

Kitty Hawk Planning Board Meeting
May 27, 2021 – 6:00pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. February 11, 2021
4. Administrative Report
 - a. Town Council Action
5. Public Comment
6. Subdivision Variance:
 - a. Southern Woods Phase I, Hornbeam Road. Applicant has requested a Subdivision Variance to create a buildable lot from a parcel smaller than minimum required for zoning district.
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 May 27, 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; Matt Spencer, Alternate; Rob Testerman, Planning Director; Casey Varnell, Town Attorney.

Gary Muir, Alternate, passed away a few months ago and the Board thanked him for his service throughout the years.

2. **Approval of Agenda**

Hearing no objections/changes/corrections to the May 27, 2021 Agenda, the Agenda was approved unanimously.

3. **Approval of Minutes**

Hearing no objections/changes/corrections to the February 11, 2021 Minutes, the Minutes were approved with Mr. Parker making the motion to approve and Mr. Richeson seconded and the Minutes were approved unanimously.

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4. **Administrative Report**

- Mr. Testerman stated that the Town Council approved the Text Amendment for the temporary signage associated with outdoor gatherings and the Text Amendment for the Zoning Ordinance of Chapter 160D was also approved.

5. **Public Comment**

- Mr. Richeson stated that this was where on the Agenda where anyone in the audience may come forward to make a public comment and he also reiterated that the Planning Board is an 'advisory board' in that, the Board may recommend approval of an agenda item, but the Town Council may not agree and not approve the Board's recommendation.
- At this time, Ms. Judith Fisher, residing at 5033 The Woods Road came forward to address the Board. Ms. Fisher stated that she became aware of the Agenda item to be presented at tonight's meeting concerning the Subdivision Variance that Mr. and Mrs. Skibo are applying for where the property in question is behind Ms. Fisher's property and Ms. Fisher was not aware that that property was for sale and if she had known, she would have purchased it.
- Mr. and Mrs. Skibo purchased the property behind Ms. Fisher with the intent to build a one bedroom, one bath flat top dwelling.
- Ms. Fisher stated that when she purchased her property some 30+ years ago, she was under the impression that the property in question was a 'buffer' and therefore, no one could build behind her and that there is not a lot of property between her property and Hornbeam Road because her house is between that property at the widest part.
- Ms. Fisher then stated that she is against the proposed Variance because she doesn't want to see a house or a possible Air BNB on that lot and that her house would be next to the new house.
- Ms. Fisher stated that she moved to Wood Road to be near her family and wanted to live in the woods and feels that if the Variance is approved, the aesthetics would be taken away and the aforementioned house would be built behind her property because there is more room there.

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- At the end of Ms. Fisher’s comments and no further speakers came forward, Mr. Richeson concluded the Public Comment portion of the meeting.

6. Subdivision Variance

- a. Southern Woods Road Phase I, Hornbeam Road. Applicant has requested a Subdivision Variance to create a buildable lot from a parcel smaller than minimum required for the zoning district.
 - Mr. Testerman proceeded to present the proposed Variance to the Board.
 - 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 Applicant has requested a Variance from 38-105(b)1, which establishes that the minimum lot size of the Zoning District be met. The lot in question is located within Kitty Haw Woods, KHW District. Minimum lot size in the district is 80,000 square feet not to include marsh, ponds or wetland areas. The proposed Variance would allow the creation of one new buildable lot, 38,554 square feet in size.

The KHW District sets the minimum required lot width, measured at the building setback line as 200 feet, meaning, if approved, the front of the lot would be required to be the long section that fronts Hornbeam Road. The KHW District has a minimum front yard setback of 15 feet and rear yard setback of 10 feet; which, according to the attached survey, would leave approximately 49 feet of buildable area between the setbacks. The minimum side yard setback is 10 feet as well. However, the covenants of the subdivision have the setbacks listed as “25 feet from any street or roadway”, 15 feet from the side lot lines and 25 feet from the rear lot line; although the Town does not enforce subdivision covenants and restrictions which would make things tighter but is not what the Town enforces.

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Background

This parcel was part of the approval of the Southern Woods Phase I Subdivision, approved in 1993. Southern Woods Phase I was approved as a ten(10)-lot subdivision, plus the subject parcel, which was intended as a buffer between the new lots being developed on Hornbeam Road and the existing lots on The Woods Road.

It appears as though the plan was either for this parcel to be split and dedicated to the property owners fronting The Woods Road by simply extending their property lines back to Hornbeam (although the Subdivision Ordinance discourages double frontage roads), or for this parcel to be turned over to the Homeowner's Association at some point in time, presumably after a certain number of lots were sold; however, this was not done and until 2020 remained in ownership of one of the developing partners until the Applicants purchased it, hoping to develop a small single-family dwelling.

There could be an argument to be made that the Town would be better served by allowing the Variance as the additional lot would increase the tax base. Alternatively, the Variance would create a buildable lot that is just under half of the minimum lot size of the KHW District intended for low density residential development.

Mr. Testerman then turned it over the Mr. and Mrs. Skibo who is the Applicant for this Variance.

- Mr. & Mrs. Skibo, 5039 The Woods Road, owner of the Hornbeam Road lot, purchased the lot behind them (Hornbeam Road) and didn't know what they were going to do with the lot and wrote a letter to the owner, called the owner and the owner claimed that he didn't know that the aforementioned lot was there.
- They didn't put any equipment on that property until the lot purchase was finalized and then they put some of their work equipment on the lot. Mr. Skibo stated that they would like to build a small single family one bath house within the setbacks which would be a small flat-top house and that the proposed structure would not be behind Ms. Fisher's house.
- Mr. Geraghty asked Mr. Skibo if they would be amenable to an accessory building that would adjoin the two lots and Mr. Skibo stated that that may be an option and Mr. Geraghty stated that adjoining the two lots would increase the rear lot setback on the width of the lot.
- Mr. Varnell stated that there already is an accessory dwelling on the property and Mr. Richeson asked if they could vacate the rear boundary and incorporate the lot and combine the two and Mr. Varnell stated it could be done, and an accessory building or a detached garage or storage shed could potentially be built.

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- Mr. Testerman stated that an accessory dwelling unit is defined as having independent cooking and sleeping facilities and sometimes there are accessory structures with living space but no cooking facilities. These would not meet the definition of an ADU and the ADU regulations would not apply.
- Mr. Varnell stated that a smaller unit would fit the area and leave the trees as they are which would be better for the neighborhood and the Town.
- Mr. Geraghty stated that the Skibos are asking for a Variance and not a rezoning.
- Mr. Testerman stated that he and Mr. Varnell discussed various options for the lot based on the subdivision approval and because the area had intended to be a buffer, and not a true lot, a rezoning wasn't recommended.
- Mr. Geraghty stated that he was one of the developers for that subdivision and that the aforementioned land was intended to be a buffer and that the aforementioned lot was to be split which meant that the property owners would have their property lines extended to the Hornbeam Road. It was intended that the Homeowner's Association was to have the aforementioned property but the HOA was disbanded and therefore there was no further interest from anyone until Mr. and Mrs. Skibo purchased the lot.
- Mr. Geraghty also stated that if the Variance is approved, the lot would then be buildable but would be ½ the minimum lot size of the zoning district.
- Mr. Parker stated that this meeting was not about whether the Applicant can build a structure and Mr. Richeson stated that it was not intended to be a separate lot on Hornbeam Road as an individual lot on the front side which was the intent. He also stated that the Zoning Ordinance was in place prior to Ms. Fisher purchasing her lot and that in the KHW District the requirement is 80,000 sf and they are 40,000 sf short.
- Mr. Richeson stated that the Kitty Hawk Woods area is scrutinized by the citizens of Kitty Hawk as the area was set aside for low density development and to help the woods as is and there are a few subdivisions which are zoned BR-1.
- Mr. Skibo stated that he doesn't have that plat of the subdivision and what was that are originally labeled as and Mr. Varnell that it could have been an open space but either way, a purchaser in that subdivision would have reason to expect that it wouldn't be developable lots and the language in the Ordinance states, 'intended to be dedicated to open space.'
- Mr. Richeson asked if there were any further questions and hearing none, he asked for a Member of the Board to make a recommendation and Mr. Geraghty made the following: **"I recommend denial of the proposed Subdivision Variance; the Planning Board finds the requested Variance would not serve the best interests of the Town."** Mr. Parker seconded and the denial was unanimous.

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7. **Comments**

Mr. Richeson nor any of the Board Members, Planning Director or Town Attorney had any further comments.

8. **Adjourn**

Mr. Richeson adjourned the May 27, 2021 Planning Board Meeting at approximately 6:45pm.

Respectfully submitted by Patricia Merski, Recording Secretary