

Kitty Hawk Planning Board Meeting  
September 19, 2024  
Kitty Hawk Municipal Building, Smith Room

**\*Note: due to technical malfunctions, the audio equipment failed to capture a recording of the meeting. As such, the minutes below reflect a summary of the meeting rather than a transcription.**

**Minutes**

The Town of Kitty Hawk Planning Board held its regularly scheduled meeting on Thursday, September 19, 2024. This meeting was held in the Smith Room at the Kitty Hawk Municipal Building, 101 Veterans Memorial Drive, Kitty Hawk, NC.

**1.) Call to Order/Attendance:** 6:00 p.m.

**Announcement:**

Mr. Testerman introduced David Morton, the new Planning Board Alternate. The Council appointed Mr. Morton to the board during their September 9<sup>th</sup> meeting.

**Members Present:** John Richeson, Chairman                      Chuck Heath, Member  
Blair Meads, Alternate    Matt Spencer, Member  
Bryan Parker, Vice Chairman                                      David Morton, Alternate

**Members Absent:** Jim Geraghty, Member

**Others Present:** Rob Testerman, Planning Director  
Jessica Everett, Administrative Zoning Technician

**Voting:** Due to Jim Geraghty's absence, Alternate David Morton will vote at this meeting.

**2.) Approval of Agenda:**

Hearing no objections/additions/changes to the agenda, Chairman Richeson moved to approve the agenda as presented.

**3.) Approval of Minutes:**

**MOTION**

Chairman Richeson: Are there any changes or corrections to be made to the August Planning Board Minutes? Hearing no objections/additions/changes, would someone like to make a motion? Mr. Spencer motioned to approve the minutes as submitted. Chairman Richeson seconded the motion.

**Vote: YEAS – unanimous**

**4.) Administrative Report:**

Mr. Testerman stated that at the September 9<sup>th</sup> Town Council Meeting, a public hearing was scheduled regarding pier length, and Council opted to not have staff draft language regulating roosters

**5.) Public Comment:**

Chairman Richeson stated that this portion is dedicated to those in the audience who want to speak to the Board about any issues. Those speaking should come to the podium and state their name for the record. He also noted that the Board is an ‘advisory’ board to the Town Council, and the Council can approve or deny what the Board puts forward.

**Jeffrey Stafford, resident of 1211 W Kitty Hawk Road** with property on Carrenda Lane- Live in a swamp, pond in the driveway, doesn’t have city water, no turnaround for firetrucks, no garbage pickup. All inherited property. If each of the 5 lots are subdivided, that would be 25 homes then add in ADU’s assuming they could have them

Chairman Richeson: Anyone else?

**Laura Strickland, resident of 1211 W Kitty Hawk Road**- Anyone driven past Carrenda Lane recently? There is a lot of water. Can the parking come off of Carrenda Lane and not Kitty Hawk Road?

Chairman Richeson: Anyone else?

**Craig Tillett resident of Carrenda Lane**- I built a home on Carrenda Lane 30 years ago. I spoke to the developer and was told there would be 3 houses, and now he wants 5. Have to take down a lot of trees, Think we are overbuilding in Kitty Hawk. We do not want to be the next Collington. Maritime forest going to be lost forest

Chairman Richeson: Thank you for your input. Would anyone else like to speak during public comment? If we have no more takers, this portion of our meeting is now closed. Next on the agenda we have Item 6, Subdivisions.

**6.)Subdivision**

- a.) 4324 Carrenda Lane – proposed 5 lot subdivision. (Agenda Item 6a)

Mr. Testerman: Before we get into the staff report, I just want to remind everyone that subdivision reviews are administrative decisions. If all requirements are met, the applicant is entitled to approval. The applicant has submitted an application and preliminary plat for the subdivision of parcel at 4324 Carrenda Lane. The plat outlines a proposal to subdivide one existing parcel totaling 2.962 acres on the west side of Carrenda Lane, at the intersection with W Kitty Hawk Road, into five lots. No new road, or road expansions, or other infrastructure are proposed as part of this subdivision. The property currently has one single-family dwellings and associated accessory structures and is zoned VR-1, low-density village residential district. The minimum lot size in the VR-1 district is 15,000 sq ft of contiguous uplands. The maximum permitted density is two single-family dwellings per acre. Catlin Spear state maintained maintenance agreement Dare County Water has reviewed lots A,B,C,D, & E, lot D would be on a private well and all other on county water. Town removed septic approval, that is Dare County Environmental Health. Density and development las proposal 2 per acre was too dense take to council and determined it was not too dense.

**Discussion:**

After the staff presentation, the Planning Board deliberated the proposal. Ultimately, the Planning Board determined that, despite understanding and in some cases agreeing with the concerns raised, the proposal met the minimum requirements of Chapters 38 and 42 of Town Code. Mr. Spencer noted that denying a proposal that is consistent with Town Code could put the Town in legal jeopardy and encouraged the speakers to voice those concerns to Council, that ordinances may be changed to address future development.

**MOTION**

Chairman Richeson: Would anyone like to make a motion?

Chairman RichesonI move to recommend approval of the preliminary/final plat for the property at 4234 Carrenda Lane, with the conditions listed in this staff report.” Motion seconded by Mr. Meads

**Vote: YEAS – unanimous**

Chairman Richeson: This brings us to Item 7 on the agenda.

## **7.) Text Amendment**

- a.) 42-504- Yards generally. Proposal amend setback requirements for uninhabitable accessory structures.

Mr. Testerman presented the staff report for the Town initiated text amendment proposal to define “accessory structures”, and allow certain accessory structures to encroach into side and rear setbacks, as described below:

### **Sec. 42-1.- Definitions**

*Accessory structure* means a non-habitable building on the same lot, but detached from the principal building, for which the use is incidental and subordinate to the principal use. In residential districts, accessory buildings may be detached garages, workshops, storage sheds, hobby-type greenhouses or similar minor buildings (roofed structures). Shipping containers shall not be used as accessory structures.

### **Sec. 42-504. - Yards generally.**

(k) For residential uses, accessory structures as defined in Sec. 42-1, not exceeding 144 sq. ft. in area and/or 15 feet in height, must meet front yard building setbacks, but can encroach as close as five feet to side and rear property lines. On corner lots or double-frontage lots, accessory structures must meet the principal structure setback on the street side/rear yard. Accessory structures exceeding 144 sq. ft. in area and/or 15 feet in height must meet the principal structure setback requirements.

### **Discussion:**

After Board deliberations of the proposal, and questions for Mr. Testerman, Mr. Spencer made the recommendation, for clarity that rather than stating “not exceeding 144 sq. ft. and/or 15 feet in height”, the language should more clearly indicate that both of those size requirements must be met.

Mr. Testerman acknowledged the suggestion and stated it could be changed to “not exceeding 144 sq. ft. in area and not exceeding 15 feet in height”.

Chairman Richeson: Does anyone have any questions or care to make a motion?

### **MOTION**

Mr. Spencer: “I recommend approval of the proposed text amendments Sec. 42-1 and 42-504, with the changes noted in this discussion. The Board has found this proposal to be consistent with the Town’s adopted land use plan.” Seconded by Vice-Chairman Parker

**Vote: YEAS – unanimous**

b.) Chapter 12- Environment Proposal to designate the live oak as the official Town Tree and implement regulations on cutting live oaks.

Mr. Testerman stated that this proposal began by a citizen presenting the idea and language to Town Council. As this is not a proposed change to the zoning or subdivision ordinance, Planning Board review is not a requirement, however, before voting on it, Council wished to have the input of the Planning Board.

Mr. Ron Tumolo: Resident of 3916 Ivy Land presented the language that he had developed for live oak protection in Kitty Hawk. He noted that he had met with town staff in the development of the language.

After Mr. Tumolo's presentation, the Board discussed the matter. Ultimately, the Board felt that the language was too restrictive on personal property rights. Specifically that the diameter of protected live oaks was too small, and that the exceptions listed in the ordinance were too narrow.

**MOTION**

Mr. Spencer made a motion to table the discussion to allow Mr. Tumolo to address those concerns. Seconded by Vice Chairman Parker

Chairman Richeson: Any discussion? Let's vote.

**Vote: YEAS – unanimous**

**8.) Comments:**

- a. Chairman Richeson – none
- Planning Board Members -none
- Planning Director- none
- Administrative Zoning Technician- none

**9.) Adjourn:**

Hearing no further comments, Mr. Richeson adjourned the September 19, 2024, Kitty Hawk Planning Board meeting at 6:22 p.m.

Respectfully Submitted,

Jessica M. Everett  
Administrative Zoning Technician

**ATTACHMENT 1**

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**TO:** Chairman Richeson and Members of the Planning Board  
**FROM:** Rob Testerman, AICP, Planning Director  
**DATE:** September 19, 2024  
**RE: Preliminary Plat/Final Plat: 4324 Carrenda Lane Subdivision (5 lots)**

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Note: Subdivision reviews are an administrative decision. If all requirements are met, the applicant is entitled to approval.

**Proposal**

The applicant has submitted an application and preliminary plat for the subdivision of the parcel at 4324 Carrenda Lane. The plat outlines a proposal to subdivide one existing parcel totaling 2.962 acres on the west side of Carrenda Lane, at the intersection with W Kitty Hawk Road, into five lots. No new road, or road expansions, or other infrastructure are proposed as part of this subdivision.

**Staff Analysis**

Zoning: The subject property currently has two single family dwellings and associated accessory structures, and is zoned VR-1, low density village residential district.

Lot Size: The minimum lot size in the VR-1 district is 15,000 square feet of contiguous uplands. The proposed lots are as indicated below:

	Total area	Total uplands	Contiguous uplands (upland is separated by paved road)
Lot "A"	26,490 sq. ft.	21,180 sq. ft.	15,061 sq. ft.
Lot "B"	22,877 sq. ft.	17,528 sq. ft.	15,083 sq. ft.
Lot "C"	27,688 sq. ft.	20,715 sq. ft.	18,084 sq. ft.
Lot "D"	23,026 sq. ft.	18,509 sq. ft.	15,029 sq. ft.
Lot "E"	28,954 sq. ft.	15,419 sq. ft.	15,010 sq. ft.

Density: Maximum permitted density is two single-family dwellings per acre. Sec. 42-1 dictates that marsh and wetland areas, as determined by CAMA and/or CRC regulations, which are contiguous with estuarine waters, sounds and bays may not be used for density calculations.

As the definition specifically notes that marsh and wetland areas may not be used for density calculations, but does not include bodies of water, it is staff's interpretation that bodies of water may be used for density calculations, if they fall within the boundaries of the parent parcel. The Town Attorney has concurred with this interpretation.

**DRAFT**

The development area, less potential wetlands/marsh as defined by CAMA is 2.52 acres. At two dwellings per acre, this acreage allows a maximum of 5.039 lots (rounds down to 5 lots).

Lot Width: The minimum lot width in the VR-1 district is seventy-five feet (75'), measured at the front building setback line on each parcel.

	Lot width at front setback line
Lot "A"	148'
Lot "B"	90'
Lot "C"	97'
Lot "D"	127'
Lot "E"	137'

- Note – the lot width for Lot "E" is measured approximately 150' west of Carrenda Ln.

Road Frontage: Sec. 38-105 states that all lots shall front upon a public or approved private road, with a minimum of 50' of frontage.

	Road frontage
Lot "A"	167' on Carrenda
Lot "B"	90' on Carrenda
Lot "C"	97' on Carrenda
Lot "D"	127' on Carrenda
Lot "E"	145'- on W Kitty Hawk Rd

- Note – Lot "E" also contains 15' of frontage on Carrenda Lane to provide access. This eliminates the need to disturb the wetlands for access onto W. Kitty Hawk Rd, and eliminates the need for an additional curb cut on W. Kitty Hawk Rd.

Section 38-105(c) also states that double frontage lots *should* be avoided. As indicated on the plat, Lots "A" "B" "C" and "E" have frontage on both Carrenda Ln and W Kitty Hawk Rd. While the ordinance states that double-frontage lots should be avoided, it also does not prohibit them.

Given the location of the parent parcel which is bordered on two of its three lot lines by Carrenda Lane and W Kitty Hawk Road, any divided lots are bound to have double-frontage, as the parent parcel has double-frontage already.

Further, it staffs opinion that because of the use of the word "should" in the ordinance, rather than a prohibition on double-frontage lots, that this configuration is compliant. "Should" indicates a recommendation, whereas "must" or "must" not imposes legally enforceable regulations.

Building Setbacks: Minimum building setbacks in the VR-1 district are 10 feet along the sides and 25 feet at the front and rear. Minimum setbacks are provided on the plat.

Road Rights-of-Way: There are no new roads proposed as part of this subdivision. The existing Carrenda Lane right-of-way currently runs through the parent parcel. Though this is a state maintained road, the applicant has indicated that this portion of the road is owned by the applicant. The deed for the parcel and staff correspondence with NCDOT District Engineer appear to support this claim.

Water: Dare County Water does not have a line that services Carrenda Lane. The Water Department indicated to staff that they would allow lots A, B, C, and E to tap into the line running along W. Kitty Hawk Road. They have moved away from the practice of approving what they refer to as “spaghetti lines” (water pipes running from a water line, through a private property to access another private property). Instead lot D would be dependent on a private well.

Fire Department Review: Deputy Chief Rogers has recommended that the access to Lot E be widened to 20’ to ensure it can provide access for fire apparatus.

**Potential Conditions of Approval:**

- Wetlands certification to be added to the plat
- Miscellaneous sheds and other structures removed from setback prior to presentation of preliminary/final plat to Town Council
- Access to Lot E be widened to 20’, while maintaining 15,000 sq. ft. of contiguous uplands on all lots prior to presentation of preliminary/final plat to Town Council
- Submit documentation indicating ownership of roadway and canal area prior to presentation of preliminary/final plat to Town Council

**Note:** Per Sec. 38-50, should the planning board recommend disapproval or conditional approval of the preliminary plat, the reasons for such action shall be noted in the minutes of the board **and reference shall be made to the specific sections of Chapter 38 of town code which the preliminary plat does not comply**, and the subdivider shall be so notified.

**Planning Board Action**

The Planning Board has been asked to review the proposed preliminary plat and provide a recommendation to Town Council. Should the Planning Board decide to recommend approval of the preliminary/final plat for the subdivision, the motion could be worded in the following manner: **“I move to recommend approval of the preliminary/final plat for the property at 4234 Carrenda Lane, with the conditions listed in this staff report.”**

Should the Board wish to deny the preliminary/final plat, the following motion could be used:

**“I move to recommend denial of the preliminary/final plat for 4234 Carrenda Lane, Cite specific sections of Town Code that the proposal is out of compliance with”**

**Directions to the Subject Property**

(from Kitty Hawk Post Office, N. Croatan Highway & Kitty Hawk Road)  
Drive west on W. Kitty Hawk Road for 2.6 miles  
Turn left on Carrenda Ln, subject parcel is on the right



**ATTACHMENT 2**

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**TO:** Chairman Richeson and Members of the Planning Board  
**FROM:** Rob Testerman, AICP, CFM, CZO, Director of Planning & Inspections  
**DATE:** September 19, 2024  
**RE:** **Text Amendment: 42-504.- Yards generally**

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Note: A zoning text amendment decision is a *legislative decision*. In forming its recommendation, the Board may use public comment and opinion on the matter.

**Sec. 42-1.- Definitions**

*Accessory structure* means a non-habitable building on the same lot, but detached from the principal building, for which the use is incidental and subordinate to the principal use. In residential districts, accessory buildings may be detached garages, workshops, storage sheds, hobby-type greenhouses or similar minor buildings (roofed structures). Shipping containers shall not be used as accessory structures.

**Sec. 42-504. - Yards generally.**

(k) For residential uses, accessory structures as defined in Sec. 42-1, not exceeding 144 sq. ft. in area and/or 15 feet in height, must meet front yard building setbacks, but can encroach as close as five feet to side and rear property lines. On corner lots or double-frontage lots, accessory structures must meet the principal structure setback on the street side/rear yard. Accessory structures exceeding 144 sq. ft. in area and/or 15 feet in height must meet the principal structure setback requirements.

**Background & Analysis**

The proposed amendment to 42-1 defines *accessory structures*. Note that this definition is separate from and does not include *accessory dwelling unit*. An accessory structure refers to structures not intended for habitation on a parcel.

The proposed amendment to Sec. 42-504 adds subsection (k) that would create an exception to the side and rear setback requirements for accessory structures of a certain size. As proposed, accessory structures not exceeding 144 sq. ft. and/or 15' in height would be permitted to encroach as close as 5' to the rear and side property lines.

Currently, any structure taller than 30 inches from grade must meet the same setbacks that are in place for the primary structure (minimum of 10' side setbacks, 25' front and rear). The requirement to place a storage shed, or a greenhouse, etc. 25' away from the rear property line can create a disjointed backyard for the property owner, whereas allowing these small,

uninhabitable structures to encroach as close as 5' to the side and rear property lines will allow the property owner greater freedom in their yard design, as well as allow for a larger uninterrupted/contiguous yard.

Accessory structures that are larger than 144 sq. ft. and/or 15' in height would continue to be permitted, however accessory structures exceeding these size thresholds would still be required to maintain the primary structure setback standards. The language also indicates that accessory structures on corner lots or double-frontage lots would be required to meet the primary structure setback line from the street (10' side setback on corner lots, 25' rear setback on double-frontage lots).

**The goals and policies listed in the CAMA Land Use Plan are silent on this specific matter.**

#### **Attachment**

Staff has attached sections of several surveys around town with a hypothetical 12'x12' accessory structure sketched into a far corner of each lot to show how current requirements impact placement and yards vs. where a 12'x12' accessory structure could be located under the proposed language

#### **Planning Board Action**

The Planning Board is asked to provide the Town Council with a recommendation regarding the text amendment proposal.

Should the Board decide to recommend **approval** of the proposed text amendment, the motion could be worded in the following manner:

"I recommend approval of the proposed text amendments Sec. 42-1 and 42-504. The Board has found this proposal to be consistent with the Town's adopted land use plan."

Should the Board wish to recommend **denial** of the proposed text amendment, the following motion could be used:

"I recommend denial of the proposed text amendment to Sec 42-1 and 42-504 . The Board finds that this proposal is inconsistent with the Town's adopted land use plan [Insert any additional justification]."

**ATTACHMENT 3**

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**TO:** John Richeson and Members of the Planning Board  
**FROM:** Rob Testerman, AICP, CFM, CZO, Director of Planning & Inspections  
**DATE:** September 19, 2024  
**RE:** **Text Amendment: Chapter 12.- Environment**

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**Proposal**

**Section 12-161.- Designation of the Official Town Tree.**

The official tree of the Town of Kitty Hawk is the live oak (*Quercus virginiana*).

**Section 12-162.- Removal or destruction.**

- (a) The removal or destruction of any live oak with a diameter at breast height (DBH) of 2 inches or more within the Town shall be prohibited except as provided in this subsection.
- (b) During active construction activities live oaks may be removed only within the footprint of the principal building, required accessways, parking areas, utility installation sites, active septic areas, and accessory buildings.

**Section 12-163.- Tree damage.**

Any tree not authorized to be removed by this section, which is damaged during construction, or damaged occurring as a result of such construction, shall be evaluated by a certified arborist whose services are to be procured by the applicant. If tree repair is possible, the applicant shall repair the tree as designated prior to the issuance of a certificate of occupancy.

**Section 12-164.- Tree removal and replacement.** Any live oak tree protected by this section which is destroyed shall be replaced prior to the issuance of a certificate of occupancy if associated with an active building or land disturbance permit. If tree removal is not associated with an active building or land disturbance permit, the applicant may satisfy the provisions of this article by (i) planting a replacement live oak tree or (ii) paying to the Town, at the time of violation of this article, for the destruction of each protected tree, a sum equal to five hundred dollars (\$500.00) per protected tree destroyed or damaged on the subject property or site.

**Section 12-165.- Removal due to Disease or Death.**

A live oak tree as referenced in Sec. 12-162 may be removed if designated diseased or dead by a certified arborist. It is the responsibility of the applicant to demonstrate the condition of the tree, and provide the arborist report, if required.

**Section 12-166.- Removal due to Hazard.**

A hazard tree is likely to fall and injure persons or property as evidenced by cracking, splitting, leaning or physical damage. A hazard tree may also include a tree that is causing damage to existing public services or facilities, and such facilities or services cannot reasonably be relocated or repaired. The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard or a foreseeable danger of property damage to an existing structure or built element and such hazard or danger cannot reasonably be alleviated by treatment or pruning or moving the service or facility.

**Section 12-167.- Topping.**

Tree topping shall be considered unauthorized removal.

**Background & Analysis**

The proposed amendments come before the Board as a citizen initiated request to change town code. An amendment to Chapter 12.- Environment, does not require Planning Board review, or a public hearing, as it is not a part of the zoning ordinance (Ch. 42) or the subdivision ordinance (Ch. 38). The applicant presented the proposed language to the Town Council at their September 9, 2024 meeting, the Council requested that the Board review and make a recommendation.

The applicant referred to the document titled “Developing Tree Protection Ordinances in North Carolina”, from the NC Forest Service. If Board members would like a printed hard copy ahead of the meeting, staff will provide one.

[www.ncforests-service.gov/urban/pdf/treeprotection.pdf](http://www.ncforests-service.gov/urban/pdf/treeprotection.pdf)

**The goals and policies listed in the CAMA Land Use Plan are as follows:**

**Policy 4.3:** Enhance tree cover in the Town of Kitty Hawk

**Planning Board Action**

The Planning Board is asked to provide the Town Council with a recommendation regarding the text amendment proposal.

*Should the Board decide to recommend **approval** of the proposed text amendment, the motion could be worded in the following manner:*

“I recommend approval of the proposed text amendments Chapter 12.- Environment. The Board has found this proposal to be consistent with the Town’s adopted land use plan.”

*Should the Board wish to recommend **denial** of the proposed text amendment, the following motion could be used:*

"I recommend denial of the proposed text amendment to Chapter 12.- . The Board finds that this proposal is inconsistent with the Town's adopted land use plan [Insert any additional justification]."