

**Kitty Hawk Planning Board Meeting**

**February 15, 2024 - 6pm**

**Kitty Hawk Municipal Building**

**AGENDA**

- 1) **Call to Order/Attendance:** Chairman Richeson called the February 15, 2024 Kitty Hawk Planning Board Meeting to order at approximately 6:00pm.  
**Attendance:** Chairman Richeson, Member; Bryan Parker, Vice-Chairman; Member; Chuck Heath, Member; Jim Geraghty; Casey Varnell, Town Attorney; Rob Testerman Planning Director; Craig Merrill, Alternate; Blair Meads; Alternate.  
**Absent:** Matt Spencer, Member  
**Voting:** Due to the absence of Matt Spencer, Member; Craig Merrill, Alternate will vote At this meeting.
- 2) **Approval of Agenda:** At the request of the applicant, motion made by Mr. Parker to remove Item #8, Unfinished business, text amendment Sec 42-1 & 42-528, and Mr. Richeson seconded.
- 3) **Approval Of Minutes: Draft - January 18, 2024 Meeting;** Hearing no objections/corrections/additions to the January 18, 2024 Meeting, the Draft of the meeting was approved unanimously.
- 4) **Administrative Report: Town Council Meeting - February 5, 2024**  
Mr. Testerman stated that there were no Planning Board items before the Town Council that required action.
- 5) **Public Comment:** Mr. Richeson stated that this portion of the Meeting was open for anyone to speak before the Board on any issues and reiterated that the Board is only an 'advisory' board to the Council and they can either deny or approve of the Boards' recommendation.
  - a) Mr. Dale Ludwig, living at 3729 Herbert Perry came before the Board regarding Item #8. Mr. Ludwig did not know that Item #8 had been removed from the Meeting but wanted to speak regarding his ABNB would become an issue under deleted Item #8. Mr. Ludwig also stated that he pays 'occupancy taxes' on the ABNB and his ABNB is one of the highest rated on the Outer Banks. He feels that all requirements have been met and feels this issue comes down to property rights.
  - b) Mr. Joe Anlauf's concern is the definition of minimum lot size and the implication of contiguous uplands vs. upland area of 15Ksf. As a licensed Engineer, the rule states that the wetlands must be contiguous and as an Engineer, and also according to the Nation-wide Permitting Process, there would be a way to combine the two areas together to make the area contiguous and inadvertently this would cause the property owner additional money to combine the two lots.
  - c)

Kitty Hawk Planning Board  
Meeting Minutes  
February 15, 2024

-2-

An example Mr. Anlauf gave was a 8Ksf lot on a single lot and a 7Ksf lot would equal 15Ksf but the lots would not be contiguous because each lot is large enough to construct a home, but if taken the 8Ksf and the 7Ksf and make it contiguous, he could take strips of dirt and get a Fill Permit to fill the wetlands that would connect them; thereby, which would impact the wetlands where there was no reason to.

He also stated that the Board, considering if the lots are contiguous or not, may be inadvertently causing people to consider a wetlands impact to the mitigation fees and also would impact fill materials at cost and this proposal would be an overall impact to the natural resources; but, if allowed to be non-contiguous, a property owner potentially could develop the property and have it remain as is.

d) Mr. Ralph Calfee, property owner in Kitty Hawk. He stated that his experience with subdivisions in areas that contain uplands do not do well and if the requirement becomes that all uplands must be contiguous, then the question is: what is the minimum lot size of the lot/acreage when then in turn it becomes how a subdivision is developed and how to make that work. Therefore, if the uplands are required to be contiguous, any future owner would have to generate a lot configuration to satisfy the requirements even if it is a lousy subdivision; then, a subdivision approval would be required and once obtained there would be two lots side by side that work and meets the minimum lot requirement. If the goal of the Board is not to have lots with contiguous uplands but if the goal is not to have the uplands contiguous there may be other options to consider. He also feels that if the requirement states that wetlands have to be contiguous, Kitty Hawk could be seeing more subdivisions.

- He stated, 'what is contiguous' regarding wetlands; does it mean that there is not a wetland in between; does it have to be natural soil or a concrete strip; and, if it's about subdivisions in wetlands then it should be a subdivision issue.
- No further audience members came forward to speak, Mr. Richeson closed the Public Comment portion of the meeting.

**6) Special Use Permit - 4907 & 4911 Putter Lane that fronts along US 158.**

- Mr. Testerman stated that EMS stations are a permitted use in the MS-1 Zoning District as a 'special use; and that there are no specific conditions listed in the Ordinance. The proposed station would also include a bay for Kitty Hawk to station a fire truck during storms or other times as necessary.
- The two properties are zoned MS-1 and the site is currently unimproved. Directly abutting the subject property to the North is a vacant Town owned parcel that is also zoned MS-1; to the West is the Seascape Golf Course; to the East across 158 are

Kitty Hawk Planning Board  
Meeting Minutes  
February 15, 2024

-3-

single-family residences zoned BR-1 and to the South is BC-1 which houses a real estate office.

- The total development area is 40ksf and each lot is 20ksf and the maximum allowable coverage is 60% and the proposed Site Plan lot coverage is 58.2% or 23,261sf.
- Maximum building height is 35' from the existing grade to the peak of the roof and the building height elevation will be reviewed and approved during the Building Permit process.
- Mr. Testerman stated that the front, rear and side setbacks are compliant with the requirements of the Ordinance
- The Site Plan shows two (2) access points; one off of 158 and the drive aisle circles around the back of the proposed structure to allow emergency vehicles to pull in to access the bays from behind.
- The southern ingress/egress drive is proposed to be 24' wide with the northern drive proposed to be 54.3' wide where the emergency vehicles will exit the site onto 158. The Town Code does not have any minimum parking standards for this specific Proposal and the Applicant has provided parking using the requirements for general commercial space/employee and five (5) additional spaces for six (6) employees and this would be eleven (11) required spaces on the Site Plan.
- Vegetative Buffers: Mr. Testerman stated that the Ordinance requires a buffer between Commercial Zones and an abutting Residential Zone and the only abutting Residential Zone in this Proposal is the Seascape Golf Course to the West and Staff's interpretation that a buffer is not required in the Proposal as an EMS station is not a commercial use and the MS-1 District is not a 'traditional commercial zone'.
- A Lighting Plan has been included and the Site Plan appears to meet all the requirements of the Outdoor Lighting Ordinance.
- Signage: No signage has been proposed at this time, but, should the Applicant, in the future, propose signage, a Sign Permit would need to be applied for and reviewed by Staff for compliance.
- Septic Improvement Permits from the Dare County Environmental Health Department will be required prior to the issuance of any Building Permit. The Site Plan has a septic area that is proposed to be located on the southern portion of the parcel.
- The following Policies and Objectives relevant to this Proposal are stated in the CAMA Land Use Plan. Policy 6.1 - Maintain and provide ocean and emergency services and fire and police protection.

Kitty Hawk Planning Board  
Meeting Minutes  
February 15, 2024

-4-

- Mr. Testerman stated that the Board is tasked with determining if the proposed development is consistent with the Policies/Objectives outlined in the Land Use Plan. He also stated that the Site Plan has been forwarded to the Dare County Water Department and Fire Department for their review. The Water Department had a few comments that are not directly related for the Board to review.
- The Proposal was also passed to the Town Engineer for review. He stated that the potential conditions of approval is a prior issuance of an Erosion & Sedimentation Control Permit; the parcel being combined into one parcel and the parcel is to be readdressed to a 158 address instead of an address of Putter Lane.
- Mr. Richeson asked the Board if they had any questions and Mr. Merrill was concerned that the Town doesn't have standards for the proposed parking requirements and Mr. Testerman stated that 16 parking spaces for the EMS Station would be sufficient.
- Mr. Mike Strader, Engineer of the Special Use Permit stated that within the preliminary site plan, there are some potential bunks that may be utilized during emergency situations, and that we took that into account, along with the number of employees at peak shift, to determine how that may affect the parking requirements.
- Mr. Richeson asked if on conditions of approval, should the parking issue be included in the motion or just referenced in the motion?
- Mr. Richeson made the following motion: ***I recommend approval of the Site Plan and Special Use Permit for an EMS Station located at 4907 and 4911 N. Croatan Highway subject to the conditions listed in the Ordinance and recommended Conditions of Approval. The Board has found this Proposal to be consistent with the Town's Adopted Land Use Plan.*** ***The motion was approved unanimously,***

7) Text Amendment 42-1: Definitions - Minimum Lot Size

(Preface: Mr. Testerman stated that this is a follow-up to a Text Amendment presented In September, 2023 and the highlighted areas in red in the Staff Report are the proposed language)

- Mr. Testerman stated the definition as it currently stands is the minimum lot area as required by various Zoning Districts in the wetlands area as determined by State and Local Agency regulations which may not be used for minimum lot size.
- The Proposal is adding: "All upland areas must be continuous, contiguous and connected to meet the minimum lot size requirements" and is also adding the various Zoning Districts to be consistent throughout.
- A Text Amendment was recently adopted that excluded any type of wetland being included in the middle of the lot size calculations and was recently brought to Staff's attention that there was major consensus by Council on this and it was intended that the 15ksf be contiguous in nature; to be considered adequate square feet footage for a new lot during the subdivision process and that the 15ksf of upland area must be uninterrupted by any wetlands, marsh, streams, roads, etc.

Kitty Hawk Planning Board  
Meeting Minutes  
February 15, 2024

-5-

- The desire for the upland area to be contiguous was not related to Staff during the previous review, therefore, this was not included in the language that was presented to the Board or Council and had there been any discussion regarding the upland areas to be contiguous during those reviews they would have been included and because that discussion did not happen, this has become before the Board as a separate Application. Therefore, in order to enforce the intent of the 15ksf of contiguous upland, the language needs to be added into the Text Amendment
- The Applicant proposed adding the language to the definition and Mr. Testerman related to the Applicant that the minimum lot size is also dictated by individual Zoning Districts and should also be included in the BR-1, BR-2 Districts.
- Mr. Testerman referred to the Engineers who stated in the Public Comment section of the meeting that some valid points were brought forward and that different angles of the Proposal should be reviewed.
- Mr. Richeson stated that as a matter of historical record, the 15ksf as was previously written that the 404 wetlands could be counted as part of the 15ksf but could not count as CRC CAMA wetlands and that the common denominator was to have a 15ksf lot that could literally be on a chunk of dirt because the 404 wetlands could be filled.
- Mr. Testerman stated that the intent was for a lot having 15ksf of uplands but the word 'contiguous' was not part of that until the subdivision came under review and the 15ksf of "contiguous uplands" was not mentioned to Staff or to the Board or Town Council.
- Mr. Anlauf and Mr. Calfee's comments bring up issues; i.e., designing a 15' or 20' lot subdivision and if there is a parcel abutting any one of the roads in Kitty Hawk, it would not be 15ksf and was fillable and no CRC wetlands.
- Mr. Varnell stated that one of the concerns is a lot of 15ksf with wetlands but does not meet the contiguous requirement because there is a pocket that separates and therefore, creates two (2) sections of uplands and in order to meet the contiguous requirement, a Fill Permit would need to be obtained that and by doing so, they would be destroying wetlands by combining them to make the lots contiguous.
- Mr. Varnell also stated to create a contiguous upland the Ordinance says that such an act could be forced which also seems to be to the contrary to protecting and preserving the wetlands.
- Mr. Richeson wanted clarification that the wetlands in question are the 404 wetlands that contained with no ingress/egress and sees this as different from CRC or CAMA wetlands which have ingress/egress
- Mr. Geraghty stated that there are 'adjacent wetlands' and 'isolated wetlands' and 'adjacent wetlands' have a big pocket (i.e., field/acres) and an 'isolated wetland' where the 'pockets' in between have high ground and a roundup which are not converted to another wetland; they are individual; therefore, the difference.

Kitty Hawk Planning Board  
Meeting Minutes  
February 15, 2024

-6-

- Army Corps of Engineers changed the ruling that 'isolated wetlands' will become non-jurisdictional so they can be filled and no longer would be considered 'wetlands; therefore, considered 'uplands'
- Mr. Geraghty also stated that Kitty Hawk is different than other areas on the Outer Banks in that there are a lot of maritime forests and that the nature of the whole area are pockets of dry land and pockets of wetlands and having to connect them would harm the environment and asked why does it have to be contiguous by connecting the uplands and why force this when the lot is not changed and left as nature intended.
- Mr. Meads asked if the Board has a say in what someone does to fill in an area to make a lot and Mr. Testerman stated that before the Board or Staff see the request, a Fill Permit would have to be obtained; they would have to clear some wetlands and then go to Staff with the Site Development Plan to show that there are contiguous wetlands.
- Mr. Varnell stated that if it falls within the regulations and does not violate the goal and is meeting the approved minimum requirements to fill the lots according to the Army Corps of Engineers then it could be approved.
- Mr. Parker stated that the majority consensus of the Board and Council are that the 15ksf would be connected land and not separated by or connected by a road, stream, etc.
- Mr. Merrill feels that this Proposal does not address the Applicant's concerns and if reviewing the CAMA Land Use Plan, is what Kitty Hawk has not sufficient to meet the policy goals and what is being proposed is unacceptable?
- Mr. Richeson stated that he feels the changes are mostly for clarification of what 15ksf is and Mr. Geraghty added that building a house, etc, those rules are currently regulated and that this proposal of contiguous wetlands will not change the regulations. He also stated that someone could easily obtain a nationwide permit to fill adjacent wetlands and fill up to a tenth of an acre which are not just isolated pockets.
- Mr. Parker stated that if someone brings a Site Plan to Staff, the offer is on the table, contingent upon the Board's approval but they couldn't fill in the wetlands because they don't own the land but want to buy the land and Mr. Geraghty stated that the landowner can do the required filling prior to the sale.

Hawk Planning Board  
Meeting Minutes  
February 15, 2024

-7-

- Mr. Geraghty made the following motion: ***“I recommend denial of the proposed Text Amendment relating to the minimum lot sizes and the Board finds that this proposal is inconsistent with the Town’s Adopted Land Use Plan and also based on input from Engineers at this meeting stated that land could be connected.”***
- In order to move forward a second needed for discussion and Mr. Merrill seconded and it was felt that there needs to be more input from the Applicant where there could be nuances that were not explained that could make an impact.
- In favor of denial - Mr. Geraghty and Mr. Merrill. Opposed to denial: Mr. Richeson, Mr. Parker and Mr. Heath.

**8) Unfinished - removed from the Agenda prior to the Meeting.**

**9) Comments:**

- a. Chairman Richeson - appreciated the input from the Engineers
- b. Planning Board Members - none
- c. Town Attorney - none
- d. Planning Director - None

**10) Adjourn:** Hearing no further comments/objections/input, Mr. Richeson adjourned the February 15, 2024 Planning Board Meeting at approximately 6:45pm

Respectfully submitted by Patricia Merski, Recording Secretary