

Kitty Hawk Planning Board Meeting
November 16, 2023 - 6pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance:

- Chairman Richeson called the November 16, 2023, Kitty Hawk Planning Board Meeting to order at approximately 6pm.
- **Attendance:** John Richeson, Chairman, Member; Bryan Parker, Vice-Chairman, Member; Chuck Heath, Member; Jim Geraghty, Member; Matt Spencer, Member; Casey Varnell, Town Attorney; Rob Testerman, Planning Director; Blair Meads, Alternate
- **Absent:** Craig Merrill, Alternate

2. Approval of Agenda: Hearing no additions, corrections, deletions, etc. to the Agenda, the Agenda was approved unanimously.

3. Approval of Minutes: October 19, 2023. Hearing no additions, deletions, corrections to the October 19, 2023, Agenda, Mr. Richeson made a motion to approve, and Mr. Parker seconded, and the Minutes were approved unanimously.

4. Administrative Report: Town Council Meeting - November 6, 2023.

- Mr. Testerman stated that the Town Council held a Public Hearing on the Text Amendment for the mini-storage warehouse in the Planned Commercial District and the Council's decision was to table the Amendment until the December 4, 2023, Meeting.

5. Public Comment: Mr. Richeson stated that this was the time for those in the audience who wished to speak to the Board, approach the podium and state their name. He also stated that the Planning Board is an 'advisory board' to the Town Council and the Council, at any time, can agree with the Board or table such Amendments for a future meeting.

- The following audience members approached the podium:
- Ms. Andrea Wendell stated that she has lived in the Village for 15 years and that she was in support of the Text Amendment that was previously passed which was done to waylay some density of the development, but density is still an issue on the beach. She stated that there are 27 homes with the potential for an ADU which would drastically change the feel of the Village and that the infrastructure

Kitty Hawk Planning Board
Meeting Minutes November
16, 2023

-2-

would affect certain areas of Kitty Hawk, i.e., Kitty Hawk Road, schools, etc. She has also attended a Town Council Meeting regarding the Text Amendment and referenced an article from the “*Reader’s Digest, December, 2022*” called “Beautiful Seaside Towns” in Beautiful America”; i.e. California, New England, Florida, South Carolina, Oregon and Kitty Hawk was referenced as ‘one of the oldest communities on the Outer Banks and that the original Village has retained much of its charm and today, remains the laid back destination’ and the article went on to reference Kitty Hawk Woods and what a beautiful place it is; the marsh, the wildlife which is why many people find it a great vacation spot because of its uniqueness to the area.

- Also, the article stated that “old Kitty Hawk Village” is the oldest of the Outer Banks’ communities and today still has the feel of a bygone time in lieu of the modern-day rush of development.”
- Based on the article, Ms. Wendell would be disappointed should tourists come to the Village and see a development instead of the characteristics of the Village.
- Ms. Wendell referenced the new, improved Land Use Plan which states that in Kitty Hawk, 51% of the homes are considered vacant and the Land Use Compatibility states, ‘we are encouraging new developments to be designed to limit impact on the wetlands, floods, maritime and encourages conservation design for larger residential and commercial development that limits the footprint of new developments.
- Ms. Wendell would appreciate it if the Board would consider the density and have more control of the proposed development in the best interest of the Village.

Kitty Hawk Planning Board
Meeting Minutes November
16, 2023

-3-

- Ms. Amy Wells stated that the intent of the Text Amendment was to have 15,000sf of upland/lot and she understands that there is some form of a technicality that they are going forward with the number of houses and they are taking separate high-land parcels and including them to equal the 15,000sf of high ground and that any decision regarding the direction of Kitty Hawk would be based on a technicality. At a prior meeting there was support for the Text Amendment with the understanding that going forward there would be more areas of high ground for development/housing because it is not one house but there are ADUs, garages, etc. which in turn has a number of buildings on one parcel. Houses in the marsh have high-ground septic's and flooding problems which make it difficult for residents of the Village to leave during that time and another subdivision would only increase the problems.
- Mr. Scarborough representing the Scarborough and Lore families stated that not one person owns all that land and the land in question has hills that are 35' high and the Text Amendment was used to torpedo this development which doesn't affect it because of the high ground levels. He also stated that there are 4-5 houses to the East; one person lives across from that land and he feels that no one else would be affected. Across the land are the wetlands at more than 100' to get to the trees and only a small part of a house from there would be visible. He suggested that the Board actually look at the land in question which is 26 acres and that according to the State law, that 33 houses can be built on a dead-end road, but no matter how many houses, the infrastructure costs would remain the same and 27 houses seems reasonable.

Kitty Hawk Planning Board

Meeting Minutes

November 16, 2023

-4-

6. **Subdivision:**

a. Applicant proposes a 27-lot subdivision off West Kitty Hawk Road.

- Mr. Testerman stated that the Applicant submitted an application and a preliminary plat for the West Village Subdivision. The plat outlines the Proposal to subdivide five (5) existing parcels for a total of 26.9 acres into 27 total lots; one new road is also being proposed that would connect to Kitty Hawk Road; a water line and underground electric line would be constructed as part of the subdivision.
- The proposed name for the subdivision and new road is the West Village Subdivision, West Village Road. This has been reviewed by Town Staff and the County Sheriff's Office to check for other similarities in subdivision and road names and the result was that both proposed names are acceptable.
- The zoning of the subject properties are presently wooded, undeveloped and zoned Village Residential (VR-1). The VR-1 District allows two (2) dwellings/acre of single-family residential developments.
- **LOT SIZE:** The minimum lot size in the VR-1 District is 15ksf of non-wetland area and the lowest amount of non-wetland area on any of the given lots consists of 15,011sf. Lot sizes for the 27 parcels are compliant with the requirement of the recent Text Amendment that was recently approved. There are some portions where the road runs through the lots, one on either side of the road which is not unique to this proposal.
- **WETLANDS:** Wetlands have been delineated, surveyed and verified by the Army Corps of Engineers; overall, on site there are 13.11 acres of wetlands and the Applicant has proposed to divide the property in such a manner that all of the proposed lots contain an adequate building area and also construct the proposed road and other improvements as designed. The Applicant must obtain a permit from the USCOE to fill approximately 0.5 acres of wetlands in the designated hatched areas as shown on the preliminary plat.

Kitty Hawk Planning Board
Meeting Minutes

November 16, 2023

-5-

- **ROAD FRONTAGE:** The lots must have a minimum road frontage of 25' on cul-de-sacs and 50' in all other situations. All of the proposed lots comply with these standards and Lot 27 will be accessed by a 30' access easement coming off the cul-de-sac at the end of the proposed West Village Road. Proposed Lots 26 & 27 as shown are part of the subdivision that will not change from their current configurations. This proposal will actually provide access to Lot 27 where currently there is none and because Lots 26 & 27 remain as is, Lot 26 will have frontage on the proposed cul-de-sac. Should Lot 27 change for any reason the requirement would be to have road frontage but for now will remain as is.
- **LOT WIDTH:** The minimum lot width in the VR-1 District is 75' which is measured at the front of the building setback and all the proposed lots comply with the standard.
- **BUILDING SETBACKS:** The minimum building setback in the VR-1 District is 10' along the sides and 25' at the front and rear. All of the minimum setbacks are properly shown on the preliminary plat.
- **NOTE:** The front/rear setbacks for Lot 1 is measured from Kitty Hawk Road and that lot will access from West Kitty Hawk Road rather than on the proposed West Village Road.
- **ROADS RIGHTS-OF-WAY:** The proposed new road meets the standards to be classified as a 'local' residential subdivision street which is required to have a minimum right-of-way of only 30' and the Applicant has proposed to develop the road to the greater standards of a 'collector' or 'secondary road' and will be consistent with the standards. The proposed right-of-way is 50' with additional road easements of 5' in width on both sides of the right-of-way.
- Town standards state that the right-of-way for a cul-de-sac must have a diameter of at least 100' and the plat shows a diameter of 102' for the cul-de-sac right-of-way. The plat was also sent to the Deputy Fire Chief for review for any possible concerns that might be encountered due to this Proposal.

Kitty Hawk Planning Board
Meeting Minutes

November 16, 2023

-6-

- **STREET INTERSECTIONS:** The minimum site distance when connecting a new local residential or ‘residential collector’ street to an existing state-maintained secondary road is 70’ along the street right-of-way and the proposed intersection appears to have approximately 100’ site distance along Kitty Hawk Road to the east and approximately 330’ to the west.
- The Applicant is proposing to install an 8” waterline which will serve the subdivision and will connect to the existing 6” Dare County water main running along the west side of Kitty Hawk Road. NOTE: Lot 1 is shown to be served directly from the existing waterline along West Kitty Hawk Road.
- **FIRE HYDRANTS:** The Applicant proposes to install six (6) new fire hydrants within the proposed subdivision.
- **SEPTIC:** All of the proposed lots will be served by individual onsite septic systems. A Septic Permit must be obtained from the Health Department prior to any issuance of a Building Permit for each lot.
- **ELECTRIC LINES:** The Applicant is proposing to install underground electric lines and Dominion Power will need to approve the plans and specifications prior to any installation of the lines.
- **STORMWATER MANAGEMENT:** The Applicant plans to apply for a Low-density Stormwater Permit from the NCDENR Division of Energy, Mineral and Land Resources. Upon issuance of the Permit, it is likely that the conditions of the Permit will limit the amount of building area for certain lots; any restrictions would have to be delineated on the final plat.
- **EASEMENTS:** There are ‘utility easements’ for each lot in the proposed subdivision for the installation and maintenance of utilities. The width of the utility easement is 15’ where abutting roads and 5’ along the sides and rear of each property.
- **ROAD MAINTENANCE EASEMENT:** An easement of 5’ in width extending along both sides of the proposed road right-of-way is provided for the purpose of road maintenance.

Kitty Hawk Planning Board
Meeting Minutes

November 16, 2023

-7-

- **ACCESS EASEMENT:** A proposed 30' access easement runs from the terminus of the West Village cul-de-sac through Lot 26, which provides access to Lot 27.
- **POTENTIAL CONDITIONS OF APPROVAL:** Deck restrictions or covenants limiting the access of Lot 1 to West Kitty Hawk Road must be recorded. A copy of the final road design must be submitted to the Planning & Inspections Department for review and approval prior to grading or construction of the road improvements.
- Also, an erosion and sediment control must be obtained from the Town of Kitty Hawk prior to clearing/grading activities or installation of any improvements including the proposed roadway.
- The Applicant will also need to obtain a Permit from the ACOE for approximately ½ acre of fill in the wetland area designated on the preliminary plat and submit a copy to the Planning & Inspections Department prior to the issuance of an Erosion and Sediment Control Permit to fill the areas of the aforementioned property.
- A copy of the Stormwater Permit from the NC Division of Energy, Mineral and Land Resources must be provided to the Planning & Inspections Department prior to the installation of any improvements.
- Dare County Water Department and NGDENR must grant approval of the plans and specifications for the water lines and a copy must be submitted to the Planning & Inspections Department prior to any installation.
- All necessary paperwork must be submitted and recorded in order to properly abandon the existing lot lines and there also needs to be a limb height of 13'6" to be maintained over the proposed roadway and addresses must be assigned to all properties.
- NOTE: Mr. Testerman stated that Mr. Merrill, Alternate, not in attendance, recommended another condition of approval that Dominion Energy also sign off on the approval of the plans for the installation of the electric lines.

Kitty Hawk Planning Board
Meeting Minutes
November 16, 2023

-8-

- Per the recently adopted CAMA Land Use Plan, it designates the subject parcels as an “Accommodate & Adapt” on the future Land Use map. An “Accommodate & Adapt” area is defined as an area that is highly vulnerable to flooding and may occasionally include new elevated structures and according to the USP, any future uses in the “Accommodate & Adapt” area should be primarily single-family homes and the reuse of existing buildings.
- Mr. Testerman stated that the Proposal appears to meet the requirements set forth in the VR-1 District and any proposal for residences will be held to the 30% lot coverage and density requirements.
- Mr. Testerman referenced Lots 26 & 27 on the plat on the screen stating that those lots remain unchanged, and the proposed easement runs from the cul-de-sac through Lot 26 for access to Lot 27.
- **(AN ASIDE:** Mr. Testerman stated that in 2013 the West Village Subdivision was approved with 32-33 lots but that expired without any action being taken; also, resubmitted in 2014 and denied in 2015.)
- The roadway shown in the current Proposal is nearly identical to the road that was proposed in the previous iteration.
- Brian Rubino, Environment Consultant, Engineer and Licensed Geologist with Quible & Associates stated that he wanted to add to the 2015 submission and that the current Proposal has five (5) additional acres at the end of the road; therefore, there were five (5) less acres in the 2015 Proposal where there were 32 lots and now are submitting for 27 lots with the additional five (5) acres. He stated that this area is a typical sand ridge that gets developed in Kitty Hawk, Southern Shores and other towns on the Outer Banks and this is a high elevation in the upland area of the property which is basically in the middle and classified as a Fripp type of soil by the USDA but is a well-drained, clean sand.

Kitty Hawk Planning Board

Meeting Minutes

November 16, 2023

-9-

- Mr. Rubino also stated that scientists have looked at the sand from a septic capacity in both 2013 and 2015 and found that all of the uplands are suitable for the on-site septic's.
- He also stated that the layout of the road is nearly the same as the prior submissions but the road was extended to reach the lots at the end and they are also trying to minimize the wetlands and keep the road alignment the same but there are a few pockets of wetlands on the property that can be labeled as 'non-jurisdictional' by the Army Corps of Engineers which was reapproved. Also, there is ½ acre of the roadway which will be less than ½ acre because the road passes through some of the isolated pockets and those pockets are 95% or more of the wetlands on the tract which are 'jurisdictional' wetlands and will remain protected as 'jurisdictional' wetlands and only a small percentage of those isolated pockets total approximately 15ksf and all the other wetlands are adjacent to waters or broader areas of wetlands which will remain 'jurisdictional'. The property is also bound on both sides by canals where future homeowners would have access to the canals.
- Mr. Testerman stated he reached out to Mr. Billy Standridge, USACE, for clarification should the Text Amendment be approved, and the lots sold, that the individual property owners could then apply for Fill Permits for certain areas of their lots. He also spoke with Mr. Varnell about any possibility of 'deed restrictions' regarding the amount of wetlands that could be filled or is it limited to what is shown on the road and with a minimum of 15ksf of non-wetlands and to add any additional wetland fill would need to be considered by the Planning Board.
- The question from Mr. Richeson on how much of the white areas shown on the plat are 'jurisdictional' wetlands and were they there before and are the colored areas on the plat wetlands that were there before as 'jurisdictional'?

Kitty Hawk Planning Board

Meeting Minutes

November 16, 2023

-10-

- Mr. Rubino stated for Mr. Richeson that there are some that are ‘jurisdictional’ and the white areas on the plat are 15ksf and but there are pockets that are not going to be ‘jurisdictional’.
- Mr. Testerman stated that the density maximum in the Zoning Districts mainly refers to when the lots are subdivided and in the VR-1 District, the maximum density is two (2) dwellings/acre and that the 27 lots are 27 acres but this is somewhat skewed because of the two large lots at the back and the plat is showing one (1) acre but does not take into account any ADUs.
- Mr. Parker stated that in the previous Text Amendment regarding the 15ksf of uplands it indicated that all the lots would be connected and was voted on. He also stated that he had spoken to a Town Council Member prior to this meeting and asked them how they ‘interpreted’ that all the lots would be connected and the Council Member confirmed that his interpretation was that all the lots would be contiguous and not isolated; here, Mr. Testerman stated that he did not recall that issue being discussed but that the first 15ksf was proposed and written into the Amendment and Mr. Parker asked if this would need to be clarified and Mr. Testerman stated that it’s a matter of how it has been written in the Ordinance and what was presented to him at the Staff level. He also stated that prior to when the Text Amendment went through it was 15ksf of non-CAMA wetlands, whether contiguous or not.
- Mr. Spencer asked the following: if there is a square lot and each corner of the lot has 4ksf of uplands no one would be able to build on that unless the middle was filled in and then a Permit would be needed from the Army Corps of Engineers and Mr. Richeson interjected ‘providing it was 404 and not ‘jurisdictional’.

Kitty Hawk Planning Board
Meeting Minutes

November 16, 2023

-11-

- Mr. Geraghty then stated that Council Member David Hines stated this wouldn't restrict an individual homeowner from obtaining a permit to fill at a later time and it was 404 and they wouldn't be restricted in getting a permit once the lot is purchased. Here Mr. Varnell interjected his question as to who would be responsible for interpreting these issues and that the Board should review the plan and adapt to moving forward and if the Town or Council feels that the Ordinance isn't written for what was intended then this is when the Board should make that decision.
- Mr. Testerman stated that the Board, in making their decision, can also request a traffic study or input from the School Superintendent.
- Mr. Rubino then stated that the majority of the lots are at a graded 15ksf of uplands on one side of the road and there are some areas that are not, but, based on the Text Amendment that was previously approved, the Applicant took that verbatim and this is where the design came from and did not want to rely on the originally planned road that was approved to minimize the wetland impact associated with the road construction and this also makes grading on the side easier and that the Applicant wants to preserve most of the trees for now and then future homeowners can then decide how they would want to handle the trees on their lot. He also stated that doing this differently there would be more wetlands impacts associated with the road with more grading and less trees on the side; therefore, the site would be more impacted than originally intended.

Kitty Hawk Planning Board
Meeting Minutes

November 16, 2023

-12-

- Mr. Rubino also stated that the current Proposal is intended to keep the wooded integrity which would be less expensive and there would be less land disturbance and there are other lots in Town that are much smaller than the ones proposed.
- Mr. Testerman stated that he and Mr. Richeson spoke prior to this meeting about Lots, 2, 3 & 4 being closer to West Kitty Hawk Road and split by the road and the smaller portion on the other side of the road has no setback lines shown which might indicate that portion could not be built on and the concern in building the primary residence on the west side of Lot 2 and an ADU on the other side of the road give it the appearance of this being two (2) separate lots and Mr. Rubino stated that nothing could be built on that small of a lot.
- Mr. Strader asked if ADUs would be situated behind the primary dwelling and Mr. Testerman stated that was the original intent but that is no longer the case.
- Mr. Geraghty brought up the Sugar Planet site which meets the guidelines of the Ordinance and is it the intent of the Board to use that as an ‘opinion’ to turn down the Proposal and Mr. Varnell stated that the Board needs to be careful in not doing that, but, if there is a rational basis to decide that the recent subdivision, for any reason, doesn’t either conform to the Ordinance or is in some way a violation of the Land Use Plan that would be a reason to deny; again, stated for the Board to be aware that opinions do not get in the way of what is on paper and that the subdivision is within the Town Code.
- Mr. Spencer stated that the density requirements are built into the Zoning Ordinance and if this is denied or we recommend denial of this project based on the density concern, then the Board is substituting our judgment for the Council who has already determined that these are the density rules in the VR-1 District and meets the requirements and a similar point to be made when it comes to issues of stormwater, floods and wetlands which are also regulated and it is not in his opinion, the role of the Board to

Kitty Hawk Planning Board

Meeting Minutes

November 16, 2023

-13-

supplant those rules with our opinions and if there is opposition to the Zoning Code, opposition to the wetland rules, etc., this is not the forum to raise those issues and he wanted to make a motion to approve the Proposal subject to the conditions of approval as stated in the Staff report and Mr. Geraghty seconded; Mr. Spencer and Mr. Geraghty approved and Mr. Heath, Mr. Richeson and Mr. Parker denied - vote 3-2.

7. COMMENTS:

- a. Chairman Richeson - none
- b. Planning Board Members - Mr. Parker was appreciative of the input from the Applicant, Quible and the Audience.
- c. Town Attorney - none
- d. Planning Director - Mr. Testerman stated that the Town was recently selected to participate in the North Carolina Resilient Coastal Communities Program. Phases 1 & 2 aim to facilitate community driven processes for setting coastal resilient goals and identifying and prioritizing projects and enhancing community resilience hazards. Phases 1 & 2 consist of community engagement and risk and vulnerability assessment, planning project selection and project prioritizing. A plan of shovel ready is proposed to help improve storm resilience and opens the Town to grant funding for such projects in the future. There is a tentative date of January 25, 2024, for the first community engagement meeting.

8. ADJOURN: Hearing no further comments/concerns, etc. Mr. Richeson adjourned the November 16, 2023, Planning Board Meeting at approximately 6:55pm.

Respectfully submitted by Patricia Merski, Recording Secretary