

**Kitty Hawk Planning Board Meeting**  
**March 12, 2026 – 6 p.m.**  
**Kitty Hawk Municipal Building, Smith Room**

**Minutes**

The Town of Kitty Hawk Planning Board held its regularly scheduled meeting on Thursday, March 12, 2026. 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  
Chuck Heath, Member      Dave Morton, Alternate

**Members Absent:** Jim Geraghty, Member      Blair Meads, Alternate  
Matt Spencer, Member

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

**Voting:** Dave Morton voting in absence of members, Jim Geraghty and  
Matt Spencer

**Mr. Testerman:** Note for the record with four members present we do have a Quorum.

**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 January 15, 2026, minutes.

**Motion**

A motion to approve the January 15, 2026, minutes was made by Chairman Richeson and seconded by Vice-Chair Parker.

**Vote Passed: Unanimously**

**4.) Administrative Report:**

**a. Town Council Action**

Mr. Testerman: Since the Planning Board's last meeting (January 15, 2026), Town Council has taken the following Planning related actions:

## **February 2, 2026**

No action taken, meeting cancelled due to inclement weather.

## **March 2, 2026**

- Approved an approval order for the Royal Farms SUP
- Approved a denial order for the RV SUP
- Scheduled a public hearing for the ADU zoning text amendments
- Scheduled a public hearing for the pool decking setbacks text amendment

### **5.) Public Comment:**

Chairman Richeson: Since there's no one in the audience, I declare the public comment section closed.

### **6.) Text Amendments**

#### **a. Div. 5.- Emergency and Governmental Services District**

Mr. Testerman: All right, I won't go through the whole background of this one unless there's any specific parts that you all want to see. I'll just note, I put up on the monitor, there's a portion of the zoning map. This district that we're talking about is that darker red. There's the four properties down in the lower end of the monitor. That's where the new EMS substation is, and then the town owns the two vacant lots just north of that.

And then a little further north, there's the lots that front on the bypass there. And then as you kind of start to make the curve around, there's where the police station is, and the visitor center is where that one solid darker red that has the loop going around it there. I guess I could have done this to make it easier, but this section right here, and then these four parcels right there. So this kind of came to me recently. I was having a discussion with the town manager about uses in this district, and I just happened to look at the current permitted uses and special uses and noted that the district, the scope and intent of it, it says that it's established to provide the proper grouping and development of medical services, medical offices, emergency and governmental service facilities in the town. Yet there were uses like the licensed physician office, chiropractor's office, optometrist, pharmacies, are currently listed as special uses that require a quasi-judicial hearing. There's also no specific conditions of approval attached to them. So when they come before the quasi-judicial hearing in front of council, they're tasked with showing evidence that they do not endanger public health or safety, meet required conditions, don't injure the value of adjoining property or constitute a public nuisance in harmony with the area in which it's located. It's also typically from the time that application is submitted to the public hearing is held, three to three-and-a-half, four-month process. So the thinking was, since this is a medical district, it would make more sense to make medical uses a permitted use without having to go through all that. I did note in going through the ordinance that currently we have a definition for medical clinic. It's defined as a building or structure or portion thereof or medical services are provided from licensed practitioners for outpatients only. This definition shall include doctors and dentist offices and offices of any other licensed and or certified health care providers. So we've got that definition, but that use is not listed anywhere in the ordinance as a permitted use or special use. So rather than trying to identify all of the different medical uses to be proposed as permitted uses, I just added the

medical clinic to be a permitted use. Also moved pharmacies and sales of medical supplies and support medical services from the special uses to permitted use.

Chairman Richeson: Maybe like Bear Drugs, they rent medical use devices and have a pharmacy.

Mr. Testerman: Right. So right now, if someone wanted to open a new pharmacy in that district, they would have to go through the whole special use permit process, come to the planning board, go to the town council with the quasi-judicial hearing, likely have an attorney involved to present the evidence that it meets all those requirements. Now, if it's something for new construction, it would still have to go through the commercial site plan review, which comes to the planning board and council, but there's no public hearing attached. You're just reviewing it to make sure the zoning requirements are being met. So, this is just talking about the use. If there's an existing building, say urgent care that's there now, if they were to move out and another urgent care office wanted to come in, the way it is right now, it would have to go through the public hearing process, all that, whereas with this proposal, they can just call me and say this is what we want to do. Okay, fine, we'll go ahead and do that.

Chairman Richeson: And we may have that because Beach Medical dissolved, and I think that building is pretty much empty.

Mr. Testerman: Right, they're in process. It wasn't empty long enough to where any use issues tripped, but the Beach Medical is transitioning just into a new name with some of the same practitioners, but just kind of carrying on under a new name. So that's all I've got for that one

Chairman Richeson: Anyone have any questions?

Mr. Morton: I do, actually. The one, two, three, four, five lots near the curve, those are where those new Outer Banks medical care and all that is.

Mr. Testerman: Yeah, the furthest one south there, the larger one, that's where the urgent care is, and then there's the three other medical offices, and then to the furthest north of those ones is what we recently approved, a commercial site plan for the parking lot expansion.

Mr. Morton: So what's below that? Are those vacant right now, or is there something going on that I don't know?

Mr. Testerman: The southern two, you're talking about where the arrow is pointing right now?

Mr. Morton: Yeah. I can't see the arrow. Oh, yeah, yes, I can. Those four, yeah.

Mr. Testerman: The southern two properties, that's where that new EMS substation was built, and then the two adjoining that are vacant and owned by the town. The plan is if

there's ever a need for another fire station or fire expansion, it will be on those two. We own those two.

Mr. Morton: Yes. Okay, I got you.

Chairman Richeson: Anyone else have any questions?

Vice-Chair Parker: I'll just state that I think it makes sense to put a medical clinic as a permitted use in the medical district.

Chairman Richeson: I agree. You want to make that a motion?

Vice-Chair Parker: Sure

### **MOTION**

A motion to approve the proposed text amendment of Chapter 42, Division 5, finding that it is to be consistent with the town's adopted land use plan was made by Vice-Chair Parker

Seconded by: Chairman Richeson:

**Vote Aye: Unanimous**

Chairman Richeson: That brings us to 6B, BC-1 42-250(d), BC-2-42-251(d), dimensional requirements.

#### **b. BC-1.-42-250(d)1; BC-2.-42-251(d1)- Dimensional Requirements**

Mr. Testerman: And this one I will kind of go through the staff report just because there's a little more background to it. It's not quite as straightforward as the last one was there. So, the zoning ordinance establishes the maximum building area limits for individual commercial uses within the BC-1 and BC-2 zoning districts. You can see in the BC-1 right now it's written that no use of an owner or tenant on site shall exceed a maximum area of 25,000 square feet of building area as shown in the commercial site plan. The BC-2 district has the same language except that maximum area is 40,000 square feet. Historically, staff has interpreted the building area to mean gross floor area, calculated as the total floor area of the structure. This interpretation was consistent with the town's intent to regulate the overall scale and intensity of commercial development. Following a recent appeal, however, the Board of Adjustment overturned staff's interpretation and determined that the maximum building area limits apply only to the building footprint, not the total gross floor area.

So, with the finding from the Board of Adjustment in the BC-2 district, they're saying that maximum would be 40,000 square foot footprint, and then you can go up 35 feet having 40,000 square foot on each floor until you hit your height limit. Just for reference, we do have a definition in Section 42-1 for gross floor area. It's defined as the total area of the building measured by taking the outside dimension of the building at each floor level intended for occupancy or storage. We've got the definition, but it's, from what I found,

nowhere else in the ordinance, just in the definition. So, staff's original interpretation was grounded in the stated intent of the zoning districts themselves. The BC-1 district is intended to serve neighborhood-scale commercial needs and is characterized by small-to-medium parcels and low-intensity commercial development. The district is not intended for shopping centers, shopping malls, or big-box retail uses. The BC-2 district intent is that it's intended to serve town-wide commercial needs with medium-intensity development on medium-to-large parcels. While commercial centers may be authorized, large shopping centers, shopping malls, and big-box retail uses exceed the intended scale of this district. Under the Board of Adjustment's interpretation, as I just mentioned, a single commercial use could be developed vertically up to the maximum height of 35 feet, resulting in a significantly larger total commercial floor area. The BC-1 going 35 feet would go up to 75,000 square feet of total floor area, or the BC-2 up to 120,000 square feet. And just as a comparison, the BC-3 district, which is specifically intended to accommodate large-scale commercial development, like those big-box retail and shopping centers, includes existing developments that range from 65,000 to 128,000 square feet in commercial floor area.

It is staff's opinion that commercial use of this scale within the BC-1 and BC-2 districts would exceed the intended low- and medium-intensity character of those districts and undermine the zoning framework that distinguishes neighborhood, town scale, and regional commercial development. You can see the proposed amendments there below. No use of an owner or tenant or individual commercial use on the site shall exceed a maximum area of 28,000 square feet of gross floor area. The limit of 28,000 square feet does not apply to legal non-conforming uses that existed prior to whatever the possible adoption date of this may be, if it gets approved. I'll get into the reasoning for the 28,000 and setting aside the legal non-conforming uses in a second here.

Consistency with the CAMA land use plan Policy 3.2, encourage commercial development at appropriate scales and areas zoned for commercial use. Policy 3.3, enforce and refine commercial design standards in order to maintain the town's unique character among coastal villages, including enforcing and amending zoning ordinance as necessary to meet land use plan goals, and refining ordinance provisions related to building scale, site design, and visual impacts. To get into more of the detail of it, the proposed amendments clarify the town's longstanding interpretation of building area as a gross floor area, aligning the ordinance text with the original intent of the BC-1 and BC-2 districts prior to that Board of Adjustment decision. Importantly, to note, the proposed amendment does not constitute downzoning under NCGS 160D-60(1)d, which I think was about a year, year and a half ago. The state legislature adopted some language that said that localities cannot downzone property, without written consent from affected property owners. We tried to gear this to avoid downzoning any properties. So, the analysis of the downzoning criteria, the state statute so the language adopted says no amendment to zoning regulations or a zoning map

that downzones property shall be initiated, enacted, or enforced without the written consent of all property owners whose property is the subject of the downzoning amendment. For purposes of this section, downzoning means a zoning ordinance that affects an area of land in one of the following ways. Number one is by decreasing the development density of the land to be less dense than was allowed under its previous usage. And I will note that even though Casey's not here, I did go over this stuff with him to make sure we were not running afoul of this. So for that number one, reduction in development density. The town's ordinance defines density as the number of dwelling units or hotel units permitted on a parcel. The proposed amendment does not alter residential or lodging density standards and therefore does not reduce density as defined by the ordinance. Number two here, it says by reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage. The proposed amendment does not remove or modify any permitted or special uses within BC-1 or BC-2 districts. Number three, by creating any type of non-conformity on land not in a residential zoning district, including non-conforming use, non-conforming lot, non-conforming structure, non-conforming improvement, or non-conforming site development. We did this to avoid creating any non-conforming structure or uses. In the BC-1 district, the largest existing commercial building is approximately 27,253 square feet per Dare County tax records. That would remain conforming by bumping that limit up to 28,000, so we're okay there. And then the, well, and I guess that was the largest non-hotel commercial building in the BC-1 district. So, the Holiday Inn Express, kind of right east of us here, is already a legally non-conforming use, and the amendment expressly exempts such uses from the gross floor area limitation. Specifically, the exemption considers square footage of the non-conforming hotel as being permitted, therefore is not a non-conforming structure. BC-2 district, there are no existing commercial uses that exceed the proposed 40,000 square foot gross floor area limit, therefore no non-conforming structures would be created.

Because the amendment clarifies measurement methodology without reducing density, eliminating permitted uses, or creating new non-conformities, written consent from effective property owners would not be required. Well, there would not be any affected property owners, because it's not creating any non-conformities, or it's not downsizing. So that's what I've got prepared for you. If you've got any questions, I'd be happy to try to answer them.

Chairman Richeson: I'm glad you went through that, because 28,000 was a number you pulled out of your hat.

Mr. Testerman Yeah, and I thought I had included that.

Chairman Richeson: Because you had that one pre-existing, it's 27, so that keeps you out of the definition of downzoning.

Mr. Testerman: Right. And I'll make sure the council had that in their packet.

Chairman Richeson: And this will affect existing litigation. It is what it is, however, it turns out. This will be anything afterward, once we approve it?

Mr. Testerman: Correct. If it gets approved by council. Yeah, I guess you're referring to the mini-storage.

Chairman Richeson: Yeah, I don't know if we're allowed to talk about that.

Mr. Testerman: Yeah, I mean, it hasn't had its day in front of the judge yet, but if the judge finds in their favor, then this will have no effect on that. They'll get their approval based on what's on the books today. If the judge finds in favor of what council decided, and this gets adopted before there's any new proposals being submitted, then I would go with that.

Chairman Richeson: Does anyone have any questions for Rob?

Mr. Morton: Yeah, I do. Is this in any way affecting the fact that now you can build a 40,000 square foot building, and each individual floor up to 35 feet can also have that much square footage to it? What am I not understanding about that?

Mr. Testerman: As it's proposed with the gross floor area limit being at 40,000 square feet, then you could still have your three floors, but the total of those three floors would not be able to exceed the 40,000 square feet.

Mr. Morton: Oh, I got you. I did not get that.

Mr. Testerman: The way the Board of Adjustment found in their hearing is that the way it's currently written, you could have 40,000 square foot footprint, and then another 40,000 square foot on top of it. So 120,000 square foot for a single commercial use, which to me, I feel like goes against the intent.

Chairman Richeson: Being medium density, it's really not zoned for that.

Vice-Chair Parker: So you're just clarifying the intent?

Mr. Testerman: And I will just add that the way it's currently written and the way it's proposed is that no use of an owner, tenant, or individual commercial use shall exceed

whatever number. Not that there's a whole lot of commercial land left, but some of the Dune shops out here. If somebody came in with a proposal for a small commercial strip building and the total floor area of the overall building was, say, 35,000 square feet, but each tenant was 8,000, 7,000, whatever, that would still be fine as long as none of the individual tenants were over that 28,000 square foot limit.

Chairman Richeson: Any more questions? Anyone care to make a motion?

Mr. Heath: So once the 10,000 occupancy, is that what you were talking about?

Chairman Richeson: We were talking about the gross floor area of the building. It's limited in the BC1, it's limited to 28,000 square feet.

Mr. Heath: Okay. That's it.

Chairman Richeson: However you configure it, you can't go over 28,000. You could have three 9,000 square foot floors or one 28,000. Is that correct, Rob?

Mr. Testerman: As an example, in the BC1 district here, this building here is the Outer Banks Blue. According to the Dare County tax record, that building has almost 17,000 square feet of finished area. I checked the file on this one. This was right at 35 feet.

Mr. Heath: And that was two floors?

Mr. Testerman: Three floors. So this building would still have 11,000 square feet of gross floor area that they could utilize under this proposal, and that fits in the BC1 district. That's kind of the closest example I have off the top of my head.

Mr. Morton: So they could expand to 11,000 more if they wanted to, however they wanted to, as long as they met all the other rules. Of course.

Mr. Testerman: Yes

#### **MOTION**

Vice-Chair Parker made a motion to approve the proposed tax amendment to section 42-250 and 42-251, following the proposal to be consistent with the Towns Land Use Plan.

Seconded by: Mr. Heath

**Vote: Aye – unanimous**

Chairman Richeson: This brings us to comments. I have no comments other than I would like to thank everybody for their input and their wisdom. Any other comments?

**8.) Adjourn:**

Hearing no further comments, Chairman Richeson adjourned the March 15, 2026, Kitty Hawk Planning Board meeting at 6:28 p.m.

  
John Richeson, Chairman

Respectfully Submitted,  
Jessica M. Everett  
Administrative Zoning Technician

