

Kitty Hawk Planning Board Meeting
March 14, 2019 – 6:00pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. February 14, 2019
4. Administrative Report:]
 - a. Town Council Action – March 4, 2019 Meeting
5. Public Comment
6. Subdivision Review:
 - a. 921 W. Kitty Hawk Road – The Applicant has proposed dividing an 8.82 acre lot into three (3) lots.
7. Text Amendment:
 - a. Sec. 42-1 & 4-6. The Applicant has requested adding a distinct definition for miniature horse and modified minimum lot size requirements for keeping miniature horses.
8. Comments:
 - a. Chairman Richeson
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director
9. Adjourn

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

Chairman Richeson called the Kitty Hawk Planning Board Meeting to order at approximately 6:00pm on Thursday, March 14, 2019

Board Members Present:

John Richeson, Chairman; Bryan Parker, Vice-Chairman; Chuck Heath, Member; Dusty Rhoads, Member; Gary Muir, Alternate; Matt Spencer, Alternate; Robert Testerman, Planning Director; Starkey Sharpe, Attorney, substituting for Town Attorney, Casey Varnell.

Absent:

Jim Geraghty, Member

Voting:

Due to the absence of Jim Geraghty, Member; Alternate, Matt Spencer will vote on the Agenda items as Mr. Muir, Alternate voted at the February 14, 2019 meeting.

2. **Approval of Agenda:**

Hearing no objections/changes/corrections to the March 14, 2019 Agenda, the Agenda was approved unanimously.

3. **Approval of Minutes:**

Hearing no objections/changes/corrections to the February 14, 2019 Meeting Minutes, the Minutes were approved with Mr. Heath making the motion to approve and Mr. Richeson seconded and the Minutes were approved unanimously.\

4. **Administrative Report:**

- a. Town Council Action from the March 4, 2019 Meeting. Mr. Testerman stated that a Public Hearing is scheduled for the Gas Station at 6100 N. Croatan Highway will be held on Monday, April 1, 2019.

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- b. Also, the Text Amendment proposed at the February 14, 2019 Planning Board Meeting to add multi-family dwellings as a Conditional Use in VC-1 Village Commercial District has been put 'on hold' by the Applicant until further notice.

5. **Public Comment:**

- Mr. Richeson asked if any member(s) of the audience would like to speak and if so, to come forward and state their name/address.
- Mr. Richeson clarified for members of the audience that the Planning Board is strictly an 'advisory board' that makes recommendations to the Town Council and the Council, in turn, can either agree with the Board's recommendation(s) or deny those recommendations; therefore, the Council has the final vote.
- As no member(s) of the audience approached to address the Board, Mr. Richeson closed the Public Comment portion of the meeting.

6. **Subdivision Review:**

- a. 921 W. Kitty Hawk Road. The Applicant has proposed dividing an 8.82 acre lot into three (3) lots.

Proposal:

- The Applicant has submitted an Application and preliminary plat for subdivision of the parcel at 921 W. Kitty Hawk Road. The plat outlines a proposal to subdivide one (1) existing parcel totaling 8.82 acres on the western side of W. Kitty Hawk Road into three (3) lots. No new road or road expansions are proposed as part of this subdivision.
- The three(3) lots would be 5.45 acres in total acres excluding Coastal Wetlands or open water (Lot 1RR); the second lot, 28,981 sq. ft. excluding Coastal Wetlands or open water (Lot 2RR) and Lot 3RR if 115,145 sq. ft. or 2.6 acres total area; 77,381 sq. ft. excluding Coastal Wetlands or open water.
- There are no improvements proposed; no roadways and no recommended conditions of approval and the plat is being presented as both the preliminary plat and final plat. Should there be any conditions of approval which would require a revised plat, the Board can make a separate preliminary plat approval and require a revised final plat to be submitted at a later date.
- Mr. Testerman noted here that he discussed this with Town Attorney Casey Varnell. Kitty Hawk's ordinance for subdivisions that come before the Planning Board and Town Council states that the preliminary plat needs to come to the Planning Board and be approved by the Town Council and once the Developer installs the improvements; i.e., road ways, etc.; then the final plat goes back to the Planning Board and Town Council for approval.
- Mr. Varnell and Mr. Testerman agreed that to streamline the process from a legal standpoint, that this could be reviewed by reviewing this plat as both the preliminary and final plat, as there are no site improvements being proposed, simply recording new lot lines.

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Zoning:

- The subject property currently has a single-family home and associated accessory structures and is zoned VC-2 Commercial District. The VC-2 District allows single-family residences as a permitted use, by-right.

Lot Size:

- The minimum lot size in the VC-2 District is 15,000 sq. ft of upland area and, as noted above, all proposed lots exceed the minimum lot size.

Density:

- There is no specific maximum density listed in the VC-2 District. The proposed density of the subdivision is approximately 0.34 dwellings per acre.

Lot Width:

- In the VC-2 District, single-family residences are permitted using the VR-1 dimensional requirements and the minimum lot width in the VR-1 District is seventy-five sq. ft. which is measured at the front building setback line on each parcel.”

Building Setbacks:

- Minimum building setbacks in the VR-1 District is 10 feet along the sides and 25 feet at the front and rear.

Road Frontage:

- Lots must have a minimum road frontage of 50 feet and there are no new roads or right-of-way proposed as part of this subdivision. There is an existing commercial drive aisle in Lot 1RR and Lots 2RR and 3RR are proposed to be accessed via the existing commercial drive aisle.
- The only condition that Staff would recommend, and does not have to be reflected on the plat, is that an access easement must be recorded for Lots 2RR and 3RR to have access via the existing commercial drive aisle.
- There is an existing dwelling on Lot 2RR and all setbacks are met in the proposal.

(The following was discussed with Town Attorney Mr. Varnell and as a result of the discussion, Mr. Varnell is in agreement with the following):

- Sec. 38-105(b)4 of the subdivision ordinance prohibits ‘flag lots’ in Kitty Hawk and in a review of the plat Lot 3RR, by configuration, looks like a ‘flag lot’; however, the Ordinance defines a ‘flag lot’ as “a lot that has a narrow frontage on a street and a thin strip of land which provides access from the street right-of-way to a wider portion of the lot.”
- While there one is a thin strip of land on Lot 3RR between proposed Lot 2RR and the adjacent lot to the south; the proposed Lot has approximately 100 feet of road frontage on W. Kitty Hawk Road which is twice the minimum.

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- The proposed lot is to be accessed via Lot 1RR so the thin strip of land does not provide access from the street right-of-way to the wider portion of the lot and by plain read of the definition, the Proposal does not fit the definition of a 'flag lot.'

Land Use Plan:

- The Kitty Hawk CAMA Land Use Plan designates the subject parcels as a "Low Density Residential Area" and the Proposal would come to 0.34 dwellings/acre.
- Mr. Richeson asked if the Board had any questions for the Applicant or Mr. Testerman and Mr. Parker asked if the access to Lot 3RR would be recorded with that Lot and Mr. Testerman stated that before the plat is signed off on and recorded by the Town, there has to be evidence of access easement in place and that this statement should be included in the motion.
- Mr. Styons, the Surveyor, asked if the access easement is something that could be noted on the subdivision plat.
- In replying to Mr. Styons question, Mr. Starkey Sharpe stated that a document will be drawn up where there will be a Dedication by the Property Owner that states that the easement along the way as shown on the plat and splits into two (2) and should the Owner, in the future, sell the lot to someone else, the new Owner would have the right to use that road in a Deeded Document. Mr. Starkey went on to state that when a map is recorded the map is not necessarily in the Chain of Title and is not a Document of Conveyance itself; so, the Document of Conveyance in this case, the easement could be a Deed then there would have to be a separate document that refers to the map.
- Mr. Richeson then asked for a Member of the Board to make a motion and Mr. Richeson made the following motion: ***"I move to recommend approval of the preliminary/final plat for Margaret E. Neal divides one existing parcel off of W. Kitty Hawk Road into three (3) lots with the condition that an access easement must be recorded for Lots 2RR and 3RR to have access via the existing commercial drive aisle."*** Mr. Parker seconded and the motion was passed unanimously.

7. Text Amendment:

- a. Sec. 42-1 & 4-6. The Applicant has requested adding a distinct definition for miniature horses and modified minimum lot size requirements for keeping miniature horses.
Note: At the February, 2019 Planning Board Meeting in reference to miniature horses, the Board tried to integrate language for miniature horses into the existing horse ordinance and during the discussions of the Board, the Board decided that the existing horse ordinance not be modified to include language for miniature horses and that a subsection be created to specifically address miniature horses.
 - The Applicant provided the attached information on miniature horses which indicates true miniature horses can be maintained on as little as one-quarter acre of land provided that its feed is supplemented with hay on a daily basis and that the miniature horse is provided a structure for shade.

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- Under the current ordinance, miniature horses are viewed and permitted as a standard horse requiring a minimum of one (1) acre of land to keep one.
- To ensure that the horses are true miniature horses, if approved, Staff has recommended the requirement in the definition for the miniature horse(s) to be registered with one of the two major miniature horse registries in the United States.
- The attached draft ordinance would maintain that the miniature horse owner would be required to obtain an annual permit just as standard horse owners are.
- The proposed subsection, 4-6(d)8 would limit the keeping of miniature horses to the Village Zoning District which was a concern brought up at the February, 2019 Planning Board meeting.
- (d)9 sets a minimum lot size for keeping miniature horses at 20,000 sf and a maximum density of two (2) miniature horses per acre. It also states that the maximum number of miniature horses on a lot would be four (4); meaning, if the property was two (2) acres or more, the owner could have a maximum of four (4) miniature horses on the lot.
- It should be noted that the 20,000 sf minimum lot size does not take into account areas taken up by a house, driveway, deck, etc.
- If the Board desires, language could be added that sets a specific minimum amount of space to be dedicated to the miniature horse(s).
- Mr. Testerman provided an example from the City of Evanston, Wyoming which allows keeping miniature horses in residential zones with a requirement that the number of miniature horses be limited to one (1) miniature horse per 5,000 sf of open area devoted to the miniature horse.
- **NOTE: Kitty Hawk's current standards for keeping horses was adopted in 2000 largely in response to a particular situation in which many horses were being kept in unhealthy and substandard living conditions on a single property and this was amended in 2011.**
- The process of developing the standards began in 1998 with the appointment of a subcommittee reporting to the Planning Board. The Kitty Hawk Horse Owners Association had membership on this subcommittee and participated throughout the process.
- Reviewing the standards of the Ordinance will be a valuable process that may result in improved standards and it will also be important to recognize that the current Ordinance seems to have served the Town well over the past nineteen years.

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- The discussion then revolved around the language to be included in the 'miniature horse' Ordinance, enclosure required, area designated to the miniature horse and nuisance odors. The new proposed draft of the Miniature Horse Ordinance was going to be tailored to miniature horses. The proposed language was attached to the Staff report and the major changes were highlighted for the Board to review and all of the other requirements are similar to what is in the standard Horse Ordinance already existing in the Town.
- As a reference to the miniature horses, Mr. Testerman attached an Ordinance from Evanston, Wyoming where the requirement of a 5,000 sq. ft. of open space dedicated to each miniature horse.
- Mr. Spencer stated that according to the information provided by the applicant, the Evanston, Wyoming Ordinance, the 5,000 sf required is less than a ¼ of an acre; therefore, Wyoming is actually allowing a horse to be kept on a smaller area than what is being recommended and in the Horse Association materials. Mr. Spencer suggested adding a requirement of 10,000 sq. ft. of open area devoted to each miniature horse on a given lot.
- Subsection 7 of the Draft Ordinance states that all miniature horses kept within the Town must be kept in an enclosure and in the standard Horse Ordinance it states that a horse enclosure be located no less than 20' from the boundaries of subject property. Mr. Parker suggested that the 20' setback be included in the mini-horse language. Also, taken from the original Horse Ordinance is Subsection D which states, 'if a shelter is constructed separately there has to be a separation distance of 100' to be maintained between the shelter and any occupied buildings on an adjacent property.' The material provided states a ¼ acre is doable provided that it is supplemented with hay and also provided a structure for shade. Mr. Testerman suggested that to keep consistent with these recommendations, a shelter should be required.
- The issue of 'nuisance odors' was addressed by the Board, and Mr. Testerman referenced Ordinance 22-117 which states, 'The existence of any of the following conditions on a vacant lot or any parcel of land which is improved or unimproved within the Town limits to be declared dangerous and prejudicial to the public health and safety that constitutes a public nuisance and any accumulation of any animal or vegetable matter that is offensive by virtue of vapors by inhabitants of rats, mice, snakes which may be dangerous or prejudicial to the public safety.'
- A motion was then made by Mr. Richeson as follows: ***"I recommend approval of proposed Text Amendment to amend Section 42-1 and 4-6 defining and setting specific standards for registered miniature horses with the conditions of language to be incorporated requiring an enclosed shelter to be erected and that waste must be removed and the property be maintained in a way that will not cause a nuisance violation in accordance with Town Code Sec. 22-117 and 10,000 sf of open space per miniature horse."***

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- Mr. Parker seconded and the motion was passed unanimously.
- 8. **Comments:**
 - a. Chairman Richeson – stated he was appreciative of the work that Mr. Testerman had done to bring this to the Board.
 - b. Planning Board Members – None
 - c. Town Attorney – None
 - d. Planning Director – None
- 9. **Adjourn:**

Chairman Richeson adjourned the March 14, 2019 Planning Board Meeting at approximately 6:37pm.

Respectfully submitted by Patricia Merski, Recording Secretary