

Kitty Hawk Planning Board Meeting  
January 18, 2018 – Rescheduled  
For January 25, 2018 – 6:00pm  
Kitty Hawk Municipal Building

**AGENDA**

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
  - a. December 14, 2017
4. Administrative Report:
  - a. Town Council Action from January 12, 2018 Meeting
5. Public Comment
6. Text Amendment:
  - a. 42-250(c)34 – Yards Generally. Staff is proposing a Text Amendment that would allow pool equipment to encroach up to 5' into the side and rear yard setbacks.
7. Subdivision Variance:
  - a. 4600 Blocks of Lindbergh Avenue and N. Croatan Highway. The Applicant is requesting to reconfigure existing lots in a manner that would be inconsistent with ordinance requirements.
8. Old Business:
  - a. Text Amendment: 42-528 – Accessory Dwelling Units: The Town Council requested Staff and the Planning Board to relook at the requested Text Amendment.
  - b. Text Amendment: 42-250(c)34. Multi-family Dwellings. The Applicant has requested a Text Amendment that would allow multi-family dwellings in the BC-1 (Beach Commercial) District as a conditional use.
9. Comments:
  - a. Chairman Richeson
  - b. Planning Board Members
  - c. Town Attorney
  - d. Planning Director
10. Adjourn

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1. **Call to Order/Attendance:**

Chairman Richeson called the Kitty Hawk Planning Board Meeting to order at approximately 6:00pm on Thursday, January 25, 2018.\

**Board Members Present:**

John Richeson, Chairman; Bryan Parker, Vice-Chairman; Chuck Heath, Member; Dusty Rhoads, Member; Jan Collins, Alternate; Gary Muir, Alternate.

**Absent:**

Jim Geraghty, Member

**Staff Present:**

Robert Testerman, Director, Planning & Inspections; Casey Varnell, Town Attorney; Patricia Merski, Recording Secretary.

2. **Approval of Agenda:**

Hearing no objections/changes/corrections to the January 25, 2018 Agenda, the Agenda was approved unanimously.

3. **Approval of Minutes – December 14, 2017**

Hearing no objections/changes/corrections to the December 14, 2017 Minutes, the Minutes were approved with Chairman Richeson asking for a motion to approve and Vice-Chairman Parker made the motion and Alternate, Jan Collins seconded the motion and the Minutes were unanimously.

4. **Administrative Report – Town Council Action from the January 12, 2018 Meeting.**

Mr. Testerman stated that at the January 12, 2018 Town Council Meeting that a public hearing is scheduled for February 5, 2018 regarding the rezoning the Beach Residential District to the MS-1 District.

5. **Public Comment:**

Mr. Richeson asked if anyone from the audience had any questions/concerns to be addressed to the Board to come up to the podium and state their name. Finding no one from the audience coming forth, the Public Comment portion of the Meeting was closed.

6. **Text Amendment: 42-250(c)34 – Yards Generally.**

Staff is proposing a Text Amendment that would allow pool equipment to encroach up to 5' into the side and rear yard setbacks.

- Mr. Testerman stated that this is a Staff initiated Text Amendment and in the Staff Report it indicates the language to be considered.
- Currently, the Town Ordinance allows for HVAC units and their associated stands to encroach 5' into the side yard setback.

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- The current Town Ordinance does not have the same allowance for pool equipment. Currently, pool equipment is 30" in height and has to meet all of the designated setbacks of 10' on sides and 25' front and rear.
- There have been multiple instances where the pool equipment ends up on the side yard setback. (picture on the screen shows why the initiation for the Text Amendment).
- Mr. Testerman stated if there is an allowance for the HVAC stands, the proposed Text Amendment should also cover uncovered, non-enclosed pool equipment stands. He also stated that it would not encroach any more than the permitted HVAC stands now and in some cases (photo), the pool equipment is sitting on the same stand as the HVAC unit and does not create any additional lot coverage.
- The pool equipment on the stand, as shown in the photo is in current violation and in order to correct, there would have to be additional lot coverage created somewhere else on the lot or build a new stand for the pool equipment.
- Mr. Testerman went on to state that the proposed Text Amendment would make it easier for the Contractors (picture shows HVAC stand that is compliant with the setback but the stand encroaches approximately 3' into the side yard and could go up to 5') and it shows on the rear of the stand the pool equipment which is in violation.
- The proposed Text Amendment would only be applicable to uncovered, enclosed stands and if someone wanted to build a structure around the pool equipment the structure would have to meet the setback requirements.
- Mr. Heath had a concern about the safety of the pool motor being exposed to the elements and Mr. Testerman stated that, as he understands it, the Building Inspector has not given any indication that that would be a problem.
- Mr. Heath stated that because the motor may be exposed to the elements, is the motor/equipment designed for that and Mr. Testerman stated that the pool contractors take that into consideration and the homeowners would expect to have to replace the equipment at some time due to exposure to the elements.
- Mr. Heath asked if a box-like structure would be built to protect the pool equipment from the elements and Mr. Richeson stated that there are plastic covers that would go over the motor and Mr. Testerman stated that the plastic covers would not create a violation, only structures constructed around the equipment.

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- Mr. Heath clarified that the plastic cover would be for safety reasons also and Mr. Richeson stated the plastic cover would keep the motor from getting wet and the motor would have to be bonded together plus grounded.
- Ms. Collins spoke about the aesthetics of having the pool scattered around the property and Mr. Testerman stated currently that is true, but, currently, there is nothing that requires the pool equipment to be behind a fence to shield it from the neighbors.
- Mr. Richeson then asked if there were any further questions for Mr. Testerman and hearing none, asked for a Member of the Board to make a motion and Mr. Richeson made the following motion: ***“I recommend approval of the proposed Text Amendment to amend Section 42-504(i) regarding the encroachment of pool equipment into the side and rear yard setback. The Board has found this proposal to be consistent with the Town’s adopted land use plan.”***
- Mr. Parker seconded and the motion was passed 4-1 in favor.

7. **Subdivision Variance: 4600 Blocks of Lindbergh Avenue and N. Croatan Highway.**

The Applicant is requesting to reconfigure existing lots in a manner that would be inconsistent with ordinance requirements.

The Kitty Hawk Subdivision Ordinance, Sec. 38-10 states, “Where, because of topographical or other conditions peculiar to the site, strict adherence to the provisions of the regulations of this chapter would cause an unnecessary hardship, or it appears that the interest of the Town would not be best served, the Planning Board may refer the matter to the Town Council and the Town Council may authorize a variance. Any variance thus authorized is required to be entered in writing in the minutes of the Planning Board and of the Town Council and the reasoning on which the departure was justified set forth.”

**Proposal:**

The lots subject to this subdivision variance request consist of six (6) lots, each measuring 100’ x approximately 150’ of road frontage.

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Three lots (3) front on Lindbergh Avenue and three (3) lots front on N. Croatan Highway. The Applicant has requested a variance from Sec. 38-105(b)4, **“Minimum Lot Width.”** The Ordinance requires a minimum lot width of 75’ measured at the front setback and no less than 50’ of road frontage. The proposed variance would allow the proposed lots to have 50’ of road frontage and a total width of 50’, rather than the required 75’ t building setback.

The Applicant has also requested a variance from 38-05(b)1, which establishes that the minimum lot size of the zoning district be met. The lots in question are located within the General Beach Commercial, BC-1 District. Minimum lot size in the district is 15,000 square feet. The proposed variance would not create any new lots but would reconfigure the existing six (6) lots to dimensions of 50’ x 299.36’, or 14,968 square feet.

The reconfigured lots would have double-frontage on N. Croatan Highway and Lindbergh Avenue.

The existing residential lots to be east on Lindbergh are all 50’ in width while the residential lots to the south on Lindbergh are 100’ in width.

The subject properties, as well as the surrounding properties are zoned BC-1, General Beach Commercial which allows single-family residences as an Administrative Conditional Use. The Applicant intends to have the lots available for six (6) single-family residences, all fronting on Lindbergh Avenue. While Sec. 38-105(c) states that double frontage lots **should** be avoided, they are not prohibited, and it could be argued that it would be in the Town’s best interest to allow the Subdivision Variance in order to reduce potential curb cuts on N. Croatan Highway. As currently configured, there could be a potential of three (3) new curb cuts for either residences or commercial uses on N. Croatan Highway, with a maximum separation of 100’ from one another.

If approved, it would be Staff’s recommendation to require through recordation that the lots be accessed via Lindbergh Avenue.

It should be noted that approval of the variance does not approve the subdivision, the variance would simply allow Staff to approve the nonconforming lots.

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- Mr. Robinson representing the Applicant that this variance would avoid having six (6) curb cuts or three (3) additional curb cuts onto 158 and Mr. Testerman stated that the DOT is in favor of REDUCING curb cuts on the bypass.
- Mr. Robinson also stated that putting a 5' easement along 158 would prevent that access of additional curb cuts would not be a problem.
- Mr. Richeson asked the Board if there were questions and Mr. Parker stated that avoiding curb cuts in that particular area is a good idea.
- Mr. Testerman stated that the measurement is just over 200' from the first lot to Eckner and if there would be curb cuts on the bypass the further away from that intersection would be better.
- Mr. Richeson stated that during the changeover days in the summer that he has seen traffic backed up well past that intersection and regardless how it is configured, it won't increase density. There are six (6) lots and there will be six (6) houses and the trade-off is good and the reconfiguration will reduce the lot size from the current configuration on the bypass on three (3) lots and increase the lot size on the other three (3) lots and would be worth it for the Town.
- If there is a 5' no pass easement and recordation is obtained and someone years later decided that they don't want to go to the light on Lindbergh and puts some gravel on the bypass to go out that way, the Town could stop that and Mr. Testerman stated 'yes.'
- Ms. Collins asked if each lot would have a separate septic system and Mr. Robinson stated 'yes'.
- Mr. Richeson, hearing no further questions, asked the Board to make a recommendation and Mr. Parker made the following: ***"I recommend approval of the proposed subdivision variance to allow lots 33, 34, 35, 42, 43 and 44 of Kitty Hawk Beach Revised Section A, Block 36 to be reconfigured as shown on the associated plat. The Board has found that it is in the best interest of the Town to allow the reconfiguration with the condition that through recordation, access to the subject parcels will be provided via Lindbergh Avenue as this will reduce potential curb cuts on N. Croatan Highway, reducing risk of traffic incidents."***
- Mr. Heath seconded and it was approved unanimously.

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8. **Old Business: Text Amendment: 42-528.** The Town Council requested Staff and the Planning Board to relook at the requested Text Amendment.
- Mr. Testerman stated that this Text Amendment went to a Public Hearing in December, 2017 at the Council Meeting and it came back that the Town Council had some further concerns as follows:
  1. **First Concern:** The Council had a concern regarding the utility connections and whether the Town can require a separate meter for the ADUs.
    - Mr. Testerman had a meeting with the Town's Building Inspector regarding the zoning requirement for a separate meter would not be in conflict with the Building Code and, in doing so, it may make it easier for the property owner to rent out the ADU if there is a separate meter.
  2. **Second Concern:** As currently written, the proposal would apply to all residential lots within the Town. Many properties between the highways, as well as ocean-front lots, are primarily used as vacation rentals and ADUs, as intended by this ordinance, may not be as appropriate in that area as it would be in a long-term, permanent residential area.
    - Many of the lots between the highways would not be eligible to construct an ADU because of the lot coverage constraints.
    - If appropriate, ADUs could be limited to the Village Residential Zoning District and possibly just the lots west of the bypass.
    - Also, ADUs could only be allowed on lots that meet the minimum lot size and if that is a consideration, a minimum lot size would be larger than the Applicant's lot which is approximately 26,000+ feet.
  3. **Third Concern:** This concern relates to the people that construct ADUs and using them for short-term rentals which could possibly open up other opportunities for rental income for any residential lot in Town which may not coincide with the future land use plan.
    - Many property owners who may want to construct an ADU could use it for a short-term rental; and, currently, every residential property in Town would have the same opportunity to have a rental income on their property.
    - It was pointed out that this could be done as either a short or long-term rental of a full, single-family home, duplex or condo (yearly leases, vacation rentals, Air BNBs of where there is currently no regulations regarding Air BNBs in the Town and has not been brought to the Planning Board regarding regulations.)

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- Also, someone could rent out bedrooms within a residence which could also be a short or long-term rental on a monthly basis or with a mother-in-law suite that is currently allowed in an ADU without a stove.
  - The question then becomes, does the Town want to allow stoves which could be done on a short or long-term basis.
- 4. Fourth Concern:** Property owners may abuse the system by housing more people living in the quarter than permissible for an ADU. (ex: a two bedroom ADU having 15 occupants in the unit which would be seen as the owner maximizing his profits.)
- This is also an issue today with a detached family dwelling unit; (ex: three bedrooms that's approved for six (6) occupants by the septic permit and then having 15 occupants living in the unit which would be a violation of the septic permit according to the Town Code.)
  - To monitor this, the Town would then have to rely on witnesses of nearby neighbors or someone in the Town witnessing this; then an investigation would be initiated and procedures put in place to bring the ADU into compliance.
  - This is an existing issue and based on a conversation with the Town Attorney, additional language was added to Subsection 42-528(i), ***“Total occupants residing on the property shall not exceed the number specified by the Septic Improvement Permit.”*** This would tie it back to Sec. 42-38 states, that if any conditions are violated, a Code Enforcer would proceed with enforcing further actions.
- 5. Fifth Concern:** A Council Member brought forth the idea that encouraging long-term rentals to residences that possible tax incentives could be offered to those long-term property owners and this would then need to be part of the Zoning Ordinance.
- It was questioned if this would be limited only to the VR District or properties west of the bypass and would the requirements be met and Mr. Varnell stated that, from a legal view point, there would be no issues.
  - Also, if the Board considers this proposal, the Board could limit it to properties west of the bypass which could include the Village Commercial District as Beach Commercial where residential dwellings are allowed. This could possibly eliminate in-law suites which are more in the residential areas rather than in the Beach Commercial areas.

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6. It would be up to the Board and Council to decide what would be most beneficial for the Town to have this in all residential areas or just limit it to specific areas. It was also pointed out that a lot of areas between the highways are currently constrained by the lot requirements and not many could have a ground floor apartment due to the flood elevation.
7. It was also asked if the language would state 'west of the bypass' or existing between the highways and if they would be considered noncompliant or would they be 'grandfathered?'
  - Also, that any existing ADU that has both a stove and sleeping quarters would be noncompliant and that mother-in-law suites that do not have stoves would not be an issue or would this pertain to a stand-alone building or just a room above a detached garage? Also, having a stove would not increase the density requirement.
  - The definition of a dwelling unit is a structure that has cooking and sleeping quarters. A room above a garage with a living room, bedroom, and bath would NOT be considered a dwelling because there are no cooking facilities.
  - Mr. Varnell stated that the incentive for tax purposes could be written into the ordinance as opposed to a policy that exists, but, having it included in the ordinance would then make it enforceable.
  - Basically, the Council's concern is people currently abusing the system and others going forward.
- Mr. Richeson stated that he did not think that ability to enforce this would be problem especially if the ADU is on the owner's property, but those who live out of state who own a rental would not know what is happening because they are not there; therefore, witnesses coming forward would be the only way to enforce this.
- Mr. Parker asked why it was not stipulated 'no stoves' when the ordinance was originally written and Mr. Testerman stated that it was not written in the ordinance that there cannot be a stove, but that having both sleeping and cooking facilities is what makes it meet the definition of a "dwelling". Without independent cooking facilities, it is not a "dwelling."
- Mr. Richeson then asked if there were any further and asked for a motion to be made and Ms. Collins made the following: ***"I recommend approval of the proposed Text Amendment to amend Section 42-1 and add Section 42-528, amending the definition of a two-family dwelling and ad the ding the proposed definition of 'accessory dwelling unit' and adding Section 42-528 permitting accessory dwelling units as permitted uses on residential lots. The Board has found this proposal to be consistent with the Town's adopted land use plan."***

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- Before the final vote was taken, Mr. Testerman wanted to clarify that the motion as read was 'without restriction as to what zoning districts be added' and the answer was 'yes'.
- Mr. Richeson seconded and it was after a resulting vote of 3-3 that the Board realized that, due to the absence of Mr. Gergahty, there should have been only one designated Alternate vote, and both Alternates have voted.
- Upon review of previous minutes, it was determined that Mr. Muir should have been the only alternate to vote, as a result the motion to recommend approval failed by a vote of 3-2.
- B. **Text Amendment: 42-250(c)34. Multi-family Dwellings.** The Applicant has requested a Text Amendment that would allow multi-family dwellings in the BC-1 (Beach Commercial) District as a Conditional Use.

**Background**

This Text Amendment Application was tabled at the December, 2017 meeting in order to allow the Applicant to work more with Staff to develop specific site requirements for any multi-family dwellings in the BC-1 District.

- Since the December, 2017 meeting, Mr. Testerman discussed with Mr. DeLucia and the Applicant and have amended the request to include a maximum density of 10-12 units/acre. Per the request, the lot coverage setbacks for the BC-1 District would apply to family dwellings as well. (Aside: an argument could be made that the Commercial Zoning Districts by nature, have more intense use than the residential districts which could justify the lot coverage requirement or setback requirements.)
- Mr. Testerman then stated that the setback requirements in the BC-1 District are as follows: 15 foot front yard setback, 20 foot rear yard setback and 10' side yard setbacks. In the districts that multi-family dwellings are currently permitted (BR-2, BR-3, VR-3) Commercial setbacks are 25 foot front and rear and a scale of 10 to 25 feet side yard setbacks, depending on the square footage of the dwelling.

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- Mr. Testerman also stated that this Text Amendment, if approved, would allow stand-alone multi-family dwellings. Multi-family developments, such as an apartment complex, as a multi-family dwelling development are not a part of this Text Amendment request and would not be permitted in the BC-1 District.
- Mr. Testerman also provided the Board with a list of what other localities are allowing regarding multi-family dwellings in Commercial Districts:
- Duck does not allow.
- Southern Shores – Multi-family dwellings are permitted in the C, general commercial district, according to the dimensional requirements of their RS-8 multi-family residential district. They do allow an extra 10% lot coverage for multi-family dwellings in the Commercial District (40%) versus the house in the RS-8 (30%).
- Kill Devil Hills – Multi-family dwellings of three or more units per dwelling are permitted in the C, Commercial District at a density of 18 dwellings per acre. The RH, high density residential district setbacks are applied..
- Nags Head – Multi-family dwellings are permitted as a Conditional Use, provided a number of conditions are met.
- Manteo – Multi-family dwellings are permitted at a density of six dwellings per buildable acre.
- Mr. DeLucia stated that there is a need for workforce housing and that this is a perfect area and aesthetically it would fit in well with the Sea Scape environment. He also stated that initially there would have been 15 apartments and with this property the apartments could be built closer to the ground because this area is not in a flood zone.
- Limiting the density to 4 units/acre wouldn't make sense for this area and that the Developers do not want to put a commercial facility on the site and then apartments above. The density would be 10-12/acre and would be two bedroom apartments rather than three bedroom apartments and with the density being a little higher will give the Developers the option for two bedroom apartments and with the lot coverage and setbacks in the commercial zone gives the designers more opportunity to include more amenities on the site.

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- Ms. Collins then questioned the driveway connected to the blue house would remain the same or would that change due to the apartments along side and the high level of traffic that would occur and Mr. Testerman stated that it may depend on the property owner's wishes and Mr. DeLucia stated he wasn't sure for the four (4) lots to have a requirement for access and Mr. Testerman stated that it would have to be investigated further and if the would be part of the conditional use permit application, should the text amendment be approved.
- Mr. Testerman stated that the discussion for this meeting is if the Applicant/Developers would be allowed to apply to do this and if approved, then more site specific aspects would need to be looked at during the conditional use permit review.
- Mr. DeLucia, in viewing the screenshot, stated that it does look like the driveway is for the four (4) lots and Mr. Testerman stated that it could be spelled out in the subdivision plat.
- Mr. Rhoads asked if there was an easement, the lot would look different and if so, would it show the line for the easement on the plan and Mr. DeLucia stated that one driveway to get to the two (2) lots had not been looked at but the possibility that it could be worked out.
- Not included in the Staff Report is another condition where this could be handled under the Conditional Use Permit or it could be put into the Text Amendment; a requirement could include a vegetative buffer between multi-family dwellings near single-family adjacent residences.

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- And, Mr. Richeson asked if there were any other places in Town where this could be done and Mr. Testerman stated that there are not a lot of BC-1 vacant lots with enough land area to handle this type of development.
- Mr. Testerman also stated that if approved, regardless of the density, lot coverage, etc. does not mean that any vacant commercial lot in Town would have an apartment building on it and it would need to be a conditional use and anyone who wanted to apply could but these would be reviewed on a case-by-case basis and if the Text Amendment is approved, there is no guarantee that a CUP would be approved.
- Mr. Testerman stated that the Board must decide if it's commercial lot coverage and can it be included in the motion which would then state the 60% or the current residential of 30% or like Southern Shores has done, allowing 10% bonus for multi-family dwellings in the commercial district;
- Mr. Testerman stated that the setbacks in the residential district currently are 25' in the front and rear and a sliding scale of side yard setbacks of 10-25' which applies to a single-family residence and does not specify in the ordinance what the setback is for multi-family units. It also does not specify how big each dwelling unit is. The Board can decide what is designated in the BR-1 district because multi-family is not specifically addressed and the Board can come up with a different standard or agree to what is in BC-1 which is 15' front, 20' rear and 10' side and 60% lot coverage for commercial use.
- He also stated that it is already written that single-family residences are permitted in the BC-1 as an administrative conditional use and also written in the ordinance that single-family residences in the BC-1 district are bound to the BR-1 dimensional requirements, setbacks, etc.
- Mr. Richeson stated that it would need to be added in if a buffer is included and need to be put in the CUP because the buffer ordinance requires a vegetative buffer between commercial and residential use and because this is in a commercial zone it still is a residential use.

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- Mr. Richeson then asked for a motion to be made and Ms. Collins stated that she had spoken to the Kitty Hawk Fire Chief and he indicated that an additional fire hydrant would probably be needed.
- Mr. Testerman stated that this would allow people to bring the proposal forward and to request the CUP for a multi-family dwelling in the commercial district and the conditions that should be included and they would need to be included in the recommendation. The ordinance allows, as a CUP, apartments on the 2<sup>nd</sup> floor above commercial uses in the BC-1 district and there is no mention of density. The 60% lot coverage and the BC-1 setbacks will still be less intensive than if commercial use on the first floor or apartments above which is currently allowed.
- Mr. Heath then asked if the parking would be below the building and Mr. DeLucia said that would be problematic because of the fire codes. He also stated that the apartments would be between 1000-1200 sq. ft. and the architect will be laying out the plans for the parking, septic, storm water, etc.
- Mr. Richeson again asked the Board to make a motion and Mr. Rhoads made the following: ***"I recommend approval of the proposed Text Amendment to amend Section 42-250(c) adding 250(c)34, multi-family dwellings as a conditional use in the BC-1 General Beach Commercial to include 60% lot coverage, commercial setbacks, vegetative buffer and a density of 10 dwellings/acre.***
- Mr. Heath seconded and the motion was passed unanimously.

**Comments:**

- a. Chairman Richeson: He apologized for the mix-up concerning the voting of the Alternates.
- b. Planning Board Members – no comments
- c. Town Attorney – no comment
- d. Planning Director – no comment

**Adjourn:**

The January 25, 2018 Planning Board Meeting was adjourned at approximately 7:10pm.

Respectfully submitted by Patricia Merski, Recording Secretary