

Kitty Hawk Planning Board Meeting  
January 18, 2024 - 6pm  
Kitty Hawk Municipal Building

**AGENDA**

1. **Call to Order/Attendance:** Chairman Richeson called the January 18, 2024 Kitty Hawk Planning Board Meeting to order at approximately 6pm.  
**Attendance:** John Richeson, Chairman; Bryan Parker, Vice-Chairman; Jim Geraghty, Member; Chuck Heath, Member; Matt Spencer, Member; Rob Testerman Planning Director; Blair Meads, Alternate; Craig Merrill, Alternate  
**Absent:** Casey Varnell, Town Attorney.
2. **Approval of Agenda:** Hearing no objections/additions/changes to the Agenda, the Agenda was approved unanimously.
3. **Approval of Minutes: December 28, 2023 Meeting:** Hearing no objections/corrections/additions to the Meeting Minutes, the Minutes were approved unanimously
4. **Administrative Report: Town Council Meeting, January 8, 2024.**
  - Mr. Testerman stated that the Town Council approved the two (2) lot subdivision on Ridge Road and also approved the Site Plan Modification for 3078 N. Croatan Highway.
5. **Public Comment:**
  - Mr. Richeson stated that this portion of the meeting was for anyone to approach the Board, state their name and make their presentation. He also stated that the Board is an 'advisory' board to the Council where the Council can either agree or deny the recommendation of the Board.
  - Mr. Joseph Anlauf, Kitty Hawk resident, stated that the reason he and his family chose Kitty Hawk was because he felt the Town was less likely to infringe on individual property rights. He stated that his daughters may not be able to afford a mortgage and may have to rent a space above a garage due to the high rates of mortgages. He stated he would like to have things in Kitty Hawk go back to where they were in protecting individual property rights.

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- Mr. Duke Geraghty, Government Affairs Director, approached and stated that he wanted to discuss Text Amendment 42.1, Item #1. He referenced an ADU being located behind the primary dwelling and the problem being that the septic system would probably be located on the side of the house where it would be driven over on a consistent basis in order to get to the ADU at the rear of the property. He stated that the septic should be at the back of the house but that may not always be an option for a homeowner depending on the size of the lot which may be a hardship for the homeowner.
- He also stated that pre-existing ADUs that were built according to the codes and now with this new proposal now they become a non-conforming and therefore, the ADU would have to be converted in 6-9 months and currently those with ADUs are taking summer reservations and with the 6-9 month timeframe, people may not be able to use that ADU for the summer and would lose the additional income from the ADU.
- He also stated that long-term occupancy is confusing and there was a limit of 31 days which was then considered a long-term occupancy and he has also heard that there may be a 90 day occupancy and he feels that Mr. Varnell should clarify the definition of 'long-term occupancy' and that the Homeowners Association has always had a policy very much in favor of ADUs being used for short-term rentals
- He also feels that the height requirement of 28' is an arbitrary number and not sure where that requirement came from.
- He also stated that the General Assembly is reviewing the requirements for ADUs and that there may be some rules from the Assembly that could possibly relax some of the rules and make other rules mandatory.
- Ms. Grace Anlauf, is a local real estate agent and stated that the proposed Text Amendment regarding the VR-1 Zoning District would impact future homebuyers or those that have previously bought homes and the income from their ADU as a short-term rental and others who may purchase homes in the future and may want to add an ADU as a short-term rental but if the property changes hands that new owner may want the ADU to become a long-term rental.

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- Ms. Anlauf also stated that taking away for a homeowner to make a decision about an ADU infringes on their personal property rights and would ask the Board to think how this Text Amendment will impact those that have previously purchased a home and this would also affect future home buyers considering building an ADU.
- Hearing no further comments from the audience, Mr. Richeson ended the Public Comment portion of the meeting.
- 6. Text Amendment: Proposed language regulating ADUs used as short-term rentals in the VR-1 Zoning District.**
- Mr. Testerman stated that this Text Amendment is for sections 42-1 and 42-528. The Applicant has submitted the Text Amendment Proposal that would aim to have the following outcomes:
  1. New ADUs permitted in the VR-1 Zoning District after potential adoption of this Ordinance to be used as 'long-term rentals' or residences,
  2. Pre-existing ADUs used for transient rentals could continue with a long-term resident or homeowner in the principle dwelling and non-conforming properties would have a grace or transition period to convert within 6-9 months.
  3. ADUs should be located behind the primary dwelling.
  4. ADUs should be located behind the primary dwelling. (Mr. Testerman referenced the map on screen to indicate the VR-1 District)
- Proposals for definitions of accessory structures include: habitable space, independent cooking facilities and long-term occupancy and the Applicant came in with a 'blank' for how long 'transient' would be defined and this area would be for the Board and Council to discuss for inclusion in the recommendation
- **Sec. 42-528 - Accessory Dwelling Units:** The sections in 'black' of the Ordinance have already been adopted. Also, addressed was the 28' height that was originally proposed by the Applicant in 2018 as part of the ADU language.
- An ADU is secondary and subordinate to the primary residence of the primary dwelling with a maximum height of 35'.
- Proposed under Subsection H would apply to all ADUs regardless of Zoning Districts and that the ADUs shall be located in the rear of the property.

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- Referencing the proposed statement “In addition to the requirements of Sec. 42-528 a-h, subsection i-l shall apply to ADUs located within the VR-1 Zoning District:
- Subsection i: ADUs shall be used for long-term occupancy and not as transient rental structures as defined in Sec. 42-1 of this Chapter.
- Property owners shall be required to have a record of deed restrictions on the Dare County Register of Deeds restricting occupancy of any ADU to long-term occupancy. This restriction shall be recorded prior to the issuance of the Certificate of Occupancy by the Town and shall not be voided unless authorized by the Town.
- Subsection j: Either the principal use structure or the ADU shall be occupied by the property owner or other long-term resident as their primary residence.
- Subsection k: Other ADU structures, such as garages or storage sheds located on the same lot may be approved by the Town in addition to ADUs. However, accessory structures shall not be occupied or used as a transient rental structure as defined in Sec. 42-1. Accessory structures authorized by the Town after potential date of approval shall not contain more than 200’ of habitable space as defined in Sec. 42- 1 and no independent cooking facilities.
- Subsection l: ADUs located on properties in the VR-1 Zoning District being used as transient rental structures that were authorized by the Town, the potential adoption date shall be considered ‘pre-existing structure’ and allowed to continue to use; however, the primary dwelling units used as transient rental structures shall have a period of 6-9 months to comply with the occupancy requirements of Subsection j.
- Mr. Testerman stated that this Amendment would focus on not having two short-term rentals on one property and would have an ‘x’ number of months to convert and suggested that the Board discuss and include in their recommendation to Council and if the recommendation is approved about the time limit a homeowner would have in converting to a long-term occupancy

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- Mr. Testerman stated that the adoption of this Text Amendment would require any future permitted ADUs located within the Low Density Village Residential District to be used for long-term occupancy and this would be achieved through a recorded Deed Restriction that would be with the property and not the owner; therefore, future owners would be bound by the same restriction.,
- In instances where an ADU was constructed prior to the potential adoption of this Proposal, those ADUs could remain as a short-term rental or under the proposed definition for 'transient rental structure.' However, within a certain 'grace period' to be determined by the Council and/or the Applicant, the primary resident on site would be required to be used as the 'primary residence' for either the owner or another long-term resident.
- The Proposal also dictates that accessory structures (not dwellings) that have habitable space contained within them would be limited to 200' of habitable space and could not be used for occupancy. (i.e., a detached garage with a home office or home gym attached or laterally attached or above it and in Sec. 42-528 would not apply and those types of structures would be allowed in a front yard.)

**Policies and Objectives are stated in the CAMA Land Use Plan**

- **Policy 3.1** - Manage land use and development to minimize primary and secondary impacts on resources and existing residents through standards for development.
- **Policy 3.4** - Encourage residential that fits Kitty Hawk's character; maintaining zoning regulations that protect the character of Kitty Hawk's neighbors.
- Monitor trends and reduce impacts of ADU and short-term rentals in Village Residential Zoning Districts
- Current regulations allow ADUs as long as lot coverage and other standards are followed
- Consider modifications to design requirements that could include additional setbacks or buffering in the VR-1 District, especially if the unit is accessed via a separate driveway.
- **Policy 3.5.** Encourage affordable workforce housing in and around Kitty Hawk.
- Goal 11: Encourage an adequate supply of affordable and workforce housing stock to serve the needs of year-round residents.

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- **Policy 11:3** - Consider incentives or other actions for keeping housing used as long-term rentals.
- Mr. Testerman stated that he has some concerns over the legality requiring any owner occupancy and suggest that any reference to 'owner occupancy' state 'long-term residence' which would include the 'owner occupancy' or stating that there shall be no more than one 'short-term rental' on any given property and the Applicant would have to agree to these proposed changes.
- He also noted that, if this Text Amendment is approved, it would not affect any stand-alone or a house being used as a short-term rental.
- Mr. Richeson asked if pre-existing ADUs used as short-term rentals would be grandfathered and Mr. Testerman stated that pre-existing ADUs used as short-term rentals and the primary dwelling is either owner occupied by a long-term renter, there would be no change and would therefore, be in compliance and that the only situation where it would need to change is if there is a primary dwelling and an ADU and both are being used as short-term rentals there would be a period of months(?) for one of the two to be converted as a long-term rental,
- Mr. Geraghty that if a homeowner built an ADU according to code then with this Proposal that ADU would be non-conforming and to convert to a long-term rental, 50% of the value would be lost to the owner and to arbitrarily state that and owner would have to meet the new codes when it built to code previously.
- Mr. Testerman stated that the 'non-conforming use' language states that, if the non-conforming use stops for a period of 12 months and any future use would have to comply with the Ordinance and if the primary ADU continued to be used as a short-term rental, then they would keep their non-conforming use but, if one or the other would end up being a short-term rental for a period of 12 months, then the non-conforming use status would be lost and then it would have to be compliant.
- Also, the items in 'red' in the Staff report are what is being proposed and what is written in 'black' have already been included and adopted in the Proposal.

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- In summarization of the comments by Mr. Spencer, Mr. Meads and Mr. Merrill:
- Most of the ADUs in the Village 1-Zoning District are primarily used as short-term rentals and now requiring those owners to convert to long-term rentals could impact their added income from the short-term rentals.
- If short-term rentals are to be regulated, then it should be done properly and the Town should not totally eliminate them.
- Short-term rentals (ADUs) would not change the character of the Town but if the proposal is adopted, there should be consideration for those ADUs that currently exist and included in the Proposal.
- There were a number of legal questions that were brought up and the Board and Mr. Testerman stated that Mr. Varnell stated to Mr. Testerman that he has concerns on the legality requiring owner occupancy and that removing any reference to 'owner occupancy' and to state 'long-term residents' instead of including 'owner occupancy' or that there shall be no more than one short-term rental on any given property.
- Any changes to the proposed Text Amendment, the Applicant would have to agree and if approved this Proposal would not affect stand-alone short term rentals in the VR-1 District that is used as a short-term rental.
- There have been two recorded cases that have addressed these same issues, one from Wilmington in 2022 which has not been settled. Possibly doing research in other areas of NC or other areas of the country where these same issues have occurred may be helpful in moving forward with this Proposal.
- Mr. Anlauf stated, from the audience, that the Proposal is stepping on the property owners' rights and if an owner wants to have an ADU they should be allowed.
- The Applicant also commented from the audience, but with no microphone it was difficult to hear what she was saying.

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- Hearing no further questions/comments from the Board Members, Mr. Richeson made a motion to 'table' the Proposal; have input from Mr. Varnell and doing research on other areas of the State or country and was passed unanimously.

**7. Comments:**

- a. Mr. Richeson - no further comments except thanking all those who have worked on the Proposal.
- b. Planning Board Members - none
- c. Town Attorney - absent
- d. Planning Director - None

**8. Adjourn:**

Hearing no further comments/additions/objections, Mr. Richeson adjourned the January 18, 2024 Planning Board Meeting at approximately 6:50pm.

Respectfully submitted by Patricia Merski, Recording Secretary