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**Kitty Hawk Planning Board Meeting
January 15, 2026 ~ 6:00 p.m.
Kitty Hawk Municipal Building**

Agenda

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes
 - a. October 30, 2025
 - b. November 13, 2025
4. Administrative Report:
 - a. Town Council Action
5. Public Comment
6. Text Amendments
 - a. 42-528.- Accessory dwelling units – setback calculation
 - b. 42-504.- Yards generally. – Pool decking setbacks
7. Comments:
 - a. Chairman Richeson
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director
8. Adjourn

Kitty Hawk Planning Board Meeting
October 30, 2025 – 6 p.m.
Kitty Hawk Municipal Building, Smith Room

Minutes

The Town of Kitty Hawk Planning Board held its regularly scheduled meeting on Thursday, October 30, 2025. The 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.

Attendance:

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

Members Absent: Matt Spencer, Member

Others Present: Rob Testerman, Planning Director, Melody Clopton, Town Manager

Voting: Blair Meads will vote this evening in place of Matt Spencer.

2.) Approval of Agenda:

Chairman Richeson: Does anybody have any changes, deletions, additions, or last-minute changes? Okay, seeing none, we'll declare the agenda approved.

3.) Approval of Minutes:

Chairman Richeson: Did everyone get a chance to review the minutes from the September 18, 2025, meeting? Are there any glaring misprints that need correction? Seeing none, does someone care to make a motion to approve the minutes for this September 18 meeting?

MOTION

Motion made by Vice-Chairman Bryan Parker to approve the September 18, 2025, minutes.
Seconded by John Richeson.

Vote: Aye – unanimous

4.) Administrative Report

Mr. Testerman: The October council meeting, they approved the commercial site plan for the parking lot over there by the three medical offices. Also set a public hearing for the variance text amendment that the planning board heard in September. We'll be holding that public hearing Monday night, November 3rd.

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, and that their decision is final.

Having no one come forward I will declare the public section closed.

6.) Special Use Permits

a. 5416 N Croatan Hwy – Gas station/convenience store

Mr. Testerman: Before we start, Casey thought he was going to be able to be here, but since he's not, he sent me something that he wanted me to read just for the planning board for the special use permits. He said, "the planning board may serve as a preliminary forum for review and quasi-judicial decisions, like the special use permits. If this is done, which our ordinance does have the planning board review and special use permits, it says the planning board must not conduct a formal evidentiary hearing, but must conduct an informal preliminary discussion of the application. The forum and recommendation must not be used as the basis for the decision by the council. The decision must still be based on evidence presented at the evidentiary hearing." So, we're reviewing it, making a recommendation, but that recommendation is not part of the evidence that council can use when they're reviewing it. And we look at the special use permit and commercial site plan in conjunction, so your recommendation will include whether it's compliant with the commercial site plan and your findings on the special use permit. In the staff report, it noted that the property is in an X flood zone and that the lowest floor elevations are at or above eight feet. The topographical map that's in the site plan packet indicates that all the existing elevations are higher than that eight-foot regulation. I think the elevation certificate we have on file for the existing vacant bank building that would be demolished, I believe they had the first-floor elevation around 15 ft. And then the only other part I really wanted to go through is just mentioning the land use plan. This property is located in an area that's designated by the plan as an invest and improve character area. The designation is primarily in high traffic corridors where levels of commercial or employment activity are greatest or where conditions create the potential for higher intensity uses. The policies and objectives relevant to this application, land use plan, Policy 3.1, manage land use and development to minimize primary and secondary impacts on resources and existing residents through standards for development, 3.2, encourage commercial development at appropriate scales in areas zoned for commercial, the BC and VC districts. Encourage larger scale commercial development to be along U.S. 158, and policy 5.1, utilize the future land use map, storm surge maps, flood exposure maps, wetlands assessments, and projected sea level rise and flood vulnerability data when considering rezoning and development requests. You can see the special use findings are those listed in 42-100(b)8. These are those findings that council will have to make in their evidentiary hearing, but it's certainly something that you all can discuss and decide whether you feel it meets those standards or not. You can see in the staff report that all the setbacks, lot coverage, building height, all seem to meet the requirements. If the applicant has anything they'd like to present or if you just want to answer questions, I'll leave that up to you.

Mr. Gallop: Yes. Good evening, Chairman Richardson and members of the planning board. Some of you may know me, some of you definitely know me. We've had a lot of experience together, and Mr. Mead and I have worked together on a couple of projects. I'm a lawyer here in Dare County. My name is Ben Gallup. I'm a sole practitioner in the Gallup Law Firm, and I'm here tonight representing the applicant of Royal Farms who wants to put this gas station here. We've got a number of people here to talk to if you need them tonight. The only person who's going to put a presentation on is Greg Schmidt here, who's an engineer. What we've also got in the row behind is Ms. Walker and Mr. DeLucia. Chris Bolino, who's a VP, I believe, with Royal Farms, and

Phil Mortoff, who's with the architecture firm for the project, and Larry Colarito, who's the appraiser who provided the appraisal report in there. And Kim Tate here is a local appraiser who's Mr. Schmidt will give a brief presentation. If y'all have any questions, we'll get you to the right person if there's a need for anybody else to speak. Otherwise, thank you for attending this application tonight.

Mr. Schmidt: I did prepare some printouts. Mr. Chair, Mr. Vice Chair, members of the planning board, my name is Greg Schmidt. I work with Kimley Horn, which is a civil engineering consulting firm. I'm based out of Virginia Beach, but we've done a few other projects down here in some of the neighboring municipalities as well as in Kitty Hawk. I want to start by just sharing a little bit about Royal Farms. If you're not familiar with the business, they have started to expand into North Carolina. Most noticeably down the 17 corridor, Little Washington and south. They have the store up here in Grandy as well and Currituck. Royal Farms is still a family-owned business. It started as a small dairy up in Maryland, and they've since been able to expand that dairy practices into a convenience store that also provides gas. Royal Farms, when we look at the land use plan and some of the initiatives out there talking about employment, I do want to highlight a few things. Each Royal Farms typically has 20 full-time employees, and then they'll bring in 30 seasonal employees as needed based on demand. The opportunities to grow within Royal Farms from an employment perspective, they have store leaders, assistant store leaders, team leaders, shift leaders, and then their customer service associates. It's not a one-size-fits-all. You walk in, you might interact with the cashier, but there's a lot going on in the background in terms of employment opportunities for a store like this. I know most of y'all are likely familiar with the site. It's currently a vacant bank, so we are looking to take the opportunity to reinvest in that property and redevelop it into a thriving business that we think will serve a good need here in Kitty Hawk. It does sit out front of the Walmart development, one of the largest shopping centers in Kitty Hawk, so it'll see a lot of bypass traffic from just the users that are going in there, picking up their groceries, might need to stop in, get gas, get some snacks, and start heading down into Kitty Hawk and taking in the other pleasures that y'all have to offer. As Mr. Testament mentioned, we worked hard with staff to make sure that we have come to you all with a compliant plan looking at things like setback and impervious cover, lot coverage, open space requirements, and have really worked diligently over the last couple of months. I know, Mr. Meads, we were in front of you at the Board of Adjustment hearing previously, so we've worked hard to try to work within the parameters that are set forth by the town, giving up some things we typically would do and would be desired by the owner, whether that be some drive-out width, some parking counts, things like that, while still maintaining compliance with the town's ordinance. To focus on the land use plan, as Mr. Testament had mentioned, this is located in the invest and improve area of the land use plan, talks to employment, talks to locating these commercial uses in areas that make sense, where there's already high-density commercial development, locating it where it doesn't have a detriment to neighbors, it's not located adjacent to any residences, it already has a right-turn de-sell off of 158 into a right-and-right-only entrance, as well as being served by the two signals, north or east and west, along 158 that go into the Walmart site. We talked about not having a detrimental impact to sensitive features as well. The only thing that's noticeable on the existing property is there's a small area of mature vegetation in the southeast corner, and we're proposing to protect and preserve that as part of our plan that's adjacent to one of the existing infiltration basins. To focus on special-use permit compliance, it does not materially endanger public health or safety. Royal Farms, I know from a gas station, there can be concerns with what happens with the gas underground. It's stored in underground fuel tanks. They use modern double-walled underground fuel tanks. They have a

monitoring system that continuously monitors for leak detection, so if there is a leak in the tank, they can respond to it and address it immediately. The access we talked about that, but it does also provide multiple ways of ingress and egress to the property for emergency service response as well, through the signals and the right-in-right-out on 158. I had mentioned that the right-in-right-out already features a right-turn desal lane into the development. The site also will use directional signage and pavement markings to efficiently direct traffic into and out of the entrances, something that they do as a standard. The development will have site lighting. There is a lighting photometric plan that was included with the commercial site plan application, again, providing some additional safety and security for the customers, employees, and visitors. One of the big things that is not clear on a singular exhibit, one of the things we are doing on this site, and I would say it's a benefit to the community as a whole, it is currently served by an existing on-site septic tank and drain field. We are removing that, and we've been coordinating with the Dare County Health Department to tie it to the existing wastewater treatment plant that is served by the shopping center. That wastewater treatment plant comes with state regulation, county regulation, and more oversight than a typical on-site sewer system. So, getting rid of that dated septic tank and drain field, I think, is something to highlight. And then, you know, related to what's around it, I think it's pretty obvious and evident, driving into 158 and coming into Kitty Hawk here, it's in a commercial corridor. So, it really does not have a significant impact on any surrounding uses from a public health and safety perspective. It does meet all the required conditions and specifications, as I had mentioned and as detailed in Mr. Testerman's staff report. We've complied with the zoning ordinance requirements and the ordinances of the town. We are still working with Dare County Health Department, as I had mentioned, to meet the specifications and standards that they will need for us to tie into the wastewater treatment plant, as well as NCDEQ for any stormwater approvals and permitting. Number three on the criteria, substantially injure the value. I'm not qualified to speak on that. As we mentioned, there was an appraisal report that was prepared, and it did not demonstrate an adverse impact. If you have more detailed questions on that, I'll have to pass that off to our colleague. Then we will be in harmony with the land use plan. I think as laid out in the land use plan, invest and improve. That's exactly what we're trying to do. It's surrounded by commercial development on the largest arterial railway into Kitty Hawk, you know, on the outskirts of town. So, it's already going to see the traffic that it's going to see. This is a convenience use. We're not adding trips. We're not adding residents. We're not doing anything like that with this proposed plan. So, you know, we're hoping that we can take what is now a vacant building that has sat vacant for a little while now and really make it into something that can benefit both the town's residents and its visitors. With that, I'll open it up to any questions you all might have for me.

Chairman Richeson: Does anyone have any questions?

Vice Chair Parker: I have one. Could you speak a little bit more about the wastewater disposal? So, you don't have a permit from Dare County to tie into the current wastewater treatment plant?

Mr. Schmidt: Yes, sir, so what we've done to date is we've laid the grounds to determine what is the available capacity in the wastewater treatment plant. And we have consensus or approval from Dare County Health that the capacity exists to serve this development. We still got to finalize getting the actual permit to make the connection.

Chairman Richeson: The numbers that were in your engineering report, those were pretty correct?

Mr. Schmidt: Yes, sir.

Chairman Richeson: Because there's still, just I guess to say it publicly, there's still, when you tie into it, there's still a surplus of capacity left?

Mr. Schmidt: That's right, yes. and we went through a process. I think it's the McDonald's is now a coffee shop or something like that. So part of cleaning up what the available capacity was, we went through that land use change process with Dare County Health to evaluate that and then show that there is still additional available capacity that is sufficient for the proposed development.

Mr. Testerman: I didn't neglect to mention, but in the staff report I had the two recommended conditions of approval, potential conditions of approval would be, and Greg kind of hit on stormwater, just submitting copies of the stormwater permit or any other DEQ documentation and submitting copies of the wastewater permits or other related approvals prior to issuing any building permits.

Chairman Richeson: I have a question for Rob. What you just mentioned, when it comes up for a motion, should that be mentioned in there? The conditions, the stormwater and the wastewater permit you had just mentioned?

Mr. Testerman: Yes. It's in the recommended motion that I included in the staff report.

Chairman Richeson: So we don't have to insert, we can just say it's recommended by staff?

Mr. Testerman: Correct. If there's any other conditions that you want to do, just recommend to council as well. You could add them there, but those were the two that I included.

Chairman Richeson: Does anyone have any questions for Rob?

Mr. Schmidt: I appreciate y'all's time.

Chairman Richeson: That was an impressive job engineering report.

Mr. Gallop: Thank you very much, and I'm assuming you don't have any questions for anybody else other than Greg or Rob. I can have other folks come up if you need them, but otherwise we're glad to be done and let y'all deliver. We want to make sure everyone have all of your questions answered.

Chairman Richeson: Thank you very much. Anyone care to make a motion then, if there's no further discussion?

MOTION

Motion made by Blair Meads recommended approval of the commercial site plan and special use permit for a gas station and convenience store at 5416 North Croatan Highway, subject to the conditions recommended by staff.

Seconded by, Jim Geraghty.

Vote: Aye – unanimous

Chairman Richeson: That brings us to our next agenda item.

b. 4352 B The Woods Road – RV Park Expansion

Mr. Testerman: This is a vacant parcel adjacent to an existing RV park. It's a preserve that's got at the corner of The Woods Road and Twiford. RV parks are permitted as a special use permit in the

VR-3, which is the zoning district for this one. Town Code 42-6195, says requires an approved community sewage disposal system. Rather than a community system, they've proposed not individual septic systems, but I think one septic for every two sites. And Dare County Environmental Health has reviewed that. The 42-622 calls for a minimum of 1,500 square feet each for the RV spaces. The site plan itself does not have that 1,500 square feet delineated, but in discussions with the applicant, they've indicated to me that they can achieve that, and they can show that before it goes to town council. Cul-de-sacs or dead-end roads shall not exceed 1,000 feet in length, measured from the entrance to the center of the turnaround. Any road designed to be permanently closed shall have turnaround at the closed end with a minimum right-of-way diameter of 80 feet. The new access road that's being proposed that ties into the existing one is about 675 feet, measured at that property boundary. If you measure from the park entrance, the total length is just over 1,000 feet. The new road itself meets that requirement. Rather than an 80-foot diameter right-of-way turnaround, the applicant has proposed a T-shaped terminus. You can see that on the site plan here at the south end of the proposal. I have forwarded this to the Deputy Fire Chief for review, and he had indicated no concerns or issues with that configuration. Another section of the ordinance that deals with the wastewater, RV parks shall provide at least one sewage dumping station approved by the County Environmental Health Department. Again, septic systems have been proposed throughout the park instead of a sewage dumping station, effectively serving as multiple sewage dumping stations to serve the park. The only other specific in the application that I wanted to hit on is that the camping unit shall be used as temporary quarters or shelter during periods of recreation, vacation, leisure time, or travel. It shall not be used for permanent living quarters. That would be an ongoing condition of approval. It's just intended to where it's not becoming permanent residences. That is required to keep it compliant with the Flood Damage Prevention Ordinance as well. To address that, I did note in a potential condition of approval that one of the requirements of the RV Park Ordinance is that the park operator maintains a register showing who owns the trailers that are in there, when they come, when they go. One of the conditions of approval would be that the park operator periodically submit the park register to the town to review for compliance with the occupancy requirements. The other potential condition being that prior to the public hearing with Council that a revised plan showing those 1,500 square foot spaces be submitted that Council would have that to review. As it relates to the land use plan, the property appears to be in both the accommodate and adapt and the acknowledge and conserve character areas. The accommodate and adapt character areas described by the plan is an area highly vulnerable to flooding but may occasionally include new elevated structures. Acknowledge and conserve is described as low-lying areas that are not suitable for development or areas that are susceptible to natural hazards and inundation. The land use map shows the acknowledge and conserve areas being that section that's closest to the ditch or canal that runs up through there. You can see on the site plan they do propose leaving a vegetative buffer between the proposed RV sites and that waterway. Following policies and objectives relevant to the application are stated in the land use plan. Policy 3.1, manage land use and development to minimize primary and secondary impacts on resources and existing residents through standards for development. 4.1, encourage the preservation of maritime forests, floodplains, marshes and wetlands through development regulations and land protection initiatives. 4.3, enhance tree cover in the town of Kitty Hawk. 5.1, utilize the future land use maps, storm surge maps, flood exposure maps, wetlands assessments and projected sea level rise and flood vulnerability data when considering rezoning and development requests. And policy 12.1, continue to be a destination for family-oriented tourism, which I think a RV Park does provide that. There is a brief sentence about the acknowledge or accommodate and adapt character areas in the staff

report. In your report, you do have the full description of the land use plan as well. It gives a little more detail. And with that, I will, if the applicant.

Mr. Delucia: Good evening. Good evening. I'm John Delucia from Albemarle and Associates. I think most of you know me. My client approached us to expand the preserve and staying on the preserve, out of the existing trailer park. Previously, a plan had come before council on this project to have little homes located here, and that was turned down. And that was turned down because of the nature of the flood trail more than anything else, I think. That was several years ago. Like Rob said, we have 32 spaces here. We have 23% lot coverage. We've located some of the big oak trees in there and we're working around them. Padded elevations are going to come up a couple of feet from the natural ground elevation now. The road is a little bit wider because backing some of the larger RVs in and out, they need a little bit more width in order to do that, unless you're doing a loop road and you can go in at an angle, which we didn't really have that opportunity to do. As far as the lot size and areas around this, we didn't draw that plan because it was just going to put more information on the plan. We've developed a plan that shows that there's at least 1,500 square feet and can be more than these, so that works. Early on, we talked with the health department and with the owners, and it seemed that having smaller individual septic systems were better. If you have problems with one of them, you don't have the whole campground down. Normally, you would design an RV site for 100 gallons a day for an RV. We've actually sized these for 240 gallons for each RV plot, for each RV space. That was requested by the health department, only because some of the RVs today are larger. They're like two-bedroom houses rather than one-bedroom houses, if you will. We just found out today that CAMA is not going to take jurisdiction on this piece of property. But we do have to leave that 30-foot buffer. As long as we stay out of the public trust 30-foot buffer, we don't need to have a CAMA permit. We will be going to the state to get a stable stormwater and a low-density permit on this. We do have stormwater management provisions along the site plan. As Rob said about the dump station, we really don't want to have a dump station there because it's better if each individual trailer can hook into a septic system rather than having a dump station. We actually have 18 dump stations, if you will. We have the required area for bathrooms and for showers, for a small laundry facility. The health department has reviewed this. We have preliminary approvals for what we've shown you. As I said, we're at 23% off coverage. We're going to try to maintain some of the nice trees that are in there because people like those.

Mr. Testerman: I will jump in here. I highlighted those sections that relates to the septic and sewage just because it's not word-for-word what the ordinance says. But I think it does meet the intent of what the ordinance is going for, managing that wastewater. So, I just wanted to highlight those in case there's any questions that you guys had as you were reading through it.

Chairman Richerson: I have a question for you. what I'm hearing is there going to be some kind of attachment or something with each of those septic systems that they would attach their RV to?

Mr. Delucia: Yes.

Chairman Richerson: So there is a possibility, like people traveling around the East Coast, stopping at places where somebody could pull up with a full tank when they first get there?

Mr. Delucia: They could. That could be possible. Although they're setting these up more so for folks from Virginia Beach and the Tidewater area, that they can keep their RVs down here and come down on the weekends and have them usable. That's kind of what they're doing in there

right now. When we were doing the feasibility study on this, I did talk with Chief and with Jimmy about if there had been any problems back there. And he said that since these folks have taken it over, they really haven't had any concerns back in that area. I know that they should read their applications that are fairly robust. They do background checks on people before they let them come down and rent. They want a safely run campground.

Chairman Richeson: It was stated in here that one of the projected uses was to be for a long-term RV. They could park it and then come back a couple times during the summer. We get a flood warning with a hurricane coming up and the owner doesn't show up or can't get ahold of him, who's going to tow the unit out?

Mr. Testerman: The Flood Damage Prevention Ordinance, the requirements say that it can't be in one place for more than 180 days or it has to remain highway ready. It doesn't necessarily speak to having any requirements that somebody has to come fill it out. Ideally, that would be the case. Ideally, you wouldn't want it sitting there.

Mr. Delucia: But their agreement does state that if a storm is coming, then the owners will be notified and they have to come down and move them. None of them will be off of wheels. They're all going to be strictly legal for anything in there.

Vice-Chair Parker: This site has been brought to us two other times previous and was denied based on the elevation wouldn't support the development of septic systems and so forth.

Mr. Delucia: We actually did a plan about ten years ago on this that had comments. And a big wastewater treatment plant that was right in the system was right in the middle of this property. Of both the properties. And that was actually what went through the state and stayed approved at that time. We've been working with Robert Preston on this one. And rather than having to put a large drain field in and clear all the vegetation and cut the trees down, I feel it's better and the health department feels it's better. So we have septic systems and repair areas for each one of these. And we design it for 480 gallons a day. Which is more than twice as much as we would normally have to design it for. So, John, your question about what happens if someone comes and dumps a 60-gallon tank, it's not a big deal.

Chairman Richeson: Yeah, I was looking at the systems. From what I understand, you have to have anywhere from a foot and a half to two feet of fill has to come in the whole site? The systems look like they're standard systems?

Mr. Delucia: They're standard bed systems.

Chairman Richeson: If you bring in two foot of fill, doesn't that have to be a Brunswick system?

Mr. Delucia: It is a Brunswick system.

Vice-Chair Parker: I think they require an extra six inches of material for a center-fed system.

Mr. Delucia: You've got more separation of the water table. Yes.

Vice-Chair Parker: I think the elevation there was a little over two feet above sea level, maybe?

Mr. Delucia: A little over five-foot pads in order to get septic systems in.

Chairman Richeson: What's the LPP field rated for?

Mr. Delucia: Probably the LPPs is, since you've got an extra tank and you've got pumps and you've got, I mean, this is a gravity system. I mean, this is as simple as they get. And they're functional. They work.

Chairman Richeson: And about the, you know, saving the trees, it looks like to do all that you're pretty much going to have to clear-cut the whole site.

Mr. Delucia: There's not a lot of trees in there, but we're going to make an attempt to. We did locate most of the trees on the site. We tried to work around a few of them. There's a lot of that water line that comes in there to serve what's there now in the fire hydrant. We made those sites a little bit smaller. The pads are not as long for those because we didn't want to have anything parked on top of the water line.

Chairman Richeson: Has anyone done a hydrology study on the ground water?

Mr. Delucia: We've looked at the ground water and we've also done everything at the health department. They did boars in every single one of these.

Chairman Richeson: I guess it would be the superficial aquifer, percolate in the ground. If it's going to get over to Oak Pond Swamp, which, yeah, my concern is, you know, Pond Swamp eventually empties out to Kitty Hawk Bay.

Mr. Delucia: John, it meets the standards of the health department. The separation distances are adequate. Separation from the ground water and from the distance to the canal or to the swamp back there, it's all compliant with state and local regulations. I'm not that worried about it. I really not.

Mr. Testerman: I would just add, like, any other development that comes through with regards to the septic permitting, if the health department approves it, we just ask for a copy of it. We don't have, like, we don't apply any additional standards. If the county's good, we're good.

Chairman Richeson: Anyone else have any questions?

Vice-Chair Parker: I'll say this. One of my concerns of just being here for a while and what we've dealt with in the past, but it basically goes against one, two, three, four of our land use policies. That's one of my concerns. It's in a knowledge and conserve area, which was mentioned. Minimize property and secondary impacts. Encourage the preservation of maritime forest, floodplains, marshes, and wetlands. Enhance tree cover. I mean, that's a wooded site currently, correct? Six acres of all trees is what it is.

Mr. Delucia: But it's zoned, it's zoned to allow it.

Vice-Chair Parker: That's a special use. It's not by right, but a special use. Those would be my concerns.

Mr. Testerman: I think on the future land use map, kind of here where, it doesn't lay out person by person, but where I'm hovering, it's kind of whereabouts. You can see Twiford coming in here, the wooded road. The existing parts of that here.

Vice-Chair Parker: So it's in the light blue shaded area?

Mr. Testerman: I would say the majority of it's in that gray. Like I said, when I was doing my part, I think the majority of the acknowledge & conserve is probably there within that buffer by the water. And then the rest being in the accommodate and adapt.

Vice-Chair Parker: There are all within a foot of each other. There wasn't a whole lot of difference in elevation from not much to not much more.

Chairman Richeson: I'm kind of bothered too by, well, accommodate and adapt policy 5.1. Utilizing the future land use map, storm surge map, flood exposure map, wetlands assessment, projected sea level rise. I mean, even if they bring in two foot of fill, that property is always going to be vulnerable. And it bothers me with its approximation to Oak Pond Swamp. Because, water flows out, but we have a flood event. Water's going to flow in. And in 2060, according to our new CAMA land use plan, that's going to be right at water level, the ground level. They're projecting, I think, by then, possible two-foot rise, if I remember correctly, from the land use plan by 2060.

Mr. Testerman: I will just read into the accommodate and adapt character area sheet from the land use plan. I don't try to advocate one way or the other. It does say that future uses should be primarily single family homes and reuse of existing buildings. So, in my mind, if you're saying single family homes are appropriate in the area, the actual hardened development here is a bathhouse and a roadway. So, you're not actually putting any structures in the plan of future floods, except for the bathhouse. And then, assuming the owner has that agreement in place and is on top of the customers to pull out if there is something coming.

Chairman Richeson: Do you have an opinion on how that's going to affect the residents on Woods Road that have houses abutting the property, if that's going to be like a noise problem or something?

Mr. Testerman: I don't know that I can really give an opinion on that.

Chairman Richeson: It's kind of hypothetical.

Mr. Testerman: I mean, 32 trailer spots. So, if the intent is to allow long-term leasing of the spot itself, not long-term occupancy, and then they have to pull out for the event of a storm, then you might have 32 RVs going down the Woods Road towards the bypass a couple times a year.

Chairman Richeson: I'm glad you did the 480 because there's two parking spots per site, which means somebody can come in with their Airstream with one family of 6 to 8 people and then his brother-in-law can follow him in there and park in the other one with another 6 to 8 per site.

Mr. Delucia: I don't think that's the intent.

Chairman Richeson: Well, I mean, you can't say it's not going to happen. It happens down here a lot.

Mr. Delucia: Well, they're only going to be able to get one RV on the path.

Chairman Richeson: Correct. But they'll all be using the bathroom.

Mr. Delucia: That's true. And that's why we want some of the higher flood rates on the design.

Chairman Richeson: Or send them to the bathhouse.

Mr. Delucia: The bathhouse would have about 2,000 gallons would be the capacity for a couple of showers and a couple of clothes, and a washing machine.

Mr. Meads: Can you show me the aerial again of the existing RV park?

Mr. Testerman: This is the proposed area.

Mr. Meads: So it's basically turning right into what's already there? Yeah, you see the access is here at the Woods Road. It goes through this private property here. And then this is the beginning of the park property. And then it would follow that access right up to here, which means there may be some improvement already there. And then into the site.

Vice-Chair Parker: Would they have to shorten the road, being that it's over what's permitted, over the 1,000 foot?

Mr. Testerman: Well, if you look at the total from entrance of the park, it came to, I've been, like, just over 1,000, but this new section was 675, thereabout. So, I guess that might be an interpretation for council when they're making their decision, whether they're looking at just the new road or the park entrance. The new road meets that 1,000 foot length, and the total, measured about 1,090 feet.

Vice-Chair Parker: Yeah, my main concerns are just that it seems like most of the land use plan says not on that site, you know. And to quote Councilman Pruitt years ago when this was before us, he said, Kitty Hawk's doing a lot of things, but we're not gaining in elevation. And that was to support the... it wouldn't support septic systems at that time, is what I remember.

Mr. Testerman: I think, as John mentioned, I believe that was early on when I came over to town, and the proposal at that time was for mobile home manufacturing on the park. And I do remember part of the concern there being selling those permanent structures there, which was different than that since There is a septic, but we're also not talking about the permanent structure, like the permanent manufacturing homes.

Mr. Delucia: It's a much less intense use of the land than if we went in there and did a subdivision with ten lots in there.

Vice-Chair Parker: Could it support it? I mean, if you're going to raise it by 2 to 3 feet, you're looking at 2,000 dump truck loads of sand.

Mr. Delucia Well not the whole area. -inaudible-

Vice-Chair Parker: It's definitely minimizing.

Chairman Richeson: Anyone else have any more questions?

Mr. Testerman: You mentioned the intensity of the uses as well. This is a VR-3 district where single-family residences and duplexes and multifamily dwellings are permitted uses by right. It's something to think about the alternatives of what could be there.

Vice-Chair Parker: What would be the difference here? We allow three in VR-3, units per acre?

Mr. Testerman: It would be four dwellings per acre. Twenty-four dwellings.

Mr. Geraghty: I think that would have more of an effect on the land and the areas than this will. If someone subdivided it. With those, you know, your elevation, if the house is up on pylons, elevation, as long as they can get a drain field in, you know.

Vice-Chair Parker: And currently you don't have septic approval, correct?

Mr. Delucia: We have preliminary approval.

Vice-Chair Parker: Preliminary.

Mr. Delucia: Well, I mean, they've gone out and done the evaluation. We have not applied for the permit yet.

Vice-Chair Parker: And they've said that it will support a drain field.

Mr. Delucia: Yes.

Chairman Richeson: The approval is contingent upon doing the recommendation by the health department.

Mr. Delucia: Yeah, like Rob said we had every single drain field staked out.

Mr. Geraghty: Your traffic and everything would be much more with a subdivision than with this. This is going to be, you know, seasonal. And as far as handling it, the Woods Road, what you said with the storm and if you've got to get out of there, every Saturday and Sunday, that Woods Road is back up. More than that would affect it.

Vice-Chair Richeson: I don't have any more questions. Anyone care to make a motion?

MOTION:

Mr. Meads recommend approval of the site plan and special use permit for an RV park at 4352B The Woods Road, subject to the conditions listed in the ordinance and those recommended by staff in this report.

Seconded by Mr. Geraghty

All in favor? Aye. Blair Meads and Jim Geraghty

All opposed? Aye. Chairman Richeson, Vice-Chair Parker, and Chuck Heath

Motion denied by a vote of 3 to 2

Mr. Delucia: Can I ask why?

Chairman Richeson: Personally?

Vice-Chair Parker: The land use plan.

Chairman Richeson: The land use plan I mean; it meets policy 12.1 to be a destination for family-oriented tourism.

Mr. Morway: The land use plan is not a binding document.

Chairman Richeson: Oh, I know, but it's a guideline.

Mr. Morway: It's a guidance

Chairman Richeson: Everybody has their opinion, you know, about what the land use plan means. Like you said, it's not a binding document.

Mr. Morway: Right.

Chairman Richeson: And I'll be specific. Policy 4.1. I don't think it lines up with that. Encourage the preservation of maritime forests, floodplains, marshes, and wetlands. I mean, right across Twiford Street, you have a coastal reserve, which fortunately is protecting, you know, some of Kitty Hawk Woods.

Mr. Delucia: A tremendous amount.

Chairman Richeson: And enhance the tree cover, because most of the trees are going to be cut down. I'm going to be specific, because you asked. You had the plastic structures around the oak trees. You bring in two foot of fill, if those plastic structures deteriorate, and that sand creeps over the trees, it's going to kill them. So, you really haven't saved anything. I'm not saying it's going to happen. And I'll try to look at everything. You know, I'm not trying to pick on you. You did a great job with it. I mean, looking for the extra capacity and bringing the health department in.

Mr. Delucia: Inaudible

Mr. Morway: And also, the trees that are shown to be saved, that's incorporated very well. But you also have a minimum of a 30-foot wide vegetated room for whatever purpose. I mean, we've got a tree on there, so we've got to decide properly. It's not just for show.

Chairman Richeson: I understand. And like I said earlier, our town council's not bound by it. (56:36) It's just a recommendation.

Mr. Delucia: Mr. We understand that. I would just like to have a clean recommendation.

Chairman Richeson: I understand and I don't blame you a bit.

Mr. Delucia: For the commissioners meeting, their attorney will be coming down here because their findings are absolute. And we're in the process of having Greg Ward prepare the documents that we are going to need for that. Thank you all very much.

Chairman Richeson: Thank you, Y'all did a great job on the engineering presentation, really.

Mr. Delucia We'll get there.

7.) Comments:

Chairman Richeson: That brings us to item number seven, comments.

No Comments

8.) Adjourn:

Hearing no further comments, Chairman Richeson adjourned the October 30, 2025, Kitty Hawk Planning Board meeting at 6:29: p.m.

Respectfully Submitted by:

Jessica M. Everett

Administrative Zoning Technician

**Kitty Hawk Planning Board Meeting
November 21, 2025 – 6 p.m.
Kitty Hawk Municipal Building, Smith Room**

Minutes

The Town of Kitty Hawk Planning Board held its regularly scheduled meeting on Thursday, November 13, 2025. The 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.

Attendance:

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

Members Absent: Jim Geraghty, Member

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

Voting: Dave Morton will vote this evening in place of absent member, Jim Geraghty.

2.) Approval of Agenda:

Chairman Richeson: Does anybody have any changes, deletions, additions, or last-minute changes? Okay, seeing none, we'll declare the agenda approved.

3.) Approval of Minutes:

Chairman Richeson: Minutes from the October 30, 2025 meeting will be available for approval at the December meeting.

4.) Administrative Report:

a. Town Council Action

At the November council meeting, they approved the text amendment for the variance language that the planning board heard a couple months ago and scheduled public hearings for the Royal Farms for their December meeting, and the RV park expansion for their January meeting.

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. Having no one approach, Chairman Richeson declared Public Comment Closed.

6.) Text Amendments

- a. 42-528 – Accessory Dwelling Units – maximum size**
- b. 42-528 – Accessory Dwelling Units – setback calculation**

Mr. Testerman: Both of these items are being brought tonight are staff generated, and just meant to clean up some of the language on our ordinance, because right now, neither of these items are expressly mentioned, defined in the ordinance, so it's kind of left up to judgment, and just making sure that, you know, a year down the road, when another application comes over, we're not trying to kind of look back and remember how we treated another one, and what interpretation we had, so just getting some clear, defined guidelines in the regulations, that way, moving forward, it's right there for us to turn to.

a. 42-528 – Accessory Dwelling Units – maximum size

Mr. Testerman: The first one, as you can see, deals with the size limitations for the accessory dwelling units. The ordinance that we have adopted, and on this staff report, on the back page, there's a typo. It says 42-529. It should be 528. This is the language that we currently have on the books for accessory dwelling units. It says, accessory dwelling units shall not be larger than 50% of the living area of the primary residence, or 800 square feet, whichever is lesser. The regulations for the ADU does not mention, in any way, shape, or form, unheated space. That could be, you know, unheated storage area, ground floor storage area, or attic space. One thing that did not really occur to me as I was writing this, but after talking with Mr. Meads and Chairman Richeson, is, you know, some folks do tend to do a detached garage with the living space above that, for the ADU. So, and that's another possibility. So some of the options that I kind of laid out for the planning board, and I guess the intent and my plan for this going forward to council is, you know, laid out the options, or if the planning board comes up with another option that, you know, I feel like you like better, I'll make a recommendation on whatever we choose, and then when I get to council, I'll provide them with the same information that the planning board has, let them know what the planning board recommended, and, you know, why you came to that decision, and let them take it from there, so they're the deciding body. One option I have listed in the staff report is limiting the unheated space in ADUs, or I guess limiting the overall square footage of the ADU by doing something as simple as saying that the gross floor area of the accessory dwelling unit shall not be larger than 50% of the living area of the primary residence, or 800 square feet, whichever is less. You can see I do have a line in there excluding attic space that would be less than six feet, eight inches high, so it couldn't be converted later on to living space. The current interpretation is we don't have a limit on it, so, you know, somebody could do an 800 square foot ADU elevated on pilings, enclose the entire 800 square foot ground floor and call it unheated space, but I think we have a couple that have done that already. And then as I was talking with Chairman Richardson and Mr.

Meads about the detached garage, another thought that kind of developed from those conversations is, you know, if we don't want to limit the people from doing a garage space underneath it, currently in our flood damage prevention ordinance, if somebody has a ground floor enclosure that's below base flood elevation, they have to do what's called a non-conversion agreement, where they're essentially acknowledging that that space can only be parking, storage, or dry access, and that's FEMA regulations, flood damage prevention ordinance regulations, and that document gets recorded at the Register of Deeds office, so it goes with the property. If it ever gets sold, the future buyers, during their due diligence, will have a copy of it knowing that it can't be converted to living space, so that's something that if the board wanted to go that route, and then another conversation I had with Mr. Morton yesterday, where we don't have a limit on the unheated square footage, it hasn't happened, so it's kind of a hypothetical, but somebody could potentially come in and say, here's my ground floor, 1,800 square feet, unheated storage space with my 800 square feet of living space above it, so if we wanted to put some kind of limit, like the unheated storage or parking area cannot exceed the living area of the ADU, or exceed a certain percentage of the living area, that would be an option too, and I guess I should have mentioned too, with this being staff generated, there's no pressing issues on these, this is just, we're trying to get it cleaned up, so if some of these ideas that come up, if you want me to go back and rewrite, rather than trying to come up with new language on the fly, I'm more than happy to table it, and get it nailed down so we do it right, and don't have to revise the ADU language for the 18th time. So that's kind of where we're at with that one, I guess at this point I'll turn it over to the board for any questions.

Chairman Richeson: Does anybody have any discussion on that?

Mr. Spencer: I really wish Blair were voting on this one, because your perspective is a lot different from mine. I mean, I don't have the experience of all the options that people want in building an ADU, and y'all do, but the CAMA requirement, making somebody sign on the dotted line, if they understand that they're not to do that, seems like a good way to handle the possibility of somebody breaking the law. But other than that, I recognize the issue, I'm not sure, I don't, the idea of a giant garage and a tiny little living space is a little bit weird, I totally agree, but I'd love to hear from you guys.

Mr. Testerman: Blair, just because you're not voting doesn't mean you can't say anything.

Chairman Richeson: Yeah, you can participate.

Mr. Morton: Okay, yeah. Yeah, I think I have an issue with being able to build a 1200 square foot, non-heated, non-living in an 800 square foot above it, it just looks, I think we're opening up the door to allow too many things to happen illegally, especially if it's above base flood.

We're protected, as you said, if it's below base flood, but we're not protected if it's, it becomes a planning nightmare, it doesn't become my nightmare, it becomes you guys' nightmare, and your building inspectors, and your zone administrators, etc., because they've got to worry about the neighbor that's going to complain, and they have to go do all the other things that go with that, so am I for some sort of limit? Yes, but do I have an idea of what that limit may be? I do not, but I think there needs to be some discussion over the limit, only because of so many things, I don't ever like to tell some guy what he can do with his property, nor do I want to be told, but if we don't do something about limiting the unheated space, we've just opened up a can of worms that the Board of Adjustments is going to have to listen to for every day, you know what I'm saying, from now on they're going to be extra busy, let alone the planning department, so just a thought. I have no problem with the 800, meaning the 50% rule with the 800, unless somebody else wants to decrease or increase that, but that unheated area, we have to be extremely careful, without thinking like we're stepping on people's toes, I just, I worry about that, I worry about that around my own home, if that were to happen.

Chairman Richeson: I'll start with the simplest thing, I think the easiest and simplest thing would be, require, if they want to enclose storage space, whether it's base floor or whatever or not, just require the non-conversion agreement.

Mr. Testerman: As part of the zoning requirement?

Chairman Richeson: Right, and then you don't have to worry about it. If they do it, and they get told, hey, you got to take all that out, you know, you should have looked it up or checked first.

Vice-Chair Parker: They're not going to have to deal with it, if they weren't, if you're not selling your house, you're going to live in it for 30 years, you know.

Chairman Richeson: Well, no, it gets transferred with the house.

Vice-Chair Parker: Right but say you're not transferring the house. You say, well, my kids will deal with that in 40 years, you know what I mean, so it can be there, but no.

Mr. Testerman: There, I mean, there is a possibility, too, like, like Dave was saying, like the neighbors see you, you know, the ground floor has been converted.

Mr. Spencer: Oh, you will have a little tattle in there.

Mr. Morton: The person that turns you in is the person you had over for dinner. You know, that, I mean, it's just, it's just the way things work in this world.

Mr. Testerman: Technically, even without that non-disclosure agreement, and even currently, if like, you know, they've got 800 square feet of living space, and they converted additional, you know, storage space into more living space, and we got a complaint and went and investigated, we would have the enforcement ability to tell them they have to tear it all out. The non-conversion agreement, I think, just is another way to make them aware, and, you know, when they try to argue with us and say, here's where you signed agreeing that you're never going to convert this, even though when they sign that zoning permit, that's doing the same thing.

Mr. Spencer: And it's in the permit file, so somebody, a lot of agents would look for that, you know, and they'll see that.

Mr. Meads: I think it's hard to govern about what somebody might do, because we could go down a rabbit hole where we make so many rules that we wouldn't even know what rules we made, and I do agree that we don't want some huge monstrosity, so it might be a good idea to come up with something, but we also need to remember that our lot coverage rules helps a lot of what this could turn into, because if you can only go to a certain percentage, our lots, most of them, aren't but so big. So, that limits a lot of development to a certain extent. So, that's one control that's already in place that goes across the board, no matter where we are. You know, I can't think of every single scenario but in my mind, when I think about an ADU, and I know this hasn't happened across the town, but if you had a house and you wanted to build a nice two-car garage and have a mother-in-law suite above it, you know, for whatever, for your kids or for your parents or for your doghouse, but you know, that's my idea of an ADU. So, I would hate to take away the ability to have a two-car garage underneath that space. In my mind, I think that would be the perfect scenario for an ADU and try to have it match the house that you, and I know not everybody's going to do that, but that's kind of the way I see it.

Mr. Testerman: And then, I guess another approach to that may take some tweaking, but you know, in that first option where I've got listed that the gross floor area cannot be larger than 50% of the living area or 800 square feet, that second line unfinished attic space with a space between the ceiling beams and roof rafters less than six foot eight shall not count towards gross floor area calculation. It could be added on saying that, you know, garage space underneath the living area should not be counted towards that calculation and then require that non-conversion agreement as well. That way, you're not limiting the garage. They can still have their 800 square foot living space and then they still got that.

Mr. Richeson: And they could still have storage too. They just can't put couches and beds and carpet in it.

Vice-Chair Parker: You could also build an 800 square foot and put 10 foot porches all the way around and not be considered, and that kind of goes counter to what we were

trying to say that the house and then the subordinate structure would be subordinate still, but if you know, if you're, so you could make them look like two homes on one zoning area that's supposed to have one house.

Mr. Testerman: We have a couple of examples in town that, you know, if you didn't, if you didn't know any better, you think it was two dwellings the same size sitting next to each other because of the deck space and the ground floor enclosure that is being used as storage. So, it does happen.

Vice-Chair Parker: Seems like if you build a better mouse trap, the mice get smarter. You know what I mean? It's like we're always chasing them. I mean, I'm sure you have an idea or a list of how many ADUs we have, but do you feel like that number is extremely accurate?

Mr. Testerman: Well, there's probably a number of living spaces that now would fall under the ADU definition that did not when they were built.

Vice-Chair Parker: That's what I'm saying. Like you said, we've been to this multiple times. No matter what you say, hypotheticals, you can't predict what. Somebody, you give them a set of rules, they can kind of work around or work through.

Mr. Meads: I do feel like though that this idea has really helped. You know, I follow the long-term housing market very closely and granted in 21' through 23', we had some very crazy amount of visitors that were here. So, you could put a window unit in a garage and rent it out for \$250 a night. I mean, that was just an unusual time, but I'm seeing a lot more long-term rentals being advertised and the prices, are beginning to lower. So, I think that these types of situations are helping our problem. So, you know, I think that they're a good thing, you know, if we can figure out a way to be in harmony with what the town is doing. So, I don't think it's a good idea to limit it so that you can't use it anywhere, you know, because I think it serves its purpose and I think it has served its purpose for our community to a certain degree, to a large degree actually.

Chairman Richeson: And that non-conversion agreement that solved doing a lot of math saying, well, you can have storage, it has to be X percent of the total floor space, and it makes the ordinance a little simpler. I'm not trying to be too simplistic.

Vice-Chair Parker: Yeah, I think in Kill Devil Hills when we had it, Michael maybe or may have started with Irene, but Kill Devil Hills found out they had a lot of downstairs in floodplain areas that they did not know about until they woke up in the morning and splash and, you know, feet on the water. Yeah, I don't know. I'm with Dave too. You know, you think about the neighbors that live in a place and then next thing you know they have either whether it be a short or long-term rental that comes in because either permitted or allowed I guess, they have to deal with the adjusted amount of people coming and going and noise and, you know, I guess. But again, I can't tell people what

they can't. I believe in property rights. You should be able to do, you know, with your property as you see as long as it meets all the rules.

Mr. Spencer: How big is 800 square feet, Blair, like in relation to where we're sitting right here? We'll just ballpark it. Is it 40 from that wall to that wall? I'm just trying to get an idea. What would be the problem if we just said, look, the footprint of your ADU can't exceed 800 square feet per two levels and the first level can only. Is that going too far?

Vice-Chair Parker: I think that was what the intent was to start with and then, like Blair was saying, that, you know, you could have a nice garage and then a living space above it that didn't have to be that low, you know, so that kind of did.

Mr. Spencer: And that can't be heated square footage or living space and we're doing the disclosure form and we're changing the setbacks to 15 feet period. We're done. Good night.

Mr. Testerman: The only tweak to that is, you know, the 800 square foot is the maximum, so it's 50 percent of the primary dwelling or 800 square feet, whichever is less. So, if somebody's got a 1,200 square foot house, the max ADU they can do is 600 square feet.

Mr. Spencer: If it's only 800 square foot, then how could you have a two-car garage under it? I guess that's still enough room. 400 square feet is enough.

Mr. Morton: Those decks, I mean, you know, the 800 can come up through the middle and deck can be on each side and then the garage could be.

Mr. Spencer: But what we're talking about is if you have a garage under living space, it's 400 and over 400 square feet.

Mr. Meads: Yeah, double garage, you can do a nice garage 24 foot wide. You know, you could make it 20 foot, you know, 24 by 24 is a nice two-car garage, I would say.

Mr. Testerman: Ok, so getting that the idea that you were kind of putting out there, maybe we can say that the unheated storage slash parking area shall not exceed the square footage of the conditioned living space and then require a non-conversion agreement that way.

Mr. Spencer: Let's not, you know, mess with what we've already got is what I'm thinking. Let's put something simple in there that you don't have to interpret and it's easy.

Chairman Richeson: And it's enforceable.

Mr. Testerman: Okay, so if you want, I think I've got the general idea of, if everybody's in agreement with that, if we want to table that one until December, I can go back to the

recording and listen to it again tomorrow to make sure I remember it right. But kind of draft that into some language and bring it back and then move forward with it. We all think. I don't know, I would love to talk to Blair some more about it because it's 800 square feet or 50 percent, whatever was less. We got that in here already. And Dave and anybody else. But 800 square feet or 50 percent, whatever is less. The scenario you talked about that a lot of people want is going to require you to have, based on this, 400 square feet of living space over 400 square feet of garage under this interpretation. Or would it not? Or could you have a larger 800 square foot heated living space over a smaller garage or just an open carport or something like that?

Mr. Testerman: Yeah, I mean you wouldn't be required to have the matching unheated space.

Mr. Meads: I mean that's the perfect candidate for an ADU in my opinion. Now I know that not everybody does that, but that's just my opinion. I mean somebody else's view of an ADU might be totally different.

Chairman Richeson: If it's 600 square feet or 800 square feet, if it's raised up, the problem is using this space that's under it.

Mr. Spencer: That's one problem. The other problem is making a giant garage under a little tiny living space. So that's one issue, yeah. But I'm okay with just having them sign the form and understanding it's against the law and Rob's going to bust their butts if they do. I mean that's where I come down on what you're saying, John. What I'm struggling now is how you kind of just make it clear what the intent of this whole thing was. Without the extremes we're talking about right now.

Chairman Richeson: The storage can't exceed the square footage of the ADU living space. And then you don't have it, you don't have the big waste and storage and three-car garage and all that.

Mr. Morton: Yeah, but you're hurting that guy that's got that 1,200 square foot home. You're making him not have anything over 600 square foot. I have a 2,000 square foot home and I have room on my lot to build whatever the heck I want. I'm blessed. But that doesn't mean that the guy next door to me that has a 1,200 square foot home should be limited to only 600 square foot of unheated space. I don't see that being fair. I don't like the idea that you can build 2,000 square foot of unheated space as long as you stay with the 800. But it goes both ways, I think. You can't have one without hurting the guy in the other. It's just it would be unfair to that person as well. I didn't do your math correctly and when you said about the 1,200 being 600, I had to reread that thing because I didn't understand it. That guy gets hurt. He might have as much land as anybody does. He gets hurt though from being able to build 600 square foot of heated space and then potentially only 600 square foot of unheated space.

Chairman Richeson: We already have the ordinance for the first one that's already in the ordinance. It states it has to be 800 square feet or 50 percent of the heated limited space and I believe that's the primary residence, right?

Mr. Morton: I get that.

Mr. Meads: I guess the intent of that was to keep from having a structure, the ADU, looking as big as the main.

Chairman Richeson: That has been a historical concern.

Mr. Spencer: Rob, could I have 800 square foot mother-in-law suite over an 800 square foot unheated garage under the way you're interpreting it right now?

Mr. Testerman: As long as your primary dwelling is 1,600 square feet of living space. There are at least 1,600 square feet. Anybody have a problem with that?

Mr. Morton: Yeah, I just want people to understand that because there's no limit on the storage area right now. So, if we do limit that, that guy with that 1,200 square foot who might have more land than any of us do gets hurt. He's the guy, that's all I'm trying to say.

Mr. Spencer: We've got to go back and change the standard in the underlying ordinance.

Mr. Morton: Well, we don't have to as far as the 800 square foot because I get that. I get the heated square foot. I can't help that. I can't help his house is only 1,200 square feet, build a bigger house, build an addition to it and then be able to go someplace else. I have a problem with him being limited to the 600. I'm not saying that it can't be presented. I'm just saying that I got a little problem with that guy being limited that way. Although he could build a 24 by 24 foot garage because that's still under 600 square feet.

Chairman Richeson: If he has that much property, Rob, correct me if I'm wrong, he can have an accessory dwelling unit.

Chairman Richeson: He can still have an accessory dwelling as long as it's not heated.

Mr. Testerman: Accessory structure.

Chairman Richeson: Accessory structure, right? That's what I was looking for. I mean, if he wants extra storage, he can build an accessory structure if he has that much property. But as far as being attached to the ADU, it would have to.

Mr. Morton: So you're saying you could build a 600 plus 600 plus go build a two-car garage? I mean, I'm so sorry, not a two-car garage, a separate storage unit that was 24 by whatever. Is that what we're saying?

Mr. Testerman: We don't have any limits on how many structures he can have on. We just have limits on ADUs. Right. As long as he meets his lot coverage.

Mr. Morton: Yeah. I get that.

Chairman Richeson: So that doesn't really cut somebody off from doing that. I mean, they're going to have construction costs either way.

Mr. Morton: Well, it still hampers them because it costs him more to do that. But yeah, I get where you're going. I get what you're saying.

Chairman Richeson: That might be something to look at. Just throwing that out. Yeah, I'm not against that. When I was talking about that 2,000 square foot unheated with the 800, it was just an example that I don't know that I want to put a square footage on it. Not that I wouldn't vote for it, but I'm saying that's really tough. The simple thing to do is just do what you say, 50%. You get 800, you get 800 for the ADU.

Chairman Richeson: And then if you wanted to build something more you can close the bottom.

Mr. Morton: Yeah, you could do that then too, I guess.

Chairman Richeson: Do a non-conversion, yeah.

Mr. Spencer: So the non-conversion agreement would be for whether or not it was below base flood, which that's already part of the rules too. If it's an X zone even, you'd have that. Right.

Mr. Testerman: We would just put that into the accessory dwelling unit language that unheated storage space. I'll figure out the wording, but yeah, we would try to.

Mr. Spencer: It would be for the ADU only, not taking into consideration the existing single family dwelling. Correct. Okay.

Chairman Richeson: So we want to make a motion to table it, let Rob come up with the language and revisit it in December?

Mr. Spencer: It sounds good to me. I'm on board with what everybody's saying. We're trying to come up with something.

Vice-Chair Parker: I think we should not have any more. Whoever has one can have one. Then we don't have to do any of this ever again. That's the rules, done. We have them. They got lucky. Whoever else doesn't, because we're going to be back here in another three months with something that's wrong.

Mr. Spencer: You can't think of all the hypotheticals.

Vice-Chair Parker: It's just going to continue and continue. I think we could table it and need better language and then kind of make it more informative.

Mr. Heath: I don't care what we do. We're not going to make everybody happy.

Chairman Richeson: Is that a motion? It can be.

MOTION

Mr. Heath made a motion to table Accessory Dwelling Unit Size.

Seconded by Chairman Richeson.

Vote: Aye – unanimous

Chairman Richeson: Which brings us to item B, accessory dwelling unit setback calculation.

b. 42-528 – Accessory Dwelling Units – setback calculation

Mr. Testerman: All right. And this is, again, like I said, we don't have any guidance or regulations in the ordinance right now. So trying to reduce the amount of interpretations that are needed and just have it clear cut. So right now, our side yard setbacks, as you can see on the table, they increase as dwelling size increases. You can see under 3,000 square feet, 10 foot setback, 3,001 to 3,500, 12 and a half and so on. There's no language one way or the other on whether accessory dwelling unit living space should count towards that setback calculation. I believe we've only had one built that would have tripped it to that next one over. And as we were talking about it, we decided that since we didn't have any language that dictated that, we weren't going to hold it to the next higher up standard. So, it was permitted, I think, the 10 foot side yard setback. But this is just another one that I think just for the future, it would be good to have it clear in the ordinance. You can see the three options I've put forward. One would be including the ADU square footage in the total. So, if you've got a 2,800 square foot primary dwelling and you want to do a 400 square foot accessory dwelling unit, you're now at 3,200 square feet total. Your setbacks go to 12 and a half feet. Or we could not do it, kind of keep it the way we've been interpreting it, that your setbacks are determined on your primary dwelling size and that's it. The 800 square feet for your ADU doesn't matter, they still fall under whatever setback your house is at. And then another option is just setting a separate standard setback for ADUs. It could be 10 feet, 12 and a half feet, 15 feet, whatever. I think I put 15 feet in the report. One issue that I guess when

Mr. Morton and I were talking about this one, would be the idea that if you've got that 2,800 square foot house, if we include the ADU square footage into the setback calculation and somebody's got a 2,800 square foot house that's built right at that 10 foot setback and they come in and want to do a 400 square foot ADU that trips them up to 12 and a half feet, do we apply that 12 and a half feet just to the ADU or do we deny the permit because the setback has changed and the house doesn't meet the new setback? Because it would put the house in non-compliance. Right, I mean it could be written in that that increased setback only applies to the ADU and that solves that issue.

Vice-Chair Parker: What would you do if the house was already built 10 foot off and then they increased the square footage with an addition, so it trips it over the amount?

Mr. Testerman: They can't.

Mr. Spencer: What's wrong with just doing 15 feet? I mean I'm really asking that question because I like simple. So much of my work is not clear or simple. Seriously. So, when you have an opportunity to do it, okay. I go into okay what's wrong with that?

Mr. Testerman: And that is in line with the CAMA Land Use Plan? You can see in policy 3.4 incurred residential development that fits Kitty Hawk's character. One of the subsections for it said for accessory dwelling units consider modifying design requirements including additional setbacks or buffering in the VR districts especially if the ADU is accessed via separate driveway. So, it was kind of talking about limiting impacts that ADUs might have on adjacent property owners. One way of doing that is getting that additional setback.

Mr. Spencer: Plus the whole point of the setback, well there's not one point. The fire safety issue, the airflow, light, all that stuff. I mean these are the reasons we have it. The more people that are living there it seems to me that ought to be have probably have a tighter setback. I don't know how y'all feel about it. You got to build these things Blair.

Mr. Meads: I think the setback is a good idea. I wonder, I just wonder how many, if we've made it such a big setback that it doesn't work on with 10% of the lots then I think we, I just don't know how restrictive it would be on, I mean it may not be restrictive at all. I don't know because the small lots you may not have enough room to do it anyway. So it may not matter at all. The 15 might be good. I mean that might be perfect.

Mr. Testerman: Probably the biggest impact would be lots between the highways where I think they're typically 50 feet wide. So, if you're talking about 15 feet on each side and you're saying you got a 20 foot wide ADU. I don't know if that's feasible for construction, if that makes it worthwhile or not.

Mr. Meads: I mean on the ADU the 20 foot wouldn't be so bad.

I just, I don't know. It's probably not going to work on many of the small lots anyway. So, I doubt that there would even be an option on those. It would have to be a 15,000 square foot or more I would guess to even come close to making it work.

Chairman Richeson: To clarify, if you had a house that's already there on a 50 foot lot and you do the ADU and you make it 15 feet, that's not going to affect the setback that's already there on the other house right?

Mr. Testerman: Right, right. This is talking about if we just establish a new side yard setback just for ADUs.

It's not going to have any impact on those.

Chairman Richeson: So the house would have 10 foot on your lot, you'd have 10 foot on one side, a 15 foot setback on the other and then 25 and 25. Or

Mr. Testerman: I mean it would be dictated by the square footage of the living space of the house what the side yard setback is.

But doing it this way, just establishing a new standard setback for ADUs only.

Chairman Richeson: Right, I forgot to grab the chart for the square footage of the house. But it's not going to change what the original house was?

Mr. Testerman: Correct.

Vice-Chair Parker: If I had a house that's 3,000 square feet, no ADU, and I wanted to do an addition to it and it tripped me up into the 12 and a half, I wouldn't be able to get a permit for it.

Vice-Chair Parker: Right.

Vice-Chair Parker: Okay. I just wanted to clarify.

Chairman Richeson: What does everybody think about the 15 foot?

Mr. Morton: So let me ask, let me re-ask that question. Are you telling me if I have a 3,000 square foot house and I want to put an addition on it and I make the new addition meet the 12.5, I can't build that house? I can't build that addition?

Mr. Testerman: I think before I got here, the interpretation that the setback, it's established along that property line.

I think the definition of it talks about whatever measurement from the property line off. So, it's not, it wouldn't be like a staggered setback like 10 feet for your primary residence and then when your addition kicks in, it jumps out here to 12 and a half. I suppose it could be something.

Mr. Meads: It has been interpreted that way for a long time. Yeah. If your addition takes you over that setback, then you can't do it because if you're only 10 feet off and you go over the limit, then you can't do it.

Chairman Richeson: And for definition purposes, ADU and addition are two different things, right?

Mr. Testerman: Yes, and I just wanted to leap back on something that Matt brought up a minute ago with like the purpose of setbacks being the fire department being fire safety. I did reach out to the fire department as we were putting this together to see if they had any preference on if there should be any kind of setback or separation from the primary residence to the ADU and feedback was no. There's nothing in the fire code and they didn't have any preference.

Mr. Spencer: Can we take this off Rob's list and recommend standard setback for ADUs at 15 feet?

Chairman Richeson: I'm good with it.

Mr. Spencer: Because I'll make that motion.

Mr. Meads: So, it'll just be a standalone 15 feet setback for ADUs only. And the square footage between the primary and ADU will not come into play. That'll be irrelevant.

Mr. Heath: What are you saying Matt? 10 feet all the way around?

Mr. Spencer: No sir. What we're talking about is just saying okay you have an ADU that's got its own separate side yard setback. It's going to be 15 feet no matter what. You still got to meet the size limitations but you're not going to have to do a calculation or anything about a setback for your ADU. It'll be 15 feet period from the side.

Mr. Testerman: Procedurally since you're making a recommendation on one and tabling the other I'm not going to put this one forward to council until we have them both ready because I don't want to do back-to-back public hearings on the same section. So, once we get it all squared away then I'll push it forward to council.

Chairman Richeson: Okay so we have a motion on the floor.

MOTION

Mr. Spencer made a motion to approve 15-foot side yard setbacks for ADUs.

Seconded by Chairman Richeson

Vote: Aye – unanimous

Chairman Richeson: And so that concludes the text amendment item six and now we're at item seven comments.

7.) Comments

Mr. Morton: Yeah, just one more question. The thing that we just voted on once we decide in December what's going to happen it's got no effect on what we're going to do in December except it must meet 15 feet on the side yard setbacks. Whatever you decide plus or minus 800 1200 this whatever nothing matters except the only time that the thing we just voted on comes into play is for the side yard setback only for just the ADU.

Mr. Testerman: Yes

8.) Adjourn:

Hearing no further comments, Chairman Richeson adjourned the November 13, 2025, Kitty Hawk Planning Board meeting at 6:43: p.m.

John Richeson, Chairman

Respectfully Submitted,

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MEMORANDUM

TO: Chairman Richeson and Members of the Planning Board
FROM: Planning & Inspections Department
DATE: January 15, 2026
RE: ADU Size Limitations

Attachment

Proposed modifications to Sec. 42-528

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

Discussion on the various options during the November meeting led back to maintaining the current interpretation that unheated space (garage, attic, storage) would not count towards the maximum size of the ADU. The concept of a “non-conversion agreement” to be applied to zoning requirements was discussed. A non-conversion agreement is a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the zoning ordinance and subject to enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. This ensures that when the property potentially changes hands in the future, that the next owner is aware that the unheated area within the ADU cannot be converted to living space.

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. Prior to issuance of a certificate of occupancy, a non-conversion agreement must be filed with the recorded deed for the property.**

CAMA Land Use Plan

The following goals and policies relevant to this application are stated in the CAMA Land Use Plan:

Policy 3.1: Manage land use and development to minimize primary and secondary impacts on resources and existing residents through standards for developments.

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

- Monitor trends and reduce impacts of ADUs and Short Term Rentals in Village Residential zoning districts.

- Consider modifications to design requirements that could include additional setbacks or buffering in VR districts, especially if the unit is accessed via a separate driveway

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 amendments to Sec 42-528. 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 amendments to Sec. 42-528. The Board finds that this proposal is inconsistent with the Town's adopted land use plan [Insert any additional justification]."

ATTACHMENT: PROPOSED MODIFICATIONS

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) 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. Prior to issuance of a certificate of occupancy, a non-conversion agreement must be filed with the recorded deed for the property.~~

(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.

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

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

~~(h)~~ **i)** 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: January 15, 2026
RE: Pool deck setbacks

Proposal:

Sec. 42-504(i) ~~Swimming pools, associated aprons, and decking no greater than 30 inches in height~~ must meet required front yard building setbacks, but can encroach as close as five feet to side and rear property lines. Any pool structures greater than 30 inches in height (such as an aboveground pool, decking, pool house, or pool equipment) must comply with the required setback standards for the district in which they are located.

Rationale

The proposed amendment is intended to clarify and better align the treatment of swimming pools and associated decking with existing zoning definitions and the general intent of setback regulations.

Relevant definitions in Section 42-1:

Setback means the distance between a property line or right-of-way and the building. It is synonymous with the yard. (Also see *yards*, and minimum yard requirements in section 42-504(g)).

Yard means a required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from 30 inches above the general ground level of the graded lot upward, except that handrails may extend more than 30 inches above the undisturbed ground level, provided the area between the support post or piers remains open and unobstructed by pickets, siding or material unnecessary for the structural strength of the handrails. Any pedestrian walkway and handrail must meet applicable CAMA standards and requirements and structural requirements of the state building code.

Based on these definitions, required yards (setbacks) only apply to structures or portions of structures that are 30 inches or greater in height, excluding handrails. As a result, ground-level improvements—such as patios or decks less than 30 inches in height—are not considered encroachments into required yards and may extend to the property line.

Current Regulation:

Section 42-504(i) presently requires swimming pool decking and aprons less than 30 inches in height to maintain a minimum five (5) foot setback from side and rear property lines. Decking greater than 30 inches in height must comply with the standard zoning district setbacks (typically ten (10) feet on the side and twenty-five (25) feet at the rear).

Proposed Change:

The proposed amendment would retain:

- Full compliance with front yard setback requirements for all pools; and
- A minimum five (5) foot setback from side and rear property lines for swimming pools themselves.

However, the amendment would treat pool decking and aprons under 30 inches in height consistently with other ground-level decking or patios, regardless of whether a pool is present. This approach removes an internal inconsistency in the ordinance by aligning pool-related improvements with the general yard and setback definitions already adopted by the Town.

Staff believes this clarification improves ordinance consistency, reduces confusion for property owners and staff, and maintains appropriate separation between pools and adjoining properties.

Relevant Goals and Policies of the CAMA Land Use Plan:

The goals and policies of the Land Use Plan are silent on this matter.

Planning Board Recommendation

The Planning Board is requested to provide a recommendation to the Town Council regarding the proposed zoning text amendment.

If the Board recommends **approval**, a motion could be stated as follows:

"I move to recommend approval of the proposed text amendment to Section 42-504(i), finding it to be consistent with the Town's adopted land use plan."

If the Board recommends **denial**, a motion could be stated as follows:

"I move to recommend denial of the proposed text amendment to Section 42-504(i), finding it to be inconsistent with the Town's adopted land use plan [and stating the specific reasons for inconsistency]."