

Kitty Hawk Planning Board Meeting  
February 11, 2021 – 6:00pm  
Kitty Hawk Municipal Building

**AGENDA**

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
  - a. January 14, 2021
4. Public Comment
5. Text Amendment:
  - a. Sec. 42-502: Temporary Uses; Sec. 18-11 Outdoor events and gatherings. Specifies requirements for signs associated with temporary uses and outdoor gatherings.
6. Text Amendment:
  - a. NCGS Chapter 160D
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 February 11, 2021 Kitty Hawk Planning Board Meeting to order at approximately 6:00pm.

**Board Members Present:**

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

2. **Approval of Agenda:**

Hearing no objections/changes/corrections to the February 11, 2021 Agenda, the Agenda was approved unanimously.

3. **Approval of Minutes:**

Hearing no objections/changes/corrections to the January 14, 2021 Minutes, the Minutes were approved with Mr. Parker making the motion to approve and Mr. Richeson seconded and the Minutes were approved unanimously.

4. **Public Comment:**

There were not audience members in attendance; therefore, Mr. Richeson closed this portion of the Meeting.

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5. **Text Amendment:**

- a. Sec. 42-502 – Temporary Uses. Sec 18-11 – Outdoor Events and Gatherings. Specifies requirements for signs associated with temporary uses and outdoor gatherings.
- Mr. Testerman began by stating that the Planning Board is required to review and make recommendations on changes to Chapters 38-42 and while the Board is not required to review other sections of Town Code, Sec. 18 included in the Staff Report as it pertains to 42-502.
  - The proposed Text Amendment would clarify and set specific regulations regarding temporary signage permitted and approved for temporary uses regarding outdoor gatherings and events.
  - Sec. 42-5023 relates to Christmas tree sales and Sub. Sec. F states that one banner up to 36 feet; one (1) small sign up to 16 sq. ft for every 25 feet of road frontage with a maximum of four (4) signs/lot and to clarify further, no signs allowed by this Section shall be placed in the right-of-way. This same language is also inserted for the temporary sales of lawn and garden supplies.
  - **Outdoor Events and Gatherings** section states that an Event with more than one Vendor can have up to a maximum of 250 sq. ft of signage and each Vendor may have a banner displayed at the Point of Sales up to a maximum of 36 sq. ft. Each Vendor may have two (2) small signs displayed at the Point of Sales up to a maximum of 16 sq. ft each.
  - An Event may also have small signs up to 16 sq. ft for every 25 feet of road frontage with a maximum of four (4) signs/lot.
  - An Outdoor Gathering with one Vendor may have one banner up to 36 sq. ft and small signs up to 16 sq. ft for every 25 feet of road frontage with a maximum of four (4) signs/lot.
  - Temporary signs shall be displayed ONLY during the actual time period of the event and must be removed at the end of each day; also, if the Event has multiple Vendors, temporary signage shall not be placed in a manner to impede the ingress and egress of pedestrians or emergency vehicles within the Event area.
  - And, no signs shall be placed in the right-of-way.
  - Mr. Testerman stated that this was brought to the attention of the Town during the past Christmas season with a number of calls concerning stating that the number and location of temporary signs were getting out of hand due to the placement of small signs near roads and aligning the entire lot where the trees were for sale.
  - Mr. Testerman also stated that there have not been any specific issues with temporary signage sales regarding lawn and garden supplies but to keep the regulations consistent, this text amendment would apply to both.

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- Mr. Richeson asked if there were any questions from the Members and since there were none, Mr. Richeson asked for a motion to be made and Mr. Richeson made the following: ***“I recommend approval of the proposed Text Amendments to Section 42-502 and Section 18-11, setting specific regulations and limitations for temporary signage associated with temporary uses and outdoor gatherings and events. The Board has found this proposal to be consistent with the Town’s Adopted Land Use Plan.”***
- Mr. Rhoads seconded the motion and the recommendation was passed unanimously.
  6. **Text Amendment:**
    - a. NCGS Chapter 160D
      - Mr. Testerman stated that the attachments that the Board received are excerpts from Chapter 38 Subdivisions, Chapter 4 Zoning Articles I, II, III, IV, V & VI
      - At the January 2021 Board Meeting, Mr. Testerman gave a brief overview of 160D and in 2019 legislation was adopted that created the new Chapter 160D of the NC General Statutes.
      - Under the new Chapter 160D, current City and County enabling statutes from Chapters 153A and 160A are consolidated into a single Chapter and also includes related statutes that were previously spread throughout the General Statutes.
      - Mr. Testerman stated that every Town in the State must go thru their zoning and subdivision ordinances to make them compliant with what is stated in 160D. The Ordinances must be amended by July 1, 2021.
      - Also, at January’s 2021 meeting, a checklist was passed out that the UNC School of Government put together that was helpful in putting the processes together for all the changes that had to be made and the checklist is being submitted to the Town Council.

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- He also stated that most of the changes are being reviewed referencing 160A which will be changed to 160D.
- Sec. 38-6 has been updated to be consistent with 160D that outlines ‘that land cannot be subdivided or sold by use of a plat showing a subdivision prior to the subdivision being properly approved and recorded’
- Sec. 38-82(a)4. This section had the most changes of what is currently the Section for “Incomplete Performance”. The language was replaced with language for 160D for “Performance Guarantee”.
- Chapter 42, Article 1: Definitions were added: dwelling, which is defined as a building that contains one or two dwelling units used or intended by design to be used or rented, leased or hired out to be occupied for living purposes.
- Manufactured homes: For consistency with the language for 160D, the definition for mobile homes now falls under the new definition for ‘manufactured homes’. The mobile home park definition was changed to ‘manufactured home park’.
- 16D allows minor commercial site plan amendments to be reviewed and approved administratively. The current code does not define explicitly what a ‘minor modification’ is and 160D states that the Town can continue to do minor site plan amendments administratively but the Ordinance has to define what constitutes a ‘minor site plan’. A ‘minor modification’ to an approved commercial site plan or special use permit that does not change the material facts or substances upon which the Council has based its original approval, explicitly including the modification of use or density to a site plan shall include changes to approved lot coverages or building sizes not to exceed 15 % of the originally approved lot coverage or building size and the lot coverage shall not exceed the maximum allowed by the Zoning District.
- A ‘major modification’ is a modification to an approved commercial site plan or condition cited by Council rendering final approval to the Application which includes, but not limited to, relocation of structural elements or open spaces; changes in lot coverage or building sizes greater than 15% of which was originally approved and changes in specific changes of approval.
- Added definition for a sleeping unit which is defined as a room where people sleep and can also include permanent provisions for living, eating and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.
- Special Use Permits: A Permit is issued to authorize development or land uses in a particular Zoning District upon presentation of competent material and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards.

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- The term, “Special Use Permits” includes permits previously referred to as “conditional use permits” or “special exceptions.” Mr. Testerman stated that once approved, there will no longer be “conditional use permits” but will now be “special use permits”
- Article II: Administration & Enforcement: All references to 160A are updated to the relevant section of 160D.
- 42-40-Amendments: Updated advertisement requirements for zoning text and map amendments. Added language allowing Town Council to act on a Zoning Amendment without the recommendation from the Planning Board if that recommendation is not received within 30 days of referral of the Amendment to the Board. (i.e., if an Amendment was applied for and there are some pressing circumstances where the Board tabled the Amendment, Council would then be able to intervene.
- 42-40 Amendments: Adds language requiring that the Planning Board advises whether proposed Amendments are consistent with the Approved Land Use Plan and requires that statement in a written recommendation to the Governing Board. (Mr. Testerman stated that this requirement has been in place in state code and is being added to the Town Code and has been included in all the motions that have been passed to the Town Council.)
- 42-69: Adds language clarifying that no development can proceed without proper approvals and that the Applications for development can be made by the Landowner, Lessee, person holding an option or contract to purchase the land or an authorized agent of the Landowner. (This language will be moved from it’s current section to Sec. 42-100(e).)
- 42-73(b): Appeals: Clarifies that notice by first-class mail shall be deemed received on the third business day after mailing.
- 42-95: Creates new Section 42-95 which codifies what are deemed Conflicts of Interest for the Town Council, appointed Boards and Administrative Staff; consistent with those conflicts defined in 160D.
- 42-98: This becomes Sec. 42-100 and changes all references of “Conditional Use Permits” to “Special Use Permits.”
- 42-99: This becomes Sec. 42-100 that changes all references of “Conditional Use Permits” to “Special Use Permits.”
- 42-100(b)10. This describes the “Minor Modifications” to “Special Use Permits” that are permitted to be approved administratively.
- 42-101: This creates the new Sec. 42-101 to describe site-specific vested rights.

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- Mr. Testerman stated that at the January, 2021 meeting Mr. Richeson asked for clarify on the definition of “Conflict of Interest” and:
- 42-95: Conflicts of Interest. A Governing Board Member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact on the Member. A Governing Board Member shall not vote on any Zoning Amendment if the Landowner of the property subject to a rezoning petition or the Applicant for a Text Amendment is a person with whom the Member has a close familial, business or other associated relationship.
- Appointed Boards: Members of Appointed Boards shall not vote on any advisory or legislative decision regarding a developmental regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact on the Member. An Appointed Board Member shall not vote on any Zoning Amendment if the Landowner of the property subject to a rezoning petition or the Applicant for a Text Amendment is a person with whom the Member has a close familial, business or other associated relationship. (This language also applies to any members of the Administrative Staff.)
- Article III. Zoning Districts Generally; Zoning Map: A Zoning Map as referenced in 160A has been updated and Sec. 42-193 updates a reference from “Conditional Use Permit” to “Special Use Permit.”
- Sec. 42-275: VR-3 High Density Residential Village District: This updates all references from “mobile homes” to “manufactured homes.” Strikes a portion of the language that said, “only those mobile homes constructed after July 13, 1994 can be installed in the Town and only if those mobile homes are being relocated from another location within the County. The July, 1994 date refers to the wind ‘red’ zone for ‘manufactured homes’ or referred to as ‘mobile homes.’
- 42-275(c)8: Updates “manufactured’ home parks under the provisions of Article IV, Division of this chapter.
- Article V. Special Districts, PUDs, Overlay Districts, Etc. This references 160A updated to the relevant section of 160D throughout the article.
- Article VI. Supplemental Regulations: This references 160A updated to the relevant section of 160D throughout the article.
- Also updates references of ‘conditional use permits’ to ‘special use permits’ throughout the article and updates references ‘mobile homes’ to ‘manufactured homes.’
- Sec. 42-101 – Site Specific Vested Rights: Kitty Hawk already abides by Site Specific Vested Rights and the State Legislature wording will be incorporated into the Town Code.
- (As an aside: Mr. Varnell stated that all of these revisions serve a purpose with more definitive standards across municipalities.)

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- With no further questions from the Board, Mr. Richeson asked for a motion to be made and Mr. Testerman clarified that 160D does not replace 153A and 160A and only replaces the enabling statutes for development and ensures that each municipality has to have a comprehensive plan and future 'landing plan' that is reasonably maintained and in clarifying 'reasonably maintained, means a 5-10 year timeframe that the Town's CAMA Use Plan can act as the Town's Comprehensive Plan.
  - A motion was then made by Mr. Geraghty: ***"I recommend approval of the proposed Text Amendments to Chapters 38 and 42, making the Subdivision and Zoning Ordinances consistent with NCGS 160D. The Board has found this proposal to be consistent with the Town's Adopted Land Use Plan."*** Mr. Rhoades seconded and the motion was approved unanimously.
7. **Comments:**
- a. Chairman Richeson
  - b. Planning Board Members
  - c. Town Attorney
  - d. Planning Director
- There were no further questions/comments from the Board Members
8. **Adjourn:**
- Mr. Richeson adjourned the February 11, 2021 Planning Board Meeting at approximately 6:40pm.

Respectfully submitted by Patricia Merski, Recording Secretary