

Kitty Hawk Planning Board Meeting  
December 16, 2021 – 6:00pm  
Kitty Hawk Municipal Building

**AGENDA**

1. Call to Order/Attendance
  2. Approval of Agenda
  3. Approval of Minutes:
    - a. November 10, 2021
  4. Administrative Report:
    - a. Town Council Action – December 6, 2021
  5. Public Comment
  6. Zoning Text Amendment:
    - a. Aa Special Use, not to exceed fourteen (14) dwellings per acre.
    - b. Proposal to amend Sec. 42-250(d)7 to allow a reduction in the 50 separation zone between Commercial and Residential Zones when certain conditions are ;
    - c. Proposed to amend Sec. 42-1 amending the definition of lot coverage to allow 500 sf of pool surface are to be exempted from lot coverage calculations.
  7. Commercial Site Plan Review:
    - a. 5201 N. Croatan Highway: Proposal to develop a retail commercial development use permitted by-right.
  8. Comments:
    - a. Chairman Richeson
    - b. Planning Board Members
    - c. Town Attorney
    - d. Planning Director
  9. Adjourn
- **Call to Order/Attendance:**  
Chairman Richeson called the December 16, 2021 Kitty Hawk Planning Board Meeting to order at approximately 6:00pm.  
**Board Members Present:**  
John Richeson, Chairman; Bryan Parker, Vice-Chairman; Jim Geraghty, Member; Chuck Heath, Member; Dusty Rhoads, Member; Blair Meads, Alternate; Casey Varnell, Town Attorney; Rob Testerman, Planning Director  
**Absent:**  
Matt Spencer, Alternate
  - **Approval of Agenda:**  
Hearing no objections/corrections, etc., the Board approved the Agenda unanimously.

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- **Approval of Minutes: November 10, 2021**

There were three typos on Page 3 of the Minutes which Mr. Testerman will correct and the Minutes were approved with corrections unanimously.

- **Administrative Report: Town Council Meeting, December 6, 2021.**

1. Mr. Testerman stated that the Town Council held Public Hearings for the Zoning Map Amendment for the four (4) Town owned properties on 158 N. Croatan Highway rezoning them from BR-1 to MS-1 which will be the future location of the Kitty Hawk Police Department.
2. The Text Amendment to change the lot coverage requirements in MS-1 to mirror what the requirements are in the BC-1 and BC-2 Districts which allows up to 72% permeable concrete.
3. Public Hearings on the Text Amendment for the RV parks which was discussed at the October, 2021 Planning Board Meeting garnered some discussion but the Council Tabled until the next meeting.
4. In addition, a Public Hearing was scheduled for the Zoning Text Amendment, Item #6A – Proposal to amend Sec. 42-414(b), adding multi-family dwelling developments as a Special Use, not to exceed fourteen (14) dwellings per acre which is on tonight's Agenda and was discussed at the Board's November 16, 2021 Meeting which was seconded and denied by two Board Members and was to be tabled for a future Board meeting and Mr. Parker seconded that motion.

**Public Comment:**

- Mr. Richeson stated that the Board's role is strictly an Advisory Board and the Town Council can either agree or deny any of the Boards' motion(s).
- Mr. Richeson closed this portion of the meeting as there were no participants from the audience.

**Zoning Text Amendment:**

- a. Proposal to amend Sec. 42-414(b) adding multi-family dwelling developments as a "special use" not to exceed fourteen (14) dwellings per acre.
- Mr. Testerman stated that this Proposal to allow multi-family dwelling development in the Planned Commercial Development with a maximum density of fourteen (14) dwelling units per acre as a "special use" was discussed at the Board's November 16, 2021 meeting but due to absences of Board Members, the recommendation vote ended in a 2-2 tie and Mr. Varnell,, Town Attorney, recommended that this proposal be tabled until this December 16, 2021 Board Meeting and therefore to be able to provide the Town Council with a recommendation and also a Public Hearing has been scheduled for January 10, 2022 on this Proposal.

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- Mr. Testerman went on to state that the following has been taken directly from the Town Ordinance: Planned Commercial Developments are intended to provide developers with an option by which they can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than may be permitted as of right under other parts of the Zoning Ordinance. PCDs can be approved within the BC-1, BC-2, BC-3 and BH-1 Zoning Districts in Town (42-411(d)) if certain site requirements are met. A PCD must be at least five (5) contiguous acres in size with not less than 500' of total and frontage on US Highway 158 or NC Highway 12, except that, portions of the site may be separated by public or private rights-of-way not more than 60' in width.
- Currently, multi-family dwellings are permitted as a "special use" in the BC-1 District with a maximum density of ten (10) dwellings per acre and multi-family dwelling developments are permitted as a "special use" in the BC-2 District with a maximum density of ten (10) dwellings per acre.
- Although the proposed language would be in conflict with the standards currently permitted as a "special use" in the BC-1 and BC-2; however, per the PCD language, Sec. 42-412 states that, should there be any conflict between any PCD development standards and the standards elsewhere in the Zoning Ordinance, the PCD language standards would apply.
- It should be noted that 42-414(a) states that the "permitted" and "special uses" of the underlying Zoning Districts within the PCD are permitted and "special uses" within the PCD. Sec. 414(b) outlines additional "special uses" that are permitted in PCDs and currently include "miniature golf course" and "retail sale of Christmas trees." Currently, a PCD in the BC-1 District could have a multi-family dwelling at ten (10) dwellings per acre and a PCD in the BC-2 District could have a multi-family dwelling development of ten (10) dwellings per acre. Approval of the Text Amendment would allow a multi-family dwelling development in any PCD at fourteen (14) dwellings per acre.
- Mr. Testerman stated that, should the Text Amendment be approved, prior to any multi-family dwelling development being approved, the site would first need to be large enough to meet the PCD requirements; then, there is the PCD preapplication process conference, a conceptual review followed by a preliminary development plan and a site plan review and then a final development and site plan approval.
- All review stages are done with the Planning Board and Town Council approvals. The "special use" review/public hearing would fall under an additional site-specific review for the multi-family development.

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- Mr. Testerman stated that if the Text Amendment is approved the Planning Board and Town Council will be heavily involved in all stages involved with the Special Use.
- Mr. Testerman then brought up the screen showing the existing PCDs: green highlighted area shows the Home Depot site and a portion of the Beachwoods Timeshare area; the blue area shown was recently approved by the Board and includes the new 7-11 and the large wooded tract behind it and the orange area is the 'promenade' which is the first area after coming off the Wright Memorial Bridge.
- He also stated that another PCD in Town could be possible but there are certain site requirements but. in addition to being in the appropriate Zoning District there would have to be a minimum of five (5) acres and a 500' frontage on US158 and NC12 and if more PCDs are presented in the future it is more than likely that they would not be wide spread.
- Mr. Testerman stated that the Applicant was in the audience if the Board had questions and Mr. Varnell stated that in the administrative report, the Council tabled the Text Amendment as there was some confusion on whether this was a 'site-specific plan' or a Text Amendment that would allow something in a particular zone after the Plan was presented and that tonight, this is NOT a 'site-specific plan' that would allow potential uses in the event the Plan is approved.
- Mr. Richeson clarified that, 'it would allow potential uses in the event the proposed is approved and Mr. Testerman stated that at the November, 2021 Board Meeting, this Text Amendment was presented and there was a 2-2 tie and therefore no recommendation went to the Council. He also stated that the State Statutes that went into effect earlier in 2021, under 160D, enabling statutes to regulate development and part also states that 'if, from the time the Planning Board first receives a Proposal and Council does not receive a recommendation from the Board within 30 days, Council can proceed without the Board recommendation" and that is why Council has scheduled a Public Hearing for January, 2022.
- Mr. Richeson wanted clarification that the current PCDs are limited to ten (10) and that the Text Amendment would increase the PCDs to fourteen (14) and Mr. Testerman stated that multi-family dwellings are not mentioned in the PCD language but they are allowed in the BC-1, ten (10) dwellings per acre as a special use, and multi-family dwelling developments dwellings allowed in the BC-2 District at ten (10) dwellings per acre as a special use.
- Mr. Testerman stated that the Text Amendment being proposed would not apply to the BC-1 or BC-2 Districts and only would apply to the three designated areas shown on the map as Planned Commercial Developments

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- Mr. Goodrich, the Applicant, came forward to clarify for the Board Members that were absent at the November, 2021 meeting and Mr. Goodrich stated that he is only asking for an increase in density to make the property more appropriate for smaller units but not necessarily labeled 'affordable housing.'
  - Mr. Geraghty stated that the building would remain the same but the units would be smaller which could be two (2) 15 bedroom units or ten (10) 3 bedroom units and Mr. Testerman stated that the number of total bedrooms and occupants to the development will be dictated by the Health Department's sign-off, regardless of units per acre.
  - There was confusion around the definition of what a 'unit' is and Mr. Varnell stated that a unit could be an 'x' number of square feet with four (4) bedrooms or a unit could be an 'x' number of square feet with two (2) bedrooms.
  - Mr. Geraghty stated that the overall number of bedrooms would be the same but some may be smaller and therefore more affordable and that the waste water will dictate the number of bedrooms but the impact on the land will remain the same as the impact on the land is based on the number of bedrooms.
  - Mr. Richeson then asked for a motion to be made and Mr. Geraghty made the following: ***"I recommend approval of the proposed Text Amendment to amend Sec. 42-414(b)3, adding multi-family dwellings as a 'special use' in Planned Commercial Developments, with a maximum density of fourteen (14) dwelling units per acre. The Board has found this proposal to be consistent with the Town's Adopted Land Use Plan." The motion was denied with a 3-2; 3 being against and this recommendation will go to the Town Council for their review.***
- b. Proposal to amend Sec. 42-250(d)7 to allow a reduction in the 50 foot separation zone between Commercial and Residential Zones when certain conditions are met.
- **Proposal:** Sec. 42-250(d)7. No building or other facility (such as parking areas, trash collection areas, etc.) shall be located nearer than 50' to the boundaries of any Residential District. The width of a driveway or a road and its right-of-way along such boundary may be included as part, or all, of the 50' Separation Zone and such surface wastewater disposal systems and stormwater runoff collection and disposal systems may be located within the Separation Zone. The Planning Board may require vegetation to be planted and maintained into a 50' separation zone. ( Regulation to be added: **Notwithstanding the preceding, the width of the Separation Zone may be reduced from 50' to 20' for that portion of the commercial lot which is adjacent to any dedicated open space or any recreational area of an adjoining residential development.**)

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**Background:** As noted in the Ordinance excerpt there is currently a 50' 'buffer' area on commercial lots in the BC-1 District that abuts Residential Districts. The Proposal would allow that 'buffer' to be reduced to 20' when the adjacent Residential District has dedicated open space or recreational uses on it. The existing 50' 'buffer' provides a separation from Residential Zones and commercial structures. In some cases in the Town, where a Commercial Zone abuts a Residential Zone, there is already a large separation between the residential **uses** and the Commercial Zone. One example would be where commercial lots back up to the Seascape Golf Course. The golf course is zoned Residential; therefore, the 50' separation area still applies to the commercial use despite being separated from the residential structures by 200-300 feet. Another example would be the playground at Harbour Bay as it is a recreational area. The 50' separation area is measured from the property line; however, the parking area for the commercial structure is approximately 120' from the nearest residential use.

- As noted in the Application Letter that is attached, the request is specifically for the 50' separation requirement in the BC-1 District and intentionally omits the BC-2 District from the request. In effect, this limits how many commercial lots that the Amendment would currently be applicable to.
- Mr. Testerman referred to the aerial imagery on the screen: he stated that there would be a handful of properties that this would impact;
- Mr. Calfee, Applicant, stated that this Application has to do with and be limited to the number of sites that would be affected and that this is only for commercial properties in the BC-1 District for recreational uses. The only other area not shown is looking at the Seascape housing development which is mostly in the BC-1 and does not have the 'required' setbacks and would therefore make it again conform to the Ordinance. The Zoning Line in the aforementioned parcel actually runs through some of the buildings on the western side and there is no setback because these buildings are on the line. These would be the only areas in Kitty Hawk that would be affected by this Proposal and it is important to note that the purpose of the Proposal is that the houses are not too close to a commercial development; but, if there is some other use between the houses and the commercial development, then, clearly you are then increasing the setback distance.

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- Mr. Parker asked about the 'split zone' that was discussed between the commercial development and would this apply and Mr. Testerman stated 'no' and again referred to the golf course imagery for clarification to the Board.
- Hearing no further questions from the Board, Mr. Richeson asked for a motion to be made and Mr. Parker made the following: ***"I recommend approval of the proposed Text Amendment to Sec. 42-250(d)7 as outlined by Staff. The Board has found this proposal to be consistent with the Town's Adopted Land Use Plan."*** Mr. Richeson seconded and the motion was passed unanimously.

c. **Proposal to amend Sec. 42-1 amending the definition of lot coverage to allow 500 square feet of pool surface area to be exempted from lot coverage calculations.**

- **Proposal:** *Lot coverage* means a measure of the developed intensity of land use. The term 'lot coverage' includes, but is not limited to all areas covered by buildings, parking areas, accessory structures, driveways, roads, sidewalks, decks and any area of concrete or asphalt. Permeable pavement lot coverage shall be reduced, upon site plan approval by the Town by the built-upon area (BUA) credit established in Sec. C-5, Permeable Pavement of the NCDEQ Stormwater Design Manual's latest edition or if a proposed permeable pavement BUA credit has not been assigned by the NCDEQ Stormwater Design Manual, the BUA credit will be as confirmed by NCDEQ Stormwater Section upon evaluation.
- **Proposed Language:** **The 'wet' or water area of a swimming pool shall be exempt from the lot coverage calculations up to 500 sq. ft. Any pool water area in excess of 500 sq. ft. will count towards lot coverage calculations.**
- **Background:** Staff has initiated this proposed Text Amendment that would allow an exemption in lot coverage calculations for pool surfaces up to 500 sq. ft. The current definition of lot coverage does not include pool surface, but for many years, the interpretation has been to consider pool surfaces to be lot coverage. Lot coverage refers to areas covered by buildings, parking areas, accessory structures, driveways, roads, etc. The purpose of regulating lot coverage is to limit the intensity of developed and impervious areas on any given lot. An excessive amount of lot coverage would create stormwater management issues as there would not be adequate storage or infiltration areas for stormwater.
- A body of water is essentially impervious as additional water cannot infiltrate but adds to the volume of water. However, given, that in most instances, there is a gap of a few inches between the top of the pool water and the adjacent grade of the pool deck. Swimming pools typically act as a catch basin for rainwater until that point in which it has collected so much rainwater that the pool water level is flush with the surrounding pool deck. Therefore, pool surfaces create no additional runoff until the swimming pool is completely full.
- The proposed language which exempts 500 sq. ft. of pool surface area from lot coverage calculations is the practice that Dare County uses. This allows for the majority of swimming pools in Kitty Hawk to be exempt from lot coverage calculations but also would prevent a rear yard from being used entirely as a swimming pool, in order to preserve any open space.

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- It should also be noted that the North Carolina Department of Environmental Quality for stormwater permitting purposes does not count pool surfaces as lot coverage.
- Mr. Testerman stated that various engineers and builders have questioned why swimming pools count a lot coverage and the simple answer is that is how the Town has defined it over the years.
- Mr. Testerman spoke with Mr. Varnell concerning this as this is not specifically listed or defined in the Ordinance and the consensus was that the Zoning Administrator, Mr. Testerman, could write a different interpretation to address this issue, however by codifying the language, it removes the room for interpretation by future zoning administrators.
- Mr. Richeson wanted clarification: this Amendment pertains only to the swimming pool but not the deck around it and Mr. Testerman stated 'yes' and any 'decking' built around the pool would be considered lot coverage.
- Hearing no further questions from the Board, Mr. Richeson asked for a motion and Mr. Richeson made the following: ***"I recommend approval of the proposed Text Amendment to amend the definition of lot coverage in Sec. 42-1 to the 'proposed language', allowing 500 sq. ft lot coverage exemption for swimming pool wet areas. The Board has found this Proposal to be consistent with the Town' Adopted Land Use Plan."*** Mr. Parker seconded and the motion was passed unanimously.

**7. Commercial Site Plan Review:**

a. 5201 N. Croatan Highway: Proposal to develop a Retail Commercial Development Use permitted by-right.

**Proposal:** The Applicant has submitted a Site Plan for a new two-story 7,500 sq. ft. (7,00 sq. ft of area accessible to customers) commercial development to be located at 5201 N. Croatan Highway.

**Background:** The subject property is presently zoned Beach Commercial (BC-2) and is vacant and undeveloped at this time. The adjoining property to the south is zoned BC-2 and houses Ambrose Furniture. The abutting property to the north is also zoned BC-2 and houses Outer Banks Furniture and across US 158 to the west is the now vacant medical building, zoned MS-1 (emergency and government services) and to the east are eight (8) lots containing single-family residences all zoned BH-1 (Beach Hotel).



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- **Proposed Use:** Retail uses. Allowed as permitted use in the BC-2 District.
- **Lot Area:** The subject parcel is approximately 41,627.28 sq. ft. This size exceeds the minimum lot size (15,000 sq. ft.) and is less than the maximum lot size (7 acres) in the BC-2 District.
- **Lot Coverage:** Total lot coverage proposed is 16,996 sq. ft. This figure complies with the maximum allowable lot coverage of 24,976.4 sq. ft.
- **Open Space:** 59/2% of the parcels would be considered open space which exceeds the minimum requirement of 25%.
- **Building Height:** The proposed two-story retail building is shown to be 28' in height at its highest point and this is compliant with the maximum height requirement of 35' from grade.

- **Minimum Setback Requirements:**

	<u>Proposed</u>	<u>Required</u>
Front	16.2 feet	15 feet
Rear	20.8 feet	20 feet
Sides	110 feet (north) 146 feet(south)	10 feet 10 feet

- **Access:** The Applicant proposes a single 22 foot wide ingress/egress drive off of the Byrd Street right-of-way and also proposed to improve the Byrd Street right-of-way up to a distance of approximately 144 feet east of the edge of the existing pavement on US 158. This Proposal does not include connecting Byrd Street to the existing portion of the road as bollards are proposed to prevent any through traffic. As the Byrd Street right-of-way is a Town right-of-way, approval of the proposed Site Plan will constitute approval to make the improvements w/in the right-of-way a Conditional Use and there were concerns from residents to the east about the increase in traffic in a residential area and that was included as part of the Proposal to ease the residents' concerns and that is being kept consistent with the prior approval and was never built and therefore the Conditional Use expired.)

- **Parking:** The minimum number of parking spaces is calculated below:

<u>Parking Calculations</u>	<u># Required Spaces</u>
7,000 sq.ft retail/350	20 spaces
4 employees	4 spaces
<b>Total:</b> 24 spaces	

The Site Plan contains 24 parking spaces including two (2) handicapped accessible parking spaces.

- For retail uses, the Ordinance requires one loading berth per 20,000 sq. ft. of floor area at a minimum of 12' by 25'. The Site Plan shows one loading berth measuring 12' by 28'

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- **Buffers:** Buffers would not be required for this project because it is not a Residential Zone; although not required, the Applicant has proposed to retain a vegetated buffer of 30' along the western side of the property. (It would be a Type C vegetative buffer of 30' along the western to be shown on the Site Plan which would be a 50% opaque vegetative screen with a minimum width of 5' which would reach a height of 3' in the buffer and may include a stabilized soil berm as per the required height and shall also include local evergreen trees to be planted no more than 20' on centers and would reach a height of 6' in three (3) years.
- **Wastewater:** The Applicant has proposed a private septic system for the development and a copy of the Dare County Environmental Health Septic Permit must be provided prior to issuance of a Building Permit.
- **Buffer Separation Zone:** The 50' Separation Zone does not apply to this Proposal as the abutting residences are in a Commercial Zone (BH-1) and likewise, the vegetated buffer requirements are not required as noted in Sec. 42-649 which requires buffers between uses in Commercial Zone and abutting Residential Zone.
- Mr. Testerman stated that no specific lighting, signage. State Stormwater plans have been submitted before any Building Permits could be issued.
- **(Note:** Mr. Testerman stated that the difference in this Proposal and the 2015 Conditional Use Permit is that medical offices are listed as "special use" in the BC-2 District which required a more subjective review and a Public Hearing).
- Retail use is a 'permitted use' right and the Board will be reviewing that to determine if that will meet the minimum requirements of the Zoning Ordinance.
- All Building Permits will be issued administratively should all the requirements be met.
- Mr. Testerman stated that one of the concerns from the adjacent residential owners was the 'wetlands' which is shown on the Site Plan and also a stormwater grading plan where there is a retention basin and the current stormwater runoff from the residential lots that feeds into the southeast corner of the lot. The Applicant for this is not necessarily responsible for accepting the stormwater runoff from other properties; the eastern are shows a small retention area that appears to be piped under the access to a larger retention area in the DOT right-of-way; therefore, any improvements in that area would require permission from the DOT and contingent on their approval.
- Mr. Winslow and Mr. Saunders are property owners behind the proposed project and their major concern is that there is continuous flooding, not only in heavy storms, but also in the winter when the water freezes and then thaws it causes a major problem. Both also stated that the Town has been aware of the water in the 'basin' and nothing has been done to alleviate the situation and also wanted to know who is responsible for the runoff.

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- Mr. Testerman stated that any land development that causes excessive impact or substantial damage to an adjacent property and if the property owner is diverting their water to someone else's lot, that owner diverting is liable. He also clarified that the intersection on Lindbergh and Byrd Street is not part of the Proposal but going forward the Board or Council may want to review.
- There was also a question if the bollards in the future would be an easement and Mr. Testerman stated the bollards are within the right-of-way which is Town owned and it would be decided by the Town Council if that were to happen and Mr. Varnell stated that a Public Meeting would have to be held on opening that area.
- Also, asked if the 50' separation requirement would apply and Mr. Testerman stated 'no' because it's a residential lot are in the BH-1 District and Mr. Testerman clarified that the 50' separation requirement applies from a commercial zone to an abutting residential zone even though there are residential uses, it' not a 'residential zone'.
- Mr. Geraghty stated that in 2000 there was a bad flood and Mark Basnight did a study on Lindbergh and others between the highways where the main focus determined that the development was a bad design and that fill should have been brought in when the houses were built and did not plan for any runoff. He also stated that the Applicant will need a State Stormwater Permit which says that they have to retain all of the runoff on their property.
- Mr. Varnell stated that a retail establishment is permitted there by-right and if this plan meets the Town Ordinance they are allowed to build.
- Mr. Varnell stated that if there is a private property dispute and the Town Ordinance defines it as a 'dispute' between property owners when it comes to runoff issues after construction; however, NC law in general supports the principle that zoning is not designed to benefit only one property owner over the next. But, if there is a certain design that meets the Town Ordinance but causes harm then someone would have recourse against the property owner who is diverting the water.
- The Civil Engineer on record for this proposed site plan, Michael Strader, stated that the present plan complies with all of the local Ordinances and State requirements but also has taken into account the concerns of the local residents. The prior Conditional Use site plan proposed more lot coverage and did not provide quite as much for water storage onsite or for the offsite flows coming into the site.

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- The Engineer stated that this will be storing more than the State requirement which is 1-1/2" and the onsite management will provide more storage and that the US Army Corps of Engineers are issuing the nation-wide permit which is a general permit.
- He also clarified that this is not a 'wetlands fill' but a 'wetlands impact' where they will be removing the restrictive horizon so that the water can run where it is supposed to go both vertically and horizontally for it will be a functioning stormwater facility and also creates wetlands along the east end of the site to collect the water so that it's not running to the eastern adjourners.
- He also stated that they are trying to utilize the area between where the existing Byrd Street ends to provide as much storage capacity as possible and the Applicant is giving his land so that they can provide as much storage capacity for the offsite users on his property and it extends to the DOT right-of-way and the Byrd Street right-of-way also.
- Mr. Richeson asked about the restrictive horizon and the Engineer stated that it's organic matter and again stated that they want to provide as much storage as possible for the offsite users which includes Byrd Street and US 158.
- Hearing no further questions from the Board, Mr. Richeson asked for a motion to be made and Mr. Richeson made the following: ***"I move to recommend approval of this Commercial Site Plan for the proposed retail use at 5201 N. Croatan Highway."*** Mr. Geraghty seconded and the motion was approved unanimously.

7. **Commenets:**

- a. Mr. Richeson – thanked everyone for the hard work on the proposals
- b. Planning Board Members – no comments
- c. Town Attorney – no comment
- d. Planning Director – no comment

8. **Adjourn:**

Hearing no further questions/objections, etc. Mr. Richeson adjourned the December 16, 2021 Meeting of the Kitty Hawk Planning Board at approximately 7:30pm.

Respectfully submitted by Patricia Merski, Recording Secretary