

Kitty Hawk Board of Adjustment  
Minutes  
January 5, 2024

**Agenda**

1. Call to Order/Attendance
2. Swearing in of Speakers:

*\*\*Note: "The Board of Adjustment is a quasi-judicial body and anyone participating in a public hearing before the Board must be sworn in prior to speaking. When appearing before the Board, please state your name and address for the record and address the Board in a courteous manner."*

3. Issue
  - a. Public Hearing
  - b. Board Deliberation & Decision
4. Adjourn

**1) Call to Order/Attendance**

Chairman Meads called the meeting to order at approximately 10:00 a.m., with the attendance noted by Rob Testerman

**Board Members Present:**

Blair Meads, Chairman  
Christine Buckner, Kip Tabb, Bill Yetzer

**Staff Present:**

Rob Testerman, Director of Planning & Inspections  
Casey Varnell, Town Attorney

**2) Approval of Minutes from May 25, 2022 Meeting.**

**Bill Yetzer moved that the Board approve the minutes of the May 22, 2022 meeting, seconded by Chairman Meads. With a call for the vote, the motion carried 4-0**

**3) Swearing In of Speakers**

Chairman Meads invited persons planning to participate during the public hearing to come forward. The Town Clerk then swore in by oath those persons who would be offering testimony during the public hearing.

- Joe Walker, applicant - 3530 Bay Drive
- John Krawczyk - Contractor for Applicant
- Rob Testerman - Director of Planning & Inspections, Town of Kitty Hawk

**4) 3530 Bay Dr. - Section 42-360(c)2 of the Town Code establishes a maximum length for a private residential pier/docking facility at 100' in length. The applicant is requesting a variance of 200' to allow a replacement of an existing pier to be a total of 300' in length.**

**a. Public Hearing:**

*Mr. Testerman outlined the procedure is to go into public hearing, hear the staff presentation, hear comments from sworn speakers, then close the public hearing and go into Board discussions. Mr. Testerman noted that variance approval requires a 4/5 vote, and that*

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*since there were only 4 members in attendance, a unanimous vote would be required in this instance.*

Chairman Meads opened the public hearing.

Planner Testerman: The requested variance is for a variance of 200 feet from the maximum personal pier/dock length, Section 42-360 in order to replace an existing 100' pier with a new 300' pier. Presently, the maximum allowable length for a private pier or docking facility is 100' in length, measured from the furthest waterward point of the normal high water mark.

Attached in your packet, you've received a narrative from the applicant describing the rationale for the request, along with the application form. The other exhibits included are photographs from the subject parcel indicating water depth and the existing 100' length, as well as the depth at the requested variance length of 300'. Exhibit B is documentation of current CAMA regulations as it relates to pier construction. Exhibit C is aerial imagery and survey information of an existing non-conforming dock to the north of the subject property. Exhibit D is a sketch plan of the proposed replacement dock. Staff has included additional Exhibit E, aerial imagery of the existing pier at the subject property, as well as the closest three other piers, indicating the approximate length of each one. Exhibit F is an article from BoatingWorld.com titled "What is the minimum water depth required for launching a boat", in order to give some background information. Exhibit G is aerial imagery from 2012, 2016, 2018, 2020 and 2022 of the subject property indicating where the sand has accumulated over the years.

As previously noted, Sec. 42-360 denotes the maximum pier length of a private pier is 100 feet. The subject property is in a BR-1 zone, and is surrounded by other properties within the BR-1 zone containing single-family residences.

In your packet, you also have the staff findings, which I will go through:

1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved which are not applicable to other land structures, or buildings in the same zoning district?

Yes. The accumulation of sediment in this vicinity of Kitty Hawk Bay has created a situation where a 100' pier/docking facility is not viable for docking and launch types of boats that are enjoyed by other waterfront property owners. It appears that the same situation is applicable to other properties in the immediate vicinity, but the majority of sound/bay-front properties can utilize a 100' dock.

2. Would a literal interpretation of the zoning code deprive the applicant of rights commonly enjoyed by other properties in the same district?

Yes. The applicant is seeking to construct a pier to the length that would allow them to utilize the pier for its common usage, docking of a boat. Other waterfront properties with deeper water within 100' are able to safely launch boats from their piers, and in the case of two nearby existing non-conforming piers, they already exceed the 100' maximum in order to reach an appropriate water depth.

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3. Do the special conditions and circumstances result from the actions of the applicant?  
No. The depth of the water at 100' from the high water mark is not due to any actions taken by the applicant, but rather natural causes.

4. Would granting the variance confer special privileges to the applicant that are denied to other land structures, or buildings in the same zoning district?

No. As noted, two existing piers in the immediate vicinity already enjoy the privileges of a longer pier to gain access to deeper water.

5. Is the requested variance the minimum possible to make reasonable use of the land, building, or structure?

Yes. As indicated by the applicant the water is approximately 32" deep at a length of 300' and 24" deep at 250 feet. Per the Exhibit F, most boats require 2-3' of depth to safely launch and navigate.

6. Is the requested variance in harmony with the general purpose and intent of the zoning code?

Yes. The stated intent of the Sound waters district is "to provide the proper use of sound waters, including islands, that adjoin the town to ensure the continued scenic, conservation, environmental and recreational value that these waters provide to the town, its residents, visitors and surrounding area."

7. Would granting the variance be injurious to the neighborhood or detrimental to the public welfare?

In staff's opinion, no. The proposed pier at the length requested does not protrude excessively into the Kitty Hawk Bay. The requested length would have the pier be similar to two piers in its immediate vicinity.

It is staff's opinion that the requested variances meet the standards of Findings 1, 2, 3, 4, 5, 6, and 7. Staff is recommending APPROVAL of the setback variance, as requested.

KEY POINTS:

Positive

- There appears to be a legitimate physical hardship due to the narrow water depth at the standard 100' length.
- Sediment appears to have accumulated in this vicinity over the years, which eventually has limited the use of a 100' dock.
- The scale of the proposed pier is consistent with the existing non-conforming piers in the vicinity.
- It does not appear that granting the variance would create any type of unsafe situation or nuisance to any of the surrounding properties.

Negative

- Other lots in the immediate vicinity appear to have experienced the same accumulation of sediment, which could require additional variances in the future - or possibly an amendment to the regulation if it becomes a common occurrence.

At this point, I will turn it over to the Board for any questions you may have.

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Chairman Meads: Thanks Rob, for that report. We can now give our applicant a chance, if you would like to add anything or to speak at this point.

Joe Walker: I would just like to thank the Board. This has all come about because I have a boat, and we've tried to use the dock a couple of times, and the water is just too shallow to safely get to the dock, and it required climbing down a ladder, which can be a challenge for the very young, and some people that are getting up in age. We would like to ask you guys to consider allowing us to extend our pier to sufficiently deep water.

Chairman Meads: At this point, does anyone on the Board have any questions for Rob, or for the applicant before we close the public hearing?

Bill Yetzer: Will there be any permanent fueling facilities on this pier or any kind of lights? Is it any sort of navigational hazard by having this sticking way out there?

Rob Testerman: The ordinance, Sec 42-360 addresses the lighting. The existing pier just to the north is around 250', I don't believe it would necessarily be much more of a navigational hazard than the one that is already there.

The ordinance states that the pier shall have and maintain lights or reflectors to warn watercraft operators of the length and location of the pier and boat slips. The ordinance also prohibits fuel dispensing facilities on piers.

Chairman Meads: Has a CAMA permit already been issued on this? I saw that it was applied for

John Krawczyk: In order to be able to apply for the CAMA permit, we first need to have the variance approval in place. Most boat slips today use these cradles, and these cradles take up 11 to 13 inches of water and with the ebbing of the water, at low tide it wouldn't be doable even as it is today, if we see continued migration of sediment in there, then it'll be even shallower.

Chairman Meads: Okay, thank you. Are there any other questions?

Kip Tabb: I do have a question about, you mentioned high tide? Aren't most of the tides there wind driven?

John Krawczyk: So I would be speaking out of my wheelhouse to speak as to whether that tide is predominately wind driven, just going by what normal ebbing would be looks to be about 6-8" difference.

Kip Tabb: Could I also ask, I remember reading over this, the CAMA regulations allow out to a 400' pier, is that correct?

JK: The CAMA regulation allow up to a 400' pier under their general permit, but 200', you have to demonstrate that for every 100' in length, you get an additional foot of water depth.

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Chairman Meads: Any other questions? No? Okay, thank you. At this point it would be appropriate to close our public hearing and move on to our Board deliberations. At this point, there will be no more input from the public. Before we get going, Casey, do you mind giving us a reminder of what our duties are?

Casey Varnell: So we're obviously here on a variance request, we've got our zoning code, and they are asking to deviate from the requirements as we know, is 100' for private docks and piers and they are requesting to go to 300'. Case law in North Carolina is that you've essentially got to meet four factors to get a variance. Number one, there has to be a hardship, the hardship is supposed to be the result of peculiar circumstances to the property, the hardship can't be caused by the applicant, and whatever is seeking to be varied from, if you approve it, it must be in harmony with the spirit and intent of the particular zoning ordinance. Now, towns or municipalities or local governments, they're allowed to put in their own requirements, they can expand requirements to have a variance granted. And essentially, that's what we've done in Kitty Hawk. However, the four elements, as Rob's got in his findings here, the four elements are incorporated into these, with a few additional requirements. So, what I would suggest you guys do is go line by line through the seven staff findings, but make your own findings. You do have to make those findings to approve the variance. I would suggest Chairman Meads that you go one through seven, you guys discuss and make your particular findings for each one.

Kip Tabb: Can I clarify something? This is separate from, the applicant will still have to go through CAMA, is that correct?

Rob Testerman: Absolutely

Kip Tabb: So our finding is strictly and specifically for the Town of Kitty Hawk and nothing else?

Casey Varnell: Yes, simply as to whether or not you guys are willing to allow the applicant to deviate from our code. That's it. And what CAMA does with it is what CAMA does with it. But as was noted, this is a requirement from CAMA before they can proceed with their permit.

Chairman Meads: So I guess we can start with Item 1 and see if there's any discussion or concerns with item 1. "Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved which are not applicable to other land, structures or buildings in the same zoning districts?" Any concerns or questions with that?

Casey Varnell: And I will note that there is no issue if you guys want to take a look at what Rob put forward, and adopt his findings if you are in agreement.

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Chairman Meads: Any issues with the first one? It's basically saying that the accumulation of sedimentation has created this situation.

Kip Tabb: I don't think that's debatable, is it? I mean, that is exactly what has happened. May I ask, do we need to have a motion on each of these findings?

Casey Varnell: Just a vote on each one. And then adopt Rob's actual findings as to rationale as to why the answer is yes.

Chairman Meads: At this point, if there is no questions or concerns on number one, we can take a vote. Is everyone in agreement on number one, yes or no?

All: Yes

Chairman Meads: Alright, number two, "Would a literal interpretation of the zoning code deprive the applicant of rights commonly enjoyed by other properties in the same district?" Any questions?

Kip Tabb: I think the only question there would be, and I think it was addressed by the applicant would be that there is very little boat traffic in that immediate vicinity. If there was a lot of boat traffic, you might want to take another look at it

Chairman Meads: Anything else? If not I'll ask for a vote if everyone agrees with the finding, yes or no.

All: Yes

Chairman Meads: Number three, "do the special conditions and circumstances result from the actions of the applicant?" Seems pretty cut and dry to me. By vote, yes or no, does the Board agree with staff findings?

All: Yes

Chairman Meads: Number four, "would granting the variance confer special privileges to the applicant that are denied to other land structures, or buildings in the same zoning district?" Staff has said no, along with that explanation.

Kip Tabb: And we should clarify, those other two pier were put in place before this particular ordinance?

Chairman Meads: That is correct. No other questions? We'll move to vote on finding four. Does the board agree with the staff finding?

All: Yes

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Chairman Meads: Number five, "Is the requested variance the minimum possible to make reasonable use of the land, building, or structure?" I think the applicant has displayed by this by taking the water depths. Any concerns? If not we'll go on and vote on number five. Does the Board agree with staff findings?

All: Yes

Chairman Meads: Number six, 6. "Is the requested variance in harmony with the general purpose and intent of the zoning code?"

Christine Buckner: Yes

All others: Yes

Chairman Meads: Number 7, "Would granting the variance be injurious to the neighborhood or detrimental to the public welfare?" I think we covered that with the lights or other reflectors as required by ordinance. If we agree with the staff statement, we'll vote yes.

All: Yes

Kip Tabb: I make a motion to approve the variance, as requested.

Bill Yetzer: second

Chairman Meads: We have a motion and a second so now we'll vote.

All: Aye

Chairman Meads: Motion passes unanimously. Thank you for submitting. At this point we can move on to other business. I have no other business, other than to wish everybody a happy and safe and prosperous new year.

Bill Yetzer: Ditto

Kip Tabb: I think I would wonder if this ordinance, can that ordinance be written in such a way that the Planning Department could actually make this type of determination instead of having the Board do this, because we're going to be back here again, for this same issue.

Casey Varnell: The solution to that would be a zoning text amendment that would increase the maximum permitted pier length.

Chairman Meads: Christine, did you have anything?

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Christine Buckner: I do not. Thank you.

Chairman Meads: Casey?

Casey Varnell: Nothing. Thank you very much.

Chairman Meads: Rob?

Rob Testerman: Nope, nothing from me.

Chairman Meads: Alright, with that, I appreciate everyone being here today, and we will adjourn.

The meeting was adjourned at approximately 10:35 am.