



**Planning Board
Agenda Packet**

May 14, 2019

Work Session

5:30 PM

Call to Order

- A) Pledge of Allegiance & Moment of Silence
- B) Ask for Disqualifications
- C) Announce Quorum Being Met
- D) Approval of Agenda

Approval of Minutes for April 9, 2019**Old Business****New Business**

- A) **PB 19-09 Bruce Weaver, Kitty Hawk Kites - Text Amendment:** Request to amend the Unified Development Ordinance, Chapter 4. Use Standards and Chapter 10. Definitions and Measurement to establish Outdoor Tour Operators, Aviation as a use allowed in the Agriculture (AG) zoning district subject to a use permit and specific conditions.

Announcements**Adjournment**



CURRITUCK COUNTY NORTH CAROLINA

April 9, 2019

Minutes – Regular Meeting of the Planning Board

WORK SESSION

The Currituck County Planning Board held a work session at 6:30 PM in the Historic Courthouse Conference Room. Introductions were made with the two newly appointed board members, Juanita Krause and David Doll. The Clerk to the Board, Cheri Elliott, gave Ms. Krause and Mr. Doll their Planning Board binders along with contact information for the Board of Commissioners, Planning Board Members and Currituck County Planning Staff. The Planning Community Development Director, Laurie LoCicero, and Jennie Turner, Planner II, briefed board members on the Dune Protection Text Amendment. Cheri Elliott handed out an email sent by Willo Kelly to Ms. Turner giving her opinion and asking specific questions concerning the Dune Protection Text Amendment. Chairman Ballance discussed voting on the amendment to the Rules of Procedure to change meeting start times from 7:00 PM to 6:00 PM. As per the Rules of Procedure, this was discussed at the previous meeting and will be voted on at tonight's meeting. The work session adjourned at 6:57 PM.

CALL TO ORDER

The Planning Board met in a regular session at 7:00 PM in the Board Meeting Room of the Historic Courthouse, 153 Courthouse Road, Currituck, North Carolina.

Attendee Name	Title	Status	Arrived
C. Shay Ballance	Chairman	Present	
Garry Owens	Vice Chairman	Absent	
K. Bryan Bass	Board Member	Absent	
David Doll	Board Member	Present	
Anamarie Hilgendorf	Board Member	Present	
Juanita S Krause	Board Member	Present	
J. Timothy Thomas	Board Member	Absent	
Laurie LoCicero	Planning and Community Department Director	Present	
Jennie Turner	Planning and Community Development Planner II	Present	
Cheri Elliott	Clerk to the Board	Present	

Chairman Ballance called the meeting to order at 7:02 PM.

A. Pledge of Allegiance & Moment of Silence

Chairman Ballance asked everyone to stand for the Pledge of Allegiance and a moment of silence.

Communication: PB Minutes April 9, 2019 (Approval of Minutes for April 9, 2019)

B. Ask for Disqualifications

Chairman Ballance referenced the State Government Ethics Act and asked if any board member had a conflict of interest with the matter coming before the board. No conflicts were noted.

C. Announce Quorum Being Met

Chairman Ballance announced a quorum being met with four board members present.

D. Approval of Agenda

Chairman Ballance asked if there were any changes needed for tonight's meeting agenda. Ms. Krause motioned to approve as presented. Ms. Hilgendorf seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
AYES:	C. Shay Ballance, Chairman, David Doll, Board Member, Anamarie Hilgendorf, Board Member, Juanita S Krause, Board Member
ABSENT:	Garry Owens, Vice Chairman, K. Bryan Bass, Board Member, J. Timothy Thomas, Board Member

APPROVAL OF MINUTES FOR MARCH 12, 2019

Chairman Ballance asked if there were any changes needed to the meeting minutes for March 12, 2019. Ms. Krause motioned to approve as presented. Ms. Hilgendorf seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
AYES:	C. Shay Ballance, Chairman, David Doll, Board Member, Anamarie Hilgendorf, Board Member, Juanita S Krause, Board Member
ABSENT:	Garry Owens, Vice Chairman, K. Bryan Bass, Board Member, J. Timothy Thomas, Board Member

E. PB Minutes March 12, 2019**OLD BUSINESS****A. Rules of Procedure****1. Rules of Procedure - Vote on Meeting Time Change**

Chairman Ballance asked for a motion to approve the Planning Board meeting time change in the Rules of Procedure from 7:00 PM to 6:00 PM. This proposed amendment was made in writing and discussed at the last Planning Board meeting on March 12, 2019.

Ms. Krause motioned to approve as presented. Ms. Hilgendorf seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
AYES:	C. Shay Ballance, Chairman, David Doll, Board Member, Anamarie Hilgendorf, Board Member, Juanita S Krause, Board Member
ABSENT:	Garry Owens, Vice Chairman, K. Bryan Bass, Board Member, J. Timothy Thomas, Board Member

NEW BUSINESS

A. PB 19-07 Currituck County Text Amendment - Dune Protection:

Jennie Turner, Planner II, presented the staff report. This text amendment to the Unified Development Ordinance (UDO) for chapter 7: Environmental Protection Standards and Chapter 10: Definitions and Measurement was directed by the Board of Commissions during the last retreat to strengthen protection of the ocean shoreline dune system and establish setbacks for oceanfront accessory structure and uses. Ms. Turner explained the Coastal Area Management Act (CAMA) regulations and how this text amendment would increase the setbacks of the CAMA regulated setbacks along the ocean front. Ms. Turner presented pictures showing home construction including placement of swimming pools cutting into the landward side of the dunes. Graphics were also presented showing where the placement of the setbacks would be in relation to the dunes and the CAMA setbacks. Ms. Turner said the proposed setback would be 60 feet from the first line of stable natural vegetation and shall not be located on a frontal dune or a primary frontal dune. The setback will not apply to dune walkover accesses and one 200 feet or less dune deck or gazebo will be allowed, but not closer than 15 feet to the first line of stable natural vegetation.

Chairman Ballance asked board members if they had any questions for staff.

Ms. LoCicero clarified the reasoning for the text amendment came from a recent Board of Commissioners retreat and it is for the general concern of our beaches and the protection of homes in the beach area. Ms. LoCicero also said the County is looking for an engineering firm to do an assessment of our current beaches and dunes. The study will also provide guidance for future needs to keep a healthy beach and dune system.

Discussion was held between staff and board members on the different setbacks according to erosion rates and size of houses, the communities that would be affected, the affects of property insurance, and the value of homes if they could not build their pools, etc. Ms. LoCicero said without being a qualified appraiser, in her opinion it would affect the desirability, but these homes would still be able to build their swimming pools outside of the setback by building a smaller house. She said some of the houses have approximately nineteen bedrooms, so building a smaller house is an option to meet the set-back requirement and still have the amenities desired.

Chairman Ballance opened the floor for public comment.

Willo Kelly, the Chief Executive Officer with the Outer Banks Association of Realtors, came before the board. She read her email that was provided to the board members at the earlier work session. Ms. Kelly referenced how Duck adopted a similar ordinance in 2013 that restricts accessory structures within 30 feet of the first line of stable natural vegetation which is less restrictive than Currituck's proposed amendment of 60 feet. She feels there needs to

be more time to allow for stakeholder meetings in Corolla and to determine the impacts of this ordinance amendment.

Dave Stormont from Kitty Hawk came before the board. He said he is a local builder and received the email about the proposed text amendment last week. Mr. Stormont said he is concerned about the homes he has built and his future to build which will affect him financially.

Jay Overton from Kill Devil Hills came before the board. Mr. Overton is a local builder/engineer/surveyor and believes it would be good to table the matter to get more input. He believes certain people are not following the current rules and enforcement of the rule breakers is not being made; if enforcement was made this amendment would not be necessary.

Chairman Ballance closed the public comment.

Chairman Ballance said he has a hard time telling people they cannot build pools in the proposed 60 feet setback section and would like to table this until we can look at more information. Ms. Hilgendorf agreed this proposed text amendment needs to be slowed down. Ms. Krause agreed, but said protection of the dunes are important.

Ms. Hilgendorf asked staff if there were any pictures showing examples of what happens when destruction is made to the west side of the dune. Ms. Turner presented a presentation slide with the dune completely gone and a swimming pool and house in its place. Ms. Hilgendorf asked if the house was built before CAMA regulations. Ms. Turner said, no, the house was built in the 1990's, but was built in violation of the CAMA setback regulation.

Chairman Ballance said maybe Mr. Overton is right that this is a code enforcement issue.

Ms. Krause motioned to table PB 19-07 Currituck County Text Amendment Dune Protection until the June 11, 2019 Planning Board Meeting to allow Corolla stakeholders time for review and for staff to have better knowledge of the total effect this text amendment will have with the total number of houses that would be found as nonconforming.

Ms. Hilgendorf seconded the motion and the motion carried unanimously.

RESULT:	TABLED [UNANIMOUS]	Next: 6/11/2019 6:00 PM
AYES:	C. Shay Ballance, Chairman, David Doll, Board Member, Anamarie Hilgendorf, Board Member, Juanita S Krause, Board Member	
ABSENT:	Garry Owens, Vice Chairman, K. Bryan Bass, Board Member, J. Timothy Thomas, Board Member	

ANNOUNCEMENTS

Chairman Ballance welcomed the two new board members, Juanita Krause and David Doll.

ADJOURNMENT

Ms. Krause motioned to adjourn the meeting. Ms. Hilgendorf seconded the motion and the Planning Board meeting adjourned at 8:05 PM.



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 2474)

Agenda Item Title

PB 19-09 Bruce Weaver, Kitty Hawk Kites - Text Amendment:

Brief Description of Agenda Item:

Request to amend the Unified Development Ordinance, Chapter 4. Use Standards and Chapter 10. Definitions and Measurement to establish Outdoor Tour Operators, Aviation as a use allowed in the Agriculture (AG) zoning district subject to a use permit and specific conditions.

Board Action Requested

Action

Person Submitting Agenda Item

Cheri Elliott, Assistant

Presenter of Agenda Item

Jennie Turner



Currituck County

Planning and Community Development Department
 Planning and Zoning Division
 153 Courthouse Road, Suite 110
 Currituck, North Carolina 27929
 252-232-3055 FAX 252-232-3026

To: Planning Board

From: Planning Staff

Date: May 7, 2019

Subject: PB 19-09 Bruce Weaver – Kitty Hawk Kites
 Outdoor Tour Operator-Aviation

The enclosed text amendment submitted by Bruce Weaver of Kitty Hawk Kites revises Chapter 4 of the Unified Development Ordinance (UDO) to allow "Outdoor Tour Operators, Aviation" in the Agriculture (AG) zoning district subject to a use permit. The proposed text amendment includes a definition of "Outdoor Tour Operator, Aviation" and establishes use specific standards for aviation related tour operations.

Background

The outdoor recreation use classification of the UDO includes a wide variety of uses including arenas, amphitheaters, stadiums, go-cart racing, water parks, amusement parks and other such uses. These are uses that require significant facilities and structures. Since the outdoor recreation use classification includes uses that are generally large and potentially impactful to adjacent neighbors and the community, "outdoor recreation" was removed as a use allowed in the AG zoning district with a use permit in January 2013. Prior to the January 1, 2013 UDO update, outdoor recreation uses were permitted in the Agriculture (AG) zoning district subject to a use permit.

Outdoor Tour Operators are categorized as Outdoor Recreation/Entertainment thus grouping them in with more impactful and intense outdoor recreation uses. Currently, outdoor tour operators are allowed in the General Business (GB) and Limited Business (LB) Zoning Districts with use specific standards subject to a use permit. The current UDO language does not differentiate potentially less impactful outdoor recreation uses, such as aviation tourism, with higher impact uses such as those listed earlier.

This text amendment proposes to allow aviation related outdoor tour operations in the AG zoning district subject to a use permit and use specific standards.

Text Amendment Review Standards

The advisability of amending the text of the UDO is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the Board of Commissioners may weigh the relevance of and consider whether and the extent to which the

PB 19-09 Bruce Weaver Kitty Hawk Kites
 Outdoor Tour Operator - Aviation
 Text Amendment
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Attachment: PB 19-09 Bruce Weaver - Kitty Hawk Kites - Text Amendment Staff Report (3) (PB 19-09 Bruce Weaver)

proposed text amendment:

- (1) Is consistent with the goals, objectives, and policies of the Land Use Plan and other applicable county-adopted plans;
 - a. *The proposed text amendment is consistent with the following 2006 Land Use Plan Policies:*
 - POLICY AG4: County growth management tools, including particularly zoning, should provide PROTECTION TO AGRICULTURE and other RESOURCE BASED ACTIVITIES from incompatible land uses, such as a residential subdivision in the midst of generally uninterrupted farm land.
 - POLICY ED1: NEW AND EXPANDING INDUSTRIES AND BUSINESSES should be especially encouraged that: 1) diversify the local economy, 2) train and utilize a more highly skilled labor force, and (3) are compatible with the environmental quality and natural amenity-based economy of Currituck County.
 - POLICY ED4: In addition to the recruitment and expansion of major new industries, the considerable value of SMALL BUSINESS START-UPS, EXPANSIONS AND SPIN-OFFS shall also be recognized.
- (2) Is not in conflict with any provision of this Ordinance or the County Code of Ordinances;
 - a. *The text amendment request is consistent with the following UDO General Purpose and Intent Statements:*
 - Protect the county's rural character and agricultural heritage.
 - Conserve the natural resources, cultural resources, and environmental quality of the county and its environs, particularly in the Outer Banks.
 - b. *The text amendment request is not in conflict with the County Code of Ordinances.*
- (3) Is required by changed conditions;
- (4) Addresses a demonstrated community need;
- (5) Is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and ensure efficient development within the county;
 - a. *The text amendment request is consistent with the purpose and intent of the zoning districts. The AG zoning district is intended to preserve and protect active agricultural uses, farmlands, and other open lands for current or future agricultural use.*
- (6) Would result in a logical and orderly development pattern; and
 - a. *The text amendment request will result in a logical and orderly development pattern and specific standards are provided to mitigate impacts on surrounding residentially zoned properties.*
 - b. *The text amendment request is compatible with current active farming operations and will only require minimal physical alteration to AG zoned properties.*
- (7) Would not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
 - a. *The request will not result in significantly adverse impacts on the natural environment, the request will result in a use that is compatible with other uses permitted in the AG zoning district.*

Land Use Plan Consistency

The UDO requires that the Board of Commissioners adopt a statement of consistency and reasonableness that describes whether the decision on the amendment is consistent with county adopted plans that are applicable and why the decision is reasonable and in the public interest.

The requested text amendment is consistent with the goals, objectives and policies of the 2006 Land Use Plan including:

POLICY AG4: County growth management tools, including particularly zoning, should provide PROTECTION TO AGRICULTURE and other RESOURCE BASED ACTIVITIES from incompatible land uses, such as a residential subdivision in the midst of generally uninterrupted farm land.

POLICY ED1: NEW AND EXPANDING INDUSTRIES AND BUSINESSES should be especially encouraged that: 1) diversify the local economy, 2) train and utilize a more highly skilled labor force, and (3) are compatible with the environmental quality and natural amenity-based economy of Currituck County.

POLICY ED4: In addition to the recruitment and expansion of major new industries, the considerable value of SMALL BUSINESS START-UPS, EXPANSIONS AND SPIN-OFFS shall also be recognized.

The request is reasonable and in the public interest because:

1. It may help preserve farm culture and promote farm and open space conservation through diversifying low impact uses of agricultural land.
2. It provides for economic diversification and local economic development.

Staff Recommendation:

Staff recommends approval of this text amendment request subject to the proposed staff additions and the suggested Statement of Consistency and Reasonableness provided in this memo and the attached staff report.



**PB 19-09 BRUCE WEAVER
KITTY HAWK KITES
OUTDOOR TOUR OPERATOR- AVIATION
TEXT AMENDMENT
PLANNING BOARD
MAY 14, 2019**

Bruce Weaver of Kitty Hawk Kites has submitted a text amendment to allow "Outdoor Tour Operator, Aviation" in the Agriculture Zoning District subject to a use permit and use specific standards. **Staff additions are highlighted in yellow.**

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

Item 1: That Chapter 4. Use Standards is amended by adding the following underlined language and removing the following strike-through language:

TABLE 4.1.1: SUMMARY USE TABLE

Z = Zoning Compliance Permit; U = Use Permit; MP = Allowed with Master Plan;
CZ= Allowed in a Conditional Zoning District blank cell = Prohibited

USE CATEGORY	USE TYPE	ZONING DISTRICT (CURRENT DISTRICT IN PARENTHESIS) [NOTE: OVERLAY OR SUB-DISTRICT REQUIREMENTS MAY FURTHER LIMIT USES]															ADDITIONAL REQ. (4.2)	
		RC	AG	SFM	SFO	SFR	SFI	MXR	GB	LB	CC	VC	LI	HI	PD-R	PD-M		PD-O
COMMERCIAL USE CLASSIFICATION																		
Recreation/ Entertainment, Outdoor	<u>Outdoor tour operator, Aviation</u>		<u>U</u>						<u>U</u>	<u>U</u>	<u>Z</u>	<u>Z</u>				<u>MP</u>	<u>MP</u>	<u>4.F.7</u>

4.2.4 Commercial Uses

F. Recreation/Entertainment, Outdoor

(7) Outdoor Tour Operators, Aviation

The base operation and extended business operations shall comply with all applicable standards in the county Code of Ordinances and the following standards:

- (a) Aviation tour operations shall comply with the standards and regulations of the Federal Aviation Administration (FAA).
- (b) Flight patterns shall be established to limit flights below 500' altitude over single-family residential zoning districts or existing single-family residential uses.
- (c) As part of the use permit approval process, the Board of Commissioners may establish hours of operation and permit duration.
- (d) Aviation outdoor tour operator uses shall provide public restrooms and adequate parking.
- (e) Aviation tour operations in the AG zoning district shall:
 - (i) Be located at least 500 feet from any single-family residential zoning district.
 - (ii) Have direct access onto a major arterial or collector street.
 - (iii) Be located on a lot of at least two acres in area.
 - (iv) Have minimal physical alteration to the area where the use is performed.

Item 2: That Chapter 10. Definitions and Measurement is amended by adding the following underlined language and removing the following strike-through language:

OUTDOOR TOUR OPERATOR

A company or individual that arranges travel tours associated with outdoor recreation. This shall include, but is not limited to, guided or independent horse, bicycle, Segway, ~~aviation~~, boat, or vehicle tours. For the purposes of this definition, the term vehicle includes any self-propelled device or structure used for transporting persons.

OUTDOOR TOUR OPERATOR, AVIATION

A company or individual that arranges aerial tours and instruction including hang gliding, paragliding, powered paragliding, powered parachutes, trikes, light sport aircraft, ultralights and general aviation aircraft. The aircraft may be powered or non-powered. Flights may be guided or independent.

Item 3: Staff's suggested Statement of Consistency and Reasonableness:

The requested text amendment is consistent with the 2006 Land Use Plan and the following

PB 19-09 Bruce Weaver Kitty Hawk Kites
Outdoor Tour Operator - Aviation
Text Amendment
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specific policies of the plan:

POLICY AG4: County growth management tools, including particularly zoning, should provide PROTECTION TO AGRICULTURE and other RESOURCE BASED ACTIVITIES from incompatible land uses, such as a residential subdivision in the midst of generally uninterrupted farm land.

POLICY ED1: NEW AND EXPANDING INDUSTRIES AND BUSINESSES should be especially encouraged that: 1) diversify the local economy, 2) train and utilize a more highly skilled labor force, and (3) are compatible with the environmental quality and natural amenity-based economy of Currituck County.

POLICY ED4: In addition to the recruitment and expansion of major new industries, the considerable value of SMALL BUSINESS START-UPS, EXPANSIONS AND SPIN-OFFS shall also be recognized.

The text amendment request is reasonable and in the public interest because

1. It may help to preserve farm culture and promote farm and open space conservation through diversifying low impact uses of agricultural land.
2. It provides for economic diversification and local economic development.

Item 4: The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

Item 5: This ordinance amendment shall be in effect from and after the __ day of _____, 2019.

Board of Commissioners' Chairman
Attest:

Leeann Walton
Clerk to the Board

DATE ADOPTED: _____
MOTION TO ADOPT BY COMMISSIONER: _____
SECONDED BY COMMISSIONER: _____
VOTE: _____AYES_____NAYS
.....

PLANNING BOARD DATE: _____
PLANNING BOARD RECOMMENDATION: _____
VOTE: _____AYES_____NAYS

ADVERTISEMENT DATE OF PUBLIC HEARING: _____
BOARD OF COMMISSIONERS PUBLIC HEARING: _____
BOARD OF COMMISSIONERS ACTION: _____
POSTED IN UNIFIED DEVELOPMENT ORDINANCE: _____
AMENDMENT NUMBER: _____



Text Amendment Application

OFFICIAL USE ONLY: PB19-69
 Case Number: 3/27/19
 Date Filed: 3/27/19
 Gate Keeper: \$300.00
 Amount Paid: \$300.00

Contact Information

APPLICANT:

Name: BRUCE WEAVER
 Address: KITTY HAWK KITES
P.O. Box 1839 NAGS HEAD, NC 27959
 Telephone: (252) 441-2424
 E-Mail Address: BRUCE@KITTYHAWK.COM

Request

I, the undersigned, do hereby make application to change the Currituck County UDO as herein requested.

Amend Chapter(s) 4 Section(s) 2.4.F as follows:
10 DEFINITIONS + MEASUREMENTS

(SEE ATTACHED)

*Request may be attached on separate paper if needed.

BRUCE WEAVER
 Petitioner

3/27/19
 Date

Text Amendment Submittal Checklist

Staff will use the following checklist to determine the completeness of your application. Only complete applications will be accepted.

Text Amendment Submittal Checklist

Date Received: 3/27/19
 Project Name: PB19-09 Bruce Weaver / CityHawk Kites
 Applicant/Property Owner: Bruce Weaver

Text Amendment Submittal Checklist

1	Complete Text Amendment application	✓
2	Application fee (\$300)	✓
3	2 hard copies of ALL documents	✓
4	1 PDF digital copy of all documents (ex. Compact Disk – e-mail not acceptable)	✓

For Staff Only

Pre-application Conference
 Pre-application Conference was held on 3/22/2019 and the following people were present:
Lavriel Cicero, Jennie Turner, Bruce Weaver

Comments

Request to add "Outdoor Tour Operator" and "Outdoor Tour Operator, Aviation" to the permitted uses of agricultural zoned land with a "use permit".

Additions to the U.D.O.:

4.2.4.F.

(7) Outdoor Tour Operator, Aviation

Outdoor aviation operations shall comply with all applicable standards in the county code of ordinances and the following standards:

- A.) Tour operators must abide by all FAA regulations
- B.) Flight patterns established to limit flights below 500' over residential neighborhoods

Chapter 10: definitions and Measurements

Outdoor Tour Operator, Aviation

A company or individual that arranges aerial tours and instruction. This shall include hang gliding, paragliding, powered paragliding, powered parachutes, trikes, LSA aircraft, ultralights and general aviation aircraft. The aircraft can be powered or non-powered. Flights can be guided or independent.