

Post Office Box 549
101 Veterans Memorial Drive
Kitty Hawk, NC 27949



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**Kitty Hawk Planning Board Meeting
November 13, 2025 ~ 6:00 p.m.
Kitty Hawk Municipal Building**

Agenda

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes
4. Administrative Report:
 - a. Town Council Action
5. Public Comment
6. Text Amendments
 - a. 42-528.- Accessory Dwelling Units – maximum size
 - b. 42-528.- Accessory Dwelling Units – setback calculation
7. Comments:
 - a. Chairman Richeson
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director
8. Adjourn

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MEMORANDUM

TO: John Richeson and Members of the Planning Board
FROM: Rob Testerman, AICP, CFM, CZO, Director of Planning & Inspections
DATE: November 13, 2025
RE: October 30, 2025 Planning Board Minutes

Due to the short turn around time from the October 30, 2025 Planning Board meeting to packet assembly for the November 13, 2025 Planning Board meeting, the draft minutes for the October 20 meeting will be presented for Board approval during the December 2025 meeting.

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MEMORANDUM

TO: Chairman Richeson and Members of the Planning Board
FROM: Planning & Inspections Department
DATE: November 13, 2025
RE: ADU Size Limitations

Background

The Town's ordinance currently limits accessory dwelling units (ADUs) to a maximum of 800 square feet or 50% of the living area of the principal residence, whichever is less. While this regulation references the living area (conditioned space) of the primary residence, the ordinance does not define whether unheated or non-conditioned space (such as unheated enclosed storage, garages, or parking areas) should be included in the size calculation of the ADU.

Historically, staff has interpreted the 800-square-foot limit to apply only to conditioned (heated and cooled) living areas. This means unheated enclosures beneath elevated dwellings or similar storage areas are not counted toward the ADU's size limit.

While this interpretation provides flexibility, it has also resulted in some unintended consequences. For example, a property owner could construct an elevated ADU with 800 square feet of conditioned living space and then fully enclose the ground level as unheated storage. The result is a structure that, while compliant with current rules/interpretation, may appear substantially larger than intended or may be easily converted into additional living space in the future without approval.

These outcomes raise two main concerns:

- **Visual Scale and Subordination:** The overall bulk of the structure may conflict with the ordinance's intent that ADUs remain clearly secondary to the primary dwelling.
- **Potential for Unauthorized Conversion:** Large unheated areas could later be converted to habitable space without permits or inspections, creating unregulated and potentially unsafe living areas.

Purpose

The purpose of this discussion is to provide the Town Council with a recommendation from the Planning Board on whether the Town should codify and continue the current practice of only

including conditioned space in the overall size, or to amend the regulation and apply the maximum size to the overall structure. Two potential approaches are outlined below.

Option 1 — Limit Unheated Space in ADUs

Under this approach, the ordinance would be amended to include limits on the gross floor area that may be approved in an ADU. The proposal below does allow for unfinished attic space to continue to be excluded from calculations, provided that the space is not tall enough to be converted to living space at a later date.

Rationale and Benefits:

- **Control Bulk and Mass:** Establishing a maximum gross floor area would help ensure that ADUs remain visually subordinate to the primary residence and consistent with the surrounding neighborhood scale.
- **Prevent Future Unpermitted Conversions:** Limiting the size of enclosed but unheated areas would reduce the likelihood that these spaces are later converted into living area without proper permitting or inspections, which also could reduce future code enforcement issues.

If the Planning Board favors this approach, the language below is presented as a potential amendment:

Sec 42-528.- Accessory dwelling units.

(b) **Gross floor area of Accessory dwelling units shall not be larger than 50% of the living area of the primary residence, or 800 sq ft, whichever is less. Unfinished attic space with a space between ceiling beams and the roof rafters less than six feet eight inches, shall not count towards gross floor area calculation.**

Option 2 — Maintain Current Interpretation (Exclude Unheated Space)

This option would retain the current practice of applying the 800-square-foot limit only to **conditioned living area**, allowing unheated space (such as parking or storage under elevated dwellings) to remain unrestricted.

Rationale and Benefits:

- **Maintains Flexibility:** Recognizes the realities of floodplain construction and allows property owners to enclose ground-level areas for storage or parking without penalty.
- **Focuses on Habitable Area:** Keeps the regulatory emphasis on livable space.

If the Planning Board favors maintaining the current interpretation, a potential clarifying amendment would be appropriate. By codifying the current practice, it removes the need for interpretation. The following language is presented as an option:

Sec 42-528.- Accessory dwelling units.

(b) **Conditioned living space of** ~~Accessory dwelling units shall not be larger than 50% of the living area of the primary residence, or 800 sq ft, whichever is less.~~ **Unheated storage or parking space shall not be included in the calculation of the maximum ADU square footage.**

Alignment with CAMA Land Use Plan:

Policy 3.4 Encourage residential that fits Kitty Hawk's character.

- Maintain zoning regulations that protect the character of Kitty Hawk's neighborhoods.
 - Monitor trends and reduce impacts of Accessory Dwelling Units (ADUs) and short-term rentals (STRs) in VR zoning districts.
-

Staff Request for Planning Board Direction

Staff is requesting the Planning Board's input and recommendation to the Town Council on how to proceed regarding the regulation of the size of ADUs.

Requested Action:

To provide a recommendation to Council on whether to limit gross floor area in ADUs (Option 1) or to maintain the current interpretation applying the 800-square-foot/50% of the primary dwelling size limit only to conditioned living space (Option 2).

The Planning Board can recommend approval of one of the options presented in this report, a modified version of the language presented in this report, or table the recommendation for further discussion / language development.

42-529.- Accessory dwelling units.

- (a) Accessory dwelling units may be attached (located within the principal residence) or in a detached structure on the lot, provided requirements for lot coverage and setbacks for the district are met.
- (b) Accessory dwelling units shall not be larger than 50 percent of the living area of the primary residence, or 800 square feet, whichever is lesser.
- (c) One additional off-street parking space shall be provided for the accessory dwelling unit.
- (d) No more than one accessory dwelling unit shall be permitted on a single residential lot.
- (e) Detached accessory dwelling units shall not exceed 28 feet in height, measured from finished grade, or the height of the principal dwelling on the property, whichever is lower.
- (f) The owner must obtain a permit from the county environmental health department that indicates the septic system is sufficient for the increased occupancy. Total occupants residing on the property shall not exceed the number specified by the septic improvement permit.
- (g) Accessory dwelling units may be used for home occupation uses, in compliance with [section 42-522](#), but in no instance shall more than one home occupation be conducted or permitted on a single lot. Additionally, the accessory dwelling unit is not permitted to be used entirely for commercial purposes.

In addition to the requirements of subsections (a)—(g), the following shall apply to ADU's located within the VR-1 zoning district:

- (h) Accessory dwelling units located in the VR-1 zoning district shall have a long term tenant or owner residing in a dwelling on the subject property, as defined in [section 42-1](#).

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MEMORANDUM

TO: Chairman Richeson & Members of the Planning Board
FROM: Planning & Inspections Department
DATE: November 13, 2025
RE: Side yard setback calculation

Background:

For several years, Kitty Hawk's residential zoning regulations have required side yard setbacks that increase as the size of a dwelling on a parcel increases. The following table outlines the current side yard setback requirements based on dwelling size:

Dwelling Size (sq. ft.)	Side Yard Setback (ft.)	Front & Rear Setbacks (ft.)
3,000 and under	10	25
3,001 – 3,500	12.5	25
3,501 – 4,000	15	25
4,001 – 5,000	17.5	25
5,001 – 6,000	20	25
6,001 and over	25	25

In practice, staff has historically used total conditioned living space to determine the side yard setback. This means that non-living components such as attic space, storage enclosures, garages, and decks are excluded from the calculation of side setbacks.

The issue at hand concerns whether the square footage of Accessory Dwelling Units (ADUs) should be included in this calculation. Specifically, if the proposed ADU's square footage pushes the total conditioned space of a property into the next higher threshold, should the increased setback be applied?

Examples of the Issue:

1. Example 1 - New Construction:

- A proposed development includes a 2,700 sq. ft. single-family dwelling and a 600 sq. ft. ADU.

- **Option 1:** The side yard setback would be based on the 2,700 sq. ft. of conditioned space, requiring a 10-foot side setback.
 - **Option 2:** If the ADU's square footage is included in the total, the total conditioned space would be 3,300 sq. ft., pushing the side setback to 12.5 feet.
- 2. Example 2 - Existing Dwelling with ADU:**
- A homeowner with an existing 2,800 sq. ft. dwelling (requiring a 10-foot setback) wishes to construct a 600 sq. ft. ADU.
 - **Option 1:** If the conditioned space of the primary dwelling is used, then the setback remains at 10' and the ADU can be permitted.
 - **Option 2:** If the ADU's square footage is included, the total conditioned space becomes 3,400 sq. ft., requiring a 12.5-foot side setback. Since the existing dwelling is only 10 feet from the property line, the ADU would not be allowed regardless of its placement on the site.
-

Alternative Approach for ADU Setbacks (Option 3):

As an alternative, Council could consider creating a separate setback requirement for ADUs that would not impact the primary dwelling's setback. This approach aligns with the CAMA Land Use Plan, particularly Policy 3.4, which supports flexibility for ADU design and setback requirements.

- **Example:** A homeowner with a 2,800 sq. ft. dwelling (10-foot setback) wishes to add a 600 sq. ft. ADU. Under this approach, the ADU would be subject to a separate, standard ADU setback of 15 feet (or other appropriate distance), while the primary dwelling's setback remains unaffected at 10 feet.
-

Potential Amendments for each option:

Option 1: Dwelling size of only the primary dwelling determines setback:

42-528.- Accessory dwelling units

(h) ADU setbacks are determined by the dwelling size of the primary dwelling per the dimensional requirements of the applicable zoning district.

Option 2: Primary dwelling and ADU size combined determines setback:

42-528.- Accessory dwelling units

(h) ADU setbacks are determined by the dimensional requirements of the applicable zoning district. The square footage of the combination of the primary dwelling and the ADU shall be used to determine the side yard setback.

Option 3: Standard ADU side yard setback.

42-528.- Accessory dwelling units

(h) Side yard setbacks for ADUs shall be established at 15 feet.

Relevant Goals and Policies of the CAMA Land Use Plan:

Policy 3.4: Encourage residential development that fits Kitty Hawk's character.

- Maintain zoning regulations that protect the character of Kitty Hawk's neighborhoods.
 - Encourage mostly single-family residential homes to preserve the overall residential character of the area.
 - Maintain variable setbacks based on dwelling size.
 - For ADUs: Consider modifying design requirements, including additional setbacks or buffering in VR districts, especially if the ADU is accessed via a separate driveway.
-

Planning Board Recommendation:

Staff requests that the Planning Board determine the appropriate approach for calculating side yard setbacks for ADUs. Options include:

1. Excluding the ADU square footage from the side yard setback calculation
2. Including the ADU square footage in the total conditioned space to determine the side yard setback, or
3. Applying a separate side setback for ADUs independent of the primary dwelling's setback.

The Planning Board can recommend approval of one of the options presented in this report, a modified version of the language presented in this report, or table the recommendation for further discussion / language development.

42-528.- Accessory dwelling units.

- (a) Accessory dwelling units may be attached (located within the principal residence) or in a detached structure on the lot, provided requirements for lot coverage and setbacks for the district are met.
- (b) Accessory dwelling units shall not be larger than 50 percent of the living area of the primary residence, or 800 square feet, whichever is lesser.
- (c) One additional off-street parking space shall be provided for the accessory dwelling unit.
- (d) No more than one accessory dwelling unit shall be permitted on a single residential lot.
- (e) Detached accessory dwelling units shall not exceed 28 feet in height, measured from finished grade, or the height of the principal dwelling on the property, whichever is lower.
- (f) The owner must obtain a permit from the county environmental health department that indicates the septic system is sufficient for the increased occupancy. Total occupants residing on the property shall not exceed the number specified by the septic improvement permit.
- (g) Accessory dwelling units may be used for home occupation uses, in compliance with [section 42-522](#), but in no instance shall more than one home occupation be conducted or permitted on a single lot. Additionally, the accessory dwelling unit is not permitted to be used entirely for commercial purposes.

In addition to the requirements of subsections (a)—(g), the following shall apply to ADU's located within the VR-1 zoning district:

- (h) Accessory dwelling units located in the VR-1 zoning district shall have a long term tenant or owner residing in a dwelling on the subject property, as defined in [section 42-1](#).