

Kitty Hawk Board of Adjustment
Minutes
May 25, 2022

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 4:00 p.m., with the roll call made by Recording Secretary Merski.

Board Members Present:

Blair Meads, Chairman

Bill Yetzer; Natalie Smith; Abby Berquist; Christine Buckner

Staff Present:

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

2) Swearing In of Speakers

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

- Samantha Harris - 319 Jejac Drive, Kitty Hawk, NC 27949
- Rob Testerman - Director of Planning & Inspections, Town of Kitty Hawk

3) 319 Jejac - Section 42-247(d)3 of the Town Code establishes a minimum rear yard setback of 25 feet. The applicant is requesting a variance of 12 feet from the minimum rear building setback.

a. Public Hearing:

Rob Testerman: For this particular project, the applicant is seeking to construct a single-family residence and a separate accessory structure on the subject property. On the proposed site plan, for the single-family residence, a total of 477 sq ft of building footprint would sit within the 25' rear yard setback, and 336 sq. ft. of the accessory structure would sit within the 25' rear yard setback. Total building width within the 25' rear yard setback, when combining the two structures would be 69 feet.

Previously, in 2013, a variance was granted for the subject property that was tied to a proposed site plan that allowed a variance of 12' feet from the rear yard setback, allowing

Kitty Hawk Board of Adjustment Meeting
Minutes
May 25, 2022

construction of a 54' wide structure as close as 13' to the rear property line. Total square footage of the allowed encroachment would be 648 sq. ft.

The attached Exhibit A shows the proposed location of the structures on the lot. Additionally, the 25' rear setback line is drawn in for reference. For additional supporting documentation, the applicants submitted the attached narrative providing the rationale for the variance request. They also submitted the following exhibit for the Board's consideration. Exhibit A, site plan showing the proposed development of 319 Jejac prepared by Timmons Group dated March 28, 2022. The survey shows the dimensions of the subject property, proposed location of the residence, driveway and septic system, and accessory structure.

Staff has submitted the following exhibit for the Board's consideration as well. Exhibit B is an aerial photograph of 319 Jejac and surrounding properties obtained from the Dare County GIS mapping website.

You can see the ordinance reference, Town Code Section 42-247(d)3 establishes setback requirements for single-family residences in the BR-1 district; for a dwelling 3,000 sq. ft. and under, there is a 10 foot side yard setback and 25 foot front and rear setback.

The subject property is presently undeveloped and zoned BR-1. It is a rectangular lot, 10,150 sq. ft. in area, and although the property has 145 feet of road frontage along Jejac Drive, it is only 70 feet in depth off the road. The abutting property to the east is zoned BR-1 and contains a single-family residence. The abutting property to the west contains a single-family residence and is also zoned BR-1. The 8.1 acre parcel to the north, across Jejac Drive is undeveloped and zoned BR-2. The three abutting properties to the south are located in the Town of Kill Devil Hills.

Eight of the eleven residential properties along the south side of Jejac Drive are developed with single-family residences. The chart in the accompanying staff report provides the size, depth, front and rear setbacks and construction date for each property. As many as five of the eight developed properties encroach into the front building setback, and all eight of the existing residences encroach into the rear setback.

Aside from 313 Jejac, which is immediately to the east of the subject property, there is no indication of variances being issued for the other developed properties. 313 was granted a variance around the same time as when the original variance was granted for 319 in 2013.

Casey Varnell: Rob, how many of those existing homes were constructed, not just before the incorporation of Kitty Hawk, but before the zoning coming into effect?

RT: The subject parcel, as well as the other lots on that side of Jejac were created as part of the Kitty Dunes II subdivision, approved by Dare County in 1971, prior to the incorporation

Kitty Hawk Board of Adjustment Meeting

Minutes

May 25, 2022

of Kitty Hawk. Several of the existing homes were constructed prior to the incorporation of the Town as well.

The subject property and ten (10) other parcels along the south side of Jejac Drive were created as part of the Kitty Dunes II subdivision, approved by Dare County in 1971, ten (10) years prior to the incorporation of Kitty Hawk.

The size of the subject property (10,150 square feet) is nonconforming as the Town's current minimum standard for lots in the BR-1 district is 15,000 square feet.

With a depth of only 70 feet, application of the front (25 feet) and rear (25 feet) setbacks leaves a building area only 20 feet in depth on the subject property.

At the time of the original variance, which limited the variance to 54' in width, accessory dwelling units were not something permitted by the Town. As the accessory structure is proposed to have conditioned space, it classifies as an ADU. Limiting the variance to 54 feet in width effectively prohibits the development of the an ADU and denies the applicant of rights and uses commonly enjoyed by other properties in the same zoning district.

Per the signed order of the 2013 variance, in its finding that the variance is in harmony with the general purpose and intent of the zoning code, the Board stated that "setback requirements are generally adopted for the purposes of securing safety from fire, providing privacy, preventing overcrowding, and achieving a desired pattern of development. The proposed residence would be at least 55 feet away from any other residence. Therefore it appears that the purpose of intent of the setback standards would still be met if the proposed variance is approved." This statement is valid whether the variance is for 54 feet in width, or the entire width of the property.

In addition to setbacks, lot coverage is a means of regulating intensity of development. The proposed site plan is minimally more developed than the site plan associated with the 2013 variance approval (2013 - 21.7% coverage, or 2,202 sq. ft.; 2022 - 22.09% or 2,243 sq. ft.)

The applicant has requested a variance of twelve feet (12') from the minimum rear setback requirement, to span the entire width of the lot.

Staff Findings:

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 minimal depth of the subject property (70 feet) does not allow for the construction of a typical, reasonably sized residence. With minimum building setbacks of 25 feet from

Kitty Hawk Board of Adjustment Meeting

Minutes

May 25, 2022

the front and rear property lines, the remaining building area is only 20 feet in depth (not much wider than a single-wide mobile home). For comparison's sake, most lots created under the Town's current subdivision standards have a depth of 150 feet or more. Even the smallest, older lots in the areas "between the highways" have depths of 100 feet, which provides a more traditional building area.

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 modest sized, single-family residence on the subject property, and a separate art studio, that classifies as an accessory dwelling unit, as it contains conditioned space. A majority of the other, similarly situated properties along Jejac Drive already contain a single-family residence, and nearly all other lots in the district can accommodate an ADU

3. Do the special conditions and circumstances result from the actions of the applicant?

No. The current dimensions of the subject property were created by a subdivision plat approved by Dare County and recorded in 1971, prior to the incorporation of the Town of Kitty Hawk and long before the applicant entered into a contract to purchase the property.

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. Five (5) of the seven (7) residences along Jejac Drive encroach into the front setback and all of these residences encroach into the rear setback. Setbacks typically run the length of the property, not a specific width, and, as noted ADUs are permitted in any zoning district, as long as setbacks, lot coverage and a handful of other requirements are met, so, the applicant is not asking for anything out of character or scale with the surrounding area or Town in general.

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

Yes. The requested variances are the minimum possible to accommodate the dimensions of the proposed residence and ADU in the proposed locations. Reasonable use for other lots within the zoning district and town as a whole would include a single-family residence as well as an ADU as proposed, a setback variance that runs the length of the property would afford the applicant the same reasonable use as other property owners in Town and in the zoning district.

Kitty Hawk Board of Adjustment Meeting

Minutes

May 25, 2022

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

Yes. Setback requirements are generally adopted for the purposes of securing safety from fire, providing privacy, preventing overcrowding, and achieving a desired pattern of development. The previously approved variance allowed a rear setback of 13' but was restricted to 54' in width. Allowing the setback of 13' to span the length of the property would not result in any structure any closer to the rear property line. Therefore, it appears that the purpose of intent of the setback standards would still be met if the proposed variance is approved.

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

No. The proposed single-family residence and ADU is consistent with the size, character, and development pattern of the other residences along in the zoning district. Again, allowing the 13' setback to span the length of the property rather than being width restricted would not alter how close development occurs to the rear property line. Therefore, granting the variance would have minimal impact on the surrounding properties.

Summary: 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 depth of the subject property and small remaining building area.
- As the existing dimensions of the lot were created by a prior owner in 1971, the applicant has not created the need for a variance.
- The applicant has attempted to minimize the requested variances by working within the previously approved 13' setback while trying to achieve the same reasonable uses enjoyed by the rest of the zoning district
- The scale and location of the proposed residence is consistent with the existing residences along the south side of Jejac Drive.
- It does not appear that granting the variance would create any type of unsafe situation or nuisance to any of the surrounding properties, as both structures would

Kitty Hawk Board of Adjustment Meeting

Minutes

May 25, 2022

still maintain 13' separation from the rear property line, and still be bound by 10' side yard setbacks and a 25' front yard setback.

- Setbacks typically span the length of a property line and are not varied by different widths. It is staff's opinion that the setback should apply consistently.

Negative

- Single-family dwelling could be developed on the lot under the existing variance that was granted in 2013.

The aerial view is pulled up on the monitor. I will note that I was contacted by two adjacent property owners after advertisements went out, both of whom were inquiring to get more information about the proposal, neither spoke in favor or opposed to the variance.

The proposed site plan that was in your is also on the monitor, you can see the proposed studio to the west of the primary residence.

That is all I have got prepared, the applicant is in attendance for any questions

Blair Meads: Thank you Rob, for that report. Did anybody on the Board have any questions for Rob at this time?

Did the applicant have anything that they would like to add at this time?

Bill Yetzer: Rob, I have a question. Is there parking required for the studio? There is plenty of lot coverage available that a third parking space could be added.

RT: One additional parking space is required for an ADU per Sec. 42-528

CV: That would have to happen at site plan approval, in the even that this variance is granted.

RT: Correct, the variance process isn't approving or denying the site plan itself, it just gives them the ability to build within that setback if the variance is approved.

BM: Are there any other questions? Hearing none, at this time I we will close public hearing and go into our Board deliberations.

After reading through the staff recommendations, I didn't see anything in there that I disagreed with. Are there any concerns that any of our Board members might have?

Natalie Smith: I'd like to make a motion of approval of the setback variance as requested for 319 Jejac Drive

Kitty Hawk Board of Adjustment Meeting
Minutes
May 25, 2022

Christine Buckner: I second

CV: I will note, a 4/5 vote is required to approve the variance.

BM: We have a motion and we have a second we will hold the vote.

The vote is unanimous, the variance will be granted.

The meeting was adjourned at approximately 4:20pm.