

Kitty Hawk Planning Board Meeting  
July 14, 2022 – 6:00pm  
Kitty Hawk Municipal Building

**AGENDA**

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
  - a. Minutes of the May 26, 2022 Meeting
  - b. Minutes of the June 16, 2022 Meeting
4. Administrative Report:
  - a. Town Council Action: July 5, 2022
5. Public Comment
6. Text Amendment:
  - a. Permitted and Special Uses in the BC-1 BC-2 and BC-3 Districts (Sec. 42-1, 42-250, 42-251, 42-252)
7. Comments:
  - a. Chairman Richeson
  - b. Planning Board Members
  - c. Town Attorney
  - d. Planning Director
8. Adjourn
1. **Call to Order/Attendance:**

Mr. Richeson called the Kitty Hawk Planning Board Meeting to order at approximately 6:00pm.

**Members Present:**  
John Richeson, Chairman; Bryan Parker, Vice-Chairman; Jim Geraghty, Member; Chuck Heath, Member; Blair Meads, Alternate; Rob Testerman, Planning Director; Patricia Merski, Recording Secretary

**Absent:**  
Dusty Rhoads, Member; Matt Spencer, Alternate; Casey Varnell, Town Attorney

**Voting:**  
Due to the absence of Dusty Rhoads and Matt Spencer, Blair Meads will be a voting member for this meeting.
2. **Approval of Agenda:**

Added to the Agenda was 42-194 and the Agenda, Mr. Parker seconded and Agenda was approved unanimously.
3. **Approval of Minutes:**
  - a. Minutes of the May 26, 2022 Meeting
  - b. Minutes of the June 16, 2022 Meeting

Mr. Geraghty made a motion to approve both Meeting Minutes, Mr. Richeson seconded and the Minutes were approved unanimously
4. **Administrative Report:**
  - a. Town Council Action, July 5, 2022  
Mr. Testerman stated that the Council approved the Text Amendment for the tattoo studio at 3608 N. Croatan Hwy. and scheduled a Public Hearing in August for the Medical Office at 5121 N. Croatan Hwy as “Special Use” in the Beach Commercial District.

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5. **Public Comment:**

As there were no members present in the audience, Mr. Richeson closed the “Public Comment” portion of the Meeting.

6. **Text Amendment:**

a. Permitted and Special Uses in the BC-1, BC-2 and BC-3 Districts (Sec. 42-1, 42-250, 42-251, 42-252)

- Mr. Testerman stated that this is a Staff generated Proposal with the goal being to reorganize the “permitted” and “special uses” in the BC-1, BC-2 and BC-3 Zoning Districts; specifically, moving several current ‘special uses’ into the ‘permitted use’ category. A ‘special use’ permit typically adds flexibility to a Zoning Ordinance while still retaining oversight over particular proposals that may not be as appropriate of a ‘use’ as others within a specific district.
- In addition to any specific standards and conditions listed for any ‘special use’ in the Zoning Districts, the Planning Board and Council must find a ‘proposed special use per the Town Code:
  - a. Does not materially endanger the public health or safety;
  - b. Does meet all required conditions and specifications;
  - c. Will not substantially injure the value of any adjoining property or be a public nuisance, and;
  - d. Will be in harmony with the area in which it is located and be in general conformity with the Comprehensive Plan and would apply to all listed in those Districts for a ‘special use.’
- If any of those four (4) conditions listed in Sec. 42-100(b)8 of the Zoning Ordinance are not met, the ‘special use permit’ would be denied. The uses that Staff has proposed to add to ‘permitted uses’ or relocate from ‘special uses’ to ‘permitted uses’ are those that would meet the four (4) conditions listed above; and, in many cases are less intensive than several of the already ‘permitted uses’ by-right in the District.
- In addition to the revisions to proposed BC-1, BC-2 and BC-3 listed in the attachments to this Staff Report; Staff is recommending the following additions and revisions to definitions listed in Sec. 42-1:
  - *Day Care Center*: A child day care facility as defined in G.S 110(86(3)). An adult day care facility as defined in G.S. 131D-6(b).
  - *Delicatessen* means a retail store with no customer seating specializing in the sale of prepared cooked meats, smoked fish, cheeses, sandwiches and any other specialty food items.

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- *Hospital* means an institution providing physical services primarily for human inpatient medical or surgical care for the sick or injured. A *hospital* may include related facilities such as laboratories, outpatient services, training facilities, central service facilities, mental health and staff offices. A *hospital* shall include an on-site heliport.
- *Place of worship* means churches, mosques, synagogues, temples, etc. and throughout the Ordinance in various districts, churches are listed as a 'special use' and the proposed change for churches as 'special use' would be classified as 'permitted use.'
- Mr. Testerman provided the Board with the following documents regarding Staff's proposal:
  - a. Sec. 42-194 **Prohibited Uses in all Districts and Unlisted Uses.**
  - b. **Sec. 42-1 – Definitions**
  - c. **Sec. 42-250. BC-1 General Beach Commercial District**
  - d. **Sec. 42-251. BC-2 Beach Commercial District**
  - e. **Sec. 42-252. BC-3 Community Shopping Mall District; Community Shopping Center District.**
- Mr. Testerman started with Sec. 42-194 which he stated deals with 'unlisted uses' and stated that in the past these 'uses' were handled if the 'use' was not listed it was then 'prohibited'. He also stated that a few years back, the State Legislature changed this to include 'what uses were not allowed' and this then allowed Staff to review any 'unlisted use' being proposed and would then compare that to other 'uses' that were in existence.
- He also stated that after reviewing Southern Shores 'prohibited uses' list and also eliminated some of the 'prohibited uses' in their list versus what Kitty Hawk specifically allows as 'special use' or 'permitted use by-right'; example: tattoo studios as being one.
- He also stated that under 'prohibited uses' there could be other 'uses' proposed that are not currently listed and that there is a section for 'classifications and review' for 'unlisted uses' similar to those currently listed in Kitty Hawk.

**Classification:**

- Mr. Testerman stated that decisions are based on the 'consistency and stated intent' of the Zoning District and the "Consistency and Stated Intent of the Zoning District and Consistency of the Adopted Vision and Statement of Policy and Land Use Plan, Density of Development and Intensity Use' based on where it is to be located.
- He also clarified for the Board that if someone came to him with an 'unlisted use', either as a 'permitted use' and Staff reviewed that against the 'Classifications' and then Staff would not approve it, the Client could then go to the Board of Adjustment to appeal Staff's decision.
- He also stated for the Board that any other proposed items added to the 'prohibited list' or the Board determines that any item that should not be on the 'prohibited list' is up to the Board to add or delete.

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- He also stated that all other issues will be brought to the Board to ensure all are properly addressed; i.e., Village District would be the next area for review and will speak to the Council and Mayor on how they would prefer these issues to be presented, one-by-one or all at once.
- Mr. Richeson wanted clarification for the process for 'unlisted uses' and comparing it to 'permitted uses' and then decide how it could compare to an 'ancillary use' and Mr. Testerman stated that the process is similar to the current established process. Mr. Testerman also stated the 42-194 simplifies the definitions and allows Staff to review the proposed 'unlisted uses' and compare that to not only 'permitted uses' in the District and also review the 'prohibited uses' to then determine where the 'proposed use' will be listed.
- Several items on the 'prohibited list' were brought forth:
  - a. Electronic gaming operations – Mr. Testerman stated that item on the list was an oversight as it is listed as #17 on Sec. 42-252.BC-3 Community Shopping Mall District; Community Shopping Center District and therefore eliminated from 42-194 – Prohibited Uses in All Districts and Unlisted Uses.
  - b. Asphalt and Concrete Plants: Mr. Testerman stated that he is aware of the current plant which is classified as not a 'permitted use' and is now in 'legal nonconformity use' and Kitty Hawk would be permit another such plan in that Zoning District. He also stated that if this was not approved and the plant operation was closed down and stayed closed for a year or more the Applicant would lose the 'nonconforming status'. He also stated that any proposed 'prohibited uses' that currently exist would be listed as 'legal non-conforming use.'
  - c. Bus, Truck and Transportation Terminals: Mr. Geraghty wanted clarification as to whether it referred to 'main terminal' or bus stop and Mr. Testerman stated 'terminal'.
  - d. Jet Pack Rentals: Mr. Testerman stated that this has not been to Staff, but if it was brought as a 'brick and mortar' request it would fall under the 'itinerant merchant classification' and should the Board want to discard from the list, it would then be in the 'commercial district'.
  - e. Nightclubs: The Board not sure of the definition of a 'nightclub' and Mr. Testerman stated that his interpretation would be such an establishment that would operate only from 9pm to 2am; therefore, the Board wants Mr. Testerman to come back with the definition of 'nightclub' and therefore that would determine what 'use' it would come under.
  - f. Items to be eliminated from the 'prohibited list' are items #7, 14 and 18 with a definition forthcoming from Mr. Testerman for determination.

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- Mr. Richeson wanted clarification if single-family residence was also included in BC-1 and Mr. Testerman stated that in BC-1 and BC-2 single family dwellings are under 'special use' permitted with the dimensional requirements of BR-1 and is being proposed to be moved into 'permitted use by-right'.
  - Mr. Richeson asked if there were any further questions and hearing none, asked for a motion to be made and Mr. Meads made the following: ***"I recommend approval of the proposed Text Amendment to Sections 42-1, 42-250, 42-251, 42-252 and 42-194 omitting items #7, 14 and 18. The Board has found this proposal to be consistent with the Town's Adopted Land Use Plan."*** Mr. Parker seconded and the motion was approved unanimously.
7. **Comments:**
- a. Chairman Richeson – complemented the Board for the quick work on this
  - b. Planning Board Members – none
  - c. Town Attorney – absent
  - d. Planning Director – None
8. **Adjourn:**  
Hearing no further comments/objections, etc. from the Board, Chairman Richeson adjourned the July 14, 2022 Kitty Hawk Planning Board meeting at approximately 6:30pm

Respectfully submitted by Patricia Merski, Recording Secretary