

Kitty Hawk Planning Board Meeting
June 29, 2023 - 6:00pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes
 - a. May, 2023 Minutes
4. Administrative Report:
 - a. Town Council Meeting, May, 2023
5. Public Comment
6. Text Amendment:
 - a. Sec. 18-II: Outdoor Events & Gatherings
 - b. Sec 18-22: Mobile Food Vendors
 - c. Sec. 42-502: Temporary Uses.
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 to order at approximately 6:00pm on Thursday, June 29, 2023

Members Present:

John Richeson, Chairman; Jim Geraghty, Member; Rob Testerman, Planning Director; Matt Spencer, Alternate; Blair Meads, Alternate

Member(s) Absent:

Bryan Parker, Vice-Chairman; Casey Varnell, Town Attorney

2. Approval of Agenda:

Mr. Richeson asked if there were any changes/corrections, etc. on the Agenda and hearing no objections, Mr. Richeson declared the Agenda approved unanimously.

3. Approval of Minutes:

- a. Before asking approval of the minutes, Mr. Richeson paid tribute to our former Member Dusty Rhoads and wanted the following included in the Minutes
Dusty Rhoads passed away the morning of June 9, 2023. Dusty owned a local HVAC company and was well known throughout the Town. He volunteered on The Heritage Day Committee from 2005-2009 and was Co-Chair of the Kitty Hawk Folk Life Heritage Committee which is the Waterman. He was very Passionate about how Kitty Hawk's survived off of the land, hunting and fishing.

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Dusty was appointed to the Recreation Committee in January, 2006 and Served until he was appointed to the Planning Board in June, 2015. He Was currently serving his fourth full-term on the Planning Board. Dusty Was a faithful and engaged citizen for many years and had hope of Running for Town Council. On May 31, 2023, Dusty was made an Honorary Member of the Town Council and was sworn in by Town Clerk Lynn Morris, Mayor Pro tem, Jeff Pruitt and Councilwoman Charlotte Walker were also present for the ceremony. He is very much missed.

4. **Administrative Report:**

- a. Town Council Report. Mr. Testerman stated that the Council approved the Text Amendment regarding Accessory Dwelling Units definition change and the elimination of the restriction to have only one driveway which was unanimously voted at a 3-2 vote allowing ADUs to have a separate driveway.

5. **Public Comment:**

- Mr. Testerman passed out handouts to the Board that Mr. Calfee had submitted earlier regarding "Attachment #3".
- Mr. Calfee approached and stated the following: a revision to Attachment #3 that stated that there be a definition for sponsored temporary outdoor markets that would include three conditions: 1) that there is a majority ownership of an existing occupancy or business to prevent just anyone to move in without a permit or lease of at least a year. The lease could also state that a minimum of one year continuous occupancy at the premises be included and declared it as a "permitted zoning use." He would also like to include a possible tenant sign a lease and once granted there could be a number of such events held; but, that is not what Mr. Calfee is proposing; he is proposing to tie temporary sales to local outdoor businesses would therefore define a 'temporary market' as the sponsor, but the term 'sponsor' needs to be defined to include any restraints that the sponsor would have.
- Issue #2: In Sec. 42 - to add that the area be a 'zoning permitted use' and stated that some are conducting business that is not approved, the therefore anyone could come in and do what the others are doing even though it is not permitted and he feels this would be a "minor change' which may have some significance going forwarded.
- He then referred to Section C where it states that the "applications for temporary outdoor markets must be made by; and here the current Ordinance states "property or business owners and the proposal would be by the business owner and also co-signed by the majority owner of the premises and a possible definition for this could be 'market sponsor.'

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- Mr. Calfee also stated that a property owner could set up an outdoor market in space not occupied and with his recommendation his changes would prohibit that behavior and this has been done in the past.
- The last proposed change is regarding 'temporary outdoor markets' which limits outdoor markets to two (2) events/year; but, if they are allowed four (4) commercial yard sales and tent sales then each business in Kitty Hawk could conceivably have 8-10 outdoor sales/year which is a lot but feels that two (2) would be sufficient. He stated that he has spoken to some business owners and that they feel they can do whatever they want to do in having two(2) temporary markets whenever they want.
- Food trucks were Mr. Calfee's next comments and he stated that he had spoken to a few restaurant owners who stated that they are not fond of having a food truck unless there are regulations in place and then they may consider it. He also checked with the Restaurant Association and found out that the Association had no knowledge that active food trucks were in Kitty Hawk and because some of the restaurant owners were not interested at this time, possibly this issue could be tabled until the Fall and also have the Restaurant Association involved in the discussion.
- Mr. Testerman then stated that each of these issues highlighted by Mr. Calfee have been broken out into individual proposals and that any of the revisions could be passed separately and hearing no further comments from the audience Mr. Richeson closed the Public Comment portion of the meeting.

6. **Text Amendments: Sec. 16-1 - Selling Goods on Public Property**
Sec. 18-11: Outdoor Events & Gatherings

Attachment #2 Proposed Revision of Temporary Uses. (Mr. Testerman Stated that Staff has been approving these uses; i.e., Christmas Tree Sales, Etc. and the Ordinance states that Town Council should be approving said 'Temporary uses' and the Proposal is 42-502 - Temporary Uses which would Bring the Ordinance in line with how the Town has been handling these Approvals over the past 8-9 years.

- Mr. Testerman referenced the attachments in the Staff Report and said that the first attachment is mostly for informational purposes concerning the existing language in Sec. 16-1 which is selling goods on public property and Sec. 18-11 refers to outdoor events and that Attachment #2 is a proposed revision that does not deal directly with the markets or food truck issues, but deals with the 'temporary uses' that are now in practice by the Town,

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- Proposals for Sec. 42-502 is to bring the Ordinance inline with the Town's current practices for the past 8-9 years.
- Attachment #3 deals with the 'temporary outdoor markets' which was actually brought last summer where it was brought to the attention of the Town that there was a covered art market that was set up at a commercial establishment where there were 10-12 vendors that had set up their merchandise but this was permitted by Kitty Hawk's Outdoor Events & Gathering permit; but, at a closer look, and as the Ordinance is written, that was not approved which propelled the motion for an Ordinance regarding Outdoor Markets. This Ordinance would regulate how the commercial business owners would be able to host a 'temporary outdoor market' where there could be a few vendors setting up their merchandise as written in the Ordinance and would have to be the same type of commercial use as the established permanent business(es). The Ordinance would also have to include that minimum parking would have to be met which would mean one space per vendor who is associated with the market. Also, the area of the lot that is devoted to the 'temporary market' would not exceed 30% of the floor area of the commercial sponsor's business. He stated that a Committee discussed the four (4) permits per a 12 month period and two members stated that they wanted less stringent regulations and the other two members wanted more stringent regulations and were in favor of two per year and the less stringent did not see a need for there being a set limit; but, included in this is that a 'temporary market' shall not interfere with fire crews or other emergency response vehicles on site and that the Application states there are standards to be followed and if not, the venue would be shut down.
- Mr. Testerman stated that the purpose of this Text Amendment should be to find an agreeable solution so commercial businesses could host various outdoor markets. One of Mr. Testerman's concerns is the bypass 158, should outdoor markets be close to the bypass that could present some safety and/or hazardous problems and the Board needs to therefore review the Land Use Plan before making any recommendation.
- Goals related to the Text Amendment: Goal #4: To seek input from business owners regarding the Town policies and that this is stated in Objective 4-D which was tabled at the last Board meeting and in order to obtain more input from the business owners and that two responses are included in the Staff report where one owner was in favor and one was against.

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- Obj. 4E: This Objective is to define ways to provide and ensure that there is a safe environment for pedestrians and to improve the circulation pattern; to minimize pedestrian vehicular conflicts in commercial areas and improve circulation patterns in the commercial areas.
- Obj. 4-G: This Objective is to periodically assess land use type needs. Commercial zoning district boundaries, economic development conditions and emerging trends and the types of 'permitted uses' allowed in the Commercial Zoning District.,
- Goal #5: _To remain ethically pleasing while maintaining a coastal village image.
- Policy 5A: Kitty Hawk will continue to adopt, enforce and amend as necessary Ordinances and Procedures to improve the community's appearance.
- Regarding 'uses', Mr. Testerman stated that if the 'use' was 'permitted' and that the business was approved then it would be a 'zoning permitted use.'
- Sec. 42-502: Temporary Uses. Temporary Uses allows Staff to approve the aforementioned proposals and Mr. Spencer stated he approved Sec. 42-502: Temporary Uses to allow Staff to give the approvals, Mr. Richeson seconded and was passed unanimously.
- Mr. Spencer stated that in expanding 'temporary outdoor markets' usage gives the businesses more opportunities in Kitty Hawk but not where there are unattended consequences that could harm any existing business due to parking issues and number of people attending which could possibly impact other businesses in the common area and possibly violate an owner's lease.
- Mr. Spencer also stated that this may not be the ideal time of year to address these issues as business/restaurant/property owners do not have to time to focus on these proposals and Mr. Richeson stated that maybe the Board should table these proposals that also include food trucks until the Fall and Mr. Testerman stated that the current 18-11 allows the Town to continue to permit these events and that there is an existing Town Code that these venues can still take place and if these proposals are passed that would mean there would be more restrictions and Mr. Spencer stated that he would like to see more feedback from those that would be exposed to these proposals.
- Mr. Richeson asked if these proposals were now approved could another Text Amendment be submitted for the Fall and Mr. Testerman stated that some of the Council Members would ultimately like some closure on these proposals.

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- Mr. Testerman also stated that the Council could put up a Public Hearing for this to go into effect for the August Meeting.
- Mr. Richeson asked about Attachment #3 that Mr. Calfee brought forward, Mr. Testerman stated that the language Mr. Calfee proposed would have to be included the Board's motion and Mr. Richeson stated that the Board makes a motion to recommend approval of the Proposed Text Amendment 42-5026- Attachment #3 is in coordination with the Town's Adopted Land Use Plan." and Mr. Spencer seconded and the motion was adopted unanimously.
- Mr. Testerman then stated that if 42-5026 is approved by Council and someone with a market reads the Text Amendment and then finds out that Sec. 18-11 is more conducive to what they want to do, they could say that there could be substantial attendance under 18-11 and not 42-5026 to ensure a clear way.
- **Sec. 18-22: Mobile Food Vendors**
- Mr. Testerman stated that he has not had any food truck owners approach the Town asking for any proposed language and because of the proposed Text Amendment for 'outdoor temporary markets', the food truck vendors could be included but cooking in the food trucks could be a problem that currently doesn't exist nor addressed. He stated that there is a food truck near Stack "Em High that was under the impression that the previous owner could place it on the property if of the same ownership and because of this assumption, the Town received a letter from an Attorney stating that the property owner was now a 1% owner of the food truck and the Town does not allow for a food truck to be on a lot for more than 24 hours at a time unless they were a majority owner of the property and food truck. Mr. Richeson stated that if a company, etc. has five food trucks, each food truck should have its own permit.
- There was a motion to table Sec. 18-22 - Mobile Food Truck Vendors until the October, 2023 Planning Board Meeting and Mr. Spencer seconded the motion and the motion was passed.
- **# 4: Outdoor Events & Gatherings:** Mr. Testerman stated that the existing 18-11 reverts back to October, 2022 when the change was made to accommodate the outdoor markets but that change did not come before the Board and since this was not part of the subdivision ordinance which states that the Board review is required or a Public Hearing made by the Council. He also stated that the language that clarifies the intent of the outdoor events as an Ordinance for the larger yearly events; i.e., Bike Week, Surf Contests, etc., where these events are likely to attract substantial attendees and asked if there should be a definition regarding "substantial crowd" and would that fall under #4. Mr. Spencer stated that it should state that the primary purpose of #4 is retail sales and Staff can then decide if that is the appropriate way to go.

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- #5: This was not previously included in the Outdoor Events which states, 'unlike the customary activities generated and associated with the principle use of property regarding outdoor events and where it is located; i.e. Bike Week where the primary objective there is retail sales.
- He stated that the Church that has the Beach Worship came to the Town asking if they needed a permit to hold their services and this did not fall under the seven (7) consecutive days, but the permit was issued for seven (7) consecutive Sundays and when the change was made in October, 2022, it was changed to two (2) consecutive days and added a limit of six (6) permits/parcel in a 12 month period.
- He also stated that the number of outdoor events should still be limited to seven (7) consecutive days for larger events and this should be part of the motion.
- Mr. Richeson stated that the motion is for Staff to develop language that limits events to two (2) events permitted per year and Mr. Geraghty seconded and was passed unanimously.
- **Yard Sales:** This is a new proposal which adds definitions under existing Definition Sec. 16-2 and is a first for a commercial yard sale, outdoor sales and commercial products at an approved commercial establishment and products offered for sales must be the same products offered for the sale within the approved establishment.
- Residential Yard Sales is an event held by a property owner or resident of that property for the purpose of selling used personal property or common household merchandise. The term "yard sale" shall not be interpreted to permit a food market which is in Sec. 42-1 and by moving this under Sec. 16-2 which was originally under Chapter 42, this proposal will make it consistent in the Ordinance.
- Mr. Testerman referenced the language in 'black' under residential is what is currently in Sec. 16-2 that states up to five (5) yard sales are permitted on any residential property in a calendar year and striking the language refers back to Sec. 42-1: definition of yard sales.
- **Commercial Yard Sales:** No more than four (4) events in a 12 month period; 10% parking can be used for merchandise sales and this can be no longer than seven (7) consecutive days and must be approved by the Planning & Inspections Department prior to the event and this would allow for temporary use such as what Sound Feet Shoes hold as their tent sale.

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- Mr. Richeson stated that he would like to see this to be consistent with the outdoor markets and commercial should also follow the number of consecutive days and Mr. Testerman stated that the temporary outdoor markets' intent is for people having vendors setting up their merchandise for sale which is separate from what a business sells where this is where businesses actually bring their merchandise outside for sale.
- Mr. Richeson stated that the number of days should be four (4) like a sidewalk sale and Mr. Testerman stated that there is a discrepancy in the Zoning Ordinance where the Town has allowed sidewalk sales where a business can sell their merchandise as long as it doesn't spill out into the parking lot.
- Mr. Spencer asked if this would be a 'loophole' based on the prior discussion of temporary outdoor markets where they could come to the Board and state what they want to do which is not a temporary outdoor market but then turn around and claim it as a 'yard sale.'
- Mr. Richeson stated that the above is only allowed by the business owner with their products and Mr. Testerman restated the definition as 'selling commercial products offered as part of the commercial yard sale which must be the same products that are offered for sale within their establishment.
- Mr. Spencer made a motion on the Text Amendment Sec. 16-2 Yardsales as described and this proposal is in line with the Town's Adopted Land Use Plan and Mr Richeson seconded and it was passed unanimously.

7. **Comments:**

- a. Chairman Richeson - Dusty will be missed
- b. Planning Board Members - None
- c. Town Attorney - Absent
- d. Planning Director - none.

8. **Adjourn:** Hearing no further comments/objections, etc. Mr. Richeson adjourned the June 29, 2023 Planning Board Meeting at approximately 7pm.

Respectfully submitted by Patricia Merski, Recording Secretary