

Kitty Hawk Planning Board Meeting
November 14, 2019 – 6:00pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. September 19, 2019
4. Administrative Report:
 - a. Town Council Action – November 4, 2019 Meeting
5. Public Comment
6. Text Amendment:
 - a. 5101Hornbeam Road. The Applicant has proposed to rezone the subject parcel from Kitty Hawk Woods (KHW) to Low Density Beach Residential (BR-1).
7. Comments:
 - a. Chairman Richeson
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director
8. Adjourn

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

Chairman Richeson called the November 14, 2019 Kitty Hawk Planning Board to order at approximately 6:00pm.

Board Members Present:

John Richeson, Chairman; Chuck Heath, Member; Dusty Rhoads, Member; Jim Geraghty, Member; Gary Muir, Alternate; Robert Testerman, Planning Director; Casey Varnell, Town Attorney

Absent:

Matt Spencer, Alternate. Mr. Spencer recused himself as he is the Attorney representing the Applicants.. Due to Mr. Spencer's absence, Alternate, Mr. Muir will vote in his absence

2. **Approval of Agenda:**

Hearing no objections/changes/corrections to the November 14, 2019 Agenda, the Agenda was approved unanimously.

3. **Approval of Minutes:**

Hearing no objections/changes/corrections to the September 19, 2019 Meeting Minutes, the Minutes were approved with Mr. Geraghty making the motion to approve and Mr. Richeson seconded and the Minutes were approved unanimously.

4. **Administrative Report**

a. Town Council Action – November 4, 2019

- Mr. Testerman stated that the Council approved the Text Amendment on the minimum roof pitch. The Council eliminated the requirement roof pitch for one and two family homes but maintained the roof pitch for multi-family homes.

5. **Public Comment:**

- Mr. Richeson asked if any member(s) of the audience would like to speak, and if so, to come forward and state their name/address.
- No members of the audience approached to address the Board and Mr. Richeson explained that the purpose of the Board is strictly advisory and the Board could approve or deny a proposal, but the Council may not always agree with the Board and either deny or approve what the Board has recommended.

6. **Text Amendment:**

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

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- Mr. Testerman stated, approximately a year ago, this proposal was before the Board and at that time it was to portion part of the Applicant's property for a family member to construct a house.
- Mr. Testerman stated that the current zoning of Kitty Hawk Woods was created as a conservation zoning district and the minimum lot size is 80,000 sf of non-wetlands area and the previous proposal, after carving out the secondary lot did not leave enough non-wetlands area and that would made it non-compliant to the Kitty Hawk District.
- Mr. Testerman has been in contact with the Applicant over the past year in an effort to find a possible resolution and the only solution would be for the Applicant to amend their original request.
- Per the Staff Report, the minimum size in the BR-1 District is 15,000 sf and, therefore, the Applicant would be able to carve out the lot and still have the original parcel be compliant, if the entire parcel were rezoned.
- The current zoning in the KHW District allows mainly for single-family residential uses and as handful of limited institutional and commercial uses that are also permitted as conditional uses.
- The intent of the KHW District is to encourage development that is compatible with the environmentally sensitivity of KHWs and to preserve land in a natural state where such land is considered to be a vital link in the groundwater replenishment cycle state where such land is considered a vital link in the groundwater replenishment cycle of the Outer Banks where the destruction of natural vegetation would have a harmful effect on the stability of the soil and its resistance to erosion.
- Mr. Testerman referenced the Zoning Code attachment that outlines 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 commercial uses are also permitted as conditional uses. The intent of the BR-1 District is to encourage the development of low-density residential neighborhoods in Kitty Hawk. The BR-1 District has a minimum lot size of 15,000sf non-wetlands area and a maximum density of four (4) dwellings per acre. It should be noted that while the Applicant desires to create one (1) new lot, it built out a total of five (5) to six (6) lots could potentially be achieved, depending on wetlands and roadway access. M. Testerman referenced the sections of the Zoning Code outlining the permitted uses, prohibited uses and development standards for the BR-1 District.
- The Applicants, Mr. and Mrs. Heller approached the podium and Ms. Heller stated the only objections they have encountered earlier were the neighbors in the front who were worried that the Applicants would cut into the ridge. The Applicants have since spoken to those neighbors and all have come to an agreement and do not have a problem with the proposed zoning.
- Ms. Heller stated that they have been good stewards of the land and that, prior, the lot was used for a dumping ground which they have since cleaned out where more nature preserve was revealed. She reiterated that the reasoning for the rezoning is so they can build a house for a family member at the front of the lot and would not be touching the backside of the lot which is connected to The Reserve.
- Ms. Heller also stated that in the front of the property to one side is the utility that belongs to the Department of Justice and the other end of the lot is connected to the neighbors' lot in front

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- and that the Applicants feel that the building of the house would not hinder any views or present any obstructions from any of the neighbor's properties.
- Mr. Richeson asked, that, if this gets approved,, what would prohibit someone else from doing the same in the same area and Mr. Testerman stated that nothing would prohibit anyone from requesting it and that any future Applicant(s) would have to follow the same procedures and come before the Board and Council.
- Mr. Richeson asked again if this would set a precedent and Mr. Varnell stated no, not by rule of definition and that no one is bound by this decision and in making further decisions on the property to the south, the factors would be the same.
- Mr. Geraghty stated that there has to be a 75' frontage if the lot is 200 feet wide and Mr. Testerman stated that 50' of frontage would be at the boundary line, and 75' wide at the setback.
- Mr. Heller stated that the property that faces the Woods Preserve and all the other lots there are wetlands and his understanding is that the property is not subject to the same footage and that they have twice as much wetlands as the other lots have and the frontage on the road is a drive around on the street.
- Mr. Geraghty went on to state that the road frontage of 200' would give room to have a 50' wide at the road and a 75' wide lot.
- Mr. Richeson asked, hypothetically, 60 years from now the current family sells the property and the new owners want to subdivide the property into four(4) lots if zoned BR-1?
- Mr. Geraghty stated that he feels that the initial proposal a year ago seemed a more reasonable solution then the new proposed Text Amendment. He also stated that the subject lot adjoins BR-1 in the front at the end of the cul-de-sac and they could have kept the 80,000sf of the lot space would make more sense.
- Mr. Richeson then asked what is 'not' a viable option now and Mr. Testerman stated that when the square footage was carved out for the proposed new lot, the parent parcel then wouldn't have the minimum required 80,00sf of non-wetlands for the KHW district.
- Mr. Richeson that years from now the lot could become a four (4) lot subdivision and Mr. Varnell stated that could be a possibility if the property cooperated and the natural elements allow it and Mr. Geraghty stated, again, that the first option makes more sense and if the wetlands concerns are holding this from approval, then he has a problem with it.
- Ms. Heller stated that they are currently not able to determine how much of their property is wetlands but at the back of the lot there is a big hill.
- Mr. Geraghty stated that if the first plan is an option the Applicants can have a survey done and Ms. Heller stated that they feel that much of the front lot is buildable and she feels there should be a simpler option but does understand about the rules and regulations and that they are connected to two (2) properties that fall into the 80,000sf and connected only to one side that falls under the ordinance for The Preserve.
- Mr. Richeson stated that anywhere else there would be no problem but the sensitive nature being the KHWs which is set aside as low density in a conservation area. He then asked Mr. Varnell what the legal aspect and Mr. Varnell stated the only issues to be considered is the 'infamous spot zoning' which most time is misconstrued or to set parameters where the law does not allow a particular lot

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in a particular district to be able to do things that another lot in the same district that can't be done. It comes down to the totality of the circumstances and the decision comes down to whether or not such a re-zoning is consistent with the Land Use Plan. Further, if the Town has a rational basis in deciding to rezone because it's in conformity; back-up to the BR-1 District which is then a factor in the Applicant's favor and that the land is not being disrupted by the Land Use Plan, then, arguably, it's not 'spot zoning.'

- Mr. Richeson stated that it is inconsistent and Mr. Varnell stated that it is a decision the Board has to make and that KHW has a completely different set of zoning requirements for building on a lot than BR-1 does and BR-1's restrictions are considerably less and does it then conflict with the Land Use Plan?
- The Land Use Plan is going to come into 'spot zoning' and the Supreme Court has a set of questions regarding the criteria; basically, is it consistent with the Land Use Plan for that particular district or area?
 - Mr. Testerman stated there needs to be verification of the square footage of the wetlands that are on the lot before proceeding.
 - Mr. Richeson reiterated the choices – vote or the Applicants need to do more research in having the wetlands delineated and then come back before the Board and Mr. Varnell stated that he's not sure that the delineation would affect or is necessary for this proposal and Mr. Testerman that he has technically been working on the original and that if the Board wants to table this proposal until verification of the square footage comes back that that part of the lot can be carved out and then it could be amended back to the original proposal.
 - Mr. Richeson made the recommendation to table until the verification comes back and Mr. Heath seconded and the Applicants agreed.

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 November 14, 2019 Planning Board Meeting at approximately 6:30pm.

Respectfully submitted by Patricia Merski, Recording Secretary