

Kitty Hawk Planning Board Meeting  
September 16, 2021 – 6:00pm  
Kitty Hawk Municipal Building

**AGENDA**

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
  - a. August 12, 2021
4. Administrative Report:
  - a. Town Council Action
5. Public Comment
6. Nonconforming Pier Replacement:
  - a. Proposal to replace an existing nonconforming pier located at 3800 Elijah Baum with a wider pier and larger platform.
7. Zoning Text Amendment:
  - a. Proposal to amend Sec. 42-1 42-619; 42-622; 42-275 to amend existing travel trailer park regulations and to add as a Special Use in the VR-3 high density village residential district.
8. Zoning Text Amendment:
  - a. Proposal to amend Sec. 42-1 to define and limit “accessory living structures”, being those accessory structures that are finished and conditioned for habitation but do not meet the definition of ‘accessory dwelling unit.’
9. Comments:
  - a. Chairman Richeson
  - b. Planning Board Members
  - c. Town Attorney
  - d. Planning Director

10. Adjourn

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

Chairman Richeson called the September 16, 2021 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; Rob Testerman, Planning Director; Casey Varnell, Town Attorney

**Absent:**

Matt Spencer, Alternate

Blair Meads, Alternate

2. **Approval of Agenda:**

Hearing no objections/corrections, etc., the Board approved the Agenda unanimously.

3. **Approval of Minutes:**

Hearing no objections/changes or corrections to the September 16, 2021 Minutes, the Minutes were approved with Mr. Heath making the motion to approve and Mr. Richeson seconded and the Minutes were approved unanimously.

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4. **Administrative Report:**

a. Town Council Action – September 7, 2021

- Mr. Testerman stated that the Council has announced a Public Hearing regarding the Text Amendment for tattoo studios and also a scheduled Public Hearing for the Text Amendment proposed at tonight’s meeting to ‘define and limit “accessory living structures”’; the Council felt this was an important issue and wanted to schedule the Public Hearing as soon as possible.

5. **Public Comment:**

- Mr. Richeson stated that this is where, on the Agenda, where anyone in the audience may come forward to make a ‘public comment’ on any issue(s) and he also reiterated that the Planning Board is an ‘advisory board’, in that, the Board may recommend approval or denial of an Agenda item, but the Town Council may not agree and not approve or deny the Board’s recommendation(s)

6. **Nonconforming Pier Replacement:**

a. Proposal to replace an existing nonconforming pier located at 3800 Elijah Baum with a wider pier and larger platform.

- Sec. 42-360-Sound Waters District
- This Section lays out the process for ‘nonconforming piers’ states that piers exceeding 100 feet waterward of the mean high-water mark of Kitty Hawk Bay or the sounds on the effective date of the Ordinance from which this division is derived can be maintained, repaired and replaced as needed notwithstanding any provision in this Chapter to the contrary.
- The pier length, width and height cannot be increased without prior Town Council and Planning Board approval. A ‘nonconforming pier’ authorized under this Subsection shall install and maintain lights or reflectors in accordance with Subsection (c)(2)e. of this Section.
- The Board is being asked to review and make a recommendation on the replacement pier as it is currently 130.5’ in length which exceeds the currently 100’ length.
- The Ordinance states that the pier can be replaced as needed; however, any changes in length, width and/or height must be approved by the Planning Board and Town Council.
- Per the attached Proposal, as a part of this replacement, the Owners would like a boat lift and kayak launch added to the platform at the end of the pier. This would not be possible at 100’ as the water is too shallow.

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- The replacement pier is also proposed to be shifted to the west on the property and a boat lift to be placed in slightly deeper water.
- Mr. Testerman stated that the Staff's interpretation of the Ordinance for the pier being shifted to a new location is permissible as the 'nonconformity' is the pier length and not the location.
- The Proposal is to drop it to 130' and the area that the Board and Council must review is that the width of the pier is being increased from 4' wide to 5' wide and the platform being enlarged to accommodate the boat lift and kayak launch. (Detailed packet provided to the Board for review.)
- Mr. Testerman stated that if the Applicant were changing the width of the pier or the size of the platform, this would be something that Mr. Testerman could have approved administratively without this Proposal being presented to the Board or Council.
- He also stated that, currently, there are no regulations on how wide the pier must be in going from 4' to 5' which doesn't conflict with any requirement in the current Ordinance.
- Mr. Richeson asked if there would be any CAMA issues and Mr. Testerman stated that he spoke with Mr. Alexander, the CAMA Officer, and Mr. Alexander doesn't see any current issues with the Proposal but where the pier width is concerned, the increase could cast a shadow on the water which might affect the sub-aquatic vegetation if the one extra foot should make a difference.
- Should the Board and Council approve, CAMA approval is required and if CAMA says 'no' then the Proposal would have to be reassessed and resubmitted to the Board and Council for approval.
- Mr. Rhoads stated his concerns according to CAMA, about the maximum width of 6' at the end where the boat lift would be; a concern about the shadow; the big platform in addition to the kayak lift being 3' above the water. He also stated that this pier would be longer than the others because the CAMA regulations state that it can't exceed the length of the other piers in that specific area.
- Mr. Geraghty stated that we have to be cognizant that this would not interfere with any boat traffic.
- Mr. Testerman stated that at this time the Board is not reviewing CAMA regulations and the Board's decision needs to be based on Kitty Hawk's Zoning regulations.
- As an aside, Mr. Richeson stated that a few years ago when he was an Alternate, the pier lengths were reviewed in how far out the piers in Kitty Hawk could go and someone came in with a proposal for calculating the length based on the shoreline and addressed if having a deep cut and a 100' pier and everyone else's' were not, the 100' would out pass the others.

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- Mr. Testerman stated that the way the Ordinance is worded is that ‘maximum length of all marine improvements, including the pier and the facility in its entirety shall be measured from the furthest water point of the normal high watermark of the bay or sound and the adjoining property. The improvements can be placed in any location within the property and extend out to the established distance’. It’s the bulkhead and would be measured from the distance of the bulkhead and Mr. Parker that they could possibly get to the same spot if they ran this at a different angle; could shorten the pier and get to the same length if needed.
  - Mr. Geraghty stated that if they keep it where it is they could put it at 130’ and Mr. Testerman stated yes, subject to CAMA’s current regulations.
  - Mr. Richeson, hearing no further questions/comments from the Board, asked for ad Member to make a motion and Mr. Geraghty made the following: ***“I recommend approval of the proposed plan to replace the existing nonconforming pier with an enlarged pier and platform as per the attached plans, not to exceed 130’5” in length.”***
  - Mr. Heath seconded and the motion was passed unanimously.
7. **Zoning Text Amendment:**
- a. Proposal to amend Sec. 42-1; 42-619; 42-622; 42-275 to amend existing travel trailer park regulations and to add as a ‘special use’ in the VR-3 High Density Village Residential District.
- Mr. Testerman stated that this proposal is in two parts; the first are the ‘proposed changes to what is generally known as ‘trailer park’ and the second part is to add the proposed renamed as a ‘recreational vehicle park’ as a ‘special use’ in the VR-3 District.
  - **Changes to the ‘Trailer Park Ordinance’:**
  - The requested Text Amendment proposes to make various changes to the requirements of what is currently listed in the Zoning Ordinance as ‘trailer parks.’ For many, the term ‘trailer park’ is interchangeable with a ‘manufactured home park’, although the way our Ordinance defines ‘trailers’ and ‘trailer parks’ is aimed at regulating a park for recreational vehicles whether they are camping trailers, motorhomes, travel trailers, etc. Additionally, the proposed Text Amendments would allow these ‘parks’ as a ‘special use’ in the VR-3 District, High Density Village Residential.
  - The first proposed change is 42-1, Definitions in renaming ‘trailer’ to RV and the second part of the definition is changing #4 ‘Travel Trailer’ from not exceeding 32 feet to 45 feet.
  - Sec. 42-619: Every RV park shall provide common sanitary and laundry facilities consisting of at least one flush toilet, one shower and one lavatory for each sex for every ten (10) and the proposed is for ‘every 20 RV spaces.’

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- The second change is to Sec. 32-622 – Specifications for RV Parks: This would change the minimum RV spaces from 2,000 sf to 1,500 sq. ft.
- #5 under 42-622: Add language to state, “RV spaces shall abut upon an interior drive of no less than 20’ in width for ‘two-way traffic or 12 feet in width for one-way traffic’ and it currently states that ‘all interior drives shall be paved and adding ‘or improved with 8” of ABC to STBC type of 3 base course materials. Recycled asphalt or asphalt millings may be used.
- Also, there are two additional proposals: (1) “The maximum allowable lot coverage in an RV park shall be 60%. (2) Ownership of camping spaces shall be retained by the Property Owner. Camping spaces shall not be individually conveyed or sold in fee simple title as condominiums, fractional ownership or interval ownership. Camping units shall be used as temporary quarters or shelter during periods of recreation, vacation, leisure time or travel and shall not be used for permanent living quarters.”
- Sec. 42-275. VR-3 High Density Village Residential District.  
Adds: RV parks under the provisions of Article VI, Division 4 of this chapter.

**Background and Analysis:**

- Per the above, the first Proposed Amendment would change the definition from “trailer” to “recreational vehicle” and the specific definition for ‘travel trailer’ has been amended from 32’ in length to 45’. Mr. Testerman added that the current Ordinance was originally written in 1990 and has not been updated since, but ‘travel trailers’ have since been updated.
- Additionally, changes to 42-619 are proposed that would reduce the number of showers and toilets required from one for each sex for every ten (10) RV spaces to one per every twenty (20). Many of the motorhomes and travel trailers today have their own toilet and shower facilities; so, requiring one for every ten (10) spaces may be excessive. One toilet, one lavatory and one shower for each sex for each twenty (20) camping spaces is also the standard that Dare County requires for travel trailer parks and the full Ordinance is attached for review.
- The Proposal also includes a reduction in the minimum camping size from 2,000 sf to 1,500 sf. This is also consistent with Dare County requirements.
- Currently, Kitty Hawk’s Ordinance requires a 20’ wide paved interior drive that will be the sole access to a public right-of-way. The proposed Amendment also uses standards currently used by Dare County by requiring a minimum width of 20’ for two-way traffic or 12’ in width for one-way traffic. Also, instead of requiring the internal access road to be paved, the proposed Amendment allows ABC or STBC Type 3 course materials or asphalt millings or recycled asphalt to be used for the internal drive which is also included in the Dare County Ordinance.

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- The Proposal would eliminate the current requirement of one-half acre of open space per every ten (10) RV sites. There would still be a requirement to provide open space for recreation, but the minimum size is not defined. Lastly, the Proposal sets a maximum lot coverage, regardless of zoning district at 60%. These are both consistent with Dare County regulations.
- Mr. Testerman stated that after discussion with the Applicant, and in an effort to ensure that was added to the Proposal that would prohibit individual sale of RV sites which would keep all under single ownership.
- Mr. Testerman selected random areas across the United States to compare our regulations with those selected: Simonton, Texas; Franklin Co, North Carolina, Mendocino Co., California and Stayton, Oregon. Items selected were Toilets, Lavatories, Showers RV Site Size, Open Space, Lot Coverage and Internal Road Width. Texas was the only one that required 1 per 25 spaces for toilets, lavatories, showers and those others were not defined or required; two RV site sizes were in California – 900 sf and Oregon – 1,500 sf. Open space was stated only in California at 200 sf/RV site; Lot coverage not defined with any of the sites and Internal road width was defined for Franklin Co, NC – 18f – two way; 9f – one way and Oregon – 24f – two-way; 14f – one way.
- Mr. Testerman stated that the request by the Applicant would allow RV parks as a ‘special use’ in the VR-3 High Density Residential District. The VR-3 District is made up of approximately 33 acres in the Town. Currently, there are three (3) legal nonconforming ‘trailer parks’ in Town: The Preserve off of Twiford/The Woods Road; Kitty Hawk RV Park and Charlie’s RV Park which are both between the highways. But, it should be noted that in Charlie’s and The Preserve, travel trailers have become more permanent. The VR-3 District is established as an area in Kitty Hawk Village in which the principal use of the land is for high-density residential purposes, the development of less intensive residential uses as well as compatible supporting uses.
- Currently in the VR-3 District, detached single-family dwellings duplexes, multi-family dwellings and manufactured homes are permitted by right; manufactured home parks and tent camping as an accessory ‘special use’ to the hostel are permitted a ‘special uses’ in the District and among other less comparable uses such as churches, cemeteries, playground, nursing homes, etc. The VR-3 District is shown as a ‘higher density residential area’ on the Future Land Use Map.
- Mr. Testerman concluded his presentation and asked for questions from the Board that the Applicant, Ms. Cherie Beacham was also available to answer any questions.

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- Mr. Parker asked how many spaces were being proposed and Mrs. Beacham stated that there would be 50 and it would be 1,500 sf and there would be a need for an open space for drainage and a road. Mr. Testerman stated that this Proposal specifically pertains to the Text Amendment and not site specifics.
- Mr. Richeson then referred to Sec. 42-622 #16 regarding the Ownership of the spaces and what does Dare County have to put in and to confirm that this would not be occupied year round and if is the plan to have permanent structures brought in to be used every year and not occupied.
- Mr. Testerman stated that this area in an AE Flood Zone and Kitty Hawk's Flood Damage Ordinance states that travel trailers, campers or motorhomes have to be moved at least once every 180 days or be licensed ad road-ready to be hooked up and moved. He also stated that 'The Preserve and Charlie's' are now considered more permanent because they were established before the Town was incorporated and therefore; grandfathered and that Mr. Testerman does not believe that 'The Preserve' does not have any permanent attached trailers.
- Applicant, Ms. Beacham stated that she would prefer a timeframe of every 90 days because during the winter months there are those that come and stay for at least 3 months.
- Mr. Richeson asked if the Town has contacted any of the permanent residents informing them of this Proposal and Mr. Testerman stated that notices for Text Amendments are not typically sent. He did state that he had received calls concerning the Text Amendment concerning a 'manufactured' home park and that this Text Amendment would address that issue.
- Mr. Richeson stated that an RV park is a commercial enterprise and how can it exist in a residential area but this Text Amendment does not equate to the homes on the Beach Road as they are private residences and could this possibly convert to a 'permanent' residence at any time by taking it off the market, but, an RV park cannot be taken off the market and Mr. Testerman stated that this Text Amendment is proposed as a 'special use' and mostly all of the Town's residential Districts have a handful of 'commercial uses' and 'special uses' that are permitted and that a 'special use permit' for the Board and Council to review for a specific site.
- Mr. Varnell stated that 'site specific' and any other 'individual proposals' would not be setting precedent by approving one and not the other and Mr. Richeson stated if that takes place, the Proposal would have to come back with a site plan any other required documents and Mr. Testerman and Mr. Varnell confirmed that.

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- Mr. Testerman also stated that ‘special uses’ were originally considered ‘conditional uses’ but changed when the 160D updates were adopted.
  - Mr. Testerman stated that if the Text Amendment is approved, the Applicant has to come back for a ‘special use permit application’ which Mr. Testerman would review, send a copy to the Fire Department and to the Dare County Water Commission for review and comments back to Mr. Testerman before any approvals can be issued.
  - Applicant stated that currently there are a few double-wide trailers onsite and should this be approved, they would be removed.
  - Hearing no further questions/comments, Mr. Richeson asked for a Member of the Board to make a recommendation and Mr. Geraghty made the following: ***“I recommend approval of the proposed Text Amendment to Section 42-1, 42-619, 42-622 and 42-275, amending the regulations for RV parks and allowing them as a ‘special use’ in the VR-3 High Density Residential District The Board has found this proposal to be consistent with the Town’s Adopted Land Use Plan.”***
  - Mr. Heath seconded; Mr. Rhoads, Mr. Richeson and Mr. Parker voted “no” and the motion was denied with a 3-2 vote.
8. **Zoning Text Amendment:**
- a. Proposal to amend Sec. 42-1 to define and limit ‘accessory living structures’, being those ‘accessory structures’ that are finished and conditioned for habitation but do not meet the definition of ‘accessory dwelling unit.’
  - Mr. Testerman began with the definitions for ‘accessory living’ which means any conditional and/or finished living space that is in conjunction with and clearly subordinate to the ‘primary residential structure’, but does not meet the definition of ‘dwelling unit.’ ‘Accessory living structures’ shall have no independent cooking facilities. Accessory living structures are limited to one per parcel. Accessory living structures are limited to 800 sf of livable space and shall not exist on the same lot with an ‘accessory dwelling unit.’
  - Mr. Testerman stated that in 2018, the Town adopted standards and specifications for “Accessory Dwelling Units” and the Text Amendment did not include a definition; therefore, Staff is proposing to add the definition for clarity.



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- Also in 2018, the Town Council adopted a Text Amendment that allows the development of one “accessory dwelling unit” per residential lot with a number of specific site requirements that the ADU must meet. A ‘dwelling unit’ is defined as ‘one room or rooms connected together constituting a separate, independent housekeeping unit or Owner occupancy or rental or lease and be physically be separated from any other rooms or dwelling units which may be in the same structure and contains independent cooking and sleeping facilities for a single family.’ It has long been interpreted that the ‘independent cooking facilities’ mean a stove or stove connection.
- This is not intended to limit ‘accessory structures’ like sheds, car ports, garages, etc. and Mr. Varnell stated that intent is always there for garages, car ports, etc. that was an ‘accessory structure’ but loop holes were found where people began building habitable units that were in the bounds of the law as the Ordinance was written and those units would NOT have a stove; so where there is o restriction on the number of ‘accessory structures’ that there could possibly be a legal cluster home or ‘pods’ that did not go thru the site plan approval.
- The requirement for having cooking facilities to be considered a ‘dwelling unit’ leaves open to the possibility of creating an ‘accessory structure’ with a conditioned ‘living space’ that is not bound by the requirements for an ‘accessory dwelling unit’ as listed in 42-528.
- As it relates to this ‘proposal’, these ‘accessory structures’ with living space are not currently restricted by number on a lot. The Town currently has no limit on how many ‘accessory structures’ a property owner can have on a lot, as long as the total lot coverage does not exceed 30% and also that all setback requirements are met.
- A loop hole was thus created wherein there is potential to have one lo with multiple structures that are developed for habitation; but with no stove or stove connections they are therefore not considered ‘dwelling units’ and are not bound y ADU requirements.
- This proposed Amendment would not limit the number of ‘accessory structures’ on any given lot and only those with conditioned/finished living space. And this would also limit a property owner to either an ‘accessory living structure’ or an ADU but NOT both.
- An example: A property owner could have a single-family residence, a detached garage with a living space above the garage and a shed without being a residence, detached garage with living space above and an ADU.
- Also, the reason for the proposed Text Amendment is that in recent months, the Planning Department has had multiple inquiries about the potential of developing a single-family dwelling with multiple, separate ‘accessory structures’; each containing a living space but does not meet the definition of a ‘dwelling unit.’
- Mr. Varnell reviewed the Land Use Plan and the scope and intent of various zoning districts that have developed an opinion on the matter ruling that it is not permissible, but Staff and Mr. Varnell agreed that it would be best to codify this to avoid any future confusion.

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- Staff considered proposing ‘accessory living structures’ be bound by all requirements applicable to ADUs’; however, there are instance in which a detached garage cannot be located in the rear or side yards (42-528(c) which would eliminate them from having living space attached. Other ADU requirements did not seem particularly applicable to certain scenarios for these types of structures either, such as 42-528(d) or (e); though, if the Board or Council desires ADU restrictions to apply to these structures with an ADU having driveways separate from the principle dwelling and one additional off-street parking space that would be provided for the Mr. Varnell stated that it was never intended for someone to have a principle structure and then three (3) separate living units on one lot.
  - Mr. Geraghty then asked why have two definitions concerning ‘dwelling units’ and to keep the Ordinance as it currently reads and Mr. Varnell stated the definition of and ADU and ‘dwelling’ defines the ‘cooking element’ and Mr. Testerman stated that the problem that could arise in doing away with the ADU that there are only two requirements of an ADU that apply to the ‘accessory living structure’ and if that is included in one definition and the intended purpose of this Amendment would therefore not be met because every ‘accessory living structure’ without a stove would be tied in with this condition.
  - Because of the back and forth of two definitions in the Amendment, Mr. Geraghty then stated that maybe the Board should table this Amendment until the next meeting until an agreeable definition could be agreed upon.
  - Mr. Varnell stated that a Public Hearing has already been scheduled regarding the proposed Amendment and Mr. Geraghty recommended that the Board approve the proposed Amendment to eliminate the proposed definition of ‘accessory living structure’ and Mr. Geraghty made the following motion: ***“I recommend approval of the proposed Text Amendment to Sec. 42-1, establishing a definition for ‘accessory dwelling unit”, as described. The Board has found this proposal to be consistent with the Town’s Adopted Land Use Plan.”***
  - Mr. Richeson seconded and the Amendment was approved unanimously.
9. **Comments:**
- a. Chairman Richeson – no further comments
  - b. Planning Board Members – no comments
  - c. Town Attorney – no comments
  - d. Planning Director – no comments

**10. Adjourn:**

Hearing no further comments, Mr. Richeson adjourned the Board Meeting at approximately 7:10pm

Respectfully submitted by Patricia Merski, Recording Secretary.