

Kitty Hawk Planning Board Meeting
September 27, 2018 – 6:00pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. July 19, 2018
4. Administrative Report:
 - a. Town Council Action from 8/6 and 9/4 Meeting
5. Public Comment
6. Rezoning:
 - a. 5101 Hornbeam Road. The Applicant proposed to rezone a portion of the subject parcel from Kitty Hawk Woods (KHW) to Low Density Beach Residential (BR-1).
7. Subdivision Preliminary Plat Review:
 - a. 5101 Hornbeam Road. Preliminary Plat Review. The Applicant proposed to subdivide the subject parcel into two (2) separate parcels.
8. Comments:
 - a. Chairman Richeson
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director
9. Adjourn

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

Chairman Richeson called the Kitty Hawk Planning Board Meeting to order at approximately 6:00pm on Thursday, September 27, 2018

Board Members Present:

John Richeson, Chairman; Bryan Parker, Vice-Chairman; Chuck Heath, Member; Dusty Rhoads, Member; Gary Muir, Member; Matt Spencer, Alternate, Recused himself as he represents the Applicant(s).

Absent:

James Geraghty, Member

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Staff Present:

Robert Testerman, Director, Planning & Inspections; Casey Varnell, Town Attorney.

2. Approval of Agenda:

Hearing no objections/changes/corrections to the September 27, 2018 Agenda, the Agenda was approved unanimously.

3. Approval of Minutes: July 19, 2018

Hearing no objections/changes/corrections to the July 19, 2018 Minutes, the Minutes were approved with Mr. Heath making the motion to approve and Chairman Richeson seconded and the Minutes were approved unanimously.

4. Administrative Report:

a. Town Council Action from 8/6 and 9/4 Meeting.

- August 6, 2018 Town Council Meeting – Mr. Testerman stated that the Council scheduled the last two (2) Public Hearings for the Text Amendment for the multi-family dwellings in the BC-2 and the PCD Text Amendment as well for the rezoning of the four (4) recently acquired town owned lots.
- September 4, 2018 Meeting. Mr. Testerman stated that the Text Amendment was approved and the rezoning denied. Based on these actions, Mr. Testerman and Mr. Varnell met and reviewed an article published by David Owens about illegal spot-zoning, therefore, raising some concerns that the rezoning of the four (4) properties to MS-1 may constitute an illegal spot zone and therefore, Town Council denied it.
- Mr. Testerman went on to state that the initial thought was to create an entirely new zoning district just for governmental uses and he checked this with David Owens and found that this would still be considered a spot-zone but, potentially, a legal spot-zoning. Implementing this could present some definite value to the Town but would take an enormous amount of time and work; therefore, what is being proposed is to review the official zoning map and updating it with the line on it showing where the Town owned lots would be and where these facilities are permitted use in any zoning district; thus, any further buyer or residents could do their research by reviewing the rezoning map and there would be a map that would be linked to it that will show the Town owned properties.
- This would allow anyone in doing their research would then be able to identify what zoning districts would be surrounded by them.

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- Mr. Varnell then clarified that this is indeed a big issue and that the intention was to be transparent with Putter Lane rezoning and in that instance, some residents in the Town found this hard to understand. To further clarify, Mr. Varnell stated that if the Town owns a parcel in Kitty Hawk and any Town owned or leased facility; i.e., public works, police station, etc., is what those public lots were originally required for and it can then be done as a 'matter of right' but there is no special zoning for it. Ex: It can be BR-1 or a commercial zoning; it doesn't matter if it's owned by the Town and Town owned facilities and public work infrastructure can go on the parcel.
 - Mr. Varnell went on to state that the Mayor was looking for this to be more transparent as the complaint was and people buying in a residential zone may want to buy in a strictly residential zone and if it's disguised, which was how the Mayor was feeling, that the property is owned by the Town but how is a potential resident buyer to know that they could put a fire station there or how does a potential buyer know that it's a 'matter of right' for the Town?
5. **Public Comment:** (Mr. Richeson thanked Mr. Varnell for his input)
- Mr. Richeson then asked if any member(s) of the audience would like to speak and if so, to come forward and state their name/address.
 - Mr. Richeson clarified for members of the audience that the Planning Board is strictly an 'advisory board' that makes recommendations to the Town Council and the Council in turn can either agree with the Board's recommendation(s) or deny those recommendations; therefore, the Council has the final vote.

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- Ms. Regalor, Ms. Buckner and Mr. and Mrs. Heller spoke during the Public Comment portion of the meeting.
- Ms. Regalor and Ms. Buckner have resided at 5101 The Woods Road since 1992 and the reason for their appearance at the meeting was to ask the Board to recommend denial of the rezoning application. They stated that Mr. and Mrs. Heller want to divide their land parcel so that their son can build a home and because of this, Ms. Regalor and Ms. Buckner's concern is that in order to make this a buildable lot, dozens of trees would be removed and tons of soil would be excavated and the trees surrounding the scrub serve a vital function of reducing the standing water after significant rainfalls.
- Ms. Regalor referenced Section 42-225 of the Town Code that the specific district was established to encourage development compatible with environmentally sensitive nature of The Kitty Hawk Woods to preserve the land in its natural state from destruction of vegetation without harmful effects to the stability of the soil and its resistance to erosion.
- Per Ms. Regalor, the preliminary plat review map does not show that a large portion of the proposed lot is the dune ridge and that the proposed lot sits in a flood zone that surrounds the area.
- Ms. Buckner referenced Lots 1B and A1 in that Lot 1B would be approximately 19,000 square feet and that would leave Lot A1 with 86,000 square feet and the tract of Kitty Hawk Woods lots must contain 80,000 square feet of non-wetlands and the lots must have a minimum lot setback of 200 feet which poses the question, how much of the wetlands is in back of the Heller's house and would that be in compliance at 85,000 square feet less the wetlands or would that then fall into non-compliance?
- Mr. and Mrs. Heller reside at 5101 Hornbeam Road and Mrs. Heller restated the reason for the rezoning is to have their son build a home on the lot in question. She also stated that when she and Mr. Heller built their home, they could have chosen the lot in question in or on the ridge and they chose the lot further back and that is the reason the ridge is still there is because they chose to leave it as is.

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- Mr. Heller stated that the lot was originally a large sand ridge and that what the ridge is only a small part of the ridge that is left. He also stated that all of the lots are higher than Ms. Regalor and Ms. Buckner's lot and that the water collects on that side of the ridge which begins on the Heller property.
- Mr. Heller also stated that he would have a survey done regarding the ridge and is willing to do whatever is necessary to take care in preserving the wetlands and the ridge not getting rid of the tree line that separates the two property lines.
- Hearing no further audience participation, Mr. Richeson closed the Public Comment portion of the meeting.

6. **Rezoning:**

- a. 5101 Hornbeam Road. The Applicant has proposed to rezone a portion of the subject parcel from Kitty Hawk Woods (KHW) to Low-Density Beach Residential (BR-1).

• **Proposal:**

- The subject property is proposed to be rezoned from Kitty Hawk Woods (KHW) to Low-Density Beach Residential (BR-1) in order to accommodate one new residential lot.
- The subject property, 5101 Hornbeam Road, is currently 104,863 sq. ft. (2.41 acres) in area. The Applicant has expressed a desire to subdivide a portion of the lot to carve out one new lot in order to build a house for a family member. The KHW district requires a minimum lot size of 80,000 sq. ft. The minimum lot size of the BR-1 district is 15,000 sq. ft. The proposed subdivision would allow both lots to meet the required minimum site size.
- To the north and east of the subject parcel is undeveloped land zoned KHW; the parcel to the north is owned by the State and the parcel to the east is owned by the Town. Abutting the subject parcel to the south are developed residential lots also zoned KHW. Abutting the subject parcel to the west are a number of developed residential lots zone BR-1 that front on The Woods Road.

• **Staff Analysis:**

- Current Zoning: KHW. The Kitty Hawk Woods (KHW) district allows mainly single-family residential uses. A handful of limited institutional and commercial uses are also permitted as conditional uses; i.e., churches, etc.

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- The intent of the KHW district is to encourage development that is compatible with the environmentally sensitive nature of Kitty Hawk Woods and to preserve land in a natural state where such land is considered to be a vital link in the groundwater replenishment cycle of the Outer Banks and where the destruction of natural vegetation would have a harmful effect on the stability of the soil and its resistance to erosion. The attached sections of the Zoning Code outline the permitted uses, prohibited uses and development standards for the KHW district.
- **Proposed Zoning. BR-1**
- The Beach Residential (BR-1) district allows mainly single-family residential uses. A handful of limited institutional and conditional uses are also permitted. The intent of the BR-1 district is to encourage the development of low-density residential neighborhoods in Kitty Hawk. The attached sections of the Zoning Code outline the permitted uses and development standards for the BR-1 District.
- **Proposed Development:** The Applicant is seeking to construct a single-family dwelling on a new proposed lot.
- **Land Use Plan**
- The Town of Kitty Hawk's Adopted CAMA Land Use Plan appears to designate the subject as a **Lower-Density Residential Area**. The plan provides the following description for a **Lower-Density Residential Area**: *"Residential areas should provide for the low-density development of single-family detached dwellings in an environment which preserves natural features to the extent possible and promotes stable, permanent neighborhoods."*
- Both subject parcels and the areas zoned BR-1 on The Woods Road are both listed as lower-density areas in the Land Use Plan.
- Mr. Testerman stated that a line is on the plat that indicates the wetlands lot not shown maybe prudent to get the wetlands line shown to make sure of the square footage of the wetlands area, as the Kitty Hawk Woods district requires 80,000 sq. ft. of nonwetland area.
- He went on to state that there are two sides to consider: one – this may not seem like much of a big deal to carve out a lot of under 19,000 sq. ft if there is a lot of the conservation area left over and 19,000 sq. ft. may not be that detrimental to the entire Kitty Hawk Woods.
- The other to consider: The Kitty Hawk Woods district was classified the way it is for a reason as a conservation and preservation type district. So, the question is; would the Planning Board and Town Council want get into the habit of cutting off pieces here and there, but, this certainly doesn't necessarily set a precedent and this wouldn't have to approve another such request that could come before the Board in the future.

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- Mr. Parker stated that the Board should make sure what exactly is being proposed and if actually possible, before the Board approves or disapproves; need for more clarification.
 - Mr. Varnell stated that there are two ways to handle this proposal: table and return with a plat denoting the wetlands line and making sure we are in compliance with the 80,000 sq. ft. requirement.
 - The other is for the Board to give a recommendation subject to the performance of the survey and by the time it goes to the Town Council because if it doesn't comply, it fails and if it does comply the recommendation would stand; again, subject to compliance.
 - Mr. Testerman agreed and stated that pushing it back a month before it come before the Board and then it would probably be not until a December, 2018 or January, 2019 hearing and if the motion was to approve, contingent on the survey, showing that there are enough wetlands left over in the parcel.
 - Mr. Parker asked of Mr. Heller if they were in a hurry to have this resolved and Mr. Heller stated that they just want to plan as far ahead as possible.
 - Mr. Richeson asked if this should be tabled and Mr. Parker stated that he felt it be appropriate to do so..
 - Mr. Richeson asked for a motion and Mr. Varnell stated that the Board had to 'make a purpose' to table this and that the motion/purpose could combine #6 and #7, as #7 is contingent on the approval of #6.
 - Mr. Richeson made the following: "I make a motion that the Planning Board table Item 6a, the rezoning of 5101 Hornbeam Road and Item 7a, subdivision preliminary plat review until the next Planning Board Meeting in order to have a proper survey of the property to ensure compliance with the Town's Zoning Ordinance regarding square footage and wetlands." Mr. Parker seconded and the motion was passed unanimously.
7. **Comments:**
- a. Chairman Richeson – none
 - b. Planning Board Members – none
 - c. Town Attorney – none
 - d. Planning Director – none
8. **Adjourn:**
Hearing no further comments, Mr. Richeson adjourned the September 27, 2018 Planning Board Meeting at approximately 6:30pm.

Respectfully submitted by Patricia Merski, Recording Secretary