

Kitty Hawk Planning Board
Meeting Minutes
May 25, 2023

Hawk Planning Board Meeting
May 25, 2023 – 6:00pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. Minutes of the April 13, 2023 Meeting
4. Administrative Report:
5. Public Comment
6. Text Amendment:
 - a. Text Amendment: 42-1. Definitions: 42-502: Temporary Uses; Sec. 18-11 – Outdoor Events; Sec. 18-22 – Mobile Food Vendors. Proposals to define and regulate temporary outdoor art markets, food trucks and larger outdoor events.
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 Kitty Hawk Planning Board Meeting to order at approximately 6:00pm on Thursday, May 25, 2023.

Members Present:

John Richeson, Chairman; Bryan Parker, Vice-Chairman; Jim Geraghty, Member; Chuck Heath, Member; Matt Spencer, Alternate

Absent:

Dusty Rhoads, Member; Blair Meads, Alternate; Casey Varnell, Town Attorney; Patricia Merski, Recording Secretary.

2. **Approval of Minutes:** Mr. Richeson made a motion to approve the April 13, 2023 Meeting Minutes and Mr. Parker seconded and the Minutes were approved unanimously.

3. **Administrative Report:**

- a. Town Council Action – Mr. Testerman stated that there will be a Public Hearing in June regarding the April 13, 2023 Text Amendment 42-528(c): Proposal to

Kitty Hawk Planning Board
Meeting Minutes
May 25, 2023

eliminate requirement that ADUs shall not be served by a driveway separate from that serving the principal dwelling.

4. **Public Comment:**

Mr. Richeson addressed the audience and asked if anyone would like to make any comments and Mr. Ralph Calfee came forward with concerns on the Text Amendment 42.1 Definitions; 42-502 Temporary Uses; Sec. 18-11 Outdoor Events; Sec. 18-22 Mobile Food Vendors. Proposals to define and regulate temporary outdoor art markets, food trucks and larger outdoor events.

- Mr. Calfee began: Temporary outdoor markets/Vendors. Mr. Calfee stated that changes in regulations for temporary outdoor markets in Kitty Hawk could lend to cooperative enhancement of the Kitty Hawk retail markets for goods and services and hopefully will not open the gate to a market that is less regulated and less burdened than existing enterprises in Kitty Hawk that are referred to by the Town/County/State and Federal regulations.
- Mr. Calfee stated that a draft of the proposed regulations has been forwarded to the Dare County Chamber of Commerce and will be sent to Town businesses via an emailer for input to the Town
- Mr. Calfee asked if there has been any feedback from any of the participants and asked if that feedback will be incorporated into the Town's consideration. He also stated that he has a few comments related to the temporary outdoor markets and also will have a few closing comments.
- (1) In revising the draft, will that cover only the arts and crafts but will it omit all the other retail uses of goods and services in the commercial districts? He also stated, that if adopted, will this allow for i.e., shoes, clothing, furniture, lawn and garden, etc. or any other approved uses to occur within the Town?
- (2) Does the draft provide for an existing enterprise in Kitty Hawk to hold their OWN temporary outdoor market or does the draft allow only third parties to have temporary outdoor markets with a Sponsor?
- (3) If there is an existing business, could someone have their own outdoor sales because, basically, those are prohibited.
- (4) Should the definition of 'temporary outdoor markets' allow or include services along with goods and merchandise?
- (5) Does the Text Amendment allow the Town to approve in any Zoning District the freedom of offerings than the restricted approved offerings that are allowed for existing businesses?

Kitty Hawk Planning Board
Meeting Minutes
May 25, 2023

- (6) Are approvals for existing Kitty Hawk businesses to be named specifically named in what they can do per the Ordinance or can a business do anything that is approved by the entire District?
- (7) If the Town is requires the market to offer the goods and services that their Sponsor offers, does that eliminate the need for either having this be only arts and crafts or describing what the uses could or should be because they will be the uses of the Sponsor and have been approved by the Town for use?
- (8) Mr. Calfee stated that he agrees that the temporary outdoor market shall not exceed 30% of the ground floor, but, he stated, that some existing enterprises are more than one floor and the idea of the 30% ratio is that the Town should have, in some way, a connection or reflection of the size and scope of the business that is sponsoring them.
- (9) Mr. Calfee highlighted: four (4) events for a 12 month period for any allowed uses per the Zoning District and that this could virtually allow non-stop temporary outdoor markets for any allowed use in the Town such as the arts and crafts markets because any outdoor market could use any businesses for their Sponsor and this could become tenuous outdoor sales.
- (10) Mr. Calfee also stated that he believes that a ‘definition’ of a ‘Town Sponsor’ would be appropriate and necessary to avoid a ‘straw’ Sponsor which has happened within Kitty Hawk.
- (11) Mr. Calfee stated that ‘food trucks’ are in many ways similar to those mentioned above as they offer food instead of other retail goods and some of the food trucks are trying to establish their role in the marketplace which is not like any other outdoor market.
- (12) Mr. Kalfee suggested that once a viable regulation is established for temporary outdoor markets a modest modification of the regulations would make it easier to define food trucks in a similar manner.
- Mr. Testerman stated that outdoor gatherings like “bike week” and “marathons” bring in visitors from the outside and are clearly different from tent sales, temporary outdoor markets and food trucks and these events would also require regulations. The only concern with the ‘draft’ of regulations for outdoor gatherings are whether there is actually a mechanism for the Town to deny any application(s) because, as the Ordinance is written, applying for an outdoor gathering permit is not to interfere with any highway usage, emergency vehicles but could be issued if all the requirements are met which could mean that the Town could have somebody propose to do anything they want to do and all they would have to do is certify that certain restrictions have not been violated; otherwise, Mr. Calfee stated that he sees no restriction and feels there should be an overseer to verify the approval(s).

Kitty Hawk Planning Board
Meeting Minutes
May 25, 2023

- Mr. Testerman stated that the Text Amendment involves several sections of the Town Code of Kitty Hawk and Staff has been directed to draft language pertaining to temporary outdoor markets.
- He also stated that previously this had been permitted under Sec. 18-11 of the Town Code (Outdoor Gatherings & Events Ordinance) and upon further review it was determined that the Ordinance was NOT intended to regulate the temporary use of how the permits were being handles in accordance to the Ordinance and this would be a complete overhaul that pertains to that use.

Mr. Testerman supplied the Board with Attachments pertaining to the Text Amendment and referenced some of the major portions of some of the Attachments to the Board. The Attachments were: (Attachment# 1. Existing Sec. 16-1 & Sec. 18-11); (Attachment #2. Proposed Revision to Sec. 42-502); (Attachment#3. Temporary Outdoor Art Market); (Attachment#4. Proposed Sec. 18-22 – Mobile Food Vendors); (Attachment #5. Proposed Revisions to Sec. 18-11 – Outdoor Events).

- First Attachment (Existing Sec. 16-1 & Sec. 18-11). Mr. Testerman stated that in the Fall of 2022, Town Council reviewed and adopted some minor changes to Secs 16-1 and 18-11. It has been requested that Staff form a Committee to address the pros & cons that would include members of the following: the vendor and brick & mortar sides and interested residents
- Mr. Testerman stated that one of the issues brought forth was to provide an avenue for local business owners to host small scale temporary art markets but having loose regulations this would have a negative impact on the permanent businesses in Town.
- Mr. Testerman also stated that in addition to the proposed new language, Staff recommends amending Sec. 42-502 to allow Staff to approve ‘temporary’ uses rather than requiring Council’s approval as a ‘special use’ as currently written, that a ‘special use permit’ process would be required for ‘temporary use’ such as Christmas tree sales, temporary real estate offices, etc.
- Another drafted language pertains to regulating food trucks/mobile food vendors who would like to operate in Kitty Hawk. Currently, there has been limited instance where a food truck is permitted to operate in Kitty Hawk.
- One avenue would be an approved outdoor event that a food truck would be considered a vendor. Also, should there be an event such as a ‘grand opening’ such as the new and improved Wal-Mart where Wal-Mart requested a food truck which the Town allowed as Wal-Mart purchased all the food and the food truck was simply a serving service to the public with no money changing hands.
- Mr. Testerman stated the Town has interpreted the Ordinance if a brick & mortar restaurant owner also owned a food truck the food truck could operate the same as the brick & mortar restaurant but this was not written in the Code and with the approval of the Text Amendment it would address that portion of the Code.

Kitty Hawk Planning Board
Meeting Minutes
May 25, 2023

- The third part of the proposal is to amend Sec. 18-11 to bring the language back to the original interpretation before governing the outdoor events and gatherings with the acknowledged intent that would cover larger events such as “bike week”, “surf contests” or “marathons”
- In addition to Mr. Calfee’s comments, there is also an excerpt from one of Nags Head’s Town Council where certain of their sections would address the ‘commercial yard sale’ for outdoor sales for commercial products as approved commercial products as an approved commercial establishment.
- In addition to Mr. Kalfee’s comments there is also an excerpt from one of Nags Head’s Town Council where certain of their sections would address the ‘commercial yard sale’ for outdoor sales of commercial products as an approved commercial establishment.
- Example: “Sound Feet Shoes” holds a tent sale once or twice a year in their parking lot of their merchandise and this has been processed as an ‘outdoor gathering’ permit which was not the intent of the Ordinance.
 - With that in mind, should the Board feel that the Nags Head language pertains to our proposal, Staff would draft similar language to meet the Town’s needs and would be discussed at the next Board meeting.

Mr. Testerman stated that within the Land Use Plan there are several objectives that he wanted to highlight:

Goal #4: Ensure continued commercial development in commercially zoned areas of Kitty Hawk and the continued vitality of existing businesses.

- Objective 4b: Encourage local support and patronage for Town businesses.
- Objective 4d: Seek input from business owners concerning Town policies
- Objective 4g: Periodically asses land use type needs, commercial zoning district boundaries, economic development conditions and emerging trends and the types of permitted use allowed in commercial zoning districts.

Goal #5: Remain aesthetically pleasing while maintaining coastal village image.

Policy 5a: Kitty Hawk will continue to adopt, enforce and amend as necessary ordinances and procedures to regulate and improve community appearance.

PROPOSALS (Attachments)

#1: Existing Sec 16-1 & 18-11.

Stipulates what is in the Town Code 16-1 & 18-11

#2: Proposed Revision to Sec. 42-502

Proposes the change and temporary uses rather than a ‘special use permit’ scenario where Staff can authorize as long as all conditions are met.

Kitty Hawk Planning Board
Meeting Minutes
May 25, 2023

#3: What is being proposed for the temporary outdoor art market.

The Committee stated that, this should not be just about artists but also include seafood, shoes, etc. which was a concern of the Committee and the Committee felt that this was a restriction for artists only.

- Mr. Testerman stated that the Board can consider if this should, in fact, include other venues or keep it strictly an 'art market.'
- Proposed temporary outdoor arts/crafts markets. A temporary outdoor retail operation that would be comprised of multiple vendors and temporary accessory structures in which handmade goods, wares or merchandise are offered for sale, barter or exchange.

#4: Sec. 42-502(6). Temporary outdoor art markets.

Specific regulations that would not be permitted on unimproved commercial parcels and if there is a vacant lot that would not be permitted as an established business.

Subsection D. Applications for temporary outdoor markets must demonstrate that the principle use on the parcel will continue to meet all minimum parking requirements during the periods for such sales. One parking space per approved vendor is required in addition to the minimum parking requirements for the principle use.

- The area of the lot devoted to the temporary outdoor market shall not exceed 30% of the ground floor area of the principal structure or sponsoring unit in a multi-tenant structure, whichever is applicable. Temporary outdoor gatherings are limited to four (4) events per a twelve (12) month period per affiliated permanent commercial establishment. Each temporary outdoor market event shall not exceed a period of two consecutive days.
- (e) The intent for the vacant lot is to make sure that someone can come in with a Site Plan Application to build something like a 10x10 structure and then host a gathering.
- (g) Temporary outdoor art/craft markets shall not interfere with potential fire, police or other emergency response needs on site as determined by the Town.
- (h) Complete Applications for a temporary outdoor market must be submitted no less than 15 working days prior to the proposed event; potential rain dates must be identified in the Application.
 - Mr. Varnell, Town Attorney, discussed with Mr. Testerman that the payment of sales taxes is the responsibility of the vendors.
 - Temporary signs shall be displayed only during actual time period of the event and shall be promptly removed by the Permittee at the close of the said event.

Mr. Testerman stated that Staff has the responsibility to approve or deny the proposed motions on each of the Sections per the attachments

Attachment #4: Proposed Se. 18-22 – Mobile Food Vendors

- Definition. Mobile Food Vendor means that any person who dispenses food or beverages from a food vending vehicle, trailer, cart or similar equipment for immediate service and/or consumption.

Kitty Hawk Planning Board
Meeting Minutes
May 25, 2023

- Permitting.
- (a) No person may operate as a mobile food vendor within the corporate limits without obtaining an annual mobile food vending permit under this Chapter and any other licenses or permits that may be required by other applicable state or county law.
- (b) Mobile food vendors shall provide documentation of approval from the North Carolina Department of Health or North Carolina Department of Agriculture and Consumer Services, a valid NC registration for all vehicles used in the operation of the truck or cart. A copy of their valid driver's license and proof of insurance. A valid health permit or most recent notice of inspection must be maintained for the duration of the food truck permit and shall be placed in a conspicuous location for public inspection.
- (c) A separate mobile food vending license shall be required for each food vending vehicle operated by a mobile food vendor.
- (d) Mobile food vendors shall supply written authorization from the Property Owner at any location at which the mobile food vendor operates.
- (e) A violation of this Chapter may result in the suspension or revocation of a mobile food vending license and civil penalties.
- (f) Mobile food vending permits shall expire on December 31 of the year for which the permit was issued.
- (g) The mobile food vending permit fee shall be \$200.00.
- (h) Operating mobile food vendor without a permit results in a \$300.00 fine and the operator is ineligible to receive a permit until the fine is paid. A business operator hosting an unpermitted mobile food vendor shall be fined \$250.00 per unpermitted vendor.
- (i) Violation of any of the standards below will result in the revocation of the mobile food vending permit for the remainder of the year. If the violation occurs after October 1st, the mobile food vendor will be ineligible to obtain a permit for the following year.
- (j) The Town shall issue a maximum of five (5) annual permits each calendar year. Once that limit has been reached, no further permits shall be issued that year and this will prevent excess vendors to apply.

3. General Standards

- (a) Mobile food vendors shall be permitted only on private property, on the premises of an existing commercial establishment located in Nonresidential Zoning Districts. Mobile food vendors shall not be permitted to operate on vacant or unimproved parcels.
- (b) Mobile food vendors shall be located at least 500 feet from the property boundary of an existing restaurant during the normal operating hours of the restaurant. This may be waived if the mobile food vendor.
- (c) Mobile food vendors shall not operate on any public right-of-way, town beaches, beach parking areas or adjacent to beach accesses

Kitty Hawk Planning Board
Meeting Minutes
May 25, 2023

- (d) Mobile food vendor applications shall demonstrate that the principal use on the parcel will continue to meet all minimum parking requirements during the periods for such sales. There shall be no impact on interior circulation.
- (e) No liquid, grease or solid wastes may be discharged from the mobile food vendor.
- (f) Mobile food vendor shall comply with the regulations of the outdoor lighting ordinance and noise ordinance,
- (g) No signage shall be permitted to advertise the mobile food vendor with the exception of one A-frame menu board that may be set in front of the mobile food vendor.
- (h) No mobile food vendor shall remain on site at one property for more than twelve (12) hours in a twenty-four (24) hour period unless the property is owned by the food truck or food cart operator and is the site of a brick-and-mortar restaurant owned by the same individual(s) who utilize the location as the truck or cart's commissary kitchen.

Attachment #5: Propose Revisions to Sec. 18-11 – Outdoor Event

- Mr. Testerman stated that this reverts to the previous language before it was changed in October, 2022 where this section regulates small markets and the Ordinance works for larger gatherings.
- (5) Is unlike the customary or usual activities generally associated with the principal use of the property where the outdoor event or gathering is to be located.
- Mr. Testerman stated that the Town Manager issues the permits or changes or a designee can also issue.
- Mr. Testerman stated that d(2) has been deleted: If needed, the Town Manager shall, upon receipt of an Application for a permit, confer with the Applicant to determine any other matters deemed relevant by the Town Manager and to obtain more specific information concerning any item presented in the permit.

(h) has also been deleted: Nonpermitted events: Any outdoor event that is commenced without a permit shall be canceled and all participants with their associated equipment shall be disbursed from the site. (deleted: It is expected that Applicants will act in compliance with this section on his own initiative; however, the Town Manager, Chief of Police or their representatives may order cancellations of any nonpermitted event if the event is required to have a permit based on the standards of this section.)

- Mr. Richeson wanted confirmation that the food vendors have food that is prepared and ready to consumption and Mr. Testerman stated 'yes.'
- Mr. Spencer stated that there has not been any input from the Chamber of Commerce and he would rather wait for the Chamber's input before the Board makes a motion to either accept or deny. He also stated that he appreciated Mr. Calfee's input and that Mr. Calfee made some very valid points and Mr. Spencer would also like to see feedback from some of the businesses in Town.
- Mr. Testerman stated that the Board can table this Text Amendment until the June Meeting in order to give business owners more time to respond.

Kitty Hawk Planning Board
Meeting Minutes
May 25, 2023

- It was then put to Motion by Mr. Spencer and the Board decided they need feedback from the Chamber, business owners, etc. before voting and Mr. Parker seconded and the motion was passed.

Respectfully submitted by Patricia Merski, Recording Secretary.