

Kitty Hawk Planning Board Meeting
July 13, 2017 – 6:00pm
Kitty Hawk Municipal Building

Agenda

1. Call to Order/Attendance
 2. Approval of Agenda
 3. Approval of Minutes:
 - a. June 15, 2017
 4. Administrative Report:
 - a. Town Council Action from July 10, 2017 Meeting
 5. Public Comment
 6. Unfinished Business:
 - a. 4100 Block of Lindbergh Avenue. The Applicant is seeking a subdivision variance to revert lots to original configuration.
 7. Text Amendment:
 - a. 42-616(a)616(a); 42-; 42-247(b)3. The Applicant is seeking a Text Amendment that would allow the occupation of trailers/RVs on residential lots in the BR-1 zoning district when specific requirements are met.
 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 with the roll call taken by Planning Director, Robert Testerman due to the absence of Recording Secretary Patricia Merski.

Board Members Present:
John Richeson, Chairman; Bryan Parker, Vice-Chairman; Jim Geraghty, Member; Dusty Rhoads, Member; Chuck Heath, Member; Gary Muir, Alternate; Jan Collins, Alternate.
 2. **Approval of Agenda**

Hearing no objections/changes/corrections to the presented Agenda, the Agenda was approved as submitted.
 3. **Approval of Minutes, June 15, 2017**

Chairman Richeson brought to the Board's attention a correction on page 12, second bullet, first sentence: *"Mr. Varnell stated that this is, indeed, an oddity for a variance not to go before the Board of Adjustment and that a decision would have a long-term effect not regarding just this site but others that may present itself."*

 - It should have read, *"that a decision would have a long-term effect on that particular site and Mr. Varnell stated this was NOT setting a precedent and that there is no type of effect on any others."*

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- Mr. Testerman stated that the change would be made to the minutes and Mr. Parker made a motion to approve the Minutes with the changes noted and Mr. Richeson seconded and the Minutes were approved.
- 4. **Administrative Report:**
 - a. Town Council Action from the July 10, 2017 Meeting.
- Mr. Testerman stated that the Council scheduled Public Hearings for the two Text Amendments from the June, 2017 Planning Board Meeting: a) 42-1 Definitions: To amend the definition of *lot coverage* to allow for a lot coverage bonus when permeable pavement is used and; b) 42-415 – Outdoor Lighting: Division 3, Signs, Table V. The hearings will take place at the August Town Council Meeting.
- 5. **Public Comment:**
 - Mr. Richeson welcomed those in attendance and reiterated that the Planning Board is an *advisory board* where recommendations are made to the Council and that the Planning Board's recommendations are not binding; whereas, the Board could make a motion to accept approval for a plan or set of plans and the Council could agree or deny.
 - He also stated that the Public Comment portion of the meeting is where any member of the audience can address the Board. Mr. Richeson asked if any member of the audience wanted to address the Board and no one came forward.
- 6. **Unfinished Business:**
 - a. **4100 Block of Lindbergh Avenue.** The Applicant is seeking a subdivision variance to revert the lots to the original configuration.
 - Mr. Testerman referred the Board back to the discussion at the June, 2017 Meeting on the subdivision variance for the Beach Haven Motel. The proposal shows as one lot divided differently. There are three (3) lots that front N. Virginia Dare Trail that are 50x150 which is the standard between the highways and N. Virginia Dare Trail.
 - Directly to the west is the parking area for the motel and are three (3) 50x50 lots that are landlocked as a result of a previous subdivision variance that was granted in 2005. The two lots that front Lindbergh Avenue were also a result of the previous subdivision variance also from 2005 and both are 75x100.
 - The current Application proposal is for a subdivision variance that would revert the lots back to the original layout – six (6) lots; 50x150 – three (3) fronting; and the three (3) fronting N. Virginia Dare Trail would remain unchanged.
 - Mr. Testerman stated that Mr. Meekins, representative for the Applicant, was present to answer any questions/concerns the Board may have.
 - Mr. Meekins approached the Board and stated, that in his opinion, this would be a win-win situation and would put it on a parity with other lots in the neighborhood of 50x150 and would also increase the tax base for the Town of Kitty Hawk.

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- Mr. Varnell interjected that this would not set a precedent and would not be unique to the area.
 - Mr. Testerman then reviewed the proposal for Mr. Heath who was not present at the June Meeting.
 - Mr. Richeson stated that he appreciated the Board's indulgence in tabling the proposal until the July Meeting in that he wanted to study this more and had discussions with Mr. Testerman and Mr. Varnell and agreed that this proposal would be a win-win situation in bringing the lots back to the original layout. Historically, the subdivision was platted as such and agreed that this would increase the tax base. He also stated that if nothing is done there would be two landlocked properties which in turn would devalue the property and lower the tax value. He also thanked Mr. Testerman for finding a way to make this work so that a precedent would not be set.
 - Mr. Richeson then asked for a Member of the Board to make a recommendation and Mr. Parker made the following: ***"I recommend approval of the proposed subdivision variance to allow lots 60, 61, 62, 60A and 62A to be recombined into three lots, measuring 50x150, fronting Lindbergh Avenue. The Board has found that it is in the best interest of the Town to allow construction of three single-family lots, rather than two, which will increase the tax base and prevent the potential for three unbuildable, landlocked lots."***
 - Mr. Richeson seconded the motion and it was approved unanimously.
7. Text Amendment:
- 42-616(a); 42-247(b)3. The Applicant is seeking a Text Amendment that would allow the occupation of trailers/RVs on residential lots in the BR-1 zoning district when specific requirements are met.
 - Mr. Testerman began by stating that the proposed Text Amendment would be amending two (2) sections of the ordinance. The first would be 42-616(a) which dictates that all mobile homes, trailers and campers shall hereafter be located for occupancy in a mobile home park or trailer park only as provided for in this chapter. The proposal would add in language that would say, **except in cases where the requirements of 42-247(b)3 are met.**
 - 42-247-BR-1. Low density beach residential district. The new 42-247(b)3 that would be added into the language, if approved, would state that as an accessory to a detached single-family dwelling, one trailer camp site provided that:
 - a. **The lot must be a minimum of 0.75 acre (32,670 sq. ft.)**
 - b. **Plumbing and electric service must be provided to the trailer site.**
 - c. **Sanitary hook-up must be provided.**
 - d. **Access to shower, toilet and sink must be provided.**

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- e. **Trailer site shall not be located in the front yard and must meet rear and side yard setbacks.**
- f. **Trailer site must have a minimum 200 foot separation from nearest adjacent residence.**
- g. **Trailer site must be screened from view from any public or private right-of-way by a six foot (6') fence.**

Background

- Kitty Hawk's zoning ordinance currently only allows trailers, campers and RVs to be occupied if located within an approved trailer park. Current, there are three (3) existing parks in Kitty Hawk; Kitty Hawk Trailer Park, Charlie's RV Park and The Preserve off of Kitty Hawk Road.
- The proposed Text Amendment would allow single-family home sites within the BR-1, low density beach residential to provide one trailer/camper/RV site on the same lot as their single-family home as an accessory use, if the criteria listed are met.
- Due to the densely developed BR-1 zoning district and typically smaller lot sizes, the proposed restrictions would limit the impact of the Text Amendment proposal to very few properties within the Town.
- This would not affect many properties in this district. Additionally, the proposed requirements of a 100' setback from any single right-of-way, 200' setback from adjacent residences and a six foot (6') fence to screen the trailer site would further limit the impact to the Town as any future trailer camp sites would not be readily visible from either neighbors or motorists driving by.
- Mr. Testerman stated that in reviewing the BR-1 zoning district for other sites that may meet the criteria listed previously, possibly there are 1-2 other properties and there are some large properties behind the Kitty Hawk Town Hall that are zoned BR-1 but are part of the Kitty Hawk Preserve which are owned by the State.
- Mr. Testerman stated that the Applicant also suggested requirements that the trailer/RV site would have been in existence prior to 1986. He stated that this suggestion was not included in the Staff Report as it would be difficult for the Town to enforce as well as the difficulties that would be involved in establishing when the site was first put in place, unless the Town had a record, there would not be a way of knowing when an ordinance would have been granted.
- Another suggested requirement that was left out is that all verified campers register through Air BnB which would not be appropriate for the Town to be endorsing or requiring the use of one specific travel booking site.

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- And the third requirement would be that no parties or events are to be permitted. Currently, a noise ordinance exists and is enforced by the Kitty Hawk Police Department and any campers, etc. would be subject to and abide by the noise ordinance.
- Mr. Testerman stated that other towns on the beach all have similar ordinances in either restricting trailer/camper/RV occupation of trailer parks and some prohibiting it altogether.
- Mr. Testerman stated that the Applicant, Ms. Heath was in the audience to answer any questions and also had photos of the property in question which Mr. Testerman projected onto the screen for the Board to see.
- Ms. Heath addressed the Board and stated that she relocated from Raleigh and purchased the property in question in 2012 and consequently, she discovered another site on the side of the house which was heavily covered in compost. As she dug out the compost, she uncovered a water line and a sewer line.
- She stated that the lot is a unique size and is set back and next door to the lot is the Dominion Power easement and that the area is quiet and there is a six foot (6') fence near the site which is 100' from the right of way. The RV lot sits behind the fence and restroom exists in the garage and a shower and a sink.. There also is electric, water and sewer hook-ups for the trailers/campers and the Amendment as worded would be hard pressed for another lot to meet those requirements.
- Ms. Heath also stated that with the popularity of Air BnB this would afford her home-based business.
- Mr. Testerman stated that in the Staff Report a requirement of a 100' setback from the right-of-way was not included, but, should the Board recommend approval, the Board could add a motion making the setback an additional requirement before it would be sent to the Town Council.
- Ms. Collins asked if currently there was an RV on the site and Mr. Testerman stated that is it not a permanent RV.
- Mr. Testerman stated that due to the current violation, Mr. Alexander had sent Ms. Heath a letter informing her of the violation. Options were discussed and it was decided that the only way Ms. Heath could continue would be to have an approved Text Amendment brought to the Board.
- Mr. Testerman stated that, if there had been a violation and the person applied for a text Amendment or a Conditional Use Permit that would correct the situation and so far, there has not been any enforcement until the Town Council has made a decision and until then the Town is currently operating the same unless the Board makes a recommendation which the Council would have a public hearing at their September meeting.

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- Mr. Parker asked 'who brings the trailer to the site' and Mr. Testerman stated that the clients bring their own to the site.
- Mr. Richeson asked if there were any questions from the Board and Mr. Geraghty asked if this would set a precedent for 'spot zoning' and Mr. Testerman stated 'no', in that it doesn't change the zoning. Mr. Testerman also stated that there are other uses allowed based on certain conditions and would be the same scenario in allowing an RV camp site provided all requirements are met.
- Mr. Varnell confirmed that this would not be considered 'spot zoning.'
- Mr. Richeson stated that there are a few sites in BR-1, but in the BR-2 district and BR-3 plus VR-1, VR-2 and VR-3 districts, what would happen if someone from either of these districts and met the same criteria, could they also ask for the same Text Amendment because it was done in another district.
- Mr. Testerman stated that an Applicant could apply and the same process would be adhered to and it would then be up to the Board and Town Council to decide whether they would like to see it in the other districts. Also, in approving the Text Amendment proposal before the Board, does not mean that it would be approved in the other districts. No precedent would be set for the other districts and those affected would be BR-1 and any additional Applications that might come forth in the BR-2, BR-3 or VR-1,2, or 3, the same process would be applied and the town could approve or deny a similar request for any other district. Approval in one district would not obligate the town to approve in another district.
- Mr. Richeson stated that there is no mandate that it would have to be denied, but if someone comes in with the same proposal, they may come back and say that there was another Text Amendment that was approved and what would be the reason that that particular Text Amendment would not be approved?
- Mr. Testerman stated that it's not a scenario where a justification has to be found to deny and Mr. Varnell stated that a strict rationalization or justification doesn't necessarily have to be defined in a scenario when deciding on a Text Amendment.
- Mr. Richeson stated that there are certain sites that are set aside for mobile parks and RV parks and would visits be similar in expanding a trailer park in Kitty Hawk and bringing in movable RVs with wheels?(Referencing The Preserve proposal)
- Mr. Testerman stated that this was a different scenario in that The Preserve applied to expand bringing in RVs and campers and the ordinance states that trailers, RVs can only be occupied in an approved trailer park but there is no district where a trailer park is a permitted use.

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- Mr. Testerman stated that, rather than do a Text Amendment to try to allow a trailer park in the VR-3 district, the Applicant applied as a mobile home park and was proposing to put 30 mobile home which was denied on the basis that it is in a flood prone area and the mobile home park ordinance states that they won't be approved in flood prone areas.
- Mr. Varnell then asked Mr. Testerman to provide clarity in describing our ordinance and the definition of a trailer park and whether or not we are permitting actual mobile homes to be placed on the site.
- Mr. Geraghty then asked what sizes are permitted and would parking become an issue with the possibility of multiple vehicles coming in and Mr. Richeson stated that many Winnabago trailers tow their cars or jeeps behind.
- Mr. Parker stated that the septic could become an issue because so many gallons per person per day would be used and Mr. Geraghty stated that he felt the Health Department should become involved regarding the septic and water requirements.
- Mr. Testerman stated that the parking issue would need to have zoning approval added to the site plan what parking requirements would be acceptable on the site and that specific language could be added to specifically address the parking and septic issues.
- Mr. Geraghty stated that he felt the Board should table this proposal until more information can be gathered and the Health Department reviews the proposal and states any concerns they may have.
- Mr. Richeson agreed and Ms. Collins stated, that according to the manual in referring to BR-1 rentals, it is very specific about what can be done concerning a rental period (daily, weekly, etc.); there would be cooking, applicances and a smoke alarm would be required.
- Mr. Testerman stated that that language was under the Conditional Use Permit a Bed & Breakfast (B&B). Although this particular site is listed on AirBnB it is not a Bed & Breakfast, by definition, and that he has counted 55 homes in Kitty Hawk that are on AirBnB in either renting a home or a house and they would not come under B&B standards. Also, the parking requirements would have to be researched concerning single-family, detached dwellings which is one for every two occupants; authorized septic improvement permit issued by the County Health Department or 1/600 sq. ft. of total heated space whichever is less and what has been approved by the Health Department. Mr. Richeson stated that there would be issues with the Health Department if this Text Amendment is approved as submitted.

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- Mr. Testerman stated that the ordinance listed as it is applied here as a trailer site includes any of the following: camping trailer (folding structure of canvas or other material mounted on wheels) and designed for travel, recreation or vacation use; motor homes – portable, temporary dwelling to be used for travel, recreation or vacation constructed as an integral part of a self-propelled vehicle; pick-up coach – a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation or vacation; travel trailer – vehicular, portable structure built on a chassis designed to be used as a temporary dwelling for travel, recreation or vacation uses and when factory equipped for the road they shall have a body width not exceeding 8’ and not exceeding 32’ in body length. This does not capture mobile or manufactured mobile homes.
 - Also, a regulation against open air camping except that an owner or lessee of improved real property and immediate family and company may camp upon the property.
 - Mr. Varnell clarified for the Board the definition of AirBnB and how it works. A particular room or house can be listed on AirBnB and with this, B&B’s come to mind, but there is a specific definition in the ordinance that is already in place.
 - There is a distinct difference of a B&B in that a true B&B has specific services that are offered to their clients as opposed to a vacation rental, where on the Outer Banks, is where our economy thrives.
 - He also stated the moving forward, there is a lot of AirBnB sites but mostly it is a medium for advertising and does not necessarily dictate that the business is being run as a B&B which is mostly dictated by the services being offered to their clients.
 - He also stated that the focus should be on what the Applicant is intending and not to be focused on the AirBnB acronym.
 - Mr. Richeson asked if there were any further questions and Mr. Geraghty made a motion to table this proposal until the August meeting asking Mr. Testerman to do more research on Health Department issues and Mr. Richeson seconded and it was approved unanimously.
8. Comments:
- a. Chairman Richeson – none
 - b. Planning Board Members – none
 - c. Town Attorney – none
 - d. Planning Director – Donna Heffernan, after 16 years with the Town was retiring effective July 14, 2017.
9. Adjourn:
- Mr. Richeson adjourned the July 13, 2017 Meeting of the Kitty Hawk Planning Board at approximately 7:10pm.

Respectfully submitted by Patricia Merski, Recording Secretary.