

Kitty Hawk Planning Board Meeting
July 16, 2020 – 6:00pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. June 11, 2020
4. Administrative Report:
 - a. Town Council Meeting Action – July 7, 2020
5. Public Comment
6. Text Amendment:
 - a. Building Height Measurement/Fill Requirements
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 July 16, 2020 Kitty Hawk Planning Board Meeting to order at approximately 6:00pm.

Board Members Present:

John Richeson, Chairman; Bryan Parker, Vice-Chairman; Dusty Rhoads, Member; Jim Geraghty, Member; Chuck Heath, Member; Casey Varnell, Town Attorney; Rob Testerman, Planning Director; Gary Muir, Alternate.

Absent:

Matt Spencer, Alternate

2. **Approval of Agenda:**

Hearing no objections/changes/corrections to the July 16, 2020 Agenda, the Agenda was approved unanimously.

3. **Approval of Minutes:**

Hearing no objections/changes/corrections to the June 11, 2020 Meeting Minutes, the Minutes were approved with Mr. Geraghty making the motion to approve the Minutes and Mr. Richeson seconded and the Minutes were approved unanimously.

4. **Administrative Report:**

Mr. Testerman stated that the Council unanimously approved the final subdivision pilot for 3.75 acres of land to be divided into three (3) lots at 4236 Carrenda Lane.

Kitty Hawk Planning Board
Meeting Minutes
July 16, 2020
-2-

5. **Public Comment:**

- Mr. Richeson asked if any member(s) of the audience would like to speak before the Board, and if so, to come forward and state their name/address.
- No member(s) of the audience came forward to address the Board. Mr. Richeson explained the purpose of the Board is strictly an “advisory” Board and that the Board may approve an item and the Council could deny or approve. This item was closed.

6. **Text Amendment:**

- a. Building Height Measurement/Fill Requirements:
Mr. Testerman stated that the proposed Text Amendment would make two (2) changes: (1) **Definition – 42-1 Ground Elevation.** The existing language currently reads: ***Ground Elevation means elevation of the undisturbed land eliminates that language and the new language replaces it with “final grade” computed at the perimeter of the proposed building’s foundation of piling location.***
 - b. **Definition – 12-141 – Land Disturbance.** The proposed language eliminates: ~~***An Owner or possessor may make reasonable use of his land, but;***~~ to be replaced with **Fill shall not be permitted to exceed the established Regulatory Flood Protection Elevation (RFPE); the fill height required by the Dare County Environmental Health Department for septic purposes of six (6) inches above the adjacent road surface, whichever is highest.**
 - c. **Interference** with the flow of surface water shall not be unreasonable so as to cause harm and substantial damage to other property or public rights-of-way. Unreasonable use and substantial damage may subject the Owner or Possessor to a civil action for injunctive relief and damages. (This section is currently in the Town Ordinance)
- Mr. Testerman refreshed the Board on the current procedure, that when an Application comes in for a new home, the Applicant is required to show the ‘original grade’ of the four (4) corners of the proposed house and then an average of those four (4) shots, the 35’ height maximum is measured from that average grade, before any grading or filling activities have taken place and the proposal would change that to be 35’ from the finished grade.
 - Mr. Testerman reminded the Board, that in March 2020, the Town adopted the new Flood Insurance Rate Maps along with a new Flood Damage Prevention Ordinance. Portions of the Ordinance had an unanticipated effect on building height. Currently, the Town’s maximum building height is 35’, measured from the average **original** grade, except in the BH-2 District.
 - In the BH-2 District if the ground elevation is lower than Base Flood Elevation (BFE), the building height is measured from either the BFE or finished grade; whichever is lower. Also, as Conditional Use, hotels in the BH-2 District can be up to 76’ in height, measured either from BFE of finished grade.

Kitty Hawk Planning Board
Meeting Minutes
July 16, 2020

-3-

- With the previous Flood Damage Prevention Ordinance, the reference level (point that had to be elevated to or above the Regulatory Flood Protection Elevation) was the top of the bottom floor of living space. This meant that the floor system could be below RFPE as long as the top of the finished floor met the requirement.
- With the Ordinance adopted in March, 2020, we now use the bottom of the lowest floor as the reference level, meaning that the bottom of the floor system must now be elevated to or above RFPE. This, in combination with the existing maximum building height and measurement process effectively reduces your functional building height by a foot or more.
- Parcels that are within the AO Flood Zone are impacted to a greater degree. Regardless of the ground elevation in the AO Zone, the RFPE is three (3) feet above the highest adjacent grade to the proposed structure.
- So, if your existing grade is nine (9') **NAVD** (North American Vertical Datum), the bottom of your lowest floor must be at twelve (12') NAVD minimum; if your existing grade is twelve (12') NAVD, the bottom of your lowest floor must be at a fifteen (15') minimum.
- In this area, there are lots that, under the 2006 Maps/Ordinance, and due to the existing grade being higher than the RFPE, a house could have been built on grade; however, now in the AO Zone, the bottom of their lowest floor must be three (3') above grade, putting the top of the bottom floor approximately four (4') above grade.
- Therefore, again, the first floor of living space is getting pushed upward but the maximum building height, measured from original grade, remains the same resulting in reduced functional building height.
- There have been various Applications to increase maximum building height in the past which have been denied for various reasons; but, the 35' height was felt to be the appropriate height for the Town of Kitty Hawk. Currently, the difference is that another of the Town's Ordinances is impacting the ability to fit particular houses between the RFPE and the maximum building height.
- As the Ordinance is written, the Town does not regulate the amount of fill that is permitted on a lot; however, they are capped to a degree because of the building height being measured from the original grade. Therefore, it is Staff's opinion that, should the Text Amendment to measure building height from finished grade to be approved, that the proposed limit on fill should also be included to prevent the Ordinance from being abused.
- Mr. Testerman stated, that in 2009 Council discussed a regulating fill requirement, but ultimately adopted the existing language that is in Sec. 12-141 because Council, at the time, felt that the Town should not be policing how much fill property owners want to put on their lot.

Kitty Hawk Planning Board
Meeting Minutes
July 16, 2020

-4-

- Mr. Testerman also stated that the language added in 2009 for Sec. 12-141 is the Council's preference to not have Staff policing stormwater issues of this type.
- Mr. Testerman noted that if Staff started to require engineered plans for single-family residences and, the Town does not have an engineer on Staff and therefore, each plan would have to be outsourced which would add costs in addition to extended wait times for the permit approval process. Therefore, it was decided to leave out any specific stormwater management requirements in this proposal for single-family homes.
- Issues with the procedure is the building height from an average original grade are not solely linked to the Flood Damage Prevention Ordinance. The Town recently permitted a single-family home that was on a lot that had a deep hole in the center of the lot with ridges on three (3) sides of road; the road was higher than the lot. This site was essentially designed to have the home as far to one side on the lot as possible to keep the home as near to the street level as possible.
- But, as Mr. Testerman stated, if that home had been built in the center of the lot where the hole existed, several feet of fill would have been required to bring the site to street level and would have limited the design possibilities for that home which would have shrunk the building by several feet.
- Mr. Testerman also provided the Board with a list of Towns in Dare County and how they measure building height.
- Mr. Testerman ended his presentation and asked for questions from the Board or Mr. Overton.
- Mr. Richeson asked if a house is lower than the road, the driveway would channel water down to the house even though the house is well above base flood and Mr. Testerman stated that one of the issues is the Flood Maps where they do not account for 'rainwater' just flood water from the ocean or from the sound.
- Mr. Richeson asked what the change in the Ordinance allows fill but also sets limits where fill shall not be permitted to exceed the established height per an RFPE elevation, which is to say, someone can bring in enough fill to make the house conform to the RFPE and then the 35' is measured from there and Mr. Testerman stated 'yes' and went on to say that the three (3) limits that are listed are: (1) that enough fill can be brought in to reach the RFPE; (2) the fill required by Dare County Environmental Health, for septic purposes, or, (3) 6" above the adjacent surface, whichever is the higher of the three options.

Kitty Hawk Planning Board
Meeting Minutes
July 16, 2020
-5-

- Mr. Testerman finished his presentation and asked the Board for any questions to him or Mr. Overton, the Applicant.
- Mr. Richeson wanted clarification on 35' is 35' and that height is not changing, it's basically 18" and to bring in enough fill to conform to the RFPE and then the 35' is measured from there so that there wouldn't be another Jockey Ridge II and Mr. Testerman stated that the Proposal would allow 35' regardless of the fill being brought in and in the current Ordinance, 35' is the original grade and at a certain point if someone wants to bring in four (4') if fill they can and would still allow for a 35' house no matter what the grade is. He also stated that in the AO Zone it's four (4') and in some rare cases it keeps 35' from the original grade and in some areas, essentially this would prohibit three (3) story houses to be built.
- Mr. Heath asked about the fill height that is required by the Dare County Board of Health where they can require 36' in fill and 30' on the fill pad.
- Mr. Parker stated that he is currently doing a job requiring 30" which is 24" plus 6" and the New Brunswick System is requiring 30".
- Mr. Testerman stated that in Kitty Hawk Landing the RFPE is 8' in NAVD and a lot of the existing ground elevations are 2-3-1/2' NAVD and with an RFPE it could be 4-5' of fill and currently there is no limit on fills but is still bound by the interference of the flood water not causing harm to public property and rights-of-way.
- Mr. Rhoads asked if there is a lot of fills wouldn't swails be required to the runoff doesn't go into a neighbor's lot and Mr. Testerman stated that since the Storm Water Management Plan is not included in the Proposal nor does an Ordinance require it, we definitely wouldn't want to have a situation where a neighbor could sue and be subject to civil litigation.
- Mr. Geraghty stated that on Worthington Lane he has put in a four (4') fill and on the north side a retention pond was constructed and everything drains into the pond and that he feels that this Text Amendment would make it more enforceable than what currently exists and Mr. Richeson stated that the Text Amendment puts a limit on fill.
- Mr. Testerman stated that if the Board found it appropriate to add back in a Stormwater Management Plan that would allow a certain amount of fill on site.

Kitty Hawk Planning Board
Meeting Minutes
July 16, 2020
-7-

- Mr. Geraghty asked if Mr. Overton would like to add to the discussion and Mr. Overton stated that requiring fill amounts fills the parameters that do not exist today. Mr. Overton also stated that in regards to Stormwater Management, if the building is 25' above the fill or the existing ground or 35', it's still the same amount of water that will fall.
- Mr. Overton also stated that the flood maps would create more incentive to regulatory standards that would bring people up and get them out of the water. There could also be some that would not want to do that but that would be giving up building height on their lot; but, now we're saying that the Town wants you to build your lot up which would allow property owners to maintain the same building height that exists; virtually.
- Mr. Richeson, hearing no further questions, asked for a Member of the Board to make a motion and Mr. Geraghty made the following: ***"I recommend approval of the proposed Text Amendment to Section 42-1, establishing 'final grade' as the definition of ground elevation and amending Section 12-141, limiting fill amounts on any give lot. The Board has found this proposal to be consistent with the Town's Adopted Land Use Plan.*** Mr. Richeson seconded and the motion was approved unanimously.

7. **Comments:**

- a. Chairman Richeson – none, other than to thank the Member of the Board for their input on this Proposal.
 - b. Planning Board Members – none
 - c. Town Attorney – none
 - d. Planning Director – none
8. **Adjourn:** Hearing no further comments, Mr. Richeson adjourned the July 16, 2020 Planning Board Meeting at approximately 6:35pm.

Respectfully submitted by Patricia Merski, Recording Secretary