

Kitty Hawk Planning Board Meeting  
September 29, 2022 – 6:00pm  
Kitty Hawk Municipal Building

**AGENDA**

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
  - a. Minutes of July 14, 2022 Meeting
4. Administrative Report:
  - a. Town Council Action – August 1, 2022; September 6, 2022
5. Public Comment
6. Text Amendment:
  - a. Text Amendment – 42-419(7). Standards and requirements. Applicant proposes amending the maximum building height in the PCD overlay from 35' to 45'.
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; Dusty Rhoads, Member; Chuck Heath, Member; Matt Spencer, Alternate; Casey Varnell, Town Attorney; Rob Testerman, Planning Director

**Absent:**

Jim Geraghty, Member; Blair Meads, Alternate.

**Voting:**

Due to the absence of Member Geraghty, Mr. Spencer will be the voting member for this meeting.

2. **Approval of Agenda:**

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

3. **Approval of Minutes:**

Mr. Parker made a motion to approve the Minutes and Mr. Richeson seconded and the Minutes were approved unanimously.

4. **Administrative Report:**

- a. Town Council Action, August 1, 2022; September 6, 2022
- b. August 1: Mr. Testerman stated that the Council approved the Special Use Permit for the medical office at 5121 N. Croatan Highway.
- c. September 6: The Council approved the Text Amendments for the Beach Commercial Districts – reclassifying some as “special and permitted uses.

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**Administrative Report (cont'd).**

a. Mr. Testerman stated that the Council has accepted a proposal from a firm out of Raleigh, Stewart, Inc. to handle the Town's Land Use update. The Board will be involved and the firm is slated to have a "kick-off meeting" with the Board in early November. Also, they have drafted an action plan and the entire process will take approximately 10-12 months after which the Plan will be sent to CRC for CAMA approval and then the Council will review for approval as well.

5. **Public Comment:**

As there were no audience participants Mr. Richeson closed the "Public Comment" portion of the Meeting.

6. **Text Amendment:**

a. Text Amendment: 42-419(7) Standards and Requirements. Applicant proposed amending the maximum building height in the PCD District from 35' to 45'.

- Individual map provided to the Board highlights all the areas that are PCD overlays that are in the Town.
- Mr. Testerman referred the Board to the left side of the map which is the sound side that shows the promenade area; the middle is the most recent areas that were designated PCD which includes the new 7-11 and the 5-6 acres behind there and the right side shows Home Depot and a portion of the Beachwoods Development which equals approximately 69 acres of the three combined.
- The Applicant has proposed increasing the building height in the PCD overlay from 35' to 45' maximum. As noted in the Zoning Ordinance for Planned Commercial Developments are intended to provide developers with an option by which they can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than may be permitted as of right under other parts of the Zoning Ordinance, PCD's can be approved in within the BC-1, BC-2, BC-3 and BH-1 Zoning Districts in Town (42-411(d)), if certain site requirements are met. A PCD must be at least five (5) contiguous acres in size with not less than 500 feet of total road frontage on US Highway 158 or NC Highway 12, except that portions of the site may be separated by public or private rights-of-way no more than 60 feet in width.
- Currently, the townwide height maximum, aside from the BH-2, Beach Hotel District is 35 feet. The BH-2 District allows for a maximum total height of 76 feet. While significantly taller than the maximum height required in the rest of the Town, the BH-2 District is very limited in scope, so, the majority of Town is unaffected by the increased height limit permitted in the BH-2 District. Like the BH-2 District, the PCD Districts in Town do not make up much of the total area of the Town (approximately 69 total acres) and are limited from widespread expansion due to the site constraints listed above.

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- Although the proposed maximum height language would be in conflict with the standards currently listed in the BC-1 and BC-2 Districts, the PCD is designed as an ‘overlay district’ which doesn’t change the underlying zoning. The portion of the PCD language in Sec. 42-412 states that, “should there be any conflict between any PCD development standards and the standards elsewhere in the Zoning Ordinance, the PCD standards shall apply.
- EX: If there is a parcel that is BC-2 but has the PCD overlay District, the 45’ requirement would apply and not the standard 35’ requirement in BC-2.
- **The following policies and objectives relevant to this Application are stated in the CAMA Land Use Plan:**
  - **Policy #4f:** Kitty Hawk will continue to regulate building intensity and oversized structures by enforcing and amending as necessary, the Zoning Ordinance. The Zoning Ordinance regulates building intensity factors such as building height, lot coverage and building setbacks for commercial and residential building development.
  - **Policy #7a:** Kitty Hawk supports the concept of development design standards.
- Mr. Testerman concluded and stated that the Applicant, Mr. Goodrich was in attendance for questions/comments from the Board. Mr. Goodrich stated that his reason for the request is primarily to lower building costs for a multi-family structure where there is a foundation, roof with a 35’ height there can only be two floors and this Proposal will not impact any of the Districts in the Town and would be limited to commercial and multi-family developments and would not have a huge affect on the Town and would be least expensive to build.
- Mr. Heath asked if this proposal meets the requirements of the five (5) acres and 500’ frontage and Mr. Testerman stated that this is not a ‘new’ PCD but this is to change the language and this area already has the PCD overlay requirement.
- Mr. Richeson asked if the Beachwoods development would have any future units to be constructed and if this Text Amendment is approved would it also apply to Beachwoods for the 45’ and Mr. Testerman stated ‘yes.’
- Mr. Richeson also asked if there was anything to prevent any business owner in the BC-1 or BC-2 Districts and new to the Town and asks for a Text Amendment in BC-2 for a commercial building and Mr. Testerman stated that there is nothing to prevent anyone from doing that now either and that adopting a certain height limit in one Zoning District doesn’t require an increase elsewhere,
- Mr. Rhoads asked if there any PCD’s in the application stage on the map now that would fall under this proposal, to which Mr. Testerman responded, “no”

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- Mr. Varnell stated for the record, regarding the above, there is no precedent in general but he pointed out the fact that this could be easily differentiated when it came to other zoning districts.
- Mr. Heath wanted clarification on how the Town would handle a “you did it for him, why can’t you do it for me?” scenario and Mr. Varnell stated that the focus is not on the Applicant and in general anyone that comes in and is willing to build something that requires such height, this would also apply. It was restated that text amendment proposals for other zoning districts are not bound by what is decided for the PCD district.
- Mr. Heath asked if these units would be rentals or purchases and the Applicant stated that they would be both.
- The Applicant stated that one of the problems the County has experienced with multi-family builders is that the County has a \$34MM loan that doesn’t have to be paid back if used for affordable housing and had an agreement with a group and nothing to date has been purchased. Here, Mr. Varnell referenced Kill Devil Hills in that they turned the proposal down.
- Mr. Goodrich stated that another Group from Ohio have purchased a few tracts of land and are will have less than 200 units and that Dare County does not need a big multi-family development of 200-300 units.
- Mr. Varnell wanted to qualify that Kill Devil Hills turned down a proposal and is not the same as the Kitty Hawk proposal and that the Group the Applicant has referred to wanted to come in and develop a huge development of multi-family owned units for the Town and there would also have been deed restrictions that they would only be used for governmental purchases and would be donated to the Town and in clarifying, Kill Devil Hills turned that down “cold” and this is NOT what Mr. Goodrich is proposing.
- Mr. Goodrich again stated that his reason for the proposal is to lower building costs; there would be no increase in lot coverage, parking, etc. He stated that all this proposal would do is to build three (3) floor and parking vs two (2) floors over parking and adding the third floor and in his estimate, this is the cheapest way to go and does open up the Town to a higher increase and would be in a commercial zone.

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- Mr. Testerman stated that a few years ago, the building height was measured from the original grade to finished grade and some neighbors had a concern that with that, ‘towers’ would be built and where the PCD Districts are and that Beachwoods is self-contained in the woods and even at 45’ no views in the area will be affected.
  - He also stated that with the existing PCDs, there should be no properties that would be negatively affected and there are no other impending PCD applications and should any future proposals come forward, the proposed standards would apply: i.e. size restrictions, road frontage, etc. and is limited to where any future PCDs would be entertained.
  - Mr. Heath wondered about septic systems and Mr. Richeson stated that would be an issue for the Health Department and would be based on capacity, number of bedrooms and that there is a formula the Health Department adheres to in these instances.
  - Mr. Testerman stated the Health Department would define the total occupancy whether the building is 35’ or 45’, the maximum occupancy would not change and Mr. Varnell added that other criteria and the Health Department would not change the requirements.
  - Mr. Richeson stated that this was ‘putting the cart before the horse’ because there was no site plan and Mr. Varnell stated that there would have to be a site plan and comply with all agency requirements no matter the height of a building.
  - Mr. Parker made a statement that the Board has made a number of Amendments or changes to this code pertaining to this particular property in the past and there has been no action to date and Mr. Varnell stated that the Board will probably have this type of proposal presented again in another two to three months where a proposal may be made for a fourth or fifth floor.
  - Mr. Richeson asked for a Member of the Board to make a motion and Mr. Spencer made the following: ***“I recommend approval of the proposed Text Amendment to amend Sec. 42-419(7), changing the maximum building height within a PCD overlay district from 35 feet to 45 feet. The Board has found this Proposal to be consistent with the Town’s Adopted Land Use Plan.”***
  - Mr. Richeson seconded but the motion was denied by a vote of 3-2. (Spencer, Heath – aye; Rhoads, Richeson, Parker – nay)
7. **Comments:**
- a. Chairman Richeson – Mr. Heard has been back to work following his stroke and appears to be doing well.
  - b. Planning Board Members – none
  - c. Town Attorney – none
  - d. Planning Director – none
8. **Adjourn:**  
Hearing no further comments/objections, etc., from the Board Members, Chairman Richeson adjourned the September 29, 2022 Kitty Hawk Planning Board Meeting at approximately 6:30pm.