



Dare County Planning Board Meeting

**Dare County Board of Commissioners Meeting Room
954 Marshall C. Collins Drive
Manteo, NC 27954**

February 14, 2022

Agenda

- I. Call to order **6:00 PM**
- II. Administer Oath of Office - Reappointments
- III. Roll call
John Finelli, Chairman
Beth Midgett
David Overton
Terry Gore II
Buddy Shelton
David Hines
John DeBoy
- IV. Approval of minutes for the January 10, 2022 meeting
- V. Public Comment
- VI. Old Business
 - a. None
- VII. New Business
 - a. None
- VIII. Other Business
 - a. Zoning Amendments for Accessory Dwelling Units – Referral from Board of Commissioners.
- IX. Adjournment

MINUTES OF THE DARE COUNTY PLANNING BOARD MEETING

The Dare County Planning Board held their regularly scheduled meeting on Monday, January 10, 2022. This meeting was held in the Dare County Board of Commissioners meeting room located at the Dare County Administrative Building, 954 Marshall C. Collins Drive, Manteo, NC.

CALL TO ORDER 6:00 pm

MEMBERS PRESENT John Finelli, Chairman
Beth Midgett
David Overton
Terry Gore II
Buddy Shelton
John DeBoy

MEMBERS ABSENT David Hines

APPROVAL OF MINUTES

There being no corrections or additions to the minutes of the December 13, 2021 meeting of the Dare County Planning Board, Terry Gore made a motion to approve the minutes as submitted. Buddy Shelton seconded this motion.

Vote: Ayes – Unanimous

PUBLIC COMMENT

-None-

OLD BUSINESS

-None-

NEW BUSINESS

-None-

OTHER BUSINESS

Discussion of the Division of Coastal Management Completeness Review of the Draft Land Use Plan.

Planning Board Director, Donna Creef, addressed the Board. She explained that the Land Use Plan serves as the framework for the Zoning Ordinance and the Land Use Plan is to be updated every five years. An updated plan was submitted to the State Division of Coastal Management for review June 25, 2021.

DRAFT

LAND OF BEGINNINGS

PRINTED ON RECYCLED PAPER

Ms. Creef reported that Charlan Owens, AICP, District Planner, Coastal Management, has returned a ten page completeness review of the plan.

A copy of the Coastal Management Completeness Memorandum was provided to the Board for their review.

Ms. Creef presented the Board with a brief overview of the completeness comments of the memorandum.

Ms. Creef expects a substantive review of the plan will be received in the future.

No action was taken by the Board as this was an update.

ADJOURNMENT

There being no further business before the Dare County Planning Board, a motion to adjourn was made by Terry Gore and seconded by Buddy Shelton.

Vote: Ayes – Unanimous

The meeting adjourned at 6:24 p.m.

Respectfully Submitted,

Andrea DiLenge
Planning Board Clerk

APPROVED: February 14, 2022

John Finelli
Chairman, Dare County Planning Board



County of Dare

P.O. Box 1000 | Manteo, North Carolina 27954 | 252.475.5000

February 1, 2022

MEMORANDUM

TO: DARE COUNTY PLANNING BOARD

FROM: Noah Gillam

RE: Expansion of the Accessory Dwelling Units to areas Zoned R-1 Single Family Residential & ELNH East Lake Natural Historic

In October 2018, the Dare County Board of Commissioners adopted amendments to the zoning ordinance that permitted Accessory Dwelling Units (ADUs) in districts that allow duplex and multifamily structures. Prior to the 2018 amendments ADUs were only permitted in the Wanchese, Manns Harbor, and the majority of the East Lake zoning districts. ADUs are currently permitted in 29 of the 47 zoning districts. In January 2022 the Dare County Board of Commissioners directed the planning board and planning staff to revisit the ADU ordinance and draft new language that would extend the ADU regulations to districts that are zoned single family residential in an attempt to building housing stock to help with the housing crisis.

Planning staff has reviewed the single family zoning districts to narrow down the districts where the addition of an ADU would potentially be in conflict with existing homeowners association's restrictive covenants, or would encounter environmental constraints. Out of the 11 districts reviewed the R-1 Residential and the East Lake Natural Historic District represent the best potential for construction of ADUs without conflicting with restrictive covenants. The R-1 district applies to portions of Roanoke Island, Colington, Avon, and Buxton, while the ELNH applies to a number of residential properties located in the East Lake tax district.

The review of the R-1 zoning district maps found a large number of properties in Buxton and Roanoke Island that are not in platted subdivisions or are in minor subdivisions that likely do not have recorded covenants. A tax record search of Roanoke Island alone found 191 residential properties that are not in a recorded subdivision. The areas zoned R-1 in Avon and Colington are in recorded subdivisions with known covenants or are on smaller platted lots which likely could not accommodate an accessory dwelling unit.

An accessory dwelling unit is defined as a secondary dwelling on one parcel in conjunction with a principal dwelling either attached or detached which is subordinate in

size to the principal structure, and has independent living facilities including permanent provisions for living, sleeping, cooking and sanitation. Dare County routinely issues building permits for accessory structures in the R-1 district that have conditioned space, and sanitation facilities. The accessory structures function as living space but without the presence of a hardwired stove or cooktop, which is the determining factor that separates it from being considered an ADU. If a hardwired stove or cooktop was shown on the plans during the Planning Department review a permit would not be issued.

When permitting accessory structures in the R-1 district Dare Planning staff has not been made aware of any situations where an accessory structure was in violation of a homeowner's association restrictive covenants. Dare County does not enforce homeowner's association covenants, and is obligated to issue a permit for an accessory structure if meets the requirements of the Dare County Zoning Ordinance and North Carolina Building Code. It is the responsibility of the homeowner to know what covenant restrictions apply to their property. It's likely that the accessory structures that have been permitted in the R-1 are in fact being used as defacto accessory dwellings minus the means of a hardwired stove or cooktop.

Environmental health has waste water requirements that also regulate the addition of ADUs on properties. If the ADU is detached from the principal use structure, it is likely that a new wastewater system and repair area would have to be installed to meet the flow requirements for a separate dwelling. The minimum flow for an additional dwelling is 240 gallons a day. If the ADU is located inside the principal use or attached to it, the existing system might have capacity already available or could be upgraded to meet the requirements for adding additional bedrooms.

I have attached the current ADU ordinance to this memo, and have included other potential standards for the addition of ADUs in the R-1 and East Lake Natural Historic district for the Planning Boards discussion. These standards include procedures for administration of regulations to document the absence of restrictive covenants that may conflict with zoning regulations, lot size requirements, lot coverage, and roadway access requirements.

SECTION 22-58.6 ACCESSORY DWELLING UNITS (adopted October 15, 2018)

An accessory dwelling unit (ADU) may be located on a residential lot in the following zoning districts:

Hatteras Island: R-2, R-2A, R-2H, R2-AH C-2, C2-H, C-3, I-1, S-1

Colington/KDH Outside: R-2, R2-B, VC-2, C-3

Manteo Outside: RS-6, RS-8, R-2, R-3, C-3, I-1, SNC

Wanchese: WR-1, VR, BT, RB, NC MLM, WVC, MC-1, MC-2, and Highway 345

Manns Harbor: MH-A, MH-B

East Lake: ELR, ELVC, ELCS

The following standards shall apply to all ADUs except for those districts in Wanchese and East Lake which have ADU standards included as part of the district regulations.

1. Only one ADU may be permitted per lot in conjunction with a principal dwelling unit. The residential lot may contain other accessory structures as authorized by the applicable zoning district. The construction of an ADU on a lot does not constitute a group housing development as established in Section 22-31 of the Dare County Zoning Ordinance.
2. An ADU may be attached to a primary dwelling unit or may be detached separate structure. An ADU shall not exceed 50% of the floor area of the primary use structure or a maximum of 1200 square feet of heated and non-heated space unless the applicable zoning district for the lot establishes a different ADU maximum size limitation. The size limitation shall not apply if existing floor area within a primary dwelling unit is internally remodeled or existing interior space is converted for use as an ADU.
3. Lot coverage – Lot coverage may be increased for the footprint area of an ADU but in no instance shall lot coverage exceed 38% to accommodate the construction of an ADU unless the applicable zoning district for the lot establishes a different ADU lot coverage limitation. No increase in lot coverage is authorized for those ADUs that are located within the interior of an existing structure. This increase in lot coverage is for the ADU structure and shall not be used for other structures or impervious coverages. If existing lot coverage of the property exceeds 38%, then reductions in lot coverage shall be made in order to accommodate the ADU.
4. Two 10' x20' parking spaces shall be provided on the residential lot outside of any dedicated right-of-way or access easement. Parking shall be of permeable surfaces

as allowed for single family dwellings in Section 22-56 of the Dare County Zoning Ordinance. The location of the ADU parking shall be approved by the Dare County Planning Department during the permit review process. Existing parking may be used if excess parking for the primary dwelling unit is available.

5. Any ADU shall be constructed according to NC State building codes and Dare County floodplain management regulations.
6. Recreational vehicles, travel trailers and/or manufactured homes shall not be used or approved as an ADU.
7. An ADU shall be located on a residential lot according to the applicable principal dwelling use setbacks. An existing accessory structure may be converted to an ADU if compliance with the principal dwelling setbacks, ADU size limitation, and applicable Dare County floodplain management regulations can be met. Any ADU shall be constructed to be compliant with the building height of the applicable zoning district.
8. Any ADU approved under these guidelines shall be used for long-term occupancy as defined in Section 22-2 of the Zoning Ordinance. Any ADU approved under these guidelines shall not be used for commercial or business activity. However, this limitation shall not prevent the ADU from being authorized as a home occupation according to the definition in Section 22-2.
9. An ADU shall not be subdivided or segregated in ownership from the principal dwelling unit.

POTENTIAL DRAFT CONDITIONS

The Following Standards shall apply to ADUs in the R-1 districts.

- 1. Any ADU in the R-1 district shall be accessed from State maintained road /publicly dedicated road and/or 20' easement. (to be discussed)*
- 2. Establish a minimum lot size for R-1 district on which ADU can be located (to be discussed)*
- 3. Any ADU in the R-1 district shall adhere to the maximum allowable lot coverage for the R-1 zoning district (30%) (to be discussed)*
- 4. Any ADU in the R-1 district that is located in a subdivision shall provide documentation from an attorney outlining title research and stating a conclusion of whether or not a covenant applies to the property. (to be discussed)*

East Lake Natural Historic (ELNH)

It is staff's recommendation that the ADU Language for the ELNH District be consistent with the other East Lake Districts that already have established language regulation ADUs. The following proposed draft language is language taken from the East Lake Village Commercial district.

Accessory dwelling unit associated with principal residential use subject to compliance with all supplementary local, state, and federal permit approvals and in addition to the following:

a. An accessory dwelling unit may be attached to the principal residence or may be detached from the principal residence. The size of an accessory dwelling unit, whether attached or detached from the principal residence, shall not exceed 900 square feet of heated space.

b. An accessory dwelling unit, whether attached to or detached from the principal residence, shall be located on the site in conformance with the building setbacks of this zoning district.

c. The owner of the property and/or family member shall occupy either the primary residence or accessory dwelling unit.

d. One additional off-street parking space shall be required.

e. Travel trailers and recreational vehicles shall not be used as accessory dwelling units.

f. Accessory dwelling units may be used for home occupations as defined Section 22-2 of the Dare County Zoning Ordinance.

ANALYSIS OF ZONING DISTRICTS.

In analyzing the zoning maps, staff is aware of the areas where restrictive covenants apply or where there is a high likelihood restrictive covenants apply. I offer the following review of each district:

NH (Natural Historic) – applies on Roanoke Island, Hatteras village, Stumpy Point, Manns Harbor and Colington. The NH is applied to the Heritage Point Subdivision on Roanoke Island, which has restricted covenants. The other areas of NH are large wetland expanses that are most likely not suitable for development. Recommendation: Should be excluded from consideration due to these issues.

CPR (Conservation Public Recreation) –applies to the north end of Roanoke Island and includes the Croatan Woods Subdivision, which has restricted covenants. Recommendation: Should be excluded from consideration because of likely covenant restrictions.

BNH (Buxton Natural Historic) – applies to the old coast guard base housing area only. Recommendation: Should be excluded from consideration since land is already developed.

ELNH (East Lake Natural Historic) – Applies in East Lake, includes some privatelyowned land but mostly federal property. Recommendation: Consider extension of ADU regulations for those properties not in a subdivision or able to demonstrate no covenant issue.

RS-1 (single family residential) applies in Colington and Hatteras village to platted subdivisions. Recommendation: Should be excluded from consideration because of likely covenant restrictions.

MP-1(Martin's Point) – applies to the residential sections of the Martin's Point Subdivision, active homeowners association. Recommendation: Should be excluded from recommendation due to covenants.

R-1 (Residential) applies in Roanoke Island, Colington, Avon and Buxton. Recommendation: Consider extension of ADU regulations for those properties not in a subdivision, properties in smaller subdivisions with no covenants or where property owners are able to demonstrate no covenant conflict.

R-1A (Residential Alternative) Applies to the Baum Bay Harbor Subdivision only, most likely restrictive covenants. Recommendation: Should be excluded from consideration because of likely covenant restrictions.

SP-2 (Alternative Residential) Applies in Stumpy Point Recommendation: Should be excluded from consideration because wastewater capacity.

R-4 (Residential) Applies to the Colington Harbour Subdivision, active homeowners association. Recommendation: Should be excluded from recommendation due to covenants.

SED-1 (Special Environmental District) Applies to the Buxton Woods areas of Buxton and Frisco. Recommendation: Should be excluded from consideration due to SED-1 zoning. This is

our most restrictive zoning district and limits vegetation removal to protect the vegetative canopy and the underlying aquifer.