

Kitty Hawk Planning Board Meeting  
January 20, 2022 – 6:00 pm  
Kitty Hawk Municipal Building

**AGENDA**

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
  - a. December 16, 2021
4. Administrative Report:
  - a. Town Council Action, January 10, 2022
5. Public Comment
6. Special Use Permit:
  - a. 3933 Welch Street – Medical Office in BC-2 (Beach Commercial) District
7. Zoning Text Amendment:
  - a. Proposal to amend Sec. 42-528; amending requirements and regulations for Accessory Dwelling Unit,
8. Comments:
  - a. Chairman Richeson
  - b. Planning Board Members
  - c. Town Attorney
  - d. Planning Director
9. Adjourn

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

Chairman Richeson called the January 20, 2022 Kitty Hawk Planning Board Meeting to order at approximately 6:00pm.

**Board Members Present:**

John Richeson, Chairman; Bryan Parker, Vice-Chairman; Chuck Heath, Member; Matt Spencer, Alternate; Blair Meads, Alternate; Casey Varnell, Town Attorney; Rob Testerman, Planning Director.

**Absent:**

Jim Geraghty, Member; Dusty Rhoads, Member

**Voting:**

Due to the absence of Members Rhoads and Geraghty, Mr. Spencer and Mr. Meads will be voting at the meeting.

Kitty Hawk Planning Board  
Meeting Minutes  
January 20, 2022

-2-

**2. Agenda:**

Hearing no objections/corrections/additions to the January 20, 2022 Agenda, the Agenda was passed unanimously.

**3. Approval of Minutes:**

Hearing no objections/corrections/additions to the Minutes, Mr. Richeson asked for a motion to be made to approve the Minutes and Mr. Richeson made the motion to approve and Mr. Spencer seconded and the Minutes were approved unanimously.

**4. Administrative Report – Town Council Meeting – January 10, 2022**

Mr. Testerman stated that the Council approved the following Text Amendments:

- 1) Approval for the 'planned commercial development for multi-family dwellings at fourteen (14) dwellings/acre as "special use"
- 2) Also approved the proposed amendments to the RV Park regulations, as well as allowing the parks as a "special use" in the BR-3 District.
- 3) Also approved, the commercial site plan for 5201 N. Croatan Highway.
- 4) The text amendments for lot coverage that would allow an exemption for 500 sf of pool surface area, and a reduction of the 50' separation area between BC-1 and residential zones have been scheduled for public hearings in February.

**5. Public Comment:**

Mr. Richeson stated that the Board's role is strictly as an Advisory Board and the Town Council can either agree or deny any of the Board's motion(s).

Mr. Richeson closed this portion of the meeting as there were no participants from the audience.

**6. Special Use Permit: 3933 Welch Street – Medical Office in BC-2 (Beach Commercial) District.**

The Applicant is requesting approval of a 'special use permit' to use an existing structure located at 3933 Welch Street as a medical office; specifically oral surgery.

The existing practice has five (5) employees and the hours of operation are Monday-Friday, 8am-3pm and according to the Applicant, a typical business day they see between five (5) to fifteen (15) patients.

**Proposed Conditional Use:**

42-251(c)7 – Hospitals, clinics and medical offices in the BC-2 District and there are no specific conditions required by the Zoning Ordinance for approval of a 'special use' for a medical office within that District.

- The subject property is an existing two-story structure, Beach Commercial (BC-2) located on a 14,200 sf lot.  
The abutting properties to the north, south and east are also zoned Beach Commercial (BC-2). The abutting property to the north is the Kitty Hawk Baptist Church; to the east, behind the subject property is Ferguson Enterprises; and, to the south, is a single-family residence in the Commercial Zone. The parcels to the west of the subject property are zoned BR-2 and are occupied by single-family residences.

Kitty Hawk Planning Board  
Meeting Minutes  
January 20, 2022

-3-

- **Proposed Uses:** Medical offices are permitted as a 'special use' in the BC-2 District.
- **Lot Area:** The subject parcel is approximately 14,000 sf in size.
- **Lot Coverage:** The maximum lot coverage in the BC-2 District is 60% or up to 72% with the use of permeable materials.  
**Site Plan:** Currently, there is not a site plan or survey indicating existing lot coverage and the proposed use will not increase lot coverage.
- **Building Height:** The maximum height in the BC-2 District is a height of 35 total feet from the existing grade exclusive of chimneys, flagpoles, communication masts and aeriels. It appears that the existing building is compliant with the height requirements and no building height changes are proposed and the current building appears to be compliant.
- **Access:** The subject property has direct access to Welch Street which feeds into Lillian Street that provides access to US 158.
- **Parking:** The existing site does not have an as-built survey on file; however, using the Measurement tools on the online GIS services, it appears as though there is sufficient space to accommodate 10-12 parking spaces on site which is compliant with the minimum requirement of ten (10) spaces for a clinic.
- The Town of Kitty Hawk's Adopted CAMA Land Use Plan designates the property as a "Commercial, Shopping and Working Area" on the future land use map.
- Mr. Testerman stated that the Applicant, Dr. Mike Zaritsky was present for the Board to ask any clarifying questions. One thing that Mr. Testerman wanted the Board to hear before there were any questions for Dr. Zaritsky was the Mr. Rhoads (not in attendance at the January 20, 2022 meeting) phoned Mr. Testerman and inquired as to how the medical waste, etc. was going to be handled and Dr. Zaritsky stated that all medical waste is prepackaged with packages from their supplier, the medical waste is packaged in the boxes and shipped back to that supplier for disposal.
- Mr. Testerman referred the Board to the scale-downed version of the zoning map which highlights the BC-2 District and the red highlighted area is the Applicant's site.
- Mr. Zaritsky stated that he does not plan any exterior changes; the main floor will be the surgical suites and the upstairs will be his office and used for storage.
- Mr. Richeson wanted clarification from Mr. Testerman that, should any changes wanting to be made, would Dr. Zaritsky need to submit a site plan and Mr. Testerman stated that would depend on the scale and that any major or minor change(s) would need to have a site plan.
- Dr. Zaritsky stated there would mostly be interior remodeling that may require building permit(s) and he would submit those to Mr. Testerman the following week.
- Hearing no further questions from the Board, Mr. Richeson asked for a Member to make a motion and Mr. Spencer began the motion and Mr. Varnell interjected and advised Mr. Spencer to add the following to the motion:

Kitty Hawk Planning Board become quasijudicial  
Meeting Minutes  
January 20, 2022

-4-

- Mr. Varnell stated that the motion should include: that the Application complies with Factors A through D which are listed in the report and also clarified about the addition is because of changes to 160D which have now become quasi-judicial and at the next phase and when Town Council reviews this Application it will be considered 'evidentiary' and actual findings have to be included that the recommendation meets the factual findings.
- Therefore; Mr. Spencer made the motion that 'there is no evidence to suggest that public health or safety will be an issue and finds that there is no evidence suggesting that allowing this 'proposed use' would endanger the public health and safety as long as the recommended safety measures by the Building and Fire Inspectors are met and would not recommend any specific conditions or specifications as listed except as listed in the Ordinance and would find that there is no evidence to suggest that the proposed special use would injure the value of the adjoining property or be a public nuisance and that an oral surgery office is a less intense use than many uses by-right in the BC-2 District and the proposed use appears to be in harmony with the area in which it is located and is in general conformity with the Comprehensive Plan and Mr. Richeson seconded and the motion was approved unanimously.

**7. Zoning Text Amendment:**

- a. Proposal to amend Sec. 42-528 amending requirements and regulations for Accessory Dwelling Units.
- Mr. Testerman stated that a few months ago there was a Text Amendment that was approved for the specific definition that stated that any accessory structure that contained a condition living space is now considered a "accessory dwelling unit" and the regulation 42-528 now applies to any accessory structure condition space.
  - He also stated that the Town Council asked that the Board re-review the requirements of an 'accessory dwelling unit; specifically, referring to Sub. Sec. C; 'detached accessory dwelling units shall be located in the established rear-side yards provided that the 'detached accessory dwelling' does not extend beyond the front of the primary residence.
  - Mr. Testerman stated that the support was not there to continue for the 'accessory dwelling unit' to be restricted to the rear yard and the Town allows 'accessory structures' to be anywhere on the lot as long as the setback requirements are met which is 25' front; 25' rear and 10' on the sides.

Kitty Hawk Planning Board  
Meeting Minutes  
January 20, 2022

-5-

- He stated that there are a number of homes in Kitty Hawk that have ‘detached accessory structure garages’ that are in the front of the house and before adopting the prior Text Amendment and whether there was ‘condition space’ above it or not, it was acceptable. The approval of the previous definition made that non-conforming if there was living space above it.
- Going forward, the argument became, that, under the current approved definition, somebody can have a detached garage that has an attic space that is not ‘conditioned’ and can be located in the front yard of a residence up to the 25’ setback with no problem. If that is the case, then someone can have the exact building that looks the same from the front street level with a finished-off ‘condition space’ above, this would then would have to be located in the rear of the residence and based on the feedback from the Council, they did not see the difference in requiring one stipulation over the other when, from the street view, it’s going to look the same.
- Mr. Testerman stated that he highlighted that specifically in the previous Text Amendment to differentiate between ‘accessory dwelling units’ and the structures that had living spaces and that requirement was left out. He stated that it is up to the Board and Council to decide what is appropriate and that he was targeting just the ‘stand alone accessory dwellings; single-level structures w/a full kitchen, etc.
- This Proposal would allow detached garages to be in the front yard which is the feedback of the Council. He referenced to the (f) section citing what was (g) has been changed from 28’ measured from ‘original grade, to ‘finished grade’ based on the previous Text Amendment that changed the maximum building height for a primary structure from ‘original grade’ to ‘finished grade’ to make the language consistent
- He also deleted the last requirement that “before obtaining a Building Permit for an ‘accessory dwelling unit’, the Property Owner shall file with the County Register of Deeds a Declaration of Restrictions containing a reference to the deed under which the property was acquired by the present Owner stating that the ‘accessory dwelling unit’ shall not be sold separately from the primary residence.
- He also stated the he spoke with Mr. Varnell and that it was not entirely necessary and that the only situations where this may happen would be if there was a lot large enough to be subdivided into two (2) lots, where the primary residence would be on one lot an ‘accessory dwelling’ on the other lot, and if the lot is large enough to subdivide, then there is no reason not to allow it.
- Mr. Richeson stated that prior to this Text Amendment, if there was an ‘accessory-use structure’ it could be in the front of the residence like a garage, shed, etc., and Mr. Testerman stated ‘yes’ and Mr. Varnell stated that someone can have a living space either above or within the ‘accessory dwelling unit’ that does not include a stove and that this is what the definition is about.

Kitty Hawk Planning Board  
Meeting Minutes  
January 20, 2022

-6-

- Mr. Testerman stated that before the definition was approved, the stove or the ability to install a stove had to meet the requirements of Sec. 42-528 and now the definition is 'finished condition space'. He also stated that some citizens in Town have been planning to convert a detached garage and have an office above it but would have no bathroom or kitchen facilities but a 'condition-finished use' as an office, but because of the aforementioned definition, they are now unable to do it in their front yard, and they were not able to do it in the back rear side yard because of how the lot was developed.
- Mr. Richeson asked if someone can put an office upstairs of their garage with no bathroom or kitchen and put an AC unit in the window would that be considered a 'dwelling space' and Mr. Testerman stated that it would meet the definition of an 'accessory dwelling unit' and Mr. Richeson then asked if there is an 'accessory dwelling unit' already on the lot could another structure would not be a 'dwelling' unit and Mr. Varnell stated 'correct'.
- Mr. Richeson then asked if someone could have a tool shed on the lot and Mr. Testerman stated that if the structure was unheated like a shed or garage, that is not affected and this Amendment only focuses on 'accessory structures with condition living space.'
- Mr. Varnell added that if it is already a rec room and then want to build an 'accessory dwelling unit' in the back of residence that would not be permitted and Mr. Testerman reinforced the fact that anyone would be limited to one 'accessory dwelling unit' on a lot – primary residence and one other structure with a living space. Also, if something else were to be built behind the already existing dwelling unit' the structure would have to be considered 'non-livable.'
- **To Summarize:**
- One Town residence was referenced on Poor Ridge Road and that the structure is not aesthetically pleasing and Mr. Testerman acknowledged that but the structure met the Zoning requirements.
- Also, Mr. Testerman referenced the Town's language regarding the height of 'accessory dwelling units' requirement of 28' instead of 35' was to show that the 'accessory dwelling unit' was subordinate to the primary residence.
- Mr. Varnell doesn't see this Text Amendment being applied on a case-by-case basis no matter the location, kitchen facilities, etc. and this could be done based on what dimensions the lot allows which was legal originally.
- The issues are not the way a structure looks aesthetically, type of structure, color, etc. are not being considered as part of this Text Amendment.

Kitty Hawk Planning Board  
Meeting Minutes  
January 20, 2022  
-7-

- Hearing no further comments/questions from the Board, Mr. Richeson asked for a motion to be made and Mr. Parker made the following: ***“I recommend approval of the proposed Text Amendment to Sec. 42-528, amending requirements and regulations for ‘accessory dwelling units’. 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.

**8. Comments:**

- a. Chairman Richeson – thanked the Board for the hard work
- b. Planning Board Members – None
- c. Town Attorney – None
- d. Planning Director – None

**9. Adjourn:**

Hearing no further questions/objections/comments, Mr. Richeson adjourned the January 20, 2022 Meeting of the Kitty Hawk Planning Board at approximately 6:45pm.

Respectfully submitted by Patrice Merski, Recording Secretary