

Kitty Hawk Planning Board Meeting
October 26, 2017 – 6:00pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. August 17, 2017
4. Administrative Report:
 - a. Town Council Action from September 5, 2017 and October 2, 2017 Meetings
5. Public Comment
6. Text Amendment:
 - a. 42-1, 42-528. The Applicant is seeking a Text Amendment that would allow residential lots to contain one accessory dwelling unit (either attached or detached) on a residential lot.
7. Comments:
 - a. Chairman Richeson
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director

8. Adjourn

1. **Call to Order/Attendance:**

Chairman Richeson called the Kitty Hawk Planning Board Meeting to order at approximately 6:00pm. With the absence of Recording Secretary Patricia Merski, Planning Director, Robert Testerman called the attendance. Due to Mr. Geraghty absence, Ms. Collins was appointed as the voting member to constitute a quorum.

Board Members Present:

John Richeson, Chairman; Bryan Parker, Vice-Chairman; Dusty Rhoads, Member; Chuck Heath, Member; Gary Muir, Alternate; Jan Collins, Alternate.

Absent:

Jim Geraghty, Member.

2. **Approval of Agenda:**

Hearing no objections/changes/corrections to the presented Agenda, the Agenda was approved as submitted.

3. **Approval of Minutes:** August 17, 2017.

Hearing no objections/changes/corrections to the August 17, 2017 Minutes, the Minutes were approved with Vice-Chairman Parker making the motion to approve and Mr. Richeson seconded and the Minutes were approved as submitted.

4. **Administrative Report:**

a. Action from the September 5, 2017 and October 2, 2017 Town Council Meetings.

- September 5, 2017 Meeting: The Town Council approved the subdivision variance for the Beach Haven Motel which was brought before the Board in June, 2017.
- Approval of Flood maps: The Council approved a letter that was drafted by Staff regarding new flood maps that are being sent to the State.

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- The letter states the concerns regarding possible errors with the flood maps. Mr. Testerman clarified that this is not an official appeal based on scientific background; i.e., storm history, etc. All the other towns in Dare County have also sent similar letters to the State. (Aside: Mr. Testerman will be briefing the Town Council on this at an upcoming meeting.)
 - Mr. Testerman stated that all the Planners in Dare County have been meeting for the past 5-6 months regarding the issue of the flood maps and discussing solutions to alleviate some of the Town's/County's concerns.
 - He also stated that the Planners and the Subcommittees from the Home Builders Association have met and recommended a local flood elevation standard of 8'. There are a number of areas in Kitty Hawk where the base flood elevation has been dropped to an elevation of 4' in areas where the flood waters are higher than that.
 - The lowest level to build would be 8' down to 4' which the maps indicate. The Towns are looking to have language created for an ordinance in the early part of 2018. Also, a note, the official repeal period ends approximately on or about November 16, 2017 when the State will review the appeals and if any are approved that would mean a change in the flood maps. A letter of Final Determination would then be issued and the Town would have six (6) months to adopt the maps into the ordinance which could take up to a year or longer.
 - Mr. Richeson interjected that he had spoken to a senior member of Dominion Power and was told that all electrical has to be above base flood level and that Dominion Power would not approve meters which are put up high on a building platform and Dominion would not approve, the reason being that a meter reader could fall off the platform causing issues. Question was posed: should an Applicant apply for a Building Permit and is told by the Building Inspector that the meter has to be installed above base flood level and not on a platform how would that be addressed and Mr. Testerman stated that it would be between Dominion Power and FEMA which is part of a federal requirement which does state that all utilities have to be installed above the flood elevation.
5. **Public Comment:**
- Mr. Richeson welcomed those in attendance to step forward to make any comments/statements to the Board. He also reiterated that the Board is only an **advisory** board where recommendations are made to the Council and that the Board's recommendations are not binding; whereas, the Board could make a motion to approve a plan and the Council could agree or deny or vice versa. As no member of the audience stepped forward, Mr. Richeson closed the **Public Comment** portion of the meeting.
6. **Text Amendment: 42-1 Definition:**
- The Applicant has proposed a Text Amendment that would add the following language, allowing for an accessory dwelling unit on a residential lot.
 - Mr. Testerman stated that this is a multi-part Text Amendment which requires an additional definition and regulations for accessory dwelling units.

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- Accessory Dwelling means a secondary dwelling unit established in conjunction with and clearly subordinate to a principal single-family dwelling unit, whether part of the same structure as the principal dwelling unit or as a detached structure on the same lot. The use of manufactured or mobile homes, travel trailers, motor homes, campers or similar vehicles as an accessory dwelling unit is prohibited.
- Article VI. Supplemental Regulations:
 - a) Accessory dwelling units may be attached (located within the principal residence) or in a detached structure on the lot, provided requirements for lot coverage and setbacks for the district are met.
 - b) Accessory dwelling units shall not be larger than 50% of the living area of the primary residence, or 800 square feet, whichever is lesser.
 - c) A detached accessory dwelling unit shall be located in the established rear or side yards, provided that the detached accessory dwelling unit does not extend beyond of the front of the primary residence.
 - d) Accessory dwelling units shall not be served by a driveway separate from that serving the principal dwelling.
 - e) One additional off-street parking space shall be provided for the accessory dwelling unit.
 - f) No more than one accessory dwelling unit shall be permitted on a single residential lot.
 - g) Detached accessory dwelling units shall not exceed 28 feet in height, measured from average original grade or the height of the principal dwelling on the property, whichever is lower.
 - h) The owner must obtain a permit from the Dare County Environmental Health Department that indicates that the septic system is sufficient for the increased occupancy.
 - i) Accessory dwelling units may be used for home occupation uses, in compliance with Sec. 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.
 - j) Before obtaining a building permit for an accessory dwelling unit, the property owner shall file with the County Register of Deeds a Declaration of Restrictions containing a reference to the deed under which the property was acquired by the present owner stating that the accessory dwelling unit shall not be sold separately from the primary residence.
- Mr. Testerman stated that accessory dwelling units are a relatively simple idea that has been around for a number of years but became less popular in the mid-20th century; but, in recent years a resurgence has emerged. Examples of an accessory dwelling unit could include an apartment over a garage; a separate, smaller house located in the rear or side yard or a lower level apartment.

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- He also stated that some of the more popular reasons for an accessory dwelling unit could be for rental income for the property owner or to provide a place for aging parents or grown children who cannot afford a home of their own for various reasons.
- Other possible advantages are helping to increase housing supply and allow for greater options for moderate-income earners, caregivers, etc. Also, an increase in housing stock where there is no need for new infrastructure as they can be connected to existing utilities.
- In a case study that Mr. Testerman provided to the Board, the case study reiterated that ADUs can provide practical housing options for the elderly, disabled, empty nesters and or having smaller in size and do not require the extra expense of purchasing land and can be developed by converting existing structures and do not require additional infrastructure.
- ADUs are also an inexpensive way for municipalities to increase their housing supply which also means increasing their tax base and also, this type of housing option can allow communities to retain population groups that might otherwise be priced out of the housing market.
- Mr. Testerman stated that he and Mr. Stewart will be attending an October 30th meeting with the Chamber of Commerce concerning the housing crisis on the Outer Banks, targeting workforce housing and what possible outcomes of that meeting would be helpful in addressing this Text Amendment.
- As the draft is currently written, the ADU, if approved would still be required to comply with the minimum setback standards on the rear and side yards, and, as noted in the proposal language would not be permitted to extend beyond the front of the primary residence. The lot owner wishing to develop an ADU would also have to work within current lot coverage requirements of 30% and therefore, allowing an ADU that might increase the amount of people living on a single lot but would not affect the potential allowed intensity of development on the lot.
- Potential issues allowing ADUs could create would be:
 - a. Could create a small residential density and traffic in residential areas which goes back to occupancy permitted by the Health Department.
- An additional concern with an ADU that could be built attached to the primary dwelling would be, by the Town's ordinance definition, a duplex, which are only permitted in certain zoning districts.
- Sec. 42-1 states, '*dwelling, two-family (duplex)* means a detached building divided horizontally or vertically and designed for or occupied by two single-family housekeeping units contained entirely under one roof and have one dividing partition common to each unit or having the ceiling structure of the lower unit the floor structure of the above unit.'

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- This issue could be resolved by amending the definition of 'dwelling, two-family' to include a statement that a single-family home with an attached ADU, meeting the size restrictions of 42-528(b) is not considered a two-family dwelling (duplex).
- Mr. Testerman also stated that the Town's flood damage prevention ordinance dictates that accessory structures cannot have habitable space or be temperature-controlled.
- The definition of 'accessory structure' in the flood damage prevention ordinance states that the structure's use 'is incidental to the use of the principal structure.'
- Mr. Testerman stated that Staff's interpretation that these accessory dwellings would not fall under the definition of 'accessory structure' as the use is not incidental to the primary structure, rather it is a secondary residential structure.
- Mr. Testerman also stated that it was confirmed with the Regional NFIP Coordinator and, if approving this Text Amendment, it would not conflict with the Town's flood damage ordinance.
- Currently, the Town has been permitting a variation of 'mother-in-law' suites in accessory buildings, typically done as living space over a detached garage. One stipulation is that one living space that is approved as a separate structure is that the top of the first floor would have to meet base flood plus 1 or under the new ordinance, if approved, base flood plus 3 or 8', whichever is lower and standard flood requirements will still need to be met.
- Currently, the Town's definition for a 'dwelling unit' is 'one room or two rooms' connected together constituting a separate, independent housekeeping unit for owner occupancy, or rental or lease and physically separated from any other rooms or dwelling units which may be in the same structure and containing independent cooking and sleeping facilities for a single family.'
- By prohibiting any stove or stove connections, the living space is not considered a dwelling unit because it has no independent cooking facilities.
- Mr. Testerman then provided the Board with the policies and objectives that are relevant to the Text Amendment which are stated in the CAMA Land Use Plan:
 - a) Policy 17a: Kitty Hawk will continue to adapt, enforce and amend as necessary ordinances and procedures to regulate residential development and redevelopment. The Town supports applicable State and Federal laws and regulations regarding building, land uses and development.
 - b) Policy 17b: Detached residential structures are the preferred type of residential development.
 - c) Objective 17a: Ensure the continuance of established residential development patterns.

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- d) Objective 17b: Ensure future development is consistent with adopted goals, objectives and policies and regulations including building code requirements and is in character with existing development with respect to features such as building size, lot coverage, architectural design standards and construction materials and methods.
- Mr. Testerman also referred to attachments of photographs from different localities that he provided to the Board showing examples of different attached/detached accessory dwelling units.
 - He also stated that there are different town and counties do currently have regulations in place to allow for ADUs.
 - Towns on the Outer Banks:
 - a. Duck recently passed such an ordinance
 - b. Southern Shores is considering such an ordinance
 - c. Dare and Currituck counties have provisions for ADUs
 - d. Manteo allows ADUs
 - e. Nags Head does not, but their Planning Director stated that they are also considering such an ordinance.
 - Mr. Testerman also stated that this is becoming a nation-wide trend and many communities are preparing ordinances for ADUs to happen.
 - Mr. Richeson asked if there were any questions and Mr. Parker asked with the history in Kitty Hawk was concerning ADUs and Mr. Richeson stated that the previous Planner had given a presentation to the Board as a matter of an FYI, but that it did not move forward.
 - Mr. Richeson asked the difference between the current ordinance and the Text Amendment?
 - Mr. Testerman stated that with the mother-in-law suites that have been currently allowed, without stoves or stove connections, therefore they do not meet the definition of a dwelling unit. He also stated that if the Text Amendment was approved, it would allow a second dwelling unit on the lot and would be allowing a lower level apartment, assuming the flood regulations are met or a detached structure to have a full kitchen with stove connections.
 - Ms. Collins then stated that she has seen various houses that have been built and have gotten occupancy permits where stoves, hot plates were allowed. She stated that she is a member of the Dementia Task Force and the Task Force is currently working with the Outer Banks Restaurant Association in educating restaurant owners and their employees on helping dementia customers have a pleasant experience. And, the Task Force is trying to have Kitty Hawk become the first community to be considered dementia friendly.

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- Ms. Collins stated that she felt this Text Amendment would be advantageous to the aging population on the Outer Banks in general having all of the regulations and standards being met.
 - Mr. Richeson asked if an ADU could be used strictly for commercial purposes as he sees a number of Air BNB rentals and are these considered commercial?
 - Mr. Varnell stated that rental vacation houses in residential areas are considered residential and not commercial unless down the road there is a decision from a higher up to make that change to commercial.
 - Mr. Testerman stated that there are home-based businesses allowed as long as certain conditions are met and that someone in an ADU can do a home occupation but cannot build an ADU and then exclusively run a business from that ADU.
 - Mr. Richeson stated that, historically, density has been an issue and if a stove is in an ADU, does that increase the density?
 - Mr. Testerman stated that density is looked at when lots are being subdivided to allow for 4 lots/acre or 4 dwellings/acre. If density is looked at as people per acre rather than dwellings per acre, there is no increase, as house sizes are bound by occupancy permitted by the septic permit.
 - Another example Mr. Testerman gave: density approved for 8 occupants, a 4 bedroom house and 8 occupants or a 3 bedroom house or a 1 bedroom ADU, the density remains the same.
 - Mr. Richeson asked if density meant people and not the structure and Mr. Testerman stated that there are no regulations on how many sheds or detached garages can be on a lot as long as the setbacks and 30% lot coverage is met and are based on Health Department approval.
 - Mr. Testerman stated that the ordinance with lot coverage and Health Department approval tampers down the density.
 - Mr. Richeson stated that he had contacted the Visitor's Bureau on the Outer Banks and their statistics from 2000-2017 indicated that there is more of a niche for visitors to come to the Outer Banks for 3-4 days as opposed to renting an expensive beach front property and this ordinance may fill that niche.
 - Mr. Richeson then asked for a member of the Board to make a motion to either approve, deny or table until Mr. Testerman's meeting with the Chamber of Commerce.
 - Ms. Collins made the following motion: ***"I recommend approval of the proposed Text Amendment to amend Section 42-1 and add Sec. 42-528, amending the definition two-family dwelling and adding the proposed definition of 'accessory dwelling unit' and adding Sec. 42-528 permitting accessory dwelling units as permitted uses on residential lots. The Board has found this proposal to be consistent with the Town's adopted land use plan."***
 - Mr. Richeson asked for a vote and the recommendation was passed 3-2 in favor.
7. **Comments:**
- a. Chairman Richeson-thanked the Board for their hard work
 - b. Planning Board Members – no comments
 - c. Town Attorney – no comment
 - d. Planning Director – no comment
8. Adjourn: The Meeting was adjourned at approximately 6:45pm.