

Kitty Hawk Planning Board Meeting
December 12, 2024 – 6 p.m.
Kitty Hawk Municipal Building, Smith Room

Minutes

The Town of Kitty Hawk Planning Board held its regularly scheduled meeting on Thursday, December 12, 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/ 6:00 p.m.

Chairman Richeson: Rob, would you please call roll?

Rob Testerman: Jessica is out sick so I will be doing the recording for attendance.

Attendance:

Members Present: John Richeson, Chairman Chuck Heath, Member
Bryan Parker, Vice Chairman Jim Geraghty, Member
Blair Meads, Alternate

Members Absent: Matt Spencer, Member Dave Morton, Alternate

Others Present: Rob Testerman, Planning Director
Casey Varnell, Town Attorney

Voting: Blair Meads, Alternate

2.) Approval of Agenda:

MOTION

Chairman Richeson moved to approve the agenda as presented.

3.) Approval of Minutes:

Rob Testerman: Just as a reminder, September 19th was the meeting where we had some technical issues, and the recording did not happen, so it is more of a broad summary of what took place rather than the transcript that you are used to.

MOTION

Chairman Richeson: Are there any changes or corrections to be made to the September 19th or November 14th Planning Board Minutes? If there are no objections/additions/changes, would someone like to make a motion?

Mr. Geraghty motioned to approve the minutes as submitted.

Chairman Richeson seconded the motion.

Vote: YEAS – unanimous

4.) Administrative Report:

Mr. Testerman: Last month, I noted to you guys that a public hearing on the pier length text amendment was held; it was later pointed out that there were procedural issues; the public comment was never called for, and we re-advertised and re-held a new public hearing. At the new hearing, the text amendment was approved again, although it was a little shorter than initially approved. It is now 250ft, which will be allowed by code. I had proposed a length of 400ft. The first public hearing went through at 300ft, and this one got taken down to 250ft. Also, the Council reviewed the Commercial Site Plan for the Sea Kove Motel and approved it with a few minor modifications. Some stairs that came down to the Bleriot Beach Access parking were shown on the property. They wanted to eliminate those so there was no confusion about whether the Bleriot parking was there for hotel use. I think there was also a sidewalk that went from the property to the crosswalk that got taken off of the site plan because the town didn't want any confusion that the town was going to be under any obligation to put in this sidewalk. I will touch on this a little later during the comments, but I put together a briefing for the town council on a recent senate bill that the senate and house approved it, Governor Cooper vetoed it, and the house overrode the veto yesterday and it is now state law. It does have some effect on what we do.

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.

Seeing as no one approached the Board, Mr. Richeson closed this portion of the meeting.

6.) Subdivision

- a.) Kitty Hawk Meadows, 740 W Kitty Hawk Road, three lots.

Mr. Testerman: I won't go through the whole staff report for you guys, but a few things to mention is this is a relatively small 3-lot subdivision on 2.42 acres. A few years ago, we approved a 4-lot subdivision on this parcel, but it was never brought in for recordation, so approval expired. This area is zoned VC-1, and the primary use is single-family residences with limited commercial use as an accessory to the single-family residence. While the VC-1 has language for setbacks and lot coverage pertaining to commercial, it says that when a single-family residence is constructed, the VR-1 dimensional requirement applies. So, the two dwellings per acre, the setbacks for VR-1, and 30% lot coverage. Flag lots are prohibited, and after discussing with Casey (Town Attorney), it was determined that the lots meet the minimum road footage requirements and maintain that 50ft width back to the building area and are not "flag lots." The other thing the applicants want to speak about is the building setbacks. At this time, I will invite the applicants to speak.

Discussion

Chairman Richeson: Good evening.

Mr. Gomez: Good evening, I am Carlos Gomes with Coastal Engineering

Mr. Testerman: Before Mr. Gomez gets started I will note that there is not complete agreement on the application with setbacks up there. Carlos has a different idea of what it should be, and I told him I would let him pitch that, and if you agree with the applicant's standpoint, then you can make that motion.

Chairman Richeson: Would that be a separate motion?

Mr. Testerman: Just include it in the motion that go with the applicants' suggestions rather than what is shown.

Chairman Richeson: If there is a motion to approve, go with the engineer's recommendation

Mr. Varnell: Recommendation, suggestion, proposal, anything of that nature will work.

Mr. Gomez: We've been working on this property for probably about seven years. It's a beautiful house. Very seldom do Rob and Coastal disagree. This was the first and a very professional difference. What comes out here that makes it a little difficult is that my understanding is we look at lots, the depth being the length and the width being the side-to-side. So, when we look at setback 25ft, it's like the front of the lot is what I would always consider the sideline. I agree not going to the front of the road. It's an oversight because you're not going to have a building on my left to start with. And we don't have the same property there, but it would have never been permitted to do anything there. So, that's probably where you start looking. And so, it's hard for me to understand how the ordinance reads. And Ralph has expressed his interest in eventually revisiting this ordinance and maybe making some adaptations. But the way we look at the lots when we plan certain issues, we go on the length as being the depth and the width being the side. So, we look at the setback 25 feet as a minimum to be the width where you can rebuild it when you start the setback. How you read the ordinance, you will call for 25 feet on the front of the lot, like if it was on the front of a road. This is difficult on corner lots. So, when we look at a corner lot, we see which side is longer and we apply the width and then the front of the lot would be on the narrow side. This is why it's difficult for us to... We have further discussion. And Ralph was strong about this. He's talking about it with a good eye and a good understanding of it. So, coming down from four lots of division to three and the opportunity to have the ADUs, it spreads the distribution of our buildings. We don't know if there are going to be ADUs. I imagine the way things are, probably they will come up, but that's not the point. When you look at lots two and three, and they're next to each other, they're side to side; they are in a 50-foot separation between the houses, which typically would be 20, 10, and 10 on each one. So, that's just a stronger argument. So, when you come to 75 feet, then you're looking at the front and it goes a long way, 25 feet. That takes a lot of buildable area to be able to distribute the house properly and all that. Now, Rob has a good point. We still have 85 feet. That's a good point. But if there's an opportunity to distribute the house, have a beautiful subject over it, those things play. It's part of that play. When we decide to have plans, it's a challenge. We're seeing 10 feet of buildable area. Not that we want to build 10 feet, but a longer house is a point. The point is the flexibility to do that. It's something that we haven't been really able to digest or process quite yet. Unfortunately, we are where we are. So, that's what I have to say about it. It's interesting. You're going to run into this situation. You've had a

lot. And here's our first run. It's a chance to challenge. We're happy that it seems to meet all the rules except that one. The discussion of the plan was put forward way earlier than was approved. That was a big deal. So, that's what I have to say. Earlier than that, Rob has been very helpful. A good argument is always a good argument. I appreciate that. It's all professional. If you have any other questions, I'm here to try to explain or ascertain whatever you may not focus on.

Chairman Richeson: Does anyone have any questions for the applicant?

Mr. Geraghty: I'm having a hard time understanding this. Do you think that the front is buildable? That 50-foot strip? On your plan, you've got this front setback of 15 feet. I know what you're saying with the 75-foot rule.

Mr. Testerman: Carlos acknowledged that part was there in error. That part wasn't perfectly built. That 50-foot strip is just to get and maintain the minimum road front. That part is all wetlands, too.

Mr. Geraghty: I wasn't entirely sure what you were arguing about.

Mr. Gomez: The discussion is of those two or three. Rule one, we totally understand. It is a confusing part of the ordinance. Rob has promised to straighten it up eventually. We fell for it. You should have picked up that. It's right there in the back. You did put that in there. It's tricky. It's contradictory.

Mr. Testerman: It is. The VC-1 district lays out permitted commercial uses. It says setbacks are 15 feet on the front and 20 on the rear. If you read the intent of the VC-1 district, it says it's a single-family residential district that allows commercial uses as an accessory to the single-family residence. If you have a single-family residence, the VR-1 standards apply to it. There's no need to have all that 15-foot, 20-foot. I don't know how long it's been in there. I haven't dealt with VC-1 districts. I've slept two of them.

Mr. Gomez: There's no discussion at all about one. It's the sidelines where the sidelines get applied. Those two and three have a 25-foot setback in the sidelines; 25 plus 25 is 50-foot separation between the houses, typically side-to-side, anywhere. If you look at the size of the structure, they've been changed from 10, 12, 1 1/2 to 18, but not even 25. We look at it as the length. The lines along the length are what we consider size. The narrow side is what we consider the front and the back. If you straighten the lot, that angle is what makes it difficult. We could have probably cut an angle between two and three, and then we would see a little smoother. We still can do it. Maybe that's going to help. It's not a big deal. If you look at it, it's a small bridge. We want to ensure we don't end up with a long and narrow bridge. It's nice. It's low and low. It's nice, but you want to be able to spread it whether it's going to go through a pool, a garage, or a potential ADU. It's a marketability of the lot.

Mr. Varnell: Two things just to clear up. I hear the mistake of running the setback line down; we can call it a flag, for lack of a better phrase. Really, the setback line should have just went straight and connected and then cut that. It should have formed a square or a rectangle, in other words, as opposed to coming all the way down the arm. Is that what I'm hearing?

Mr. Gomez: It should have not gone down the arm because it would not be permissible. The building area would have been 75 feet apart.

Mr. Varnell: Taking your rectangle and using your interpretation and then Rob's rectangle using his interpretation. Rob, what you're saying is the yellow and the red there, that would be the buildable area based on your interpretation. That would be where the setbacks would be

designated. Then Carlos's would be the dotted, obviously, drawn on by the CAD system. But only at the 10th.

Mr. Gomez: Only at the 10th.

Mr. Varnell: Right, okay.

Chairman Richeson: It's switching the side yards into front and back yards.

Mr. Meads: Would the front and the back, per Carlos, would that be east and west?

Mr. Gomez: Yes, sir.

Mr. Meads: That's what you're saying?

Mr. Varnell: That's what I thought.

Chairman Richeson: I might be simplistic here, but if that reserve right of way was a street and those lots could go straight across, it would appear to me that it's drawn correctly. As it is on here, the frontage is on Kitty Hawk Road, so the lots really are stacked. If you look at it that way, the lot's being stacked. Then that would be front yard, back yard, back yard, back yard. I mean, I could see it if this was a real street and they were coming off the street. Of course, you wouldn't have the flag portion, but you wouldn't need it.

Mr. Parker: They'd be fronting on a different road.

Chairman Richeson: Right, they'd be fronting on a different road. Then I could see your argument, but the fact that they're coming down to Kitty Hawk Road and the way the ordinance is written, I can see why Rob did that.

Mr. Gomez: No, what Rob is bringing up, it makes sense. The thing is that 25 feet is applicable to a street stop, not to a side of a property. That's where we have our differences. Because I don't look at it differently. And your argument that you brought up about that reserve right away is where we started doing this because that will eventually become our right because of the access to all the properties in the lot. So that's eventually going to be a right. Not now. It's not a right now. It's a new park. But when it comes back, they'll all be new parks.

Mr. Meads: So the easement on the east side of lot one will be what you access the back two lots with?

Mr. Gomez: Yes, sir.

Mr. Meads: So, you're proposing the houses face that easement? Is that what you're suggesting?

Mr. Gomez: Essentially, we're going to be access at this moment to the back of the lot, through that easement.

Chairman Richeson: But they could never have access there unless they get a permit to fill in. because this is all wetland.

Mr. Gomez: As you see, it's challenging. There's not going to be any construction on the front, unless one day we can access to the front, which, I don't know, I'd rather stick to the back. It'd be expensive. But it can be done. It's been done many times in Kitty Hawk, right? But that's not the issue. It's got something similar to it. Very much like this. But many more lots. In Kitty Hawk.

Mr. Testerman: Yes. I don't know what it's called. Yeah, I know the one called...

Mr Gomez: North of the cover bridge.

Mr. Testerman: Yeah. Or... Well, there's that, and there's also... There's one that just goes directly off of West Kitty Hawk Road. It's just an easement, gravel road that accesses like six lots. I don't recall the address on that one.

Mr. Gomez: As you see, we've been discussing this for a little bit.

Chairman Richeson: What we're talking about is 30 feet.

Mr. Gomez: It would have been four lots. We could not do it at this moment. We would have been stuck because there would be no building area when there were four lots.

Mr. Parker: Have you got an elevation anywhere?

Mr. Gomez: The elevations are around six. From four to six. Four at the very front. And six, I believe, first of all, they were created for the cemetery. Uh-huh.

Mr. Parker: That's like four foot back there? Or six foot?

Mr. Gomez: The cemeteries are around eight. Towards the front of Kitty Hawk Road is four and a half. I think the road itself is five.

Mr. Parker: The Kitty Hawk Road?

Mr. Gomez: Kitty Hawk Road.

Chairman Richeson: Does anybody have any comments or thoughts on it?

Mr. Meads: I have some for Rob, but I don't have any for Mr. Gomez.

Mr. Testerman: I think Carlos might have a way of reconfiguring the lots a little bit that might shift where the front setback would be and keep everything else compliant. Make it clear so there's no question of why it can be looked at a certain way.

Mr. Varnell: What type of reconfiguration are you really talking about?

Mr. Testerman: Instead of this at a 90 degree, come across there, and then when that hits 75 foot wide, there's your front setback, and that's side setback, and rear stays the same.

Mr. Varnell: I think the key is... The issue would be that you guys having to understand, obviously. I mean, we could put into motion, yeah, what Rob said we adopt. But having them actually understand it is the key. I don't know if words are going to cut it.

Chairman Richeson: Could we table it and let him redraw it and then bring it back?

Mr. Varnell: Well, I guess one question is reconfiguring something they want to do? That would be the first question. My concern is that we try to make a motion without something in front of us that you can visually see, which is what you're approving. And then somebody raises a concern about the manner in which we approved it. I think seeing it would certainly be preferable and probably the most prudent approach. But I guess the first question is, do you guys... Do you want to entertain? Revising?

Mr. Gomez: Yeah. We sometimes fail as professionals to convey because we always see it. But we do have to see it. I respect that.

Mr. Varnell: And I'm... comfortable with, you know, a postponement, something of that nature, and then allowing the revision. It's not... The deviation that I'm seeing here is not substantial enough to take you back to the drawing board with Rob, in my opinion. So I'm okay with you guys, if it's your pleasure, allowing the revisions they seem to be willing to make that would not just meet the ordinance but provide a more precise map for you guys and hopefully achieve everybody's goal. Compliance and the best use of land. So... If... If that's y'all's pleasure, that's fine. Y'all can do that.

Chairman Richeson: How would we make a motion? If we do that, how would we make a motion?

Mr. Varnell: I would say... I think tabling is fine. I think you just make a motion to the table for the purpose of allowing revisions. And I'm okay with you calling them minor revisions. I think they would be to the proposed subdivision.

Mr. Gomez: Per discussion.

Mr. Varnell: Yeah, per discussion.

Chairman Richeson: Y'all okay with that?

Mr. Gomez: Yes, sir. All right.

MOTION

Chairman Richeson: I'll make a motion that we table this site plan review preliminary final site plan review till the January planning board meeting. Is that enough time?

Mr. Gomez: Yeah. I will have it ready tomorrow.

Mr. Varnell: And to add to that, our chairman is to make revisions, minor revisions to the subdivision plat, pursuant to the conversation held during the meeting tonight. Correct? Would you adopt that as the end of your motion?

Chairman Richeson: Yes, perfect.

Mr. Varnell: All right. So now, it's good for a second.

Motion was seconded by Mr. Heath

Vote: YEAS – unanimous

Mr. Gomez: I appreciate your disclosure.

7.) Comments:

- a. Chairman Richeson – I have none other than I came here confused, and I left not confused, but we did nothing.
- b. Planning Board Members -None
- d. Planning Director-

Mr. Testerman: I'll keep it short, but I just wanted to catch you guys up to speed. As I mentioned before, there's a new state law that became effective yesterday. It was brought forward in the state legislature as hurricane relief. It is a hundred-and-thirty-one-page bill I am not sure how much was relief-oriented, but there was one thing on the very back page of it that now says if a locality wants to do anything that would be considered downzoning, we would have to get the written consent of every property owner it would affect first before enacting or enforcing anything. Two examples that I gave to the council were based on discussions we had whenever we had subdivisions come up in the village area. Many of the comments that we hear are that there are too many houses back there and that it's too dense even though it meets our zoning regulations. We were starting to put together a committee. We were going to send out a survey and get input from people who live in the village to see what they felt was the appropriate density, the lot sizes, and what have you. One of the ways that the state defines downzoning is by reducing density or lessening what can be done on a lot. For that example, in VR-1, the current density requirement of two dwellings per acre is the maximum. If we wanted to reduce that to make it less dense, say one dwelling per acre, we would have to get written consent of every property owner in VR-1 before we make that change. Something that came up in a planner's meeting this morning, too, is that we have some property with fifty acres that are all

party owners, and we would have to get every owner of every property to sign off. Another one that came up recently was the idea of creating some commercial architectural design standards.

Part of the new language that was added in was in any nonresidential zoning district. Any language that establishes a nonconformity, whether a non-conforming structure, non-conforming building component, nonconforming use, or anything like that, is considered downzoning. So, if we wanted to do any design standard, we would have to get written consent from every commercial property owner it might affect. The third way its considered downzoning is by removing a currently permitted use from a district. We have not had any talks about that recently not to my knowledge; and that is for residential or commercial, so if there is a specific residential district that we thought currently allowed multifamily and we decided we didn't want multifamily there or commercial use that is allowed in BC-1 and we felt that maybe it was not the most appropriate area for that anymore. To try to remove that it would be downzoning and we would have to get the written consent if every property owner in that zoning district before we can do it

Mr. Varnell: Very clear that commercial enterprise lobbyists were behind this. Certainly, everything they added, one of the key components is that it use to be that the government we could propose an amendment that was even a statutory- met the statutory definition of downzoning and set it aside an argument about it and we could do that as long as it was not so egregious that somebody made some constitutional argument. They were not attacked, and you didn't have to get permission from the owners. That was the key change having to get the consent of the owners. Adding in the fact that another definition of downzoning will be not just the use idea if we took a permitted use now in a commercial district and we made that no longer permitted and struck it from our ordinance, it creates a non-conforming use but they went so far as to say its not just use its any non-conformity that is created in a non-residential zoned. Very heavily favoring commercial. One thing that I pointed out, you know, when we had the local bill that basically said that the affordable housing developer that partnered with Dare County could come in, build affordable housing, and ignore any zoning ordinance in a municipality they were building in. We attacked that through lawsuits. We were able to dismiss the suit because when Dare County gave the money back, that was repealed. Essentially, they did it on their own. With this, we can't because it is across all counties. The one reason we were able to attach on discrimination grounds was that it was local to Dare. In this particular case, our options are to press our congressmen hard. We have already sent resolutions off and have municipalities and local government stress the fact that this little provision slid in the back of an omnibus bill that had two extremely political issues: Hurricane relief and who gets to appoint the Board of Elections the governor or the auditor they made it the auditor that was the focus. It was very political, so this got snuck in. Lobbyists are good at what they do. They get paid a lot for that reason, so if we can have them repeal that because this was not looked out, no one really weighed the effects. Hopefully, they will strike this particular provision at a legislative session, but until then, we are stuck with it.

Mr. Geraghty: What about the retroactive part?

Mr. Varnell: 6 months retroactive to anything

Mr. Testerman: any ordinance that is downzoning within 180 days from yesterday is unenforceable

Mr. Varnell: Casey, I got an email from Kill Devil Hills earlier today. They put together a chart of everything they have passed in the past 6 months because every town now has to evaluate if

any of those recent ordinances are downzone. Density is going to be the big one for the most part. It will be interesting because every ordinance we put forward does not directly attack density. Sometimes, it is an incidental effect. I am going to be interested to see how this plays out. I mean, if this thing is not repealed, there will be towns making arguments that, well, it doesn't say that the dwellings per acre are now decreased, so it's not part of this downzoning.

Mr. Testerman: It has been expressed to us that it is on their to-do list when they reconvene in January and February to try to get this corrected.

Mr. Varnell: There is a decent amount of concerned congress folk because the constituents started calling them up.

10.) Adjourn:

Hearing no further comments, Mr. Richeson adjourned the December 12, 2024, Kitty Hawk Planning Board meeting at 6:38 p.m.

Respectfully Submitted,

Jessica M. Everett
Administrative Zoning Technician