THAT MAKES UP THIS PROPOSED SUB-DIVISION .



Currituck County

Department of Planning
Post Office Box 70
Currituck, North Carolina 27929
252-232-3055
FAX 252-232-3026

MEMORANDUM

To: Mark Bissell, Bissell Professional Group
Justin Old, Allied Properties LLC

From: Planning Staff

Date: August 11, 2021

Re: PB 21-20 Baxter Station C-MXR, TRC Comments

The following comments have been received for the August 11, 2021 TRC meeting. In order to be scheduled for the October 12, 2021 Planning Board meeting, please address and satisfy the comments and resubmit a corrected plan by 3:00 p.m. on August 26, 2021. TRC comments are valid for six months from the date of the TRC meeting.

Planning, Tammy Glave, 252-232-6025 (No new comments)

Reviewed with comments:

1. The County Attorney must provide comment on the enforcement of age restrictions.
2. This development is within the LUP Rural designation, which is not allowed as proposed. An LUP amendment to reclassify the property as Full Service is required and the LUP amendment will run simultaneously with the conditional zoning request. Additional advertising requirements are necessary for an LUP amendment that may delay hearing dates. Staff supports the LUP amendment to Full Service at this location and it is Full Service in the Moyock Small Area Plan.
3. The project will be reviewed for compliance with subdivision regulations upon preliminary plat/use permit submittal.

Currituck County Building Inspections, Bill Newns (252-232-6023)

Approved with comments:

Fire notes

1. Fire hydrants must be within 500' of all road frontages.
2. Maintain 20' width for streets
3. Provide "no street parking" signage at street entrances, cul de sacs, private alleys (where alley is part of fire access) provide "no parking signage at fire hydrants".
4. Mark fire hydrant's locations in the center of road/street with blue reflectors.

5. Dwellings greater than 4800 sq. ft. and/or greater than 2 stories will be calculated using the ISO commercial method.
6. Dwellings 4800 sq. ft. and no greater than 2 stories may use setbacks as indicated in the ISO method to determine Needed Fire Flow.

Inspections notes

7. Cluster mailbox units must be accessible (accessible route, reach ranges).
8. Accessible routes must be provided to all amenities such as pools, boardwalks, piers, docks, and other amenities within the development. Plans must be designed to the 2018 NC Building Code design loads and structures must meet ADA requirements.
9. Curb cuts at vehicular traffic areas and pedestrian crossings must be ADA compliant and have detectable warning devices installed.
10. Soil engineering reports for footings will be required for lots that have fill placed on them where the footings do not rest at a minimum of 12" below grade on undisturbed natural soil. Site preparation, the area within the foundation walls shall have all vegetation, topsoil and foreign material removed.
11. Compaction testing will be required for slabs and thickened footing areas that exceed 24" of fill. Fill material shall be free of vegetation and foreign material. The fill shall be compacted to ensure uniform support of the slab, and except where approved, the fill depths shall not exceed 24 inches for clean sand or gravel and 8 inches (203 mm) for earth.
12. Amenities must be ADA compliant.

Currituck Soil and Stormwater, Dylan Lloyd (252-232-3360)

Reviewed with comment:

1. Agreement for improvements on Baxter Ditch, including culvert replacement and realignment at end of Baxter Lane, shall be included in construction drawings.
2. Collector Swales are open space area and shall not be fenced in, blocked by man-made features or used as storage by any resident.
3. Space 2' x 2' protection berm from collector swales as to allow for 3:1 slopes.
4. The existing undersized culvert along Baxter Lane extension shall be replaced in concurrence with the underlying 2" waterline being relocated.

Currituck County Utilities, Will Rumsey & Dave Spence (Will Rumsey 252-232-2769; Dave Spence 252-232-2769)

Reviewed with comment:

1. We ask as we usually do to please increase the 2" water main that ties into Baxter Ln to a 4".
2. How will the waterline located at the end of Baxter Lane with the drainage culvert sitting on top of it be corrected?

Currituck County GIS, Harry Lee (252-232-4039)

Reviewed without comment.

Currituck County Parks and Recreation, Jason Weeks (252-232-3007)

Reviewed without comment.

Currituck County Economic Development, Larry Lombardi (252-232-6015)

Reviewed with comments:

1. Popular Activities in 55+ Communities- out of curiosity: Where's the pickle ball courts, Bocce courts? A community space to meet either indoors or outdoors, i.e., for yoga, conferences meeting, arts & crafts?

NC Division of Coastal Management, Charlan Owens (252-264-3901)

Reviewed without comment.

Albemarle Regional Health Services, Joe Hobbs (252-232-6603)

Reviewed with comment:

1. OWNER/DEVELOPER NEEDS TO CONSULT WITH KEVIN CARVER RS(252-232-6603) CONCERNING SEPTIC SYSTEM APPROVAL FOR EACH LOT THAT MAKES UP THIS PROPOSED SUB-DIVISION .

The following items are necessary for resubmittal:

- 2 - full size copies of revised plans.
- 1- 8.5"x11" copy of all revised plans.
- 1- PDF digital copy of all revised documents and plans.



August 26, 2021

Ms. Tammy Glave, CZO
Currituck County Department of Planning & Community Development
Post Office Box 70
Currituck, North Carolina 27929

Re: PB 21-20 Baxter Station C-MXR, Response to TRC Comments

Dear Tammy:

We are responding to the comments that were received following the August 11, 2021 TRC meeting, as follows:

Planning, Tammy Glave

1. Information regarding the enforcement of age restrictions has been provided for the County Attorney's review.
2. We are encouraged that Staff supports the LUP amendment to Full Service at this location, which will make it consistent with the Full Service classification in the Moyock Small Area Plan.
3. We acknowledge that the project will be reviewed for compliance with subdivision regulations upon preliminary plat/use permit submittal.

Currituck County Building Inspections, Bill Newns

All items outlined in the Fire notes and Inspections notes sections will be addressed at the SUP and/or Construction Drawing stages

Currituck Soil and Stormwater, Dylan Lloyd

1. Agreement language for the proposed improvements to Baxter Ditch, including culvert replacement and realignment at end of Baxter Lane, are included in the draft zoning conditions.
2. Collector Swales in open space areas will have easements recorded and will not be available to residents for the installation of fences, storage facilities or other man-made features.
3. Berms will be located so as to allow for 3:1 maximum slopes.
4. The existing undersized culvert along Baxter Lane extension will be replaced with concurrence from the adjacent property owners, which will include adjusting the underlying 2" waterline as necessary.

Currituck County Utilities, Will Rumsey & Dave Spence

1. The water main that ties into Baxter Lane has actually been increased to 8", as we believe that eventually there will be a larger main installed along Baxter.
2. The waterline located at the end of Baxter Lane will need to be lowered to provide proper separation to the new drainage culvert.

Currituck County Economic Development, Larry Lombardi

1. Pickle ball and bocce courts are not proposed at this time, but there will be a community space for outdoor gatherings as shown on the waterfront garden conceptual plan. Also, there will be an extensive network of walkways and a dog park.

Albemarle Regional Health Services, Joe Hobbs

1. A letter from ARHS is included approving the design concept; individual lot evaluations will be obtained at the next stage of the approval process (Preliminary Plat/SUP).

The following items are included in this resubmittal:

- 2 - full size copies of revised plans.
- 1- 8.5"x11" copy of all revised plans.
- 1- PDF digital copy of all revised documents and plans.

Please let us know if anything additional is needed in order to be scheduled for the October 12, 2021 Planning Board meeting.

Sincerely,

Bissell Professional Group



Mark S. Bissell, P.E.

cc: Mr. Justin Old

Baxter Station MXR Rezoning

July 20, 2021

Scheduled Time/Place: 5:30, Eagle Creek Pavilion

The meeting began at 5:30pm/Meeting Ended: at approximately 6:45pm

Attendees: (See attached sign-in sheets)

Also Justin Old, Developer
Mark Bissell, Engineer

The review procedures were outlined and an overview of the development plan and details were provided, both verbally and graphically. Comments from the community meeting that was held in December on a similar development plan were also reviewed and are attached for reference. Many of the same comments were heard regarding drainage, so only the new comments are included in this second community meeting record.

Comments from the Community	How Addressed
What size will the lots be?	A minimum of 15,000 sq. ft.
Can fewer lots be done?	The density has already been dropped from 125 to 80, and complies with MXR zoning.
Still concerned about raising the water table across the street due to berming.	We will consult with a hydrogeologist during the modeling and design.
Drainage problems should be resolved before more development is approved.	The drainage problems in question are on private property and the County cannot do this work.
Concerned about septic tanks raising the water table. How much water is being added to the site?	About 12,000 gal/day (equivalent to about 0.008 inch rainfall) will be considered in the design.
What happens if the HOA can't or won't take over?	The community has enough homes that it will be able to have professional management.
I understand from the engineering department that	The UDO requires us to model pre-

no more water was to go to the Baxter ditch but rather was to be directed to the south.	development conditions to determine how much water goes to each outlet during a 2-year wooded condition storm and then limit the post development 10-year storm to that amount for each outlet, so we would not be able to redirect flow into a different drainage system.
There is too much development in Moyock.	The demand will continue; we are trying to do it in a way that also benefits the community.
Today it could possibly work and I'm not anti-development, but why does the county allow density on soils that don't perk? There are some smaller communities that do not adhere to UDO.	We are agreeing to conditions that <u>exceed</u> the UDO requirements and agreeing to make improvements to existing problems that otherwise would not be solved.
Will there be sidewalks and a sidewalk to the park?	There will be sidewalks on both sides of the street and a connection to Hidden Oaks, which connects to the park.
Are there tree buffers?	Yes, both to Baxter Lane Estates and to Hidden Oaks, and also along Baxter Lane to buffer homes across the street

Baxter Estates Conditional Rezoning

July 20, 2021

5:30PM

NAME	ADDRESS	TELEPHONE	E-MAIL
Cheryl Kelly	203 Green Road	252-267-1321	
Cheryl Sherrill	116 Shady Oaks Way		
William Frey	Hidden Oaks		
George Frey	" "		georgefrey@gmail.com
Jennie Turner	Carrituck County Planning	252-232-6031	jennie.turner@carrituckcounty.nc.gov
Kevin Kemp	Carrituck Co. Development	Sec. —	kevin.kemp@carrituckcounty.nc.gov
Rosanne Burling	125 Shady Oaks Way		rosanneburling@aol.com
Fred Whitman	181 ST Andrews Rd		
Larry Towell	103 Avul Road Circle	757 615 1591	larry.towell@yahoo.com
Alex Wilbanks	107 ALDEN RUN	757-777-8372	Alexander.Wilbanks@gmail.com
Aaron Waver	102 Avul Bender	757-374-9168	Avaiver@wfsystems.com
Joshua Old	131 Spruce Ln		
Kathy Kendrick	10 Bay 99 Shallowford		
David & Gilda Hernandez	108 Alamo Head Ln.	804 426 4909	DHERN ?

July 20, 2021
5:30PM

NAME	ADDRESS	TELEPHONE	E-MAIL
Cristina	142 Green View	727-267-8550	jenny-guthrie@yahoo.com
Rosey Jason	103 Swoody Manor	757-298 6290	jason.l.rooney@gmail
Cathy Morris	330 Caratke Hwy	757-439-0532	Faithful1@mcshi.com
Gail Winslow	388 Caratke Rd.	757-630-9530	gail526@mac.com
An Bismont	162 Deserified Tr	252 339-8982	BismontP@ctv5.com
Rich Taurad	151 BAXTER LANE	252-598-1537	RichardTaurado436@gmail.

Baxter Station MXR Rezoning

December 15, 2020

Scheduled Time/Place: 4:30pm and 6:00pm, Eagle Creek Pavilion

The first meeting began at 4:30pm/Meeting Ended: at approximately 5:40pm

The second meeting began at 6:00pm/Meeting Ended at approximately 7:15pm

Attendees: (See attached sign-in sheets)

Also: Jason Litteral, Currituck County
Justin Old, Developer
Mark Bissell, Engineer

Comments from the Community	How Addressed
Windswept Pines ponds are overflowing in 51/2" rainfall and impacting adjacent development.	Downstream conditons were observed during flooded conditions and it was determined that drainage along Baxter Lane is restricted and preventing Windswept Pines drainage system from draining properly.
What is being proposed to the ditch on Baxter?	The ditch will be studied and modeled, and based on the results of the model it will be widened, deepened, slopes laid back, put on grade, and an easement provided for ongoing maintenance.
Will the proposed construction be crawl-space or slab?	Probably elevated slab.
Will the development be on septic tanks? Previously it was going to be sewer.	Yes, septic systems are proposed similar to at Windswept Pines. County sewer is not available at this time.
There are problems with the property line ditch between the Baxter property and Hidden Oaks.	The plan will be to clean out this ditch along with the first phase of development.
What is the timeframe?	It will take a minimum of 1 1/2 years before the first house goes under construction and 2 yrs for occupancy. Very possibly longer.
Who will do the building?	Since that will be a year and a half to two years down the road, that has not been decided.
Will the project be phased?	Yes it will be done in two phases about 40 lots each.
Will there be a traffic light at Baxter Lane and	NCDOT will need to do a signal warrant. Even

Caratoke Highway?	when the proposed project was larger, they did not think it warranted it yet. This would probably not occur until the main entrance to Currituck Station goes in and development gets under way there.
The pipe needs to be replaced and upgraded at Baxter Lane extension because there was an existing water line that kept it from being put at proper grade when it was replaced a year or so ago.	We will speak with the land owners there to see if access can be obtained (the last time the developer asked he was refused access to do any work there)
Will construction traffic go through Hidden Oaks?	No, it will be from Baxter Lane, and the connection to Hidden Oaks will not be made until Phase 2.
Will the waterline be looped?	Yes, it will be looped from Hidden Oaks to Baxter Lane which should improve pressure.
Concerned about water in ponds raising the water table.	Improving the ditch along Baxter Lane should serve to lower the water table on the other side of Baxter.
Can the second entrance farther east on Baxter Lane be eliminated?	We believe the County will want the second entrance, but will ask if it can be eliminated.

Summary: Between the two meetings, ten residents attended, from Hidden Oaks and Baxter Lane. Most questions and discussions had to do with the need for drainage improvements in the area, and a plan to address those.

CONSISTENCY WITH COMPREHENSIVE PLAN
BAXTER STATION MXR

The proposed zoning is from AG to C-MXR, with a sketch plan limiting density to approximately 1.49 units per acre. This request is for approximately 53.52 acres along Baxter Lane just off Caratoke Highway to provide new single-family development. This request is consistent with the following density and development pattern policies of the 2006 Land Use Plan, Moyock Small Area Plan, and UDO:

1. 2014 Moyock Area Small Area Plan (“MSAP”):

The 2014 MSAP “is used to assist staff and the Board of Commissioners in guiding growth as well as planning for future county improvements to infrastructure and services.” MSAP, p. 1. The plan guidance materials indicate that it was intended to:

“supplement the [2006] Land Use Plan to more specifically address the needs and issues of the [Moyock] study area over the next 10 years. The policies and guidance given in this plan are consistent with the Land Use Plan and other county policies and documents. This plan will establish a new focus for growth and development. The Board of Commissioners and staff will use the SAP to make recommendations about development proposals and other county land use policy decisions. This plan is a vital tool for staff in day to day decision making and in assisting the public with development proposals.”

MSAP, p. 7. The MSAP Future Land Use Map “should be used in conjunction with the entire plan.” MSAP, p. 30. The fact that the site is designated Full Service on the MSAP Future Land Use Map, will have County water available, is located close to 168, and is adjacent to a Full Service Area on the MSAP and 2006 LUP all support the requested density for the site. The MSAP designates this area as Full Service Area, with densities up to 3 units per acre. This is significant because only several portions of the MSAP include Full Service; the majority of the plan is Rural Area and Conservation Area. MSAP p. 30. The Full Service designations “are focal points in the community where high amounts of activity occur ...[and] ... a broad range of infrastructure and service investments ... will be made available by the public and/or private sectors.” These investments may include centralized water and sewer. MSAP p. 31. “[P]lanned commercial and residential areas with diversity in housing types is preferred. Typical densities in full service designations range from 1.5 – 3 units per acre depending on surrounding land uses.” MSAP p. 31.

Activity centers are located in full service designations, and are anticipated to be destination hubs for activity in the surrounding community. MSAP p. 32. This property is also almost adjacent to the largest Activity Center on the MSAP, the Employment Center, across Hwy 168. This center includes planned corporate parks, and supporting residential use is encouraged. The proximity of this development to Currituck Station, an area designated for significant growth, further supports the requested density.

Policy FLU 1 – promote compatibility between new development and existing development to avoid adverse impacts to the existing community.

Policy CC 1 - Encourage and foster development that is compatible with rural atmosphere, transitional areas, and a small town, main street feel consistent with the vision, policies, and future land use map of this plan.

Policy CC 2 - Encourage non-residential and mixed use development that incorporates building and site design to enhance community appearance, promote human scale, and create a unique sense of place. This may include common themed building materials, forms, and site amenities.

2. 2006 Currituck County Land Use Plan ("LUP"):

A. Land Use Compatibility Policies

i. Density: The project is located within the Rural Area of the LUP, and proposes a maximum density of 1.49 units per acre. The site is across from land zoned MXR and AG to the north, all put to residential, non-agricultural uses. To the west of the site is a General Business zoning designation, which extends along Caratoke Highway. To the east and south the land is zoned and used for residential use, zoned C-MXR and C-SFM. Directly across 168 from the property is an area proposed as G-3 and up to 12 dwelling units per acre, a much higher density than requested here. As such, the request can serve as a reasonable transition between uses.

The density guidance in the LUP is based on assumptions about available infrastructure, existing development patterns, and the presence of environmental features that do not apply to this site in the same way they may apply to Rural sites in general. There are no environmentally sensitive features or factors which suggest preservation of this portion of the development is critical. County water is available to be extended from Baxter Lane.

POLICY HN1: Currituck County shall encourage development to occur at densities appropriate for the location. LOCATION AND DENSITY FACTORS shall include whether the development is within an environmentally suitable area, the type and capacity of sewage treatment available to the site, the adequacy of transportation facilities providing access to the site, and the proximity of the site to existing and planned urban services. For example, projects falling within the Full Services areas of the Future Land Use Map would be permitted a higher density because of the availability of infrastructure as well as similarity to the existing development pattern. Such projects could be developed at a density of two (2) or more dwelling units per acre.... Projects within areas designated as Limited Service would be permitted a density of one (1) to one and one half (1.5) units per acre depending upon the surrounding development pattern and availability of resources. Projects within areas designated as Rural or Conservation by the Future Land Use Plan would be permitted a much lower density of 1 dwelling unit per 3 acres because of the lack of infrastructure in the area, the existing low density development pattern, and presence of environmentally sensitive natural areas. LUP, p. 9-7.

POLICY AG6: For areas experiencing intense development pressure, new residential development may be allowed to locate in COMPACT, VILLAGE-LIKE CLUSTERS, PREFERABLY NEAR EXISTING, NON-AGRICULTURAL ACTIVITIES AND SERVICES, or in other locations that will not interfere with resource production activities. Overall density shall

remain very low, with permanent open space, dedicated during the development review process, surrounding such clusters of homes. LUP, p. 9-7.

ii. **Development Patterns:** This is consistent with the County's approach to development in the Moyock area, which encourages continuation of development patterns instead of abrupt changes, holes, or leapfrogging. It is also consistent with the Board's findings in similar cases approving density in this area of Moyock. The site is also adjacent to commercial uses along 168, which is designated a Full Service Area, and thus is close to the area where more intense development is anticipated.

POLICY HN3: Currituck County shall especially encourage two forms of residential development, each with the objective of avoiding traditional suburban sprawl... OPEN SPACE DEVELOPMENTS that cluster homes on less land, preserving permanently dedicated open space and often employ on-site or community sewage treatment. These types of developments are likely to occur primarily in the Conservation, Rural, and to a certain extent the Limited Service areas identified on the Future Land Use Map. LUP, p. 9-7.

POLICY HN4: Currituck County shall discourage all forms of housing from "LEAPFROGGING" INTO THE MIDST OF FARMLAND and rural areas, thereby eroding the agricultural resource base of the county. LUP, p. 9-7.

POLICY AG3: County ACTIONS CONCERNING INFRASTRUCTURE (e.g. schools, parks, and utilities) and regulations shall serve to direct new development first to targeted growth areas near existing settlements identified as Full Service Areas on the Future Land Use Map, rather than "leapfrogging" to locations in the midst of farmland and greenspace identified as Rural and Conservation areas on the Future Land Use Map. LUP, p. 9-6.

POLICY AG4: County growth management tools, including particularly zoning, should provide PROTECTION TO AGRICULTURE and other RESOURCE BASED ACTIVITIES from incompatible land uses, such as a residential subdivision in the midst of generally uninterrupted farm land. LUP, p. 9-6.

B. Moyock Area Policy Emphasis of the Land Use Plan:

Summary of Area Character: The Moyock area is the fastest growing part of Currituck County. Development densities currently range from 1 to 3 units per acre depending upon development type.

Moyock Area Policy Emphasis: The policy emphasis of this plan is on properly managing the increased urban level of growth that this area is sure to experience over the next decade and beyond. Residential development densities should be medium to high depending upon available services. In areas where on-site wastewater is proposed and other County services are limited, development density should be limited to 1-2 units per acre. However in areas where central sewer is proposed or existing, additional services are available and the character of the surrounding areas supports it, higher density ranging from 3-4 units per acre could be considered through the use of overlay zones. Clustered housing developments, with open space required by ordinance, will ... be encouraged. Given the existing development pattern and availability of services, much of the Moyock area is planned as Full Service. LUP, p. 11-4.

The applicant is proposing on-site stormwater improvements, including improvements that will benefit the surrounding community, and will connect to County water available on Baxter Lane. The Moyock Area policy consistently references densities at 1 unit per acre minimum, and recognizes that increased density is appropriate where services are available. This is consistent with the 1.49 units per acre proposed.

3. UDO:

- A.** The proposed single-family residential use is designated in the MXR District is intended to provide moderate-cost housing options for county residents within well-designed neighborhoods and developments that incorporate open space resources,” and “accommodate a wide variety of residential use types at moderate densities” UDO Sec. 3.4.6.A.
- B.** This district includes dimensional standards for single-family detached development, including a minimum lot size of 15,000 square feet, setbacks and, and buffers. UDO Sec. 3.4.6.D. Maximum density is established in the master plan for these districts, and may not exceed 2 units per acre in Full Service areas or 1 unit per acre for Limited Service areas. There is no corresponding maximum density listed for the Rural Service Area, and thus the UDO does not restrict density in the Rural designated areas of the 2006 Land Use Plan. The proposed density is thus consistent with the UDO.



Jamie S. Schwedler

Partner

t: 919.835.4529

f: 919.835.4618

jamieschwedler@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, DC

December 1, 2020

Via Email: Laurie.Locicero@CurrituckCountyNC.gov

Laurie B. LoCicero, AICP
Planning and Community Development Dept.
153 Courthouse Road, Suite 110
Currituck, NC 27929

Re: Age Restrictions for Baxter Station Rezoning

Dear Ms. LoCicero:

North South Development Group, LLC is preparing to submit a conditional use district rezoning for land known as Baxter Station, along Highway 168 in Currituck County (the "Property"), to create an age-restricted community. The age restrictions are planned to be documented both as zoning conditions on the Property, and in restrictive covenants recorded against the Property. As explained below, both methods are legally enforceable land use restrictions, and the ongoing nature of the restrictions are regulated by federal and state fair housing laws. Thus, the County can accept the zoning conditions as legally enforceable on several grounds.

First, age-restricted communities can be created via conditional zoning districts and have been accepted as such by multiple jurisdictions in North Carolina. A sample condition is as follows: "The use of the property shall be limited to an age-restricted residential community which meets the federal definition of elderly housing, having at least eighty (80) percent of the occupied units occupied by at least one person fifty five (55) years of age or older per unit." This condition was accepted by the Raleigh City Council, approved this year. See attached case Z-29-19 zoning condition 1. This zoning condition would be enforceable by the County under section 9.5 of the Currituck County UDO, just like any other condition. That is, if compliance with the age restriction was not demonstrated after construction and sale of the homes, the County could issue a notice of violation and, if not corrected, pursue legal and equitable remedies. However, as explained below, compliance records are required by law, and thus determining compliance should not be any more challenging or time-consuming for the County than any other enforcement action it has initiated.

Second, the age restriction can be documented in a restrictive covenant contained in the homeowners association documents for the community ("Declaration"). This method was used in an age-restricted apartment development in Cary approved in 2018, see attached p.4, sec

PPAB 5968562v1.docx

Parker Poe Adams & Bernstein LLP PNC Plaza 301 Fayetteville Street Suite 1400 Raleigh, NC 27602-0389
t 919.828.0564 f 919.834.4564 www.parkerpoe.com

Attachment: 7 baxter-station-approvalsandforms-21aug11 (PB 21-20 Baxter Station Conditional Zoning)

December 1, 2020
Page 2

1.3.1. In the Cary case, a zoning condition was offered and a Declaration of restrictive covenants recorded to mirror the condition ("Developer of the community shall record with the applicable Register of Deeds office a Declaration of Covenants, Conditions, and Restrictions ... providing that at least eighty percent (80%) of all occupied units shall have as a resident at least one person age 55 or older"). See Wake County Register of Deeds, Book 17448, page 331. The Declaration was recorded prior to building permits being issued, and provides restrictions on persons living within the household and procedures to verify and enforce these restrictions. See Sections 1.2, 2.1, 2.2. While the Baxter Station community is intended for single-family housing, the Declaration would still be recorded prior to any sale of the first home, such that all purchasers would take title with notice of, and be bound by, the occupancy requirements, including requirements to provide proof of age of occupants on a regular basis.

Finally, regardless if established by zoning condition or restrictive covenant, federal and state laws ensure continuing compliance with the age-restricted community requirements after the development has been established. The federal Fair Housing Act, 42 U.S.C. § 3601, *et. seq* ("FHA") and North Carolina Fair Housing Act, N.C.G.S. § 41A-4, *et. seq* ("NC FHA") prohibit discrimination in the sale or rental of housing based on familial status. Familial discrimination occurs when a real estate agent or property owner treats someone different because they have a family with one or more individuals under 18 years of age. *Iniestra v. Cliff Warren Investments, Inc.*, 886 F. Supp. 2d 1161, 1166 (C.D. Cal. 2012). Both acts provide an exception for housing communities intended for and operated for occupancy by at least one person 55 years of age or older per unit. 42 U.S.C. § 3607(a)(2); N.C.G.S. § 41A-6(e). In order to qualify for the exception, at least 80% of the development's occupied units must be occupied by at least one person 55 years of age or older. 24 C.F.R. § 100.305. This occupancy must be verified by survey or other means once every two years, and the records of such occupancy should be kept available for inspection upon reasonable notice. Verification procedures allow for drivers' license, birth certificates, and passports as among the forms of acceptable evidence of age of occupants. 24 C.F.R. § 100.307. Finally, the community must publish and adhere to policies that demonstrate its intent to operate as housing designed for persons 55 years old or older, which can be evidenced by a Declaration, lease provisions, advertising to prospective residents, and public posting in common areas. 24 C.F.R. § 100.306. Thus, in order to comply with these state and federal laws and regulations after the homes are sold, the developer is responsible for ongoing investigation and certification that the occupancy standards have been met.

Because there are adequate means to enforce such a restriction by the County, the developer, and the occupants themselves, the County is able to accept an age-restricted community zoning request for consideration by staff and the Board of Commissioners. Like the ongoing maintenance obligations of the drainage conditions offered and accepted in the Flora rezoning, this restriction is able to be accepted and enforced by the County, but has even more oversight and protection due to the safeguards of federal and state law requirements.

The Baxter Station community intends to offer the following age-restriction zoning condition, followed by a Declaration confirming the same:

"The use of the property shall be limited to an age-restricted residential community where all units are occupied by occupants fifty five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners association documents restricting the use accordingly, requiring occupants to certify the age of all

December 1, 2020
Page 3

household occupants at least once every two years, and providing for enforcement of such restriction."

This condition exceeds the above-stated restrictions, complies with federal and state law, and prevents school-aged children from occupying the units. We are happy to discuss the details of such a condition, as well as any timing of recording, frequency of age confirmation, or other details staff or the Board may request.

Please contact me with any questions or to discuss further.

Sincerely,



Jamie S. Schwedler

JSS
Attachment

Attachment: 7 baxter-station-approvalsandforms-21aug11 (PB 21-20 Baxter Station Conditional Zoning)

LETTER OF TRANSMITTAL

Date: 07/22/2021

Project # 4671

To: Donna Voliva, CZO
Assistant Planning Director
Currituck County Planning and
Community Development

ADDRESS:

Project Name: Baxter Station
Cond. Rezoning-MXR

153 Courthouse Road, Ste. 110
Currituck, NC 27929

☒	HAND DELIVERED	☐	OVER-NITE MAIL	☐	MAILED	☐	FAXED
-------------------------------------	----------------	--------------------------	----------------	--------------------------	--------	--------------------------	-------

We are sending ☒ Enclosed ☐ Attached ☐ Under separate cover via _____ the following items:

- | | | | |
|--|--|---|--|
| ☐ As Requested | ☐ For Client Approval | ☐ For Bid Submission | ☐ For Construction |
| ☐ For Your Signature | ☐ For Permit Approval | ☐ For Distribution | ☐ For Const. Record |
| ☒ For Review & Comment | ☐ For Your Records | ☐ For Release | ☐ Confidential |

COPIES	DESCRIPTION	DATE
1	APPLICATION FOR COND. REZONING	7/22/2021
1	APPLICATION FEE	7/22/2021
2	COPIES OF COMM. MTG. MINUTES	7/22/2021
2	COPIES OF AGE RESTRICTION LETTER	12/1/2020
2	COPIES OF CONSISTENCY WITH COMPREHENSIVE PLAN	7/22/2021
2	COPIES OF PLANS	7/22/2021
2	COPIES OF PROPOSED STRUCTURES	7/22/2021
1	8X5 X 11 REDUCTION OF PLANS	7/22/2021
1	CD OF ALL	7/20/2021

Thank you.

Sincerely,
BISSELL PROFESSIONAL GROUP

Marcie Respass

Marcie Respass

Attachment: 7 baxter-station-approvalsandforms-21aug11 (PB 21-20 Baxter Station Conditional Zoning)

Engineer Coordinator



ALBEMARLE REGIONAL HEALTH SERVICES
Partners in Public Health

July 15, 2021

To: North South Development Group
417 Caratoke Hwy Unit D
Moyock, NC 27958

Re: Baxter Station

Pasquotank

Perquimans

Camden

Chowan

Currituck

Bertie

Gates

Hertford

This letter is based on the test that this is a subdivision that will be under the Federal Department of Housing and Urban Development (HUD) which regulates senior communities to ensure their compliance with the Housing for Older Persons Act of 1995 (HOPA).

North South Development Group submitted applications to ARHS for site evaluations to see if soil would accept onsite sewage systems. After site evaluations were completed the following was determined:

- The soils are typical for the coastal plains in Eastern NC
- The site would need 24 inches of fill material (sand) – it will need to be done the same as property located across the road.
- The large ditch along the highway will be cleared and sloped to improve drainage.
- The septic systems will be backfilled and installed in accordance to the attached drawings.
- All lots will be required to join the public Management Entity and inspected/monitored at least once a year.
- Note : this will include all drainage.

If I can be of further assistance, please feel free to contact me at 252-338-4490

Respectfully,

Ralph L Hollowell, Jr
Environmental Health Director
License Soil Scientist



R. Battle Betts, Jr., MPA, Health Director

P.O. Box 189 • 711 Roanoke Avenue • Elizabeth City, North Carolina 27907-0189
Tel: 252-338-4400 • Fax: 252-338-4449 • www.arhs-nc.org





Conditional Rezoning Application

OFFICIAL USE ONLY:

Case Number: _____
 Date Filed: _____
 Gate Keeper: _____
 Amount Paid: _____

Contact Information
APPLICANT:

Name: Allied Properties, LLC
 Address: 417 Caratoke Hwy., Unit D
Moyock, NC 27958
 Telephone: 252-435-2718
 E-Mail Address: jold@qhoc.com

PROPERTY OWNER:

Name: Jarvis Harvest, LLC
 Address: 701 Blue Point Drive
Wilmington, NC 28411
 Telephone: _____
 E-Mail Address: _____

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Contract Purchaser

Property Information

Physical Street Address: Baxter Lane
Moyock, NC 27958
 Location: _____
 Parcel Identification Number(s): 0009-000-025A-0000
 Total Parcel(s) Acreage: 53.52AC
 Existing Land Use of Property: _____

Request

Current Zoning of Property: A Proposed Zoning District: C-MXR

Community Meeting

Date Meeting Held: July 20, 2021 @5:30pm Meeting Location: Eagle Creek Pavilion

Conditional Rezoning Request

To Chairman, Currituck County Board of Commissioners:

The undersigned respectfully requests that, pursuant to the Unified Development Ordinance, a conditional zoning district be approved for the following use(s) and subject to the following condition(s):

Proposed Use(s): MXR subdivision with 80 single-family detached lots which will be an age-restricted community.

Proposed Zoning Condition(s):

See Attachment "A"

An application has been duly filed requesting that the property involved with this application be rezoned from: A to: C-MXR

It is understood and acknowledged that if the property is rezoned as requested, the property involved in this request will be perpetually bound to the conceptual development plan, use(s) authorized, and subject to such condition(s) as imposed, unless subsequently changed or amended as provided for in the Currituck County Unified Development Ordinance. It is further understood and acknowledged that final plans for any development be made pursuant to any such conditional zoning district so authorized and shall be submitted to the Technical Review Committee.

BY JARVIS KUEVER, LLC CHARLES T. BERRY
Property Owner (s) CHARLES T. BERRY, MGR

12/16/20
Date

NOTE: Form must be signed by the owner(s) of record. If there are multiple property owners a signature is required for each owner of record.

Attachment "A"

Proposed Zoning Conditions – Baxter Station

Condition 1 regarding age restriction:

The use of the property shall be limited to an age-restricted residential community and associated amenities, where all units are occupied by persons fifty five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners association documents ("Declaration") restricting the use accordingly, requiring occupants to certify the age of all household occupants at least once every two years, and providing for enforcement of such restriction.

Condition 2 regarding drainage improvements:

Drainage improvements will be provided as follows:

- a. Perform modeling of the Baxter ditch to its outlet on the Jarvis (Landing) property.
- b. Based on model results, make improvements to Baxter Lane ditch along the Baxter Station property boundary, including widening, deepening, laying back side slopes and putting on proper grade. Improvements to be completed prior to putting first plat phase of subdivision to record.
- c. Record an easement along the Baxter Station part of the ditch to provide access for ongoing maintenance.
- d. Include a provision in the Declaration that clarifies that the HOA will have the responsibility to maintain the ditch at least annually, and budget for funding within the HOA dues structure to assure that ongoing maintenance is funded.
- e. Model the development to manage the 100 year storm event and design stormwater storage accordingly, including providing berms as necessary.
- f. If Currituck County is able to obtain the necessary right of entry agreements, the existing undersized culvert at Baxter Lane Extension will be replaced with a properly sized culvert set at the proper grade.

Attachment "A"**Proposed Zoning Conditions – Baxter Station**Condition 1 regarding age restriction:

The use of the property shall be limited to an age-restricted residential community where all units are occupied by occupants fifty five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners association documents restricting the use accordingly, requiring occupants to certify the age of all household occupants at least once every two years, and providing for enforcement of such restriction.

Condition 2 regarding drainage improvements:

Drainage improvements will be provided as follows:

- a. Perform modeling of the Baxter ditch to its outlet on the Jarvis (Landing) property.
- b. Based on model results, make improvements to Baxter Lane ditch along the Baxter Station property boundary, including widening, deepening, laying back side slopes and putting on proper grade. Improvements to be completed prior to putting first plat phase of subdivision to record.
- c. Record an easement along the Baxter Station part of the ditch to provide access for ongoing maintenance.
- d. Include a provision in the covenants of Baxter Station that clarifies that the HOA will have the responsibility to maintain the Baxter Lane ditch through the subdivision at least annually, and budget for funding within the HOA dues structure to assure that ongoing maintenance is funded.
- e. Model the Baxter Station to manage the 100 year storm event and provide stormwater storage, including berms as necessary, to prevent runoff from Baxter Station during the 100 year storm event from adversely impacting offsite properties.
- f. If Currituck County is able to obtain the necessary right of entry agreements, the existing undersized culvert at Baxter Lane Extension will be replaced with a properly sized culvert set at the proper grade.

Baxter Station MXR Rezoning

July 20, 2021

Scheduled Time/Place: 5:30, Eagle Creek Pavilion

The meeting began at 5:30pm/Meeting Ended: at approximately 6:45pm

Attendees: (See attached sign-in sheets)

Also Justin Old, Developer
Mark Bissell, Engineer

The review procedures were outlined and an overview of the development plan and details were provided, both verbally and graphically. Comments from the community meeting that was held in December on a similar development plan were also reviewed and are attached for reference. Many of the same comments were heard regarding drainage, so only the new comments are included in this second community meeting record.

Comments from the Community	How Addressed
What size will the lots be?	A minimum of 15,000 sq. ft.
Can fewer lots be done?	The density has already been dropped from 125 to 80, and complies with MXR zoning.
Still concerned about raising the water table across the street due to berming.	We will consult with a hydrogeologist during the modeling and design.
Drainage problems should be resolved before more development is approved.	The drainage problems in question are on private property and the County cannot do this work.
Concerned about septic tanks raising the water table. How much water is being added to the site?	About 12,000 gal/day (equivalent to about 0.008 inch rainfall) will be considered in the design.
What happens if the HOA can't or won't take over?	The community has enough homes that it will be able to have professional management.
I understand from the engineering department that	The UDO requires us to model pre-

no more water was to go to the Baxter ditch but rather was to be directed to the south.	development conditions to determine how much water goes to each outlet during a 2-year wooded condition storm and then limit the post development 10-year storm to that amount for each outlet, so we would not be able to redirect flow into a different drainage system.
There is too much development in Moyock.	The demand will continue; we are trying to do it in a way that also benefits the community.
Today it could possibly work and I'm not anti-development, but why does the county allow density on soils that don't perk? There are some smaller communities that do not adhere to UDO.	We are agreeing to conditions that <u>exceed</u> the UDO requirements and agreeing to make improvements to existing problems that otherwise would not be solved.
Will there be sidewalks and a sidewalk to the park?	There will be sidewalks on both sides of the street and a connection to Hidden Oaks, which connects to the park.
Are there tree buffers?	Yes, both to Baxter Lane Estates and to Hidden Oaks, and also along Baxter Lane to buffer homes across the street

Baxter Estates
Conditional Rezoning

July 20, 2021

5:30PM

NAME	ADDRESS	TELEPHONE	E-MAIL
Cheryl Kelly	203 Green Road	252-262-1321	
Cheryl Stewart	116 Shady Oaks Way		
William Frey	Hidden Oaks		
George Frey	" "		georgefrey@gmail.com
Jennie Turner	Carrituck County Planning	252-232-6031	jennie.turner@carrituckcounty.nc.gov
Kevin Kemp	Carrituck Co. Development Sec.	—	kevin.kemp@carrituckcounty.nc.gov
Rosanne Burling	125 Shady Oaks Way		rosanneburling@aol.com
Fred Whitman	181 ST Andrews Rd		
Larry Towell	103 Avul Road Circle	757 615 1591	larry.towell@yahoo.com
Alex Wilbanks	107 ALDEN RUN	757-777-8372	Alexander.Wilbanks@gmail.com
Aaron Wares	102 Avul Bender	757-374-9168	Awares@wfsystems.com
Joshua Old	131 Spruce Ln		
Kyle Kendrick	10 Bay 99 Shallowford		
David Igilda Hernandez	108 Arrowhead Ln.	804 426 4909	DHERN ?

July 20, 2021
5:30PM

[illegible]

Baxter Station MXR Rezoning

December 15, 2020

Scheduled Time/Place: 4:30pm and 6:00pm, Eagle Creek Pavilion

The first meeting began at 4:30pm/Meeting Ended: at approximately 5:40pm

The second meeting began at 6:00pm/Meeting Ended at approximately 7:15pm

Attendees: (See attached sign-in sheets)

Also: Jason Litteral, Currituck County
Justin Old, Developer
Mark Bissell, Engineer

Comments from the Community	How Addressed
Windswept Pines ponds are overflowing in 51/2" rainfall and impacting adjacent development.	Downstream conditons were observed during flooded conditions and it was determined that drainage along Baxter Lane is restricted and preventing Windswept Pines drainage system from draining properly.
What is being proposed to the ditch on Baxter?	The ditch will be studied and modeled, and based on the results of the model it will be widened, deepened, slopes laid back, put on grade, and an easement provided for ongoing maintenance.
Will the proposed construction be crawl-space or slab?	Probably elevated slab.
Will the development be on septic tanks? Previously it was going to be sewer.	Yes, septic systems are proposed similar to at Windswept Pines. County sewer is not available at this time.
There are problems with the property line ditch between the Baxter property and Hidden Oaks.	The plan will be to clean out this ditch along with the first phase of development.
What is the timeframe?	It will take a minimum of 1 1/2 years before the first house goes under construction and 2 yrs for occupancy. Very possibly longer.
Who will do the building?	Since that will be a year and a half to two years down the road, that has not been decided.
Will the project be phased?	Yes it will be done in two phases about 40 lots each.
Will there be a traffic light at Baxter Lane and	NCDOT will need to do a signal warrant. Even

Caratoke Highway?	when the proposed project was larger, they did not think it warranted it yet. This would probably not occur until the main entrance to Currituck Station goes in and development gets under way there.
The pipe needs to be replaced and upgraded at Baxter Lane extension because there was an existing water line that kept it from being put at proper grade when it was replaced a year or so ago.	We will speak with the land owners there to see if access can be obtained (the last time the developer asked he was refused access to do any work there)
Will construction traffic go through Hidden Oaks?	No, it will be from Baxter Lane, and the connection to Hidden Oaks will not be made until Phase 2.
Will the waterline be looped?	Yes, it will be looped from Hidden Oaks to Baxter Lane which should improve pressure.
Concerned about water in ponds raising the water table.	Improving the ditch along Baxter Lane should serve to lower the water table on the other side of Baxter.
Can the second entrance farther east on Baxter Lane be eliminated?	We believe the County will want the second entrance, but will ask if it can be eliminated.

Summary: Between the two meetings, ten residents attended, from Hidden Oaks and Baxter Lane. Most questions and discussions had to do with the need for drainage improvements in the area, and a plan to address those.



Attachment: 11 Model Homes (PB 21-20 Baxter Station Conditional Zoning)



Attachment: 11 Model Homes (PB 21-20 Baxter Station Conditional Zoning)







Attachment: 11 Model Homes (PB 21-20 Baxter Station Conditional Zoning)



Attachment: 11 Model Homes (PB 21-20 Baxter Station Conditional Zoning)



Attachment: 11 Model Homes (PB 21-20 Baxter Station Conditional Zoning)

CONSISTENCY WITH COMPREHENSIVE PLAN
BAXTER STATION MXR

The proposed zoning is from AG to C-MXR, with a sketch plan limiting density to approximately 1.49 units per acre. This request is for approximately 53.52 acres along Baxter Lane just off Caratoke Highway to provide new single-family development. This request is consistent with the following density and development pattern policies of the 2006 Land Use Plan, Moyock Small Area Plan, and UDO:

1. 2014 Moyock Area Small Area Plan (“MSAP”):

The 2014 MSAP “is used to assist staff and the Board of Commissioners in guiding growth as well as planning for future county improvements to infrastructure and services.” MSAP, p. 1. The plan guidance materials indicate that it was intended to:

“supplement the [2006] Land Use Plan to more specifically address the needs and issues of the [Moyock] study area over the next 10 years. The policies and guidance given in this plan are consistent with the Land Use Plan and other county policies and documents. This plan will establish a new focus for growth and development. The Board of Commissioners and staff will use the SAP to make recommendations about development proposals and other county land use policy decisions. This plan is a vital tool for staff in day to day decision making and in assisting the public with development proposals.”

MSAP, p. 7. The MSAP Future Land Use Map “should be used in conjunction with the entire plan.” MSAP, p. 30. The fact that the site is designated Full Service on the MSAP Future Land Use Map, will have County water available, is located close to 168, and is adjacent to a Full Service Area on the MSAP and 2006 LUP all support the requested density for the site. The MSAP designates this area as Full Service Area, with densities up to 3 units per acre. This is significant because only several portions of the MSAP include Full Service; the majority of the plan is Rural Area and Conservation Area. MSAP p. 30. The Full Service designations “are focal points in the community where high amounts of activity occur ...[and] ... a broad range of infrastructure and service investments ... will be made available by the public and/or private sectors.” These investments may include centralized water and sewer. MSAP p. 31. “[P]lanned commercial and residential areas with diversity in housing types is preferred. Typical densities in full service designations range from 1.5 – 3 units per acre depending on surrounding land uses.” MSAP p. 31.

Activity centers are located in full service designations, and are anticipated to be destination hubs for activity in the surrounding community. MSAP p. 32. This property is also almost adjacent to the largest Activity Center on the MSAP, the Employment Center, across Hwy 168. This center includes planned corporate parks, and supporting residential use is encouraged. The proximity of this development to Currituck Station, an area designated for significant growth, further supports the requested density.

Policy FLU 1 – promote compatibility between new development and existing development to avoid adverse impacts to the existing community.

Policy CC 1 - Encourage and foster development that is compatible with rural atmosphere, transitional areas, and a small town, main street feel consistent with the vision, policies, and future land use map of this plan.

Policy CC 2 - Encourage non-residential and mixed use development that incorporates building and site design to enhance community appearance, promote human scale, and create a unique sense of place. This may include common themed building materials, forms, and site amenities.

2. 2006 Currituck County Land Use Plan ("LUP"):

A. Land Use Compatibility Policies

i. Density: The project is located within the Rural Area of the LUP, and proposes a maximum density of 1.49 units per acre. The site is across from land zoned MXR and AG to the north, all put to residential, non-agricultural uses. To the west of the site is a General Business zoning designation, which extends along Caratoke Highway. To the east and south the land is zoned and used for residential use, zoned C-MXR and C-SFM. Directly across 168 from the property is an area proposed as G-3 and up to 12 dwelling units per acre, a much higher density than requested here. As such, the request can serve as a reasonable transition between uses.

The density guidance in the LUP is based on assumptions about available infrastructure, existing development patterns, and the presence of environmental features that do not apply to this site in the same way they may apply to Rural sites in general. There are no environmentally sensitive features or factors which suggest preservation of this portion of the development is critical. County water is available to be extended from Baxter Lane.

POLICY HN1: Currituck County shall encourage development to occur at densities appropriate for the location. LOCATION AND DENSITY FACTORS shall include whether the development is within an environmentally suitable area, the type and capacity of sewage treatment available to the site, the adequacy of transportation facilities providing access to the site, and the proximity of the site to existing and planned urban services. For example, projects falling within the Full Services areas of the Future Land Use Map would be permitted a higher density because of the availability of infrastructure as well as similarity to the existing development pattern. Such projects could be developed at a density of two (2) or more dwelling units per acre.... Projects within areas designated as Limited Service would be permitted a density of one (1) to one and one half (1.5) units per acre depending upon the surrounding development pattern and availability of resources. Projects within areas designated as Rural or Conservation by the Future Land Use Plan would be permitted a much lower density of 1 dwelling unit per 3 acres because of the lack of infrastructure in the area, the existing low density development pattern, and presence of environmentally sensitive natural areas. LUP, p. 9-7.

POLICY AG6: For areas experiencing intense development pressure, new residential development may be allowed to locate in COMPACT, VILLAGE-LIKE CLUSTERS, PREFERABLY NEAR EXISTING, NON-AGRICULTURAL ACTIVITIES AND SERVICES, or in other locations that will not interfere with resource production activities. Overall density shall

remain very low, with permanent open space, dedicated during the development review process, surrounding such clusters of homes. LUP, p. 9-7.

ii. **Development Patterns:** This is consistent with the County's approach to development in the Moyock area, which encourages continuation of development patterns instead of abrupt changes, holes, or leapfrogging. It is also consistent with the Board's findings in similar cases approving density in this area of Moyock. The site is also adjacent to commercial uses along 168, which is designated a Full Service Area, and thus is close to the area where more intense development is anticipated.

POLICY HN3: Currituck County shall especially encourage two forms of residential development, each with the objective of avoiding traditional suburban sprawl... OPEN SPACE DEVELOPMENTS that cluster homes on less land, preserving permanently dedicated open space and often employ on-site or community sewage treatment. These types of developments are likely to occur primarily in the Conservation, Rural, and to a certain extent the Limited Service areas identified on the Future Land Use Map. LUP, p. 9-7.

POLICY HN4: Currituck County shall discourage all forms of housing from "LEAPFROGGING" INTO THE MIDST OF FARMLAND and rural areas, thereby eroding the agricultural resource base of the county. LUP, p. 9-7.

POLICY AG3: County ACTIONS CONCERNING INFRASTRUCTURE (e.g. schools, parks, and utilities) and regulations shall serve to direct new development first to targeted growth areas near existing settlements identified as Full Service Areas on the Future Land Use Map, rather than "leapfrogging" to locations in the midst of farmland and greenspace identified as Rural and Conservation areas on the Future Land Use Map. LUP, p. 9-6.

POLICY AG4: County growth management tools, including particularly zoning, should provide PROTECTION TO AGRICULTURE and other RESOURCE BASED ACTIVITIES from incompatible land uses, such as a residential subdivision in the midst of generally uninterrupted farm land. LUP, p. 9-6.

B. Moyock Area Policy Emphasis of the Land Use Plan:

Summary of Area Character: The Moyock area is the fastest growing part of Currituck County. Development densities currently range from 1 to 3 units per acre depending upon development type.

Moyock Area Policy Emphasis: The policy emphasis of this plan is on properly managing the increased urban level of growth that this area is sure to experience over the next decade and beyond. Residential development densities should be medium to high depending upon available services. In areas where on-site wastewater is proposed and other County services are limited, development density should be limited to 1-2 units per acre. However in areas where central sewer is proposed or existing, additional services are available and the character of the surrounding areas supports it, higher density ranging from 3-4 units per acre could be considered through the use of overlay zones. Clustered housing developments, with open space required by ordinance, will ... be encouraged. Given the existing development pattern and availability of services, much of the Moyock area is planned as Full Service. LUP, p. 11-4.

The applicant is proposing on-site stormwater improvements, including improvements that will benefit the surrounding community, and will connect to County water available on Baxter Lane. The Moyock Area policy consistently references densities at 1 unit per acre minimum, and recognizes that increased density is appropriate where services are available. This is consistent with the 1.49 units per acre proposed.

3. UDO:

- A.** The proposed single-family residential use is designated in the MXR District is intended to provide moderate-cost housing options for county residents within well-designed neighborhoods and developments that incorporate open space resources,” and “accommodate a wide variety of residential use types at moderate densities” UDO Sec. 3.4.6.A.
- B.** This district includes dimensional standards for single-family detached development, including a minimum lot size of 15,000 square feet, setbacks and, and buffers. UDO Sec. 3.4.6.D. Maximum density is established in the master plan for these districts, and may not exceed 2 units per acre in Full Service areas or 1 unit per acre for Limited Service areas. There is no corresponding maximum density listed for the Rural Service Area, and thus the UDO does not restrict density in the Rural designated areas of the 2006 Land Use Plan. The proposed density is thus consistent with the UDO.



Jamie S. Schwedler

Partner

t: 919.835.4529

f: 919.835.4618

jamieschwedler@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, DC

December 1, 2020

Via Email: Laurie.Locicero@CurrituckCountyNC.gov

Laurie B. LoCicero, AICP
Planning and Community Development Dept.
153 Courthouse Road, Suite 110
Currituck, NC 27929

Re: Age Restrictions for Baxter Station Rezoning

Dear Ms. LoCicero:

North South Development Group, LLC is preparing to submit a conditional use district rezoning for land known as Baxter Station, along Highway 168 in Currituck County (the "Property"), to create an age-restricted community. The age restrictions are planned to be documented both as zoning conditions on the Property, and in restrictive covenants recorded against the Property. As explained below, both methods are legally enforceable land use restrictions, and the ongoing nature of the restrictions are regulated by federal and state fair housing laws. Thus, the County can accept the zoning conditions as legally enforceable on several grounds.

First, age-restricted communities can be created via conditional zoning districts and have been accepted as such by multiple jurisdictions in North Carolina. A sample condition is as follows: "The use of the property shall be limited to an age-restricted residential community which meets the federal definition of elderly housing, having at least eighty (80) percent of the occupied units occupied by at least one person fifty five (55) years of age or older per unit." This condition was accepted by the Raleigh City Council, approved this year. See attached case Z-29-19 zoning condition 1. This zoning condition would be enforceable by the County under section 9.5 of the Currituck County UDO, just like any other condition. That is, if compliance with the age restriction was not demonstrated after construction and sale of the homes, the County could issue a notice of violation and, if not corrected, pursue legal and equitable remedies. However, as explained below, compliance records are required by law, and thus determining compliance should not be any more challenging or time-consuming for the County than any other enforcement action it has initiated.

Second, the age restriction can be documented in a restrictive covenant contained in the homeowners association documents for the community ("Declaration"). This method was used in an age-restricted apartment development in Cary approved in 2018, see attached p.4, sec

PPAB 5968562v1.docx

Parker Poe Adams & Bernstein LLP PNC Plaza 301 Fayetteville Street Suite 1400 Raleigh, NC 27602-0389
t 919.828.0564 f 919.834.4564 www.parkerpoe.com

Attachment: 13 Schwedler Ltr 12-1-2020 (PB 21-20 Baxter Station Conditional Zoning)

December 1, 2020
Page 2

1.3.1. In the Cary case, a zoning condition was offered and a Declaration of restrictive covenants recorded to mirror the condition ("Developer of the community shall record with the applicable Register of Deeds office a Declaration of Covenants, Conditions, and Restrictions ... providing that at least eighty percent (80%) of all occupied units shall have as a resident at least one person age 55 or older"). See Wake County Register of Deeds, Book 17448, page 331. The Declaration was recorded prior to building permits being issued, and provides restrictions on persons living within the household and procedures to verify and enforce these restrictions. See Sections 1.2, 2.1, 2.2. While the Baxter Station community is intended for single-family housing, the Declaration would still be recorded prior to any sale of the first home, such that all purchasers would take title with notice of, and be bound by, the occupancy requirements, including requirements to provide proof of age of occupants on a regular basis.

Finally, regardless if established by zoning condition or restrictive covenant, federal and state laws ensure continuing compliance with the age-restricted community requirements after the development has been established. The federal Fair Housing Act, 42 U.S.C. § 3601, *et. seq* ("FHA") and North Carolina Fair Housing Act, N.C.G.S. § 41A-4, *et. seq* ("NC FHA") prohibit discrimination in the sale or rental of housing based on familial status. Familial discrimination occurs when a real estate agent or property owner treats someone different because they have a family with one or more individuals under 18 years of age. *Iniestra v. Cliff Warren Investments, Inc.*, 886 F. Supp. 2d 1161, 1166 (C.D. Cal. 2012). Both acts provide an exception for housing communities intended for and operated for occupancy by at least one person 55 years of age or older per unit. 42 U.S.C. § 3607(a)(2); N.C.G.S. § 41A-6(e). In order to qualify for the exception, at least 80% of the development's occupied units must be occupied by at least one person 55 years of age or older. 24 C.F.R. § 100.305. This occupancy must be verified by survey or other means once every two years, and the records of such occupancy should be kept available for inspection upon reasonable notice. Verification procedures allow for drivers' license, birth certificates, and passports as among the forms of acceptable evidence of age of occupants. 24 C.F.R. § 100.307. Finally, the community must publish and adhere to policies that demonstrate its intent to operate as housing designed for persons 55 years old or older, which can be evidenced by a Declaration, lease provisions, advertising to prospective residents, and public posting in common areas. 24 C.F.R. § 100.306. Thus, in order to comply with these state and federal laws and regulations after the homes are sold, the developer is responsible for ongoing investigation and certification that the occupancy standards have been met.

Because there are adequate means to enforce such a restriction by the County, the developer, and the occupants themselves, the County is able to accept an age-restricted community zoning request for consideration by staff and the Board of Commissioners. Like the ongoing maintenance obligations of the drainage conditions offered and accepted in the Flora rezoning, this restriction is able to be accepted and enforced by the County, but has even more oversight and protection due to the safeguards of federal and state law requirements.

The Baxter Station community intends to offer the following age-restriction zoning condition, followed by a Declaration confirming the same:

"The use of the property shall be limited to an age-restricted residential community where all units are occupied by occupants fifty five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners association documents restricting the use accordingly, requiring occupants to certify the age of all

December 1, 2020
Page 3

household occupants at least once every two years, and providing for enforcement of such restriction."

This condition exceeds the above-stated restrictions, complies with federal and state law, and prevents school-aged children from occupying the units. We are happy to discuss the details of such a condition, as well as any timing of recording, frequency of age confirmation, or other details staff or the Board may request.

Please contact me with any questions or to discuss further.

Sincerely,



Jamie S. Schwedler

JSS
Attachment

Attachment: 13 Schwedler Ltr 12-1-2020 (PB 21-20 Baxter Station Conditional Zoning)