



Minutes
KITTY HAWK TOWN COUNCIL
Monday, July 1, 2024
Kitty Hawk Town Hall, Smith Room
6:00 PM

1. **Call to Order**
2. **Moment of Silence/Pledge of Allegiance**
3. **Approval of Agenda**
4. **Public Comment** – The public is invited to address the Town Council on any topic. Please sign up with the Town Clerk before the meeting and when your name is called, come forward and speak into the microphone at the lectern. Please limit comments to 3 minutes.
5. **Consent Agenda** – Items on the consent agenda are considered to be non-controversial, routine in nature, or items not requiring a presentation to discuss by the Town Council in order to consider the items(s). Any item may be removed for discussion by the council or by any member of the audience who wants to hear the item presented and discussed.
 - a) **Approval of June 3, 2024, Regular Session Council Minutes** – Approval of the consent agenda will approve these minutes.
 - b) **NC Resilient Coastal Communities Phase 3 Grant Application.** Staff are requesting Council approval to apply for the aforementioned grant funding for engineering and design of high priority projects identified in the RCCP Plan.
 - c) **Interlocal Agreement for solid waste collection services with Dare County.** The Town of Kitty Hawk contracts garbage collection services with Dare County for the citizens of Kitty Hawk.
 - d) **Interlocal Agreement for Motorola Flex software.** The Town of Kitty Hawk contracts with Dare County for Motorola Flex public safety software.
 - e) **Audit contract with Johnson, Mizelle, Straub, & Consolvo, LLP.** The Town of Kitty Hawk contracted the audit services for a fee of \$24,000.
6. **Items Removed from Consent Agenda**
7. **Planning – Public Hearing**
 - a) **Text Amendment – 42-1 – Definitions, Accessory workforce housing.** Applicant proposed language to allow accessory workforce housing on non-residential properties.
 - b) **Text Amendment – 42-1, 42-247, 42-248, 42-249, 42-273, 42-274, 42-275, Minimum Lot Size.** Applicant proposes language exempting lots of certain sizes of from the 15,000 sq ft of contiguous upland requirements.
 - c) **Text Amendment- 42-1.-Definitions and 42-528.- Accessory Dwelling Units.** Applicant proposes language requiring long-term occupancy on sites in the VR-1 district that contain an Accessory Dwelling Unit.
 - d) **Text Amendment - All districts allowing single-family dwellings – Maximum dwelling size and occupancy.** Staff proposes language that would set a maximum dwelling size of 6,000 sq. ft. of conditioned living space and 14 occupants.



TOWN OF KITTY HAWK

8. Schedule Public Hearing

- a) **Zoning Text Amendment** – 42-414(b).- Mini-warehouse in PCD. Applicant proposes to amend the maximum building size of a mini-warehouse in a PCD to 40,000 square foot footprint.
- b) **Zoning Text Amendment** – 42-1.- Definitions; 42-225, 42-247 thru 249; 42-273 thru 275. Lot coverage and Permeable paving materials
- c) **Special Use Permit/Site Plan** - 6100 N Croatan Hwy/The Woods Rd PCD – Applicant is requesting a special use permit and site plan approval for a mini-warehouse facility as well as a second commercial structure

9. Old Business:

10. New Business:

- a) **Planning Board Membership.** Council requested discussion regarding Planning Board alternates.

11. Reports/General Comments from Town Manager

12. Reports/General Comments from Town Attorney

13. Reports/General Comments from Town Council

14. Adjourn

***To Watch Livestream on YouTube:** <https://youtube.com/live/CBfNMN28Fug?feature=share>

Council Members Present:

Mayor Craig Garriss, Mayor Pro Tem Jeff Pruitt, Councilman David Hines, Councilwoman Charlotte Walker, and Councilman Dylan Tillett.

Staff Members Present:

Town Manager Melody Clopton, Town Attorney Casey Varnell, Administrative Services Director Laura Walker, Finance Officer Liliana Noble, Police Chief Mike Palkovics, Police Lieutenant James Helms, Fire Chief Mike Talley, Public Works Director Willie Midgett, Public Information Officer/Town Clerk, Lauren Garrett

1. **Call to Order**
2. **Moment of Silence**
3. **Pledge of Allegiance**
4. **Approval of Agenda**

Garriss: Council, I need a motion to approve tonight's agenda please.

Walker, Charlotte: So, moved.

Garriss: Motion made by Charlotte. Second?

Tillett: Second.

Garriss: Second by Dylan. All in favor?



All Council: Aye.

Garriss: All opposed? None.

4. **Public Comment** – The public is invited to address the Town Council on any topic. Please sign up with the Town Clerk before the meeting and when your name is called, come forward and speak into the microphone at the lectern. Please limit comments to 3 minutes.

Garriss: Okay, Public Comment. Lauren, do we have anyone signed up for Public Comment please? Anyone signed up for Public Comment? Would anyone like to speak at Public Comment? Okay, we'll get to the Public Hearing later.

5. **Consent Agenda** – Items on the consent agenda are considered to be non-controversial, routine in nature, or items not requiring a presentation to discuss by the Town Council in order to consider the items(s). Any item may be removed for discussion by the council or by any member of the audience who wants to hear the item presented and discussed.
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 - e. **Audit contract with Johnson, Mizelle, Straub, & Consolvo, LLP.** The Town of Kitty Hawk contracted the audit services for a fee of \$24,000.

Garriss: Council, I need a motion to approve tonight's Consent Agenda please.

Tillett: Mayor, I move to approve tonight's Consent Agenda.

Garriss: Thank you Dylan. Second?

Walker, Charlotte: Second.

Garriss: All in favor?

All Council: Aye.

Garriss: All opposed? None.

4. **Items Removed from Consent Agenda**

Garriss: Okay, and no items removed from Consent Agenda.

Garriss: Planning. Rob, if you can please come up. Council, I need a motion to go into Public Hearing regarding text amendment 42-1 Accessory Workforce Housing, Non-Residential Housing. Can I have that motion, please?

Pruitt: So, moved.

Garriss: Second?

Hines: Second.



Garriss: All in favor?

All Council: Aye.

Garriss: All opposed? None. Alright we are in Public Hearing. Rob?

5. Planning – Public Hearing

- a. Text Amendment – 42-1 – Definitions, Accessory workforce housing.** Applicant proposed language to allow accessory workforce housing on non-residential properties.

Testerman: First text amendment for tonight is to section 42-1; adding two definitions listed in the staff report for that for accessory use workforce habitation and accessory workforce housing. The application was submitted, and the proposed language would provide commercial property owners in Kitty Hawk with greater flexibility providing an opportunity to develop small scale residential uses on site to provide housing for the workforce in the area. As an example of what is proposed, and I can go through the staff report for you, a commercial development that has a gross floor area of 15,000 square feet would be permitted up to 1,500 square feet to dedicate as workforce housing. The proposal states that 10 percent of the floor area was dedicated as workforce housing. The definition of dwelling if built to the maximum setbacks and lot coverage requirements would still apply as well as zoning requirements that apply to the commercial requirements in place. Currently we do allow apartments over permitted commercial uses as special use permit, this definition that is proposed differentiates itself as the dwelling is required to be over an existing structure but instead this could be over or attached laterally or detached entirely from the structure on the commercial property. There are also no prohibitions on short term rentals or apartments under the current ordinance. The proposed language for you tonight dictates that it could not be used for short-term rentals. During the Planning Board review, the discussion did come up with also setting up a minimum square footage for potential units but ultimately when the vote came no modifications to the language that was proposed. In the following policies and objectives relevant to the application and CAMA land use plan, policy 3.5 states to encourage affordable workforce housing in Kitty Hawk, affordable workforce units should be located within or near invested improved areas the land use map which pretty much encompasses the commercial developments in Town. Considering improvements in dimensional requirements to allow for additional and consider increasing allowances for small scale detached housing i.e. duplexes, triplexes, and some areas where performance design. The Planning Board reviewed this proposal at the May 16th meeting and unanimously recommended approval. The applicant is on hand if you have any questions for me or for him. I'll turn it over to Council at this point.

Garriss: Thank you, Rob. Council, any questions for Rob then I will ask the applicant to come up? Any questions? Okay. Will the applicant come up please sir? How are you doing?

Calfee: Super, thank you. For the record, my name is Ralph Calfee and I'm a property owner in Kitty Hawk. I think Rob has set it out and it's a pretty simple proposal. I don't think there's anything complicated about it. It's simply an effort to create an opportunity for commercial properties to include the development of limited workforce housing rather than trying to do a large project that's 60 units jammed into a big building which doesn't seem to be receiving too good of a response locally. This would provide distributed workforce housing that we could put on properties that are already commercially developed and conceivably folks in the workforce housing would be working in the commercial development that is on the property where they are housed. Rob mentioned the size limitations so that will prevent anything large or grandiose. At the Planning Board meeting there was discussion about whether there should be a minimum size for these units, but I did not introduce a



minimum size. I wasn't trying to be restrictive but on the other hand I certainly have no objection to the notion of a minimum size. I personally am not a fan of trying to house workers in really minimal sized facilities because it should be satisfactory, and I don't think that's an ideal solution. Anyway, if you would choose to put a minimum size, I would not have a problem with it. I don't have any more to add, I'll be glad to respond to any questions.

Garriss: Council, any questions for Mr. Calfee?

Tillett: I don't have any but maybe it is a question. First of all, I think this would be a neat way to help Dare County with existing housing issues that we have. If Council decided to modify this slightly to add a parking space per bedroom, would you be in agreement with that? As a condition to this approval? Is there a reason you did not include requiring parking spaces?

Calfee: First, I don't have to be in agreement if that is what you all decide. If it's what you'll approve of, it's what you'll approve, and I will either accommodate it or not. Secondly, the notion is if we have workforce housing on the site then that eliminates some of the transportation issues, we have for workers moving around. Conceivably some of these workers would not have transportation. The reason the size was in my discussion is with commercial ventures there's often singles or pairs in the workforce that don't have a place to live but I'm not trying to develop housing for a couple with two kids or whatever. I'm just trying to provide for a single or a couple maybe with a small dependent and I suspect the amount of parking they will need would be minimal as well as eliminating a parking space. To me it is not essential but if you deem it essential then we'll go from there.

Tillett: So, what you're saying is if that person worked at that facility, then the parking spot may be a moot point.

Calfee: When they come here they would have to get a car and in speaking with some of these business owners they may not have a car at all. I just don't see this as a driver for a major need for parking.

Garriss: Does that answer your question?

Tillett: It does.

Hines: I'm going to add on to that too. Usually, a commercial property generally has plenty of parking anyway, correct?

Calfee: There's never enough. But we do get all the parking on we can so we could set aside parts of the property to have a place to park.

Hines: Correct, I'm done.

Garriss: Any other questions for Mr. Calfee? Thank you, Mr. Calfee. Is there anyone here who would like to speak during this Public Hearing segment? Come on up, Donna.

Creaf, Donna: My name is Donna Creaf and I serve as the Government Affairs Director for the Outer Banks Association of Realtors. Each year the Association has develops policy positions on the local, state, and federal levels. This amendment that you have in front of you tonight is consistent with the position that OBAR has, and it expands the opportunity for your Town particularly for workforce housing, so I encourage the Board to adopt this amendment that Mr. Calfee has submitted. This gives flexibility to business owners in Kitty Hawk and moves us in the right direction. Thank you.

Garriss: Thank you, Donna.

Hines: Ms. Creaf, didn't the county have a similar standard in 2008?



Creef, Donna: Yes, sir in 2018.

Hines: 2018, I'm sorry.

Garriss: Anyone else like to speak in this hearing section? Okay, Council, I will entertain a motion to back into Regular Session.

Hines: So, moved.

Garriss: Motion made by David, second?

Pruitt: Second.

Garriss: Alright, any further discussion? All in favor?

All Council: Aye.

Garriss: All opposed? None. Okay, Council we're back in Regular Session. What would you like to do with this item?

Hines: I'd like to make a motion.

Garriss: Go ahead.

Hines: I move to approve the proposed text amendment to add the definition of Accessory Use Workforce Habitation and Accessory Workforce Housing to Section 42-1 as presented in the staff report. Town Council finds this proposal to be consistent with the Town's adopted Land Use Plan.

Garriss: Thank you, David. I need a second.

Walker, Charlotte: Second.

Garriss: Any further discussion? All in favor?

All Council: Aye.

Garriss: All opposed? None. Thank you all. Council, I need a motion to go back into Public Hearing.

Hines: So, moved.

Garriss: Thank you David. Second?

Tillett: Second.

Garriss: Thank you Dylan. Go ahead Rob.

- b. Text Amendment – 42-1, 42-247, 42-248, 42-249, 42-273, 42-274, 42-275, Minimum Lot Size.**
Applicant proposes language exempting lots of certain sizes of from the 15,000 sq ft of contiguous upland requirements.

Testerman: For this one, in this section 42-1, 42-247, 42-248, 42-249, 42-273, 42-274, 42-275, Minimum Lot Size regarding residential zoning districts. So, the proposed change to the definition is the existing definition is in the plan all upland areas must be continuous, contiguous, and connected to meet minimum lot size requirements except as allowed by various zoning districts. Then as you get into each of the zoning districts, for example VR-1 district, 2.7 B allows 15,000 square feet of uplands then it creates exceptions then requires all areas to be continuous, contiguous, and connected to meet the minimum lot size requirements except if the area is one and a half acres of which would not be required to be continuous, contiguous, and connected. That language is repeated throughout the other residences. You can see in the VR-2 district 240D for duplexes our current ordinances require



25,000 square feet per duplex. For multi-family dwellings it's an acre and a half as well. So, I guess that's intent with the applicant who is on hand to answer questions as well. During the last public hearing for the minimum lot size that requiring these 15,000 square feet to be continuous, contiguous, and connected could end up creating some unintended consequences with people filling land to create the square footage. This proposal doesn't change any of that for lots that are smaller than an acre and a half or two acres for multi-family, but it could potentially encourage a developer to use larger lot or subdivisions where they could make the choice whether they want to disturb those wetlands. They would still have to have the 15,000 square feet of uplands. So, the applicant is on hand to answer any questions for his specific proposal. The CAMA land use plan states that policy 23.1 to manage land use and development for primary and secondary impacts on resources on development. Policy 3.4 is to encourage residential development that fits Kitty Hawk's character while maintaining zoning regulations that protect residential neighborhoods. Policy 4.1 encourages the preservation of Kitty Hawk's maritime forest and floodplains, marshes, and wetlands and to develop regulations as well as land protection initiatives. At the May 16, 2024, Planning Board Meeting there was a split vote so recommended disapproval by a vote of 3 to 2 so I will turn it over to Council for any questions. I meant to point it out in the last public hearing too that all of these we have tonight are legislative decisions so it's really what Council feels in in the best interest of the Town while listening to public comment, the staff report, and the applicant so it's up to judgment without having to adhere to any standard. I'll turn it over to the Council.

Garriss: Thank you Rob. Any questions for Rob?

Hines: I may have one. One second please. Under the multi-family dwellings Rob, if I'm reading your language correctly it says and correct me if I'm wrong. Marshes and wetland areas as determined by federal, state, and agencies and areas waterboard of the vegetation line are determined by CAMA regulations may not be used. Is that defining CAMA wetlands or CAMA water? Because there are two different sides to that.

Testerman: Well, it's written as marshes and wetlands as determined by CAMA regulations.

Hines: Okay, it's a little confusing because if it's a CAMA waterway.

Testerman: Yes, that part of the language doesn't currently exist in the multi-family dwellings because it's just copied language that has been under the single-family dwelling section since before I've been here.

Hines: But now it's being included into multi-family?

Testerman: Yes, I'll let the applicant speak to that but the intent was to include that language in multi-family to have some continuity and same language across the different dwelling types.

Hines: Okay, thank you.

Garriss: Thank you, David. Does anyone else have questions for Rob?

Testerman: I will add that as I was preparing for this a trend we've seen with recent development proposals lately is that despite what our minimum requirements say for density and lot size but not only lot size the size of houses and developments and all is if this was to get adopted it does give an option for lower density development and fewer houses in the particular area they are looking at when subdividing. In my opinion that would be on trend with the voices that we've heard here in our most recent subdivision reviews which is that the density needs to be looked at and not require anyone to do these larger lots but maybe give them an incentive and encouragement to do so.

Hines: But the key word there is that they don't have to.



Testerman: Right.

Hines: We all know how that can work sometimes in Dare County.

Garriss: Any more questions for Rob? Applicant is here, correct? Come on up, Mr. Calfee.

Calfee: Thank you. Again, for the record I am Ralph Calfee, a Kitty Hawk property owner. It's probably important on this one to talk about what it isn't as opposed to what it is. This does not propose to void your most recent adoption with the 15,000 square feet of continuous, contiguous, and connected uplands. What it says as an alternative if you chose not to follow that option you can go with larger sized lots and so the intent of this is to see if developers will take the opportunity to avoid the difficult process that could occur for the 15,000 contiguous and instead have larger lots with lower density still be required to have the 15,000 square feet of uplands but not necessarily be contiguous but this is just some kind of work around for the contiguous thing. In my view it is not because the larger lots with lower density development is not a work around it's a worthwhile alternative. I think this ordinance will give a developer an incentive to do just that and subdivide larger lots. The long ordinance of it is simply because each of the district's requirements for single family, duplex, multi-family and all of that. The concept is always the same if it's single family and you want to use the alternative approach then the lot size is going to be a minimum of an acre and a half. Let me be sure to get it right. Two acres instead of an acre and a half. Then multi family is a little more complicated because you have acreage attached to each of the units, so this does that with the same format but once again it increasing the acreage associated with each one of the units so it consistent in that respect throughout. Also, I will add that I am not doing this for any client. I have not researched any particular property in Kitty Hawk to see exactly what the impact would be. I am of the belief that there would be a lot of properties remaining in Kitty Hawk where this would be potentially a way to do subdivisions that in fact result in lower density. I will be glad to answer any questions.

Garriss: Council, any questions for Mr. Calfee?

Hines: I have one for Rob. On the multi-family zoning is it four units per acre?

Testerman: Yes.

Hines: Do you feel the way this is written hurts that requirement? I'm still stuck on the CAMA part.

Calfee: Multi-family is close to four units per acre. The arithmetic is kind of odd, it gives you different calculations.

Hines: I'm aware.

Calfee: The bottom line is four units to the acre then my recollection here is that we go into basically following the same rationale as the acre and a half for single family and two acres for duplex. So, in the multi-family as you expand the number of units you would also expand the increase for acreage requirements.

Testerman: As far as the density, the four dwellings per acre is the maximum density we allow in the VR-3. I don't think this would have that much effect on that. We're not looking at a specific site on this but our definitions when we calculate density, we're looking at non-wetland are by definition anyway.

Hines: Correct, but still, you can use wetlands to count for the overall area. You can still use whether it be Army Corps on one side and CAMA on the other doesn't matter. If you have three acres of uplands and five acres of wetlands you can combine that to make eight in multi-family, correct?

Testerman: I'd take a closer look.



Hines: That's my interpretation of our ordinance.

Testerman: I can check on that and get back to you but in 42.1 the definition of the density, it's laid out but I don't have the exact wording in front of me. It's the upland area that we're looking at to calculate density.

Hines: I'm good.

Garriss: Any more questions for Mr. Calfee? Is there anyone here tonight that would like to speak during this public hearing section? Come on up, sir. State your name, please. You get five minutes to speak during Public Hearing.

Anlauf, Joe: Joe Anlauf, 4721 West Eckner Street. I didn't come here originally to speak on this, but I have professionally looked at properties exactly like what Ralph has described where you have 8,000 square feet of uplands and 7,000 square feet of separate uplands. All of you are familiar with Kitty Hawk village and the lay of the land where we have ridges separated by small portions. We have lots that you can fit a house on there, you can fit a drain field on there, you can fit everything. You make it have to be contiguous you make me have to connect that 8,000 to that 7,000 then I have to go the Corps and get fill between those to make it contiguous but if you allow an alternative where someone can make a larger lot size that's greater in size and I can leave those separate and develop them maybe connect them with a wooden foot bridge or something like that to get use of that property then you're not forcing me to impact those wetlands in that natural resource. I very strongly support what Ralph has proposed, I think it's a really good idea. It gives a developer an alternative and I can tell you now professionally that I am looking at several properties where this is relevant.

Hines: I'm going to have something on that too. As long as the wetland does not connect to an open body of water you don't have to get a fill permit anymore from Army Corps. I know all about that.

Anlauf, Joe: It was settled that isolated wetlands are not the jurisdiction of the Army Corps of Engineers provided they are not connected to a navigable body of water. That sounds like a simple thing but it's not. The Corps will claim jurisdiction over things that are not connected but for example there are places in Kitty Hawk that connect through a ditch or something on Moore Shore Road that connects all the way out to Kitty Hawk Bay and they're going to claim jurisdiction over that and so it's not as clear cut. The Federal government in the Supreme Court ruling was unanimous. The Federal government divested their interest in monitoring isolated pockets of wetlands. North Carolina followed the Farm Bill in 2023 and said we also aren't going to get involved in it. So, it sounds simple isolated pockets you can fill by right, that's the way I interpret it. Unfortunately, I don't get to make that call but the Corps has to come in and make a jurisdictional determination about something they don't have jurisdiction over anymore.

Hines: So, I'm in the business as well. My conversation with the Army Corps official is if I can walk around that pocket of wetland and not touch water it can be filled.

Anlauf, Joe: When we can delineate wetlands, if you can delineate a loop and it closes upon itself like what you just described you can walk around to me that is isolated. Sometimes though you have a loop that hits a property line, and you don't have the right to continue to follow it out so that isolated call becomes a little muddier. I tell my clients if the loop closes, and the delineator ties those flags in a loop then you can fill it by right that's what I tell them. But I tell them they are taking a risk without getting a jurisdictional determination by the Corps. In doing so, they don't have that cover of the claim of no jurisdiction gives them. But we could debate that all night and I only have a minute and twenty-two seconds left so that's all I got.

Hines: We can debate it and I'm not saying I'm for it or against it because there are certain cases



where you have to use common sense but I'm not in favor of building here to the bypass to get something done.

Anlauf, Joe: I understand. I see it for the client's side that I represent if the rule says the wetlands should be contiguous then they're either existing as contiguous in some way they connect or we make it and there's a nationwide permit series 18 for a tenth of an acre 14 for driveways, we can go get a permit, fill those wetlands, impact that natural resource, pay a wetland bank somewhere else for the wetlands credits and move on but that's an expensive exercise and if you can give a developer an alternative to avoid that and preserve that wetland as a natural resource then why not do that? That's all I want to say about it.

Hines: Thank you.

Garriss: Thank you, sir. Would anyone else like to speak at this public hearing? Okay Council, if there are no other questions then I need a motion to go back into regular session.

Pruitt: So, moved.

Garriss: Motion made by Jeff. Second?

Walker, Charlotte: Second.

Garriss: Second by Charlotte. All in favor?

All Council: Aye.

Garriss: All opposed? None. Okay, we are back in regular session Item 7B. Council, discussion? Entertain a motion?

Tillett: I'll discuss. I understand the intent of this is to encourage larger lots but what I see with it is I disagree a little bit on that it encourages utilizing a bunch of wetlands which is a lot of what we have in Kitty Hawk to eliminate or reserve the text amendment that we recently passed to go right back to where we used to be.

Garriss: We knew this might be an issue.

Hines: What I'm not in favor of is this being some wide-open thing. I have paid more mitigation bank money than I ever care to admit to. I get there's a purpose behind it but to me it's just too wide open. That's just my opinion. I'm not saying there aren't cases where it should be done and can be done. I did 17 lots behind Howard's Public, and it worked fine. I think it's too wide open for me. I may stand alone in this but that's just how I feel about it. I think there's good merit behind what's being asked.

Walker, Charlotte: If someone has a two-acre lot or one and half acre lot and they go to get a permit, is the real property exempt from the 15,000 square feet of uplands?

Garriss: Rob?

Testerman: Can you repeat that please?

Walker, Charlotte: If someone has the larger lot and they go to permit and they have filled area on their lot, that does not count towards uplands? Is that true or it should be?

Testerman: Yes, right. There's nothing in the adopted language from a few months ago that would prevent someone from getting fill brought in before the subdivision. They could get whatever permits necessary from the Army Corps to get that filled area to meet the 15,000 square feet.

Walker, Charlotte: So that can go towards the 15,000 square feet?



Testerman: It can be used for that calculation.

Hines: To help Councilwoman Walker out, if somebody has 15,000 square foot lot on Bob Perry Road, and all things considered with the Army Corps and you can walk around it and its not leading out to Kitty Hawk Bay then someone can come in there and fill it and then go to Rob and it's a 15,000 square foot lot, correct?

Testerman: Yes, and with the proposal you've got in front of you tonight nothing would change with that. They could still do that and get the smaller lot subdivisions. As the applicant was explaining, instead of getting these fill permits and getting this fill in here and fill in there and coming up with 10 lots as long as they are an acre and a half in size.

Hines: If it's still not connected to a body of water and there's wetlands there somebody can still and will go fill that then come see you after its filled. It happens all the time.

Testerman: Sure. If someone comes in with these acre and a half lots they've got 10,000 square feet or 5,000 square feet then what they do after somebody sells the lot and they start developing it and they get whatever permits they need like Army Corps permits then we're not going to have any say in that but what this is saying is that instead of doing all that fill ahead of time and breaking out instead of having a 25 lot subdivision they are breaking down into acre and a half lots so they'll have the same acreage but have 8 lots or maybe 9 lots. Again, it's not anything that would be required of them, but it provides another option. They could still do 15,000 square feet lots and have I think it's two dwellings per acre in the village or four dwellings per acre out here, it just gives an alternative.

Hines: I've never asked this question but I'm going to ask it. How does the staff feel about this text amendment?

Testerman: I think it makes sense. Like I said it came up in the Planning Board and I mentioned it was a 3 to 2 vote. It was actually a motion to approve, and that vote failed 2 to 3 then that motion was denied. Then one of the Board members brought up what would be the downside? We're not requiring anybody to do these larger lots but we have the option of doing 15,000 square feet of uplands which is what is required now but like I said it gives them an option to do a larger lot rather than getting a permit to fill as much as they need to get the necessary uplands to do the subdivision they are more encouraged to work with what they've got and do a larger lot lower density development.

Walker, Charlotte: But isn't our objective to protect the wetlands?

Testerman: Yes.

Varnell, Casey: So, I think maybe I'm being simple about it but so I look at it as we're requiring is that if you want to be exempt the only thing we're exempting really is the requirement of connected, contiguous, and continuous. So, the idea I think the idea behind the amendment, and I don't want to put words in anyone's mouth is to prevent the filling of the wetlands to create if you will by exempting a larger lot from the requirement of connectivity. So that's a simple way to stay it, does that make sense?

Hines: Is this in the meeting that you gave your recommendation on during the planning board or is this another?

Varnell, Casey: If I was there, I probably would have given a recommendation as they often ask, and I think it makes sense. I think there was concern when we first passed the amendment here at Council level requiring the "Three Cs". I think there was concern when seeing that diagram and hearing folks talk about how disrupting wetlands and diverting waterflow could be a very bad thing and an



unintended consequence. All this does is propose an alternative without undoing the original concept. You're just encouraging something larger, a larger lot, in exchange for not having to connect the uplands and disturb the natural flow. So, the density issue is still achieved but it's just an alternative.

Garriss: You good Charlotte?

Walker, Charlotte: Yes.

Pruitt: So, with this if I have a 7,500 square foot hammock and a 7,500 square foot hammock, I'm considered to have 15,000 square feet?

Varnell, Casey: Only if remember we're looking at one acre lots for example. They're still going in the given district have to meet the continuous, contiguous, and connected requirement however if that same lot you just described is at least an acre and a half or two acres for multi-family I think then then the connectivity wouldn't be required but there again you have a much larger surface area as far as what is being developed as far as what the lot boundaries would be.

Pruitt: But the CAMA would be used as that area also so if you had two hammocks, a hammock, a hammock, like a big square but then you only had two clumps in there then all that is going to be included so now you're still going to be able to develop on two little hammocks.

Varnell, Casey: If those two areas are actually able to be developed on but I do see what you're saying.

Testerman: So, we're still talking about just one lot. You could have the 7,500 square feet here and 7,500 square feet there but it's only one lot so you could do one house and with current regulations one ADU but you're not putting several lots on that one square footage.

Hines: You're not filling it to get to that square footage.

Tillett: But this is touching on my concern which is if you're able to utilize a bunch of wetlands then the uplands become the same density that we voted to not go with.

Testerman: I think the size requirement that the applicant has on there for the minimum to be eligible for this proposed exemption with an acre and a half so rather than looking at it as we're just going back to how it was like I think 15,000 square feet of uplands if they're able to fill certain amounts here and certain amounts there to get it 15,00 square feet that would be almost three lots per acre if it's all uplands so I don't think it's quite getting back at the same density.

Hines: It's slightly different than the last time.

Testerman: Granted you're not going to get permits to fill an entire 15,000 square feet or anything. The minimum lot size that is proposed I think is large enough that you're not really back into undoing what was done a couple months ago. I guess we have to look into the logistics of it also but if someone wanted to go this route if it gets approved you could do an acre and a half lots and they've got the pockets of uplands as part of the subdivision approval I think it could be restricted in that it would not be eligible to be subdivided further down the road like that acre and a half would be an acre and a half. You're not two years down the road have the current owner come in and say I'm going to turn this into three lots.

Hines: Thank you for saying that. That's what I don't want to see happen.

Varnell, Casey: If you're creating more lots at any point in time then we're falling under our subdivision ordinance which is going to be subject to regulation so as you said yes, we can hold them to that.

Hines: I don't want to see someone who's got 5,000 square feet and the rest is all wet and not able



to build. I don't want to see it subdivided either.

Testerman: Right, under the current language or this proposal if you have only 5,000 square feet of uplands, you're not creating a lot out of it because this doesn't create an exemption from the 15,000 square feet just the 15,000 square feet of contiguous, continuous and connected. Either way you have to have 15,000 square feet of upland to create a lot.

Hines: For example, you have 15,000 square feet and one.

Garriss: Okay, Council any further questions or discussion? Good discussion. I will entertain a motion. David, do you want to make a motion?

Hines: Me?

Garriss: You're the one that had the most discussion.

Hines: I just think it could be a little bit differently written in some areas. Rob, do you think this proposal is not detrimental to the town?

Testerman: No, I don't think so. It makes sense to me.

Hines: I have faith in the Planning Director. If he feels like it's not going to hurt anything then I feel like I'm going to support my Planning Director. Which one is it?

Garriss: Next page. You want me to make it?

Hines: Sure.

Garriss: I move to approve the proposed text amendment to the definition of minimum lot size section 42.1 and relevant district regulations as presented in this staff report. Town Council has found this proposal to be consistent with the Town's adopted land use plan. Second?

Walker, Charlotte: Second.

Garriss: Second by Charlotte. Any further discussion? All in favor?

Garriss, Hines, Walker: Aye.

Garriss: All opposed?

Pruitt, Tillett: Aye.

Garriss: We've got two opposed. Motion passed with three in favor, two opposed. Thank you, Council.

Garriss: Item 7C Text Amendment Accessory Dwelling Units. I need a motion to go back into Public Hearing.

Walker, Charlotte: So, moved.

Garriss: Motion made by Charlotte. Second?

Tillett: Second.

Garriss: Second by Dylan. All in favor?

All Council: Aye.

Garriss: We are in Public Hearing.



- c. **Text Amendment- 42-1.-Definitions and 42-528.- Accessory Dwelling Units.** Applicant proposes language requiring long-term occupancy on sites in the VR-1 district that contain an Accessory Dwelling Unit.

Testerman: This text amendment has two portions in it. The first in 42-1 definitions it proposes to define long-term tenant as a person or persons using a dwelling unit for living, sleeping, cooking, or eating purposes for a period of 31 or more continual days. The second part of it is under Section 42-528 which is our language that regulates our accessory dwelling units. That language states that in addition to requirements of Section 42-528 A through G the following shall apply to ADUs located within the VR1 zoning district. The first regulation being that accessory dwelling units located in the VR1 zoning district shall have a long-term tenant or owner residing in a dwelling on the subject property as defined in Section 42-1 and subsection I properties located in the VR1 district with an existing accessory dwelling unit as of July 1st if it's approved tonight and having no long-term resident or owner on the subject property shall have a 12 month period to finalize conversion and compliance. I think the accessory dwelling unit language was first adopted into our ordinance language in 2018. I think this is the fourth or fifth time we've been revisiting it with different proposals to add or subtract from it. This one mentioned in the staff report specifically deals with the VR1 zoning district so any other zones these two proposals would not apply to. This gist of it is pretty self-explanatory, it's if you're in that VR1 district and you've got an accessory dwelling unit on your property then either that ADU or the primary residence would have to be occupied by long-term tenant. There's a handful in town that have both the primary dwelling and the ADU being used as short-term rentals, this would prohibit that and any future ones that are permitted. The second part of it would be that any of those existing ones, and I think it's three that I'm aware of, within 12 months of adoption they would have to be brought into compliance where one of the structures would have to be occupied by a long-term occupant. The relevant policies and objectives in the Land Use Plan policy 3.1 states, "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, maintain zoning regulations that maintains the character of Kitty Hawk's neighborhoods, monitor trends and reduce impacts of accessory dwelling units and short-term rental in the Village Residential zoning districts." Current regulations allow ADUs with standards followed considering modifications to design requirements that could include additional setbacks or buffering in the districts especially if the unit accessed via separate driveways. Section 3.5, "encourage affordable and workforce housing in and around Kitty Hawk". I added that one in there if this goes into effect it's obviously going to have an effect on the housing stock available for long-term residents. How much of an effect? Right now, it's three or four properties but this would also affect any future accessory dwelling units permitted in the coming years and months so it could have an effect there. Goal 11, an adequate supply of workforce housing stock to serve the needs of year-round residents. Policy 11.1, "evaluate targeted actions to enhance the amount of housing available for year-round residents. Policy 11.3, "consider incentives or other actions for housing used as long-term rentals. The Planning Board reviewed this at their May meeting and citing a concern with the requirement that the existing non-conforming properties would be required to be brought into compliance within 12 months a motion was made to recommend denial of the proposed text amendment. That motion failed by a vote of two to three. That motion was made to approve as it is presented tonight, and that motion passed three to two so it comes with a recommendation of approval. The applicant is on hand for this one as well to answer any questions and I can as well if needed.

Garriss: Just for the record on the front page for Council has it but just for the public, can you read the definition of long-term tenant?



Testerman: It means a person or persons using a dwelling unit for living, sleeping, cooking, and eating purposes for a period of 31 or more continual days.

Garriss: Thank you, I wanted to make sure everyone is aware. Any questions for Rob?

Testerman: I will note that in discussions with the applicant the current concern that came before the Planning Board regarding the compliance was that we may create a non-conforming use by changing the ordinance those non-conforming units would then have a period of 12 months or more to be brought into compliance and any subsequent use has to comply with current regulations. The applicant did point out my concern which is the legality of requiring it to be brought into compliance after 12 months. Chapel Hill, they have a very thorough ordinance on short-term rentals, and they did put in theirs I believe 18 months for short-term rentals to be brought into compliance. I don't know if there's been any resolution.

Varnell, Casey: I investigated that today in court. I thought it may be a question, so it went to the court of appeals and that was one of the items being attacked along with requiring owner occupancy. The second time that ordinance went to the court of appeals the first one settled and I supposed revisions were made but I'm not sure what happened in the first suit. Just as of last week I think there was a form filed and it did mediate while on appeal and there was some form of settlement reached between whoever sued the Town of Chapel Hill. I don't know the details yet, but the appeal was dismissed now that doesn't mean the ordinance is going to be changed. Part of the agreement could have been that the Board of Commissioners are going to entertain something different than what's currently written. I don't have the details because again we'll know more about what happened in Chapel Hill in the future but many of the others, I had read with clauses that specifically allowed for grandfathering and Rob I don't know if maybe you had viewed any others that had required compliance as opposed to grandfathering the current existing properties as they're operating.

Hines: So, these folks that have built these properties in compliance with the Town of Kitty Hawk's code, zoning regulations, whatever, correct? I'm not trying to put the cart before the horse, I'm good with someone having to live there. I don't think it's right for people to put two of them on one lot and just rent them. I'm okay with that. I have a problem with telling someone they built something in compliance by following the ordinance we had in place and then tell them they have 12 months to convert that unit over to a year-round rental. I think it sets the Town up for a lawsuit. I'll defer that to Casey.

Pruitt: I have a question and it will probably be for both. So, I went back and wanted to find out what is permitted by use in a VR1 by right and the only thing is a detached single-family dwelling not to include mobile home, manufactured home, customary accessory building, private swimming pool, tennis courts, private piers and boat slips, Town-owned and police facilities. Everything else is a special use permit. So, at what point were short-term Air BnBs allowed as permitted use in VR1? When did Council allow this?

Testerman: Kind of always because we've never defined it as a land use so until we define it as a land use we can't say where it can and can't go.

Varnell, Casey: So, there was this case in Wilmington and that's exactly what the Court of Appeals and perhaps even a firm at the Supreme Court level said short-term rentals can be regulated but bear in mind this particular ordinance doesn't seek to define short-term rentals, we're talking about long-term rentals but if you want to regulate short-term rentals it's not enough to say our ordinance doesn't have it as a permitted and/or special use. You have to go in and define short-term rental in your ordinance in order to regulate any facet of a short-term rental. So, the answer as Rob said is the fact that our ordinance is currently silent on short-term rentals that's why they are allowed.



Pruitt: Maybe I'm not going short-term it's the fact that it is an Air BnB, a business that is being run in a VR with no conditions of the number of parking places I can go in to find a bed and breakfast. Why does a man who has a bread and breakfast have to live there, have to have parking places, only a certain amount of people? What gives the Air BnB free rein to run a business however they want, as many people as they want in these without some kind of protection by this Town Council to protect the people in a VR1?

Varnell, Casey: We could if we have the definition. My answer to that would be as far as from a business or a corporate entity, North Carolina does not look at renting your property as running a business out of your property.

Pruitt: An Air BnB?

Varnell, Casey: We have to keep in mind that Air BnB is a platform. It's not the actual use of a corporation.

Testerman: Correct me if I'm wrong but if we're talking short-term rentals whether it's Air BnB or property management that has an office here that manages all of those. I personally own a house that I privately run as a short-term rental and do my bookings through Craigslist. If we want to regulate Air BnB then we'll have to regulate all of them the same because they're all short-term rentals. If we define them and set different regulations for different districts, we can do that then have a set of regulations in VR1 versus others because I don't think we want to mess with that.

Hines: So more to Jeff's point then, how many do we have in the VR1 now?

Testerman: Short term rentals? I don't know, I don't have that data. Are you talking about Air BnBs or short-term rentals?

Hines: I like to use the word Air Bnb but that is a platform.

Testerman: Yes, but we have to look at it the same as rental companies and private rentals and what have you.

Hines: I have no issue getting behind anybody moving forward, not being allowed to do that. If you want to rent it nightly, just don't build it. But when somebody's already done it by right then it's not right for us to come in and tell them they can't do it. I may stand alone on that but that's how I feel about that. Now to Jeff's point, do we create an ordinance that says you can't do that, so it doesn't happen again?

Varnell, Casey: If so then that's the direction we would need to go. I know that's not what Jeff is proposing. I think Jeff you were kind of taking the business angle of it, right?

Pruitt: Okay, say I have a dock. Just all of a sudden, I say man I think I'm going to build me four boats and I'm going to start fishing. What's the difference between me building a house and starting to rent it? At what point do I have to come to get a permit?

Varnell, Casey: That's a good question but right now as far as realty is concerned, which is obviously what we're talking about, North Carolina doesn't look at that as the owner of the property performing a commercial exercise. So, in other words it's not a home occupation, it's none of that.

Hines: That's no different than a 20-bedroom house not being considered a motel.

Varnell, Casey: Correct, the state is not giving any guidelines.

Pruitt: But again, we're talking about VR1 not right down the street in VR2. We're talking about where it clearly says here, my opinion, that is all that's permitted. Everything else that was done without



coming to the Town and asking permission from me has never been approved to be grandfathered.

Varnell, Casey: If they are doing something other than simply residing in a residential property, I'd agree but that is in essence what these people are doing no matter if they have weekly rentals, three-day rentals, overnight rentals, the use is still residential. They are still living in a piece of real estate. That's where and what you were just saying with the 25-bedroom homes if they were to go and take those type of homes and if the state were to say okay here's what constitutes a commercial and these 22-bedroom mini hotels fall into that category then that's totally different, now it's a business perhaps. Or just form a hybrid of residential versus commercial, maybe it's a component of two. They have not given us anything and we cannot usurp or create things that the state has not given us the right to create which puts us right back in the residential world. That is the use, the use is living.

Pruitt: When somebody comes here, and they say well look I'm interested in buying a piece of property in the VR1 I'm sure that they probably got the same thing I did when I asked for it. Where in here is telling them that that can be next door to them?

Varnell, Casey: It doesn't say that it can't.

Pruitt: Well, I've always heard that ever since I was on the Planning Board here that if it's not permitted it's prohibited.

Varnell, Casey: We've got either Court of Appeals or affirmed by the Supreme Court there is finite case law on that exact issue involving short-term rentals. If it doesn't say, we cannot regulate it.

Hines: That's why I say we need to create a definitive ordinance that prevents it.

Varnell, Casey: I'm not advocating for or against it obviously, my job is to tell you what is legal and what is not.

Hines: Jeff, I do agree with you, but I mean if you don't have an ordinance then.

Varnell, Casey: As a use with short-term rentals then you have to incorporate your regulations using that definition and we don't have a definition of a short-term rental at this point.

Hines: I have rentals around me, and I can't stand it.

Pruitt: I get it too. I don't have any more for you, Rob.

Garriss: Any more questions for Rob? Is the applicant here, come on up ma'am. How are you this evening?

Wells, Amy: There was some discussion but not much in regard to defining short-term rentals, long-term rentals, vacation rentals, however the town does have a residential definition. It does exist but some people have said it doesn't apply but are any of you familiar with the residential definition? It says that it is used for living residential purposes only one family. That is the town's definition, it's not mine. But it gives definition to the residential neighborhoods and areas in Kitty Hawk. Maybe we haven't been applying that definition but that doesn't mean it goes away. The residential definition is there, you might need to add short term vacation, I'm not sure. So, these other types of rentals were never permitted, they have just occurred. It's not the fault of the planning or town, it's just occurred because you've had this rampant rise in Air BnB and these other platforms that have made this much more available to homeowners. I have an Air BnB, so I understand, I get it. I don't have it where there are multiple ones on lots. That's where the real problem comes in because you have people build these multiple units on one lot and so it creates problems in our residential neighborhoods. That said, short-term rentals are mentioned in the town code. I've spent a lot of time in the last year taking part in several different planning board meetings, I've talked to the planning board, I've talked to the



realtors, I've talked to a lot of different people so short-term rentals are mentioned in the town code. They are only mentioned, they're not even mentioned for the beach areas, they are nowhere except for bed and breakfast and that is the only place where they are allowed in the town code. There is a bed and breakfast ordinance that addresses short term rentals, it also has a lot of other requirements for you to have a bed and breakfast with short term rentals. It means there's an owner on site, management is on site, other parking requirements and handicap spaces but there is a definition in the town code for short term rentals or it mentions short term rentals, I will say that. The other thing is I think the town is going to have to consider in the grandfathering clause, if it was never permitted in the residential then it's prohibited. I don't think this is a grandfathering issue because it was never really allowed so I don't understand why you have to let one person who may have just developed his property according to what he wanted to do and uses it as he wanted to do, I just don't think it's fair for you to allow him then to restrict everybody else. So, with that said, it's a difficult issue. Towns are grappling with it everywhere. Chapel Hill has done something in regard to the grandfathering clause or making those existing when they are hard on the neighborhoods with heavy traffic use. To have them to go back and give time, they can still rent their place, they still get a good amount of money for a long-term rental and so the place can but use for rentals, just not short-term rentals that they might currently have. One thing I think you need to consider is that you spend a thousand times more time in your street and within five blocks of your home than you do anywhere else in your town or city. That means your small neighborhood and your town. When you're thinking about the importance of your neighborhood and the area in which you live, it becomes extremely important for the town to think about these neighborhoods as places that make a really big impact on your life and your happiness. You spend a thousand more times there than you do anywhere else in your town. So, I realize it's a complicated issue, it's taken me a year to even get to Council. That's all I have, if anyone has any questions.

Hines: I want to be clear; I totally support what you're trying to do. Last night there were people shooting fireworks off the side of the deck near my house, I understand it. I'm all about stopping it moving forward. What concerns me is telling someone that they have to have to convert in 12 months.

Wells, Amy: You could make it 18 months. You could make it two years if you want. He still gets to rent his house, it's just not short term it's long term. He may make just as much money, but I think he makes 20-30% more on short-term and I realize that can be a big impact.

Hines: I do think it's declining. I think it will take care of itself eventually.

Wells, Amy: It will be about the same. I don't know if you're really impacting him whereas he is having a tremendous impact on our neighborhood. We've got a lot of new police cars, and I cannot get anyone to stop the speeding down our road, it is rampant. It's a problem and we also have this guy that has two separate developments. He has two, he has four vacation rentals we now have someone else on our street so now there's another one on our street and I don't know where the third one so we have three on our street and I think you mentioned another one. I mean it's coming and they're going to be everywhere.

Hines: So, on the end of your street, the one all the way down on the right, he's using both of those isn't he? He's not living in any of them.

Wells, Amy: He has four of them. When he first started, he built the first two. He said he was using it for his use then the next thing we knew he lived there for a while then he changed it to where he rents both of them so when he first started it was a residential home with an ADU. The other thing is ADUs I don't see them anywhere in there other than home occupation that you can really use for short term rentals. It says home occupation and it also says talking about what is not written it says ADUs will not



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be used for business or commercial use now. I know there's some questions as to short term rentals but there was a case in Pennsylvania I think and it was decided at the Supreme Court in Pennsylvania that vacation rentals are not residential use, vacation rentals are not residential use of property. Maybe that doesn't mean anything for North Carolina.

Hines: I think there was a case in Wilmington, too. Was there not? I believe I heard about it. There was a big lawsuit there for this exact same thing.

Varnell, Casey: I don't think that really addressed whether it was a business or not requiring a permit, business license, one of the ones where you have to define it if you want to regulate it.

Wells, Amy: That said, I don't think this ordinance hurts anyone that may have a short-term rental in an ADU. We tried not to do that, we tried to find every way to accommodate most everybody so it does allow anybody that has an existing ADU as a short-term rental they can continue that use as long as there is a long-term resident on site. That's what we are trying to do.

Hines: I've worked years on a county planning board working on these exact issues. Not Air BnBs or VRBOs but how do we address housing. In fact, I remember maybe a few years ago we even increased lot coverage size to accommodate so if you have one you were renting nightly you could do another one, but it had to be for a year-round person. I completely agree with what you're trying to do. Believe me, I've got it on both sides of me, I understand. A little different in the fact that they are homes and not accessory dwelling units but they're rental properties. I want to do whatever we can to help solve this issue, but I would feel a lot better if we had an ordinance that we created that says no more moving forward than putting a stop to it that was especially in the VR1.

Garriss: How did you come up with the 12 months, Ms. Wells? I will be honest, if that is in then I cannot support it. I cannot support this text amendment with that in it.

Wells, Amy: Well, one reason and maybe I didn't give them enough time. Chapel Hill is 18 months and maybe they started out with less, but they changed it to 18 months. I felt like what they are doing in Chapel Hill would be pretty reasonable. I thought that would give someone time since they usually book a year in advance so I thought it would give anybody that had their rental program a year in advance it would give them through the full year cycle of rentals. Like I said, you can make it two years the point is to not have a cottage court next door in a residential neighborhood and that's essentially what it is.

Garriss: Like David, he supports, I support it and I understand your reasoning.

Wells, Amy: It was never allowed. Cottage courts were never supposed to be allowed in the residential VR1 neighborhoods in Kitty Hawk.

Garriss: I don't agree with telling someone that they have to convert it in 12 months.

Wells, Amy: He did it where it is not permitted.

Hines: There are two properties on one lot that he's no longer living in.

Wells, Amy: I don't see where the ADU ordinance says it can be used for home occupations and not for business use. What was your question again?

Hines: It's not really a cottage court. Now where you're talking about, and he's got the two here and the two there that kind of could be a cottage court in a way. I support every single thing you're doing right now minus the 12 months.

Pruitt: Is there a date or just grandfather forever?



Hines: I don't know. I think I would like to have more direct legal, not sure what word I'm looking for.

Garriss: And that came up. Is it legal?

Varnell, Casey: Currently, with what happened with that Chapel Hill case I think if it had come to finality in the court of appeals and we had the three judges' rule and right now settled, I don't know. There's no precedent out there.

Wells, Amy: There's other towns that have done it.

Varnell, Casey: There may be. Most of the ones I have read allowed for any current use of this nature are grandfathered. But I am not saying there aren't others out there because obviously I didn't read all 300 municipalities regulations.

Hines: But North Carolina has not given a definitive answer as to what is.

Varnell, Casey: I've got a little heartburn with it.

Hines: You have heartburn for 12 months?

Varnell, Casey: Yes. If you want to know my legal opinion that's it.

Tillett: Do you have just as much heartburn as 18 months mimicking the Chapel Hill process?

Varnell, Casey: Maybe saying it this way, not allowing grandfathering is what I have heartburn with currently because I just don't think we have anything to hang our hat on the insulates us. I really don't.

Tillett: I don't think the grandfathering that way you're saying the people who are ahead of the game now got lucky.

Varnell, Casey: They utilized the ordinance. If someone's going to call that getting lucky, I guess they got lucky.

Tillett: Well, yes, I agree.

Pruitt: But where in the ordinance does it say that's a permitted use?

Varnell, Casey: The fact that it doesn't say it's not permitted use because we don't have that short-term rental defined. That's what it comes down to.

Hines: Are we allowed to come up with our own? First of all, those Air BnBs, if that's what you're going to call them, are on the West side and you can go to the tourism board and look at their numbers too. It's already declining, people aren't renting them anymore, it's down 25%. It's going to take care of itself but to help her and I agree with her concerns in the short term, I would like to know the legality of what we're doing. If you can research that. This is just me, I'm good with everything on there except Item I.

Wells, Amy: Can I ask you what is short-term rentals being defined and allowed in the code in the bed and breakfast?

Varnell, Casey: There have to be two components to regulate something and to regulate something you have to define it. You said it was mentioned you're not sure it's defined. As Rob said, I don't think we have the use short-term rental defined and then when you define what the courts have said then you must regulate it. So, in other words you have the definition, you insert it into your code, and then you apply different regulations in various zoning districts perhaps to that particular zoning definition. That's why we can't regulate and why I can't sit here and say that having short-term rentals right now in Kitty Hawk in any district is not allowed.



Hines: And more to that point, if we don't have a definition then they can go down the whole beach road and shut down Joe Lamb down tomorrow.

Garriss: I really hate to do this. You and Rob have worked extremely hard on this. Anything else that you could find out if we are to table this matter until the next meeting. It could help Ms. Wells and Rob.

Varnell, Casey: I have not, have you though? I know David Owens and you have had quite a bit of back and forth. David Owens spoke to you guys at one point from the School of Government obviously just a guru in these types of land use matters. Have you spoken to him since he came from Chapel Hill when you moved out here? Have you spoken with him about his thoughts on grandfathering?

Hines: Can we bring him in?

Testerman: That would be up to him. No, he hasn't said one way or the other. Most of the talks I've had with him recently were on different subjects.

Varnell, Casey: I was just curious if you guys had run it by. That's an avenue we can pursue. My only hesitation is somewhat common sense like David was saying. Somebody was following the rules when they went and built their ADU, and they are using it as allowed in our code simply because we do not have it defined and capable of regulation and now, we're saying you can't do that. You wait long enough and there will be a court case on it but right now we just don't have anything that definitively says one way or the other.

Wells, Amy: Why doesn't he have to conform to the bed and breakfast rule?

Varnell, Casey: It's not a bed and breakfast, by definition. A bed and breakfast must also come with a service such as breakfast, that's why they call it a bed and breakfast.

Hines: That is commercial too.

Varnell, Casey: Yes, I believe so.

Walker, Charlotte: Do you use Air BnB?

Wells, Amy: For some of the rentals I have, yes. I'm familiar with them, I've been using them for a long time, and they serve a good purpose you know. When it becomes multiple on one lot in a residential area it does affect your neighborhood. It changes a lot.

Hines: I think we all experience this in our own homes.

Wells, Amy: Yes, and the noise and the traffic.

Walker, Charlotte: With Air BnB, this could fall into the question and concern that I have with the that our ordinances are not up to date and have not been reviewed for many years. Back in the days that Air BnBs were put in there, that's all that there was.

Wells, Amy: I think that's a large part of the problem.

Testerman: I was just going to add if I didn't catch part of you suggested the possibility of tabling and then I'm happy to reach out to the planning list serv; planners from all across the state to get input from what they all do. I will add in the talk of short-term rentals and where they are allowed because we don't have them defined as a land use like the VR1 district one of the only permitted uses right there is single family residence so if we're going to start saying because we haven't said they're okay over here then they are not okay over there either. I don't think that will go well.

Hines: I'll use my neighborhood as an example in First Flight Ridge. When that neighborhood was



developed it was developed as rental properties then that developer is out and I'd like to see them go away even though I'm a property rights guy first and foremost, we can't do it because it wasn't defined up front. We will get sued if we adopt that tonight. So, what I would like to do personally is ask if we can approve everything but that tonight. Can we do that, or do we have to table the whole thing?

Garriss: Before we do anything, what I need to find out is there anyone here who would like to speak at this public hearing section? Come on up, sir. You're frustrated, I can tell.

Anlauf, Joe: There's so much to unpack here, I don't know if I can cover it all as there's a lot of different things discussed. As far as the grandfathering goes, it's insane to me that someone who has an existing use would take that use away from them. If the Town of Kitty Hawk said it's going to change the residential lot coverage to 25% and you have 30% on your lot coverage, what 5% are you going to give up? You can't go back in history and say you had this use; you had this right. I'm a property rights guy, this is insane. It's insane to me that we're even talking about this. It sounds to me like there's somebody out there that built something that people don't like and I'm not familiar with the specifics of it but I understand it's frustrating for those people that live by there. But to write a rule that applies to this entire zone and say no one else can do it because we've got a bad actor in the community. There are noise ordinances and police forces and ways to control it and as you've indicated some of these things peter out because the rent by night or shorter-term rental is a lot of work, there's a lot of money to be made in it if you're willing to do the work. I have four daughters, they were all born and raised here on the Outer Banks, I want them all to live here in Kitty Hawk, that's my dream. My oldest has a piece of property under contract in the village, she's 24 years old. She's got to make ends meet, if she wants to do the work to rent that place by the night so she can make the mortgage payment, let her do it. Property rights. As far as the affordable housing thing, it's crazy that we are going to ask individual property owners in Kitty Hawk to solve the affordable housing problem on the Outer Banks by stepping on their necks. I worked for Woda Cooper, and we looked at Bowser Town, we looked at pieces of land in Nags Head, we looked at pieces of land in Kitty Hawk, Kitty Hawk was the only town that was willing to entertain it. Those other places said no, we don't want it. So, you're going to say that these individual property owners that build this ADU and count on this revenue stream, we're going to say you've got to convert, you can't do it anymore, you can't do it in the future if it's a new one for affordable housing. That's BS, it's a cop out, there's a bigger problem and it's not to be solved on the backs of the individual property owners in Kitty Hawk. So again, there's a lot here but as you can tell I don't support this in any way, shape or form. I understand there's some bad actors and problems with some developments but to have rules made to apply to an entire zoning district when there are people out there renting their primary homes by the night, there are people out there running ADUs and renting them by the night, and they are successful, and they are not infringing on their neighbors' rights with noise and with fireworks and whatnot. You have to let people do what they want and that's the reason I moved to Kitty Hawk and not Kill Devil Hills or Nags Head. If you want to be under someone's thumb, move there.

Hines: I appreciate your comment and for the record the nightly rental on the west side is dropping drastically. We're going to end up putting things in year-round just to make more money.

Garriss: Is there anyone else who would like to speak at this public hearing? Come on up sir, I saw you cringing out there.

Gaherty, Duke: Duke Gaherty, Government Affairs, Outer Banks Home Builders Association. The General Assembly was supposed to come up with a new rule state-wide this year. If it wasn't an election year and they didn't have a self-imposed deadline to get out of there before Fourth of July it would probably get out, but they want to get out and campaign, so it just got kicked around and kicked around. It's a problem so whatever you come up with you might want to put it in pencil because next



year something will come through and it may change. But they want to make something uniform, they want to do it right but there's an affordable housing problem all over the state and that's what they're working on. They're tired of their phones ringing, if you think your phones are ringing here, you should see what goes on in Raleigh. There are people all over so thank you for working on it, it's a good idea. We, the Homebuilders Association, believe in ADUs, believe in affordable housing, we're working on it now too, so I appreciate it but just to let you know that's what is going on. I got an email last week asking if anything is going to get done before the session ends and the answer was no.

Hines: They may come back for a short session.

Gaherty, Duke: They will bring it back next year, it will have to be a new one. A new rule but they will be back next year.

Hines: But it will be defined by next year, I'm sure.

Garriss: Thank you, Mr. Gaherty. Would anyone else like to speak? Donna?

Creef, Donna: Donna Creef, Government Affairs Director for Outer Banks Association of Realtors, whose business is short-term rentals. The advertisement on your public hearing notice is on Accessory Dwelling Units, that's what the hearing is advertised for, Accessory Dwelling Units and the regulations that apply to them in the VR1 district. This has somehow delved into the negative effects of short-term rentals from a third-party marketing, Air BnB. They are not realtors, they are not licensed agents so if the Board in their right wants to regulate short-term rentals, then let the public know that so I can have a debate about that and address that. There are other towns in Dare County that have ADU restrictions, and they're geared towards year-round occupancy. I wasn't planning on speaking tonight because I'm okay with the ADUs and the year-round occupancy. When Ms. Wells first submitted this to the Planning Board it was an outright prohibition on a person being able to rent their whole house as a vacation rental. Your attorney has sat right here and said North Carolina supports the fact that renting your house is not a commercial activity. Your land use plan that was recently adopted has a policy in there that talks about regulating the impacts of short-term rentals. Regulate is different than prohibit and so if the Town wants to go down that course, then so be it, that's your prerogative. Court cases give you that right to regulate where you can have them, where you can zone them, but again that's not what's on your agenda tonight. It's about ADUs and if you're going to talk about ADUs then let's talk about ADUs. If you're going to talk about short-term rentals, then by all means talk about short-term rentals but give us some advance notice. Thank you.

Hines: Thank you, Donna.

Garriss: Thank you, Donna. Come on up, sir. Please state your name and address.

Merrill, Craig: Craig Merrill, 4227 Lindberg and I'm on the Planning Board. When I saw this, I totally empathized with Ms. Wells, and I agreed with the intent. I was one of the people who had difficulty with the short-term limit on how people had to comply. I went back and looked at the old Town Council minutes and I think that one of the things that would as David suggested would have you in legal problem is that the Council acknowledged short-term rentals were a risk of ADUs and essentially chose not to mitigate that risk. They said it was worth it because of all of the benefits they would add so I do think that needs to be looked at some more. Trying to think of a middle way, I wonder if you couldn't grandfather the people that exist, but they say if you stop using in that manner for X period of time, you must come into compliance. If you stop being a short-term renter, then you need to come into compliance with the current regulation. Then that might be a nice balance, then you're not taking an infinite time for them to continue something many feels is disturbing to the neighborhood. Thanks.

Garriss: Thank you, sir. Come on up, ma'am.



Anlauf, Grace: Good evening, my name is Grace Anlauf. I am a local licensed Realtor. I grew up off of Eckner Street, I am a 24-year-old that has the property under contract in the VR1 zoning district. I've spoken at two meetings so far; I've attended four discussing this matter. We can talk for hours about the different topics previously discussed about what tourism does for the community, what ADUs do for the community, occupancy tax that is derived from ADUs and short-term rentals, all of that. We can go into detail on how difficult it is to run an Air BnB, I have Air BnBs that I own and manage in Currituck. It's not an easy thing to do and you have to have a certain quality to get a certain guest and it's all based on reviews, it's important that we maintain five stars, and it's not this slum situation that I allow people to live in or stay at. Mostly, I would like to go over a few things that go with the real estate portion of it and that's that people purchased these properties. I'm purchasing a property in the VR1 zoning district that currently as I'm buying and assigning a price in it mentally in my mind that I can build an accessory dwelling unit on it in the future and short-term rent it to make money off of it. People have bought homes for years, built accessory dwelling units, I am very familiar with the cost to build a home, cost to build an ADU is not cheap, labor is not cheap. So, if I buy a piece of property or I have a client that buys a piece of property knowing that they can do that or spend a certain amount of money with the idea that they can make a certain amount of money with a short-term rental of that property then to take that away it infringes on their personal property rights. It takes away the ability for them to pay their mortgage, it takes away their resale value or as Mr. Tillett pointed out those that stay grandfathered, they are lucky well then why should I be hurt as an owner when my neighbor built their ADU before I did? These are just food for thought things to think about. The other thing when it comes to Accessory Dwelling Units I've heard the term multiple several times tonight. My understanding is that you are allowed to have one primary home and one Accessory Dwelling Unit. That's two units, not multiple family housing. That is completely different than one primary one accessory unit if there are multiple units, three or four in the VR1 district then that would be a different issue. My other request is when we think about tourism in general, every job I have had growing up here has been derived from tourism. I went to college because I worked and made money at Seascape Golf Course and tourists funded my education. I have a bachelor's degree from ECU in business. They paid for it because I worked and had the opportunities that came from tourism. So, I think as a general consensus I know it's frustrating I had a guy yesterday as I was going to see my parents, he drove by like crazy and passed me in oncoming traffic. He was from Maryland, no offense to anyone from Maryland in the room. He was on vacation, and he drove by me like crazy and I get that's frustrating. So, when we are thinking about making restrictions, we're thinking about making the bread and butter of what gives us jobs. Keep in mind that they are what makes us who we are and not Chapel Hill. We are not Pennsylvania, we are Kitty Hawk, North Carolina and there's something to be said about that. We graciously accept people here to go on vacation because this is a beautiful place. The other thing I ask is that I understand anyone can come up and make a text amendments and it's a beautiful thing that we give our citizens the opportunity to do so but if there is a situation with someone's neighbor and they have a personal issue, I would ask that it does not become the responsibility of the other property owners in that district of the Town to fix that issue. Between me and my neighbor or I just have to deal with it, or I sell my house and move. I don't ask everyone on the street to be involved in it. If I did want to live in a certain place that dictates, oh sorry guys. I appreciate it, thank you so much.

Garriss: Thank you very much. Anyone else like to speak? Come on up.

Sullivan, Sharon: Sharon Sullivan, 3708 Herbert Perry Road. I'm upset because of what I heard but it's not a personal issue with me in that it's personal that there's two houses now that are both rented, and no one lives in the big house. It's VR1 only and it only applies when nobody is living in one of those houses. It's not a neighbor issue, I'm a good neighbor to them but I just don't want this to happen anywhere else in VR1. I don't want anybody to buy a property and fill it up with ADUs, short-term



rentals, or whatever you want to call it. I don't want this anywhere else, anyone else. I can't just move, my property's been in my family for many years. Anyway, thank you.

Hines: I have one more question for Rob. Are there currently any permits pulled for, and I'm not going to call it an Air BnB, but an ADU in the village?

Testerman: I would have to look at the permit manual and I have shifted some duties around so I am not as directly involved in those tasks in the day-to-day part of it. I don't have that information on hand tonight.

Hines: I would like the Council to know at some time you get time.

Tillett: To follow up a little bit on that too, Rob. Just out of curiosity, what was the process you used to find out what existing non-conformance to this text amendment would have created? You said it's two or possibly three.

Testerman: Three that I was able to find. The one that I referenced as a possibility as a third is the second one owned by the gentleman at the end of Herbert Perry which has gotten his COs and they're listed on Air BnB now.

Tillett: How did you find the other ones? One was probably a complaint. Is there a process to find the other ones?

Testerman: There might be some out in existence that I have missed but I've browsed different short-term rental platforms, some that Accessory Dwelling Units that I knew existed and then looked at the different short-term rental platforms to get an idea to see if I could find if there were multiple units on the same property. The ones that were on the staff report are the ones that I was able to find multiple short-term listings on a single property. They don't give the exact address but if you're in the area you know which properties they are talking about.

Tillett: Hypothetically, if we pass this text amendment and decide to grandfather the existing, how confident are you that there were only 3 possible ones that were double rent?

Testerman: It would be tough, and it would be tough in the future. We are complaint driven when we do code enforcement activities and if someone called and said they had two new short-term rentals I guess we would have to send our violation letter then it would be on them to provide documentation showing that they were in operation prior to whatever date that was set. I think there would be ways for owners to verify but it would be a challenge and I don't think that staff would dedicate a day or two days to going around to each short-term rental and make sure they are compliant.

Hines: We'll get a complaint; neighbors will tell on them every time. I think I need more information before I am ready to vote.

Garriss: We're still in public hearing so we'll need to know if there are any more questions. I need a motion to go back into regular session.

Hines: So, moved.

Garriss: Thank you, David. Second?

Tillett: Second.

Garriss: Thank you, Dylan. All in favor?

All Council: Aye.

Garriss: Chief, can you try to address Ms. Wells' complaint about speeding on Herbert Perry?



Chief Palkovics: Yes, sir.

Garriss: Thank you, Donna Creef for getting us back on track. Any other discussion, Council? Motion? What would you like to do?

Hines: I'm going to speak for me because I've been speaking a lot tonight. I prefer to table it because I want to help Ms. Wells out but if I have to vote on it at all I can't get behind the 12 months. I just can't do it as a real estate broker, as a builder, I just can't do it. But I'm open to suggestions on how to handle it.

Garriss: Is anyone in favor of the table? Would you like to make a motion?

Walker, Charlotte: I hate to do it, but I think it would be best to table.

Wells, Amy: That is fine, I can get you more information.

Pruitt: You know, I have talked to Amy and I with me I see David's and your side. I'd like to work through it. Personally, once again I don't think they were ever permitted to be grandfathered but I do understand it. The last thing I'd ever want to do is cause anyone some kind of hardship, that's not it. I think the goal here is whatever we do to get it right for the future. What's happened already sounds like our hands might be tied. Whether they were permitted or not, I think they felt like the guy down the road is doing it I can do it, and nobody stopped them so whether it's the Town's fault, I don't know. Once again, I think we need to look into that, and we will but as far as what we're talking about tonight we have this particular advertised text amendment that we are not comfortable with because of the wording so I support the tabling also so we can get it straight.

Garriss: Is that a motion?

Varnell, Casey: Just make sure that we have a clear motion out there.

Hines: For the record, I was not on this Board when the ADUs were passed but I make a motion to table this tonight.

Garriss: Do I have a second?

Pruitt: Second.

Garriss: All in favor?

All Council: Aye.

Garriss: All opposed? None. Thank you, everyone. Alright, Item D text amendment dwelling size. Need a motion to go back into Public Hearing.

Hines: So, moved.

Garriss: Second?

Tillett: Second.

Garriss: All in favor?

All Council: Aye.

- d. **Text Amendment** - All districts allowing single-family dwellings – Maximum dwelling size and occupancy. Staff proposes language that would set a maximum dwelling size of 6,000 sq. ft. of conditioned living space and 14 occupants.



Garriss: We are back in Public Hearing about single family dwelling size.

Testerman: This proposal, as you can see in the subject line of the memo, applies to several different ordinances as single-family detached dwelling as a permitted use. The proposal under the permitted uses as aligns single-family detached dwellings not to include mobile or manufactured homes. Single-family dwellings shall not have a maximum capacity to exceed more than 14 overnight occupants and shall not exceed 6,000 square feet of conditioned living space. Kitty Hawk's recently adopted land use plan identifies the community vision as quote, "the Town of Kitty Hawk is a community focused, family oriented, lowkey Outer Banks village that prioritizes natural resources, preserving history, and improving resiliency. We strive to balance the needs of Kitty Hawk's year-round residents and visitors while improving everyday coastal living. Goal three in the adopted land use plan is to reinforce Kitty Hawk's unique coastal identity and sense of community through high quality design and protection of natural and cultural resources. As we've seen in some of our neighboring communities here, the development of some of the oversized dwellings can result in large scale structures that can house large amounts, 40 plus people in some cases. Kitty Hawk's scale of increasing side yard setbacks based on the size of the proposed dwelling has prevented this type of development to a large degree on our oceanside lots. However, a trend that is becoming more common that we've been seeing in permitting is that the old beach box cottages are being demolished or moved out of town in favor of these larger structures that we're talking about. It hasn't happened here yet but it's a possibility. As I mentioned, the proposed language in the staff report I've got it BC2, BH1, VR1, 2, and 3, VC1, Kitty Hawk Woods district, that's all the districts we have single family residence as a permitted use. As noted in Goal Three and in the relevant policies listed in the staff report, from the adopted future land use plan, the type of large-scale oversized single-family dwelling is contrary to that character of Kitty Hawk that was identified in the plan. I will note that NCGS Section 160-D 702B prohibits localities from regulating building design elements, except in certain scenarios. Per Section 160D the phrase, "building design elements" means exterior building color, type, or style of exterior cladding material style or materials of roof structures or porches, exterior non-structural architectural ornamentation, location or architectural stylings of windows and doors including garage doors, the number and types of rooms, and the interior layout of rooms. It goes on to state that the first building design elements include any of the following including height, bulk, orientation, the use buffering or screening to mitigate impacts of light and noise or to protect the privacy of neighbors, or three regulations adopted pursuant to this article governing the permitted uses of land or structure to the North Carolina residential code of two-family dwellings. In preparing this, I look over tax information of over a hundred developed properties in town and from what I was able to find setting an upper limit of 6,000 square feet of conditioned space would not create any non-conforming structures as it relates to the size of the conditioned space. The largest I was able to find was just over 5,800 of conditioned space. There are three single-family dwellings that occupy more than the 14 and I think the largest one of those is 2,400 square feet so they have them crammed in. The following policies and objectives relevant to the application in the land use plan is policy 3.4 residential that fits Kitty Hawk's character, maintain zoning regulations that protect the character of Kitty Hawk's neighborhoods, continue to maintain regulations that encourage mostly single-family homes and overall residential character of Kitty Hawk. The Planning Board reviewed this at their April 25th meeting, and unanimously recommended approval. Another note is that Southern Shores has proposed the same caps that are proposed here, 6,000 square feet of conditioned space, 14 occupants. Casey, in terms of David Owens, I did speak with him earlier on this proposal and he was confident that as it's listed in 160D in the staff report, he is very confident that the overall size from his discussions there are attorneys across the state that have differing opinions on the occupancy, but he feels confident that one is covered as well. I'll turn it over to the Council.

Garriss: Any questions for Rob, Council? Anyone here tonight want to speak at this Public Hearing?



Come on up, sir.

Gaherty, Duke: Good evening, again. Duke Gaherty, Outer Banks Home Builders Association, Government Affairs Director. In 2015, Senate Bill 25, I know you've seen this quoted statute 160D there were some changes made and a little bit prohibited by subsection may not be applied directly or indirectly in the number of rooms, number and type of rooms, the reason that was put in and those, the elements and the decorative elements, it wasn't to stop big houses, it was to allow small houses. There were some towns in the middle of the state that didn't want any Habitat for Humanity houses so they made you put in a side entrance garage, dormers, for aesthetics so they wouldn't have these small houses. With that wording it put a stall on some of the houses that were being built here and the houses in those days had about 8 bedrooms. It wasn't the 25-bedroom houses that we have here now, Mr. Varnell's shaking his head. You have in your proposed ordinance here for occupants, occupancy is usually done by the septic system, two people per bedroom and that's how you do it. By the statute you're not supposed to design the occupancy by bedrooms or the septic system. Nags Head does it, Southern Shores does it, leaving themselves open but no one wants to challenge it. We can't find a better way of doing it than putting that in there and worrying about it. Southern Shores has a, I can't remember what it is now, put a 12-bedroom home in there 2 years ago. They couldn't stop it so I just want you to be sure of it, be aware of it because someone may challenge you on it. The Outer Banks Home Builders Association is good with 6,000 square feet and we don't have a problem with deciding how big to have the house. Thank you.

Garriss: Thank you, Mr. Gaherty. Anyone else like to speak during this Public Hearing period? _____
All in favor?

All Council: Aye.

Pruitt: I move to approve the matter of the proposed text amendment to Section 42-1, 42-247, 42-248, 42-249, 42-273, 42-274, 42-275 relevant district regulations as presented in the staff report. Town Council finds this proposal to be consistent with the Town's adopted Land Use Plan.

Garriss: Thank you, Jeff. Can I get a second?

Hines: Second.

Garriss: Second by David. You almost talked as much as Rob tonight. All in favor?

All Council: Aye.

Garriss: All opposed? None. Thank you, Council. Alright we need to schedule some Public Hearings. Item 8A Zoning Text Amendment for mini-warehouse and PCD. Who would like to make that motion, Item 8A?

8. Schedule Public Hearing

- a) Zoning Text Amendment – 42-414(b).** Mini-warehouse in PCD. Applicant proposes to amend the maximum building size of a mini-warehouse in a PCD to 40,000 square foot footprint.

Garriss: I move to set a Public Hearing at the Town Council Meeting on August 5th, 2024, to consider the proposed text amendment to Section 42-414B related to mini-warehouse in Planned Commercial Developments. Can I get a second?

Hines: Second.

Garriss: Second by David. All in favor?



All Council: Aye.

Garriss: All opposed? None.

b). Zoning Text Amendment – 42-1.- Definitions; 42-225, 42-247 thru 249; 42-273 thru 275.
Lot coverage and Permeable paving materials

Garriss: Item 8B Zoning Text Amendment Lot Coverage Permeable Paving Materials. I need a motion.

Tillett: Mr. Mayor, I move to set a Public Hearing at the Town Council Meeting August 5th, 2024, to consider the proposed Text Amendment to Section 42-1 in relevant commercial and residential zones as related to lot coverage and permeable materials.

Hines: Second.

Garriss: Second by David. All in favor?

All Council: Aye.

Garriss: All opposed? None.

c.) Special Use Permit/Site Plan - 6100 N Croatan Hwy/The Woods Rd PCD – Applicant is
requesting a special use permit and site plan approval for a mini-warehouse facility as well as a
second commercial structure

Garriss: Item 8C Special Use Site Plan on The Woods Road. Can I get a motion in this matter, please?

Hines: I move to set a Public Hearing at the Town Council Meeting on August 5th, 2024, to consider the proposed Special Use Permit and commercial site plan for a mini warehouse in the PCD located at 6100 North Croatan Highway.

Garriss: Thank you, David. Can I get a second?

Tillett: Second.

Garriss: All in favor?

All Council: Aye.

Garriss: All opposed? None.

9. Old Business

Garriss: Okay, we have no Old Business. Item 10, Councilman Hines requested to have a discussion regarding Planning Board membership. Staff, Melody and Lauren, I think both have done some research for us, got us some information regarding other towns but David, I will let you speak.

10. New Business:

a. Planning Board Membership. Council requested discussion regarding Planning Board alternates.

Hines: Since I've been on this Council, it's always been peculiar to me why we would have alternate members. I came to the Planning Board, in fact we were here just the other night together, I believe we have an alternate member sitting in the audience who has discussion, gets paid but has no vote unless somebody else is not here. I've never understood that. I've had discussions with Rob and I'm



not trying to throw you under the bus, I defer to how you feel about it too. I think but I don't want to speak for you, but to me I don't feel we need to have an alternate tag on Planning Board members if they are going to be paid to sit here and have discussions. I don't remember when I got on the County Planning Board, I'd have to ask Ms. Creef but it's been many years ago. I think Southern Shores has alternate members, but I think one of them is a liaison, is that correct? For Martins Point?

Testerman: Yes, they have five regular members, two alternates, and one ETJ representative.

Hines: I also feel like too by having a full Board, a full discussion, I think that's a good thing. I think it gives more diversity to the conversation. When you have two members that sit over here who have discussion but don't have a vote unless somebody is not in attendance, I just don't understand that. Further to that point, I just think it balances the Board better. I'll let you speak but I would personally like to see the alternate tags removed and everybody be a full voting member. Literally, Southern Shores is the only other town on the Outer Banks that does that, correct? So, I would defer to you and the Town Manager if you have anything to add to that, but I know I've had conversations with Melody about this, numerous conversations about this, so I wanted to bring it up.

Testerman: We serve at the pleasure of the Council so whatever you all decide is fine with the way we do it. From a practicality standpoint, you can see in the memo that was put together that we currently have a five-member quorum voting at the meetings when in attendance, but we do have two alternates so when we do have one or two alternates then we'll have four or five people there to vote. If it was all seven voting members the quorum would go up to four which I think in my time that I have been here I don't think we have had any meetings where we haven't had at least four members there so I don't think it would be a detriment or delay any kind of business or anything. Councilman Hines is right you know the alternates prepare the same, they participate in discussion, they might have strong feelings on things one way or the other but it's dependent on whether there's a full attendance of regular members whether they can vote or just persuade people through discussion. If the Council wanted to turn all seven into regular voting members as I mentioned in the staff report, two items in the Town Code would have to be changed, Section 26-28 and Section 26-22. You've got in front of you how every other Planning Board on the beach is composed; five regular members in Duck, five regular members, two alternates and one ETJ representative in Southern Shores, KDH has seven, Nags Head is seven, Manteo is five, Dare County is seven.

Garriss: Like all matters Council, this is a big decision. This is important. Jeff, you and I were alternates for a long time together so we know what is involved here but I would like input from each Council member, please. What do you think, do we need to do this? Is it a good thing?

Hines: I clearly think it is or I wouldn't have brought it up.

Garriss: Dylan?

Tillett: I have mixed feelings to be honest with you. I'm a big fan of it's not broken, don't fix it but I also understand the intent here. If Southern Shores is the only one that does this and the normal is either seven or five, not normal but more frequently, consistent. Question for you Rob, I hadn't seen this happen yet but, in the event, this is not a quorum on a Planning Board, does that bypass the Planning Board and go straight to Council? Does it go another month to catch the Planning Board for the next month before it goes to Council?

Varnell, Casey: If it's something that is required to go through Planning Board.

Testerman: Zoning Text Amendments have to be reviewed by the Planning Board. We do have our second meeting date built into every month. You guys mentioned you were here Thursday night so if we had a regular meeting and didn't have a quorum. Same as would be today then we would schedule



that back up date to try and not push everything back by a month.

Tillett: Can I ask how many times you have seen the Planning Board not have a quorum?

Testerman: I don't recall any since I have been here. Even if quorum were four, I don't think there have been any. Maybe one is the almost 10 years I have been here.

Hines: That was during spring break.

Testerman: Yes.

Hines: Clearly, a lot of people here had kids. More to the point when we were here the other night, there were two people missing. All the more reason I feel like there needs to be every member as a voting member.

Testerman: To clarify, at the Thursday meeting, we have one regular member absent and one alternate absent. The one alternate who was in attendance stepped in to become that fifth voting member.

Garriss: Anything else, Dylan?

Tillett: That's all I have.

Garriss: Jeff?

Pruitt: Like you said, we spent seven years together on the Planning Board. Even in the beginning, with five voting sets of us there sometimes it was easy to get off track. You know, seven of us talking and if you don't have a good Chairman then sometimes, we can end up talking about thing that really weren't on the agenda. When you have an applicant here and he's bringing two lawyers with him for a project that's sitting out here and now he has to listen to a whole lot more people and the clock's ticking. You don't have to come to the Planning Board, we go straight to you, we change some things, trying to relieve the financial burden on some of the applicants coming in. I know I was on the Recreation Committee, and I know there were quite a few people, and it was very hard to get a lot done with everybody going on it. In my seven years on the Board, we didn't miss a meeting and I think it went fine. I do get it if we were a bigger town maybe, seems like the smaller towns have five and the larger towns have seven. It's worked since the incorporation of the Town so it would be more cost to the Town, the applicants are going to have to, or have to have alternates right? So, you're going to have to pay for them all?

Testerman: They currently are, all seven currently.

Pruitt: All seven vote.

Hines: All I'm asking is that all seven get to vote. Everybody's paid the same, no matter what. There's no extra cost.

Walker, Charlotte: It doesn't matter if you don't change that.

Hines: Now if they weren't being paid then I would totally agree to leave it be, but they are getting paid to sit here so it's no extra cost to the Town of Kitty Hawk. These seven members are being paid every night they're here anyway.

Pruitt: But what is the advantage of their actual vote? If we have five votes, we kind of get the gist of what the Planning Board wants out of the five, what is the advantage of having two more votes?

Hines: Because sometimes I think the other two who don't have a vote could change what the others are doing, for better or for worse. I think it opens it up to be fairer to the applicant. That's just my



opinion.

Pruitt: Once again, I say we've been five since the incorporation and I'm good with five.

Garriss: Charlotte?

Walker, Charlotte: They do the same work to be ready for the meeting, they do the same research, sometimes more, they do have input just because they don't have a vote and that alone can sway the thinking of members. I'm torn but I don't really see a problem with seven.

Hines: I agree.

Garriss: I'm kind of like Jeff, I don't see a need to change it. That's the way it's always been and if the reason for changing is someone on the Planning Board then that's another issue we need to look at.

Hines: Well, I agree with that too. Again, I just don't see the issue with someone sitting up here doing the same amount of research, the same amount of everything but they don't get to say yay or nay.

Tillett: But they knew that when they signed up.

Hines: I understand.

Pruitt: And part of that is the reason that they are there to even the discussion and often the alternates are the brand-new guy on the Planning Board and it gives him a chance to really get his feet in and understand. I know my first night I was scared to death and there were people who had been there for a while and I had no problem being an alternate for a while until I felt comfortable. All of a sudden I would show up and there would be a regular voting member out. Then you'd go oh I've got to vote but I knew I was ready because I had gone to every meeting and stayed in the loop in though I'd rather the other guy been there sometimes. But that was the way I felt like being an alternate even though I was able to have the discussions in the beginning I was relieved a little but that I didn't have the pressure of making the decision until I was comfortable enough knowing the codes and everything in the town. Now we have alternates who have been on there quite a long time.

Hines: I did some research on it as well, talking to the previous mayors and whatnot. That was created back in the day, we had nobody. This is how it originally started with the alternates going way back towards the inception of Kitty Hawk. So, it's 2024 and if you guys want to keep it the way it is that's fine. I think it's time to let everyone have an actual vote if they are up here discussing it and doing the same work if the entire board doesn't agree with it that is fine. I don't understand why but that's just me.

Garriss: Does anyone want to make a motion?

Hines: I thought we had to change some codes first. What did you say, Casey?

Varnell, Casey: I'm sorry? Rob was saying there were two sections that would have to be changed.

Testerman: Yes, if you want to make any changes, there's two sections of code. I think if you don't make any changes, there's nothing to change.

Varnell, Casey: Right now, it's taking action on whether or not to have a motion to change to seven voting members or keep it the way it is. That's what currently needs to be done.

Hines: I try not to attend a whole lot of Planning Board meetings because I don't know that it's right for a Council member to be in every Planning Board meeting, but I can tell you, trying to figure out how to say this, hadn't been impressed with some of the meetings.

Garriss: Alright, let's get back on track.



Hines: Well, that is on track with how I feel about it. That's where I'm at with it.

Garriss: What do you want to do, David?

Hines: I make a motion to remove the alternate tag. Doesn't sound like I have support but I'm going to make a motion for it.

Garriss: Do we have a second? Once again, do we have a second?

Varnell, Casey: With no second, the motion dies.

Garriss: No second, motion dies. Great thought, great conversation, thank you. I get a feeling that's not going to be the end of it.

Hines: It is not going to be the end of it.

Garriss: Thank you, David. Alright, Town Manager report.

11. Reports/General Comments from Town Manager

Clopton, Melody: I think I need to say thank you to Rob. It's been the Rob show tonight. I'm not sure if this is the Town record for Public Hearings. We appreciate all you do, Rob. I want to say thank you to everyone who joined the Kitty Hawk Police Department's Youth Fishing Tournament on Saturday. We had 45 kids and their families, in total there were probably over a hundred people. It seemed like everyone had a great time and it would not be possible without the support of our community so special thanks to Outer Banks Anglers Club, John's Drive In, Bluewater Grill, Mom's Sweet Shop, Seto's Towing, Grandy Bees, Henry's Restaurant, High Cotton, Hilton Garden Inn, Pok's Art, Walmart. The way our community rallies is really humbling, and we appreciate it very much. Special thanks to all of the Kitty Hawk police officers that had a part in it, Kitty Hawk Fire and Rescue who attended, and really special thanks to Sergeant Tyler Kouskouris who headed it all up. We're already looking forward to next year and new ideas. Tomorrow, we are going to be wishing Sharon Davenport as she retires with 28 years of service. She has served as the Police Department's Administrative Records Technician for the last 28 years. She is a force all to herself that keeps the department running administratively and knows where all the bodies are buried. We appreciate all of her hard work and dedication during her time. Finally, Town offices will be closed Thursday in honor the July Fourth holiday, we will reopen Friday, July 5th. The Town's trash collection schedule will not be changing, it will remain the same.

Garriss: Thank you, Melody. Casey?

12. Reports/General Comments from Town Attorney

Varnell, Casey: I have nothing, Mayor.

13. Reports/General Comments from Town Council

Garriss: David?

Hines: I do not.

Garriss: Dylan?

Tillett: I echo Melody, nice job tonight, Rob. Appreciate everything, I know it's a long one. I just want to wish everyone a happy Independence Day and be safe out there.

Garriss: Thank you, Dylan. Jeff?



TOWN OF KITTY HAWK

Pruitt: Yes, first of all we have some beautiful beaches and I happened to be driving through the bath house and I happened to notice people picking up along the fence and it got my curiosity as to what was going on. So, I backed up and I said excuse me, what are you doing? They were picking up trash and cigarette butts along the fence. I noticed when I looked around it was a whole bunch so I'm going to give a shout out to the GR Little Group for Adopt a Beach. They were at the bath house with a pretty large group, and I don't think there's a piece of trash left on that site. I want to thank them and also the better beaches. Sometimes we forget to thank them and this year they have planted a ton of beach grass and it's holding up really well over there. Donnie King has done a good job with that group, and I'd like to thank them. That's all I have.

Garriss: Thank you, Jeff. Charlotte?

Walker, Charlotte: I was fortunate enough to be able to watch the EMTs and Dare Rescue do a mock rescue on the beach. That was quite an event, it really was. It's like they have an emergency room they set up right on the beach. We should be very comfortable that they're there protecting us. It was a great training exercise. Mayor was there and Melody was there, and it was very informative. Thank you.

Garriss: Again, the fishing tournament was wonderful. Chief, thank you again. A lot of discussion tonight and I've asked Melody for the next meeting to add a contingency discussion for the Police Department construction project so Liliana will be good to go. They are gathering information for you so we can discuss it at the August meeting. Any further discussion? If not, I will entertain a motion to adjourn.

Pruitt: So, moved.

Garriss: Second?

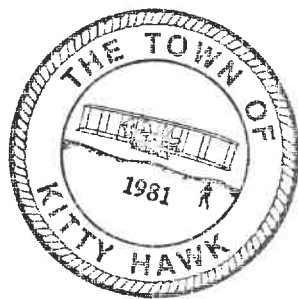
Walker, Charlotte: Second.

Garriss: Thank you, we are adjourned.

14. Adjourn

Adjourned at 8:24 pm.

The Minutes of the July 1, 2024, Kitty Hawk Town Council Meeting are approved at the August 5th, 2024, Kitty Hawk Town Council Meeting.




D. Craig Garriss, Mayor