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**Kitty Hawk Planning Board Meeting  
September 18, 2025 ~ 6:00 p.m.  
Kitty Hawk Municipal Building**

**Agenda**

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
  - a. Draft minutes of May 15, 2025
4. Town Manager Presentation
  - a. Elected and Appointed Board Members Operating Guidelines for High Quality Governance
5. Administrative Report:
  - a. Town Council Action
6. Public Comment
7. Text Amendment
  - a. Sec. 42-74. Variances. Update language related to variance findings to align with state statutes.
8. Commercial Site Plan Review
  - a. 5133 Putter Ln – Commercial parking lot
9. Comments:
  - a. Chairman Richeson
  - b. Planning Board Members
  - c. Town Attorney
  - d. Planning Director
10. Adjourn

**Kitty Hawk Planning Board Meeting  
May 15, 2025 – 6 p.m.  
Kitty Hawk Municipal Building, Smith Room**

**Minutes**

The Town of Kitty Hawk Planning Board held its regularly scheduled meeting on Thursday, May 15, 2025. It was held in the Smith Room at the Kitty Hawk Municipal Building, 101 Veterans Memorial Drive, Kitty Hawk, NC.

**1.) Call to Order:** 6:00 p.m.

**Attendance:**

<b>Members Present:</b>	John Richeson, Chairman,	Bryan Parker, Vice Chairman
	Chuck Heath, Member	Jim Geraghty, Member
	Matt Spencer, Member	Dave Morton, Alternate

**Members Absent:** Blair Meads, Alternate

**Others Present:** Rob Testerman, Planning Director  
Jessica Everett, Administrative Zoning Technician

**Voting:** All members present

**2.) Approval of Agenda:**

Chairman Richeson: Does anybody else know of any omissions, deletions, or corrections? I will note here that we've had an update on item six on subdivision and an updated plan. Just note that for the record.

**3.) Approval of Minutes:**

Chairman Richeson: Item three, approval of the minutes. I guess everybody had a chance to read them. Does anybody have any changes, corrections, or notations? Okay, hearing none, I'll make a motion to approve the draft minutes of the February 13, 2025, meeting.

Second by Jim Geraghty

**Vote: YEAS – unanimous**

**4.) Administrative Report:**

Mr. Testerman: Since we met last in March, the town council approved the County Land Use Plan that is now being certified by the state. So, that's squared away now. The council also adopted the 2025 Outer Banks Regional Hazard Mitigation Plan.

So, we'll square away for the next five years. At the May meeting, the council denied the special use permit hearing or request for the main warehouse facility over by the 7-11. That one didn't come back to the planning board because the council had never taken action on it. I think the planning board made a recommendation back in August of last year. The council denied the text amendment that would have allowed them to move forward. They then appealed the interpretation that they even needed the text amendment. The Board of Adjustment overruled staff and agreed that the 40,000 square feet referred to the footprint. So, it went back to the council for the special use permit hearing, where it was denied 4-1.

Mr. Geraghty: Was it denied, mainly because the package was incomplete?

Mr. Testerman: One of the conditions of approval is that all conditions and specifications must be met. The motion that was carried was that there wasn't enough information provided to verify that all those conditions were met.

Mr. Geraghty: Well, if they get everything together, they can just resubmit without coming to us, right?

Mr. Testerman: I think it would have to come back to the planning board because it wasn't tabled. It was denied, so it would have to be a new application.

Chairman Richeson: If that is all, we will move to item number five on the agenda.

#### **5.) Public Comment:**

Chairman Richeson stated that this portion is dedicated to those in the audience who want to speak to the Board about any issues. Those speaking should come to the podium and state their name for the record. He also noted that the Board is an 'advisory' board to the Town Council, and the Council can approve or deny what the Board puts forward.

Mr. Testerman: Duke, before you go, did you see I emailed you an update? Okay, I'm just making sure you got the latest.

Duke Geraghty: I am Duke Geraghty of the Outer Banks Home Builders Association. You'll be going over a text amendment tonight for lot coverage, a little bit of change. I met with Rob yesterday, and we had a good meeting. We think we came to a real good compromise. I want to thank you for your time. He just had to explain things. Sometimes we're on different sides, different ideas, and we have, though. But he listened, I listened, and I talked to Blair today. I know he met you, Blair Meads, and Blair spoke to me about what we came up with. So, I want to thank Rob for the work he put into it. And like I said, it's not perfect, but it's something we can all live with. Thank you.

Chairman Richeson: Since no one else is in the audience, I'll declare the public comment section closed.

#### **6.) Subdivision**

- a.) 4106 Bob Perry Rd – two lot subdivision

Mr. Testerman: All right. I won't go through all the specifics of this one. I'll just note one item: When the packet went out on Friday of last week, there was still some question as to whether the proposal met the density requirement. The density is two single-family

dwellings per acre. Our definition for density in 42-1 states that wetlands and marsh areas contiguous with estuarine waters cannot be counted towards density. The plat that was originally submitted and was included in the packet that went out, only had the area to the West of Bob Perry Road surveyed. The parent parcel is located across the east side of Bob Perry Road. So, I conveyed that the area they had shown did not contain enough upland to meet the two dwellings per acre requirement. After I conveyed that to the applicant, they had their surveyor go back out there. I've got a copy at your seats tonight, and this was sent in to me Friday afternoon after the packets went out, that the area across the road that's part of the parent parcel contains an additional 8,354 square feet. So that brings the total uplands for density calculations to 44,417 square feet, or 1.02 acres. So, they meet the density requirement of two dwellings per acre. And I'll note for the record that our minimum lot size is 15,000 square feet of contiguous, continuous, and connected uplands area. The density definition does not have that requirement for the contiguous, but it doesn't have that same requirement. So, the fact that it's divided by the road is still consistent with the ordinance. That was the only kind of questionable part for me until I got this additional information. With that, I'll turn it over to the board for any questions.

#### COMMENTS

Chairman Richeson: Does anyone have any questions for Rob?

Vice Chairman Parker: I don't have any questions, but that was my concern, was that they would have that in there prior to us approving, so they've taken that step.

Chairman Richeson: Applicant's not here, so they're not doing that. And all the conditions you met, all the requirements?

Mr. Testerman: Yes, all the road frontage, lot width, minimum lot area, density, and requirements are met with this additional information. No new roads or right-of-ways are being proposed for this. The only reason this is coming before the planning board and council is because of the size of the parent parcel. It's 3.52 acres. There's language in our ordinance that, if the parent parcel is less than two acres and divided into less than three lots, it's an exempt subdivision. So, if the parent parcel were smaller, I would just be signing off on this one administratively anyway. The size is just what triggers it coming before the board and council.

Chairman Richeson: Anybody care to make a motion?

#### MOTION

Mr. Spencer: I move to recommend approval of the preliminary plat. This is preliminary, isn't it?

Mr. Testerman: Typically, they've got it labeled preliminary with these. With these, we've kind of done them as a preliminary and final at the same time, since there are no improvements being made, rather than make them come back with another final plat. So, if you want to include that in the motion, you can.

Mr. Spencer: All right. Well, since what's before us is labeled preliminary, I move to recommend approval of the preliminary plat that's been presented for the property at 4106 Bob Perry Road, provided that the applicant demonstrates that the density requirement is met prior to town council approval.

Second by Jim Geraghty

**Vote: YEAS – unanimous**

Chairman Richeson: Okay. That brings us to item number seven.

**7.) Text Amendment**

- a.) Chapter 38.- Subdivisions. Define minor subdivision and approval process
- b.) Sec. 42-1. Definitions. Clarify language regarding lot coverage and lot coverage physical area with regards to permeable materials.

Mr. Testerman: I felt like that first agenda item was kind of a good segue into this one. So, the proposal for this one, I've got a definition of minor subdivision, defining it as a division of a parcel into five or fewer lots with no new public roads, no new public or private roads, and no dedication of new rights of way. For review purposes, this definition applies only to subdivisions intended for single-family residential use. And then standards for the plat review of minor subdivisions, stating that minor subdivision applications in place as defined by section 38-1, which refers to the proposed definition there, shall be reviewed for general compliance with this ordinance and other applicable town ordinances and regulations. Planning directors shall approve the subdivision plat, provided that all requirements of this ordinance and appropriate zoning district regulations are met, and the applicant shall be notified in writing of plat approval. Likewise, if the planning director denies a minor subdivision, the reasons for such action shall be noted in a letter to the applicant. The applicant may appeal such disapproval as provided in Article 2 of Chapter 42 of the Town Code. This would allow the staff to review and approve subdivisions like this one. Probably like the last three or four, maybe even five subdivisions that have come through Planning Board and Council, there was the three-lot subdivision over on West Kitty Hawk Road, I think a five-lot subdivision on Corinda Lane, and maybe a second one on Kitty Hawk Road. It's all just been five or fewer lots, and there are no new roads. My logic behind that is I can look at those plats in a matter of a half an hour and determine whether or not they're consistent with the ordinance or not, and rather than making the applicant go through a two-month review process of the Planning Board and Council, I can go ahead and look at that and get them approved so they can get their subdivision recorded. The second part of this one, you can see in Sections 38-48, mirrors some language provided in 160D about subdivision review, basically just specifying some other agencies that we allow to comment on before we take action on a subdivision plan. That was kind of my reasoning on that one. I think it was the three-lot subdivision, I think it was called Kitty Hawk Meadows. When it got to the town council, a councilman asked, " Why is this even in front of us? That's what spurred this one.

Mr. Geraghty: It must have saved the applicant money, you know, having to bring an engineer or anybody in.

Mr. Testerman: Well, I mean, they'll still have to get the plat, you know.

Mr. Geraghty: No, I mean coming to the meeting. Paying an engineer to go to the meeting or, you know, something like that, it just saves them money, too.

Mr. Testerman: Right.

Vice Chairman Parker: Is this staff-generated, I guess? From you?

Mr. Testerman: Yes

Vice Chairman Parker: Not from anybody else?

Mr. Testerman: Correct

Vice-Chairman Parker: What stuck with the five? To me, that's not minor.

Mr. Testerman: Looking at some other ordinances around the state, I think Morehead City may have had five listed. I was thinking of the typical ones we've been seeing, like in the 2, 3, 4, 5. Like, initially, some of the ones I looked at had 10 and under. I thought that might be more than, you know, we don't see too many. I don't think I've seen any get approved that have 10 lots. There's been one applied for a couple of times that hasn't gotten approval. So that was just kind of where I generated that from. And, you know, if the planning board and council are more comfortable with a different number, I'm open to it. It was just my starting point. That was kind of my reasoning on that one.

Mr. Spencer: Efficiency sounds awesome. I mean, the only thing I would pause to think about is that it's a hot topic, and do we want to recommend that we take out the two layers of, I mean, I understand efficiency. I get it. But with the planning board and council approach, you get public hearings, and people can at least speak their minds.

And, you know, I would recommend this to the council, but I guess if I were on the council, I'd be thinking, well, is this a good thing for the public? I mean, what is it better to do than that? Mr. Testerman: It's kind of a tough spot because subdivisions are administrative decisions, whether the council is making the decision, the planning board, or the staff. So, if it meets the requirements of Chapter 38 and Chapter 42, the applicant is entitled to approval. And, yeah, it's more, I guess, transparent when it's at the planning board and council. But then people come out and voice their opposition to it. But the opposition doesn't really matter if it meets the requirements. and that's where the larger subdivisions and where they have the roads and all that would come in. The flip side to that on my part is that the public can't voice their displeasure at the council, so they're going to be calling me. But if it's, I mean, if it meets the requirements and it's black and white and it's a minor subdivision, I have no problem telling people all day long, like, there's no way we can deny this legally

Mr. Geraghty: And you've done it before where you have to go for changing ordinance. If you want to stop this happening in the future, you can't. If it meets A, B, C and D, they have a right to it.

Mr. Testerman: Right.

Vice Chairman Parker: And I don't think we have a problem as long as it meets all the criteria. I just believe the purpose of the planning board is to vet for the council.

So when it reaches them, any questions, concerns, or issues have been addressed before they receive it.

Chairman Richeson: Well, there's an extra layer of protection for you, too.

Mr. Testerman: Right

Chairman Richeson: You know, the transparency. And people do get to come. It may be entitled to pass, but at least people do get to come and vent and say they don't like it. That's my feeling, though. Anyone else?

Vice Chairman Parker: Subdivisions have been a hot topic, as Matt said. Subdivisions.

Chairman Richeson: And it's going to get tighter, too, because land's getting scarcer and scarcer.

Vice Chairman Parker: I think five's more than I'd be comfortable with.

Mr. Geraghty: Didn't we do something else like this recently, where we gave you administrative or something?

Mr. Testerman: A couple of years ago, we added language for minor commercial site plan modifications. If the building size or lot coverage didn't increase by more than 15%, then it could be done administratively. I think that was around the same time the 160D was adopted into state law because it specified that you could proceed administratively if you had defined specifications for what constituted a minor subdivision. We had always included a provision in our ordinance allowing staff to approve minor site plan amendments, but we hadn't clearly defined what a minor site plan amendment was. It was more of a judgment call, so we added language to clarify that.

Mr. Spencer: Rob, what about this? Now, I mean, a scenario where, and this never happens to any of us, but you miss something, you approve it. A ship has sailed, right? There's no backing off of that. But the two-tier deal we got now, it's not saying we're any smarter than you because we're not. I'm just saying that is another reason why, I mean, I'm really on the fence here because efficiency makes perfect 100% sense. But these things are important decisions, and I feel like where I personally come down is probably ought to just leave it to this two-part review process. Not just because people should be able to come in here and express their opinion. That would not be a good enough reason. But I think it is a good enough reason to give us, you know, two shots at it. The government, I mean, the town government, two shots at it.

Mr. Testerman: Sure

Mr. Spencer: That's just me.

Chairman Richeson: Anybody else have any comments? Share anything?

Mr. Geraghty: Have you seen this? Any other town on the other bank side have this?

Mr. Testerman: Yes. Dare County does. I don't recall off the top of my head. I'd be happy to, well, I don't have that easily to look up right now. But I'd be happy to check if you wanted to continue this into June.

Vice Chairman Parker: For me, Rob, it's getting kind of on the heavier side of minor. And I'm kind of a man on alleviating you from all responsibility that if something did go wrong, it's all on you, not being divided up by.

Mr. Testerman: Yeah, I look at it with these minor ones. The things that I'm looking at are lot width, road frontage, densities, are the main things. Like, you know, there's no, like I said,

many roads going in. So you don't have to, a good section of our subdivision ordinance talks about road design and all that. Like, I'm not focused on any of that.

Vice Chairman Parker: Well, if they brought in an incomplete plan like this one was, you wouldn't be able to issue anything on it until they completed their application.

Mr. Testerman: Yeah, and I went back and forth when the packets went out for this, whether to push them off until June since they didn't have all the information. But I thought, you know, just put in the suggested condition that they get that information before it goes to the council. But then they got it before it came to you guys.

Vice Chairman Parker: I suppose the unused plan can also be presented to the council. They might have some discretion in that regard. Does that not hold water?

Mr. Testerman: It's chapter 38 and chapter 42. We can use the land use plan to shape chapters 38 and 42. But once the policy is set, that's what we go by.

Mr. Geraghty: Usually you help them, if they come in with a plan that doesn't meet it, you usually help them and tell them you need to do, just like you did with this one. You need to do this, this, and this.

Mr. Testerman: Correct, yeah. 'Il just be giving them feedback before I can sign off rather than before council can sign off. But I mean, I get the concern that Matt's raising. You know, I consider myself pretty good at this, but I'm not perfect. There could be an instance when I miss something.

Chairman Richeson: Anyone care to make a motion if we're done?

Mr. Spencer: I'm going to move to deny it. I'm just wondering where you all fall on it. I'm going to make the motion then.

## **MOTION**

Mr. Spencer: I'm recommending denial of the text amendment to Chapter 38.

Seconded by Chairman Richeson

All in favor? Aye. (4) Spencer, Heath, Richeson, Parker

All Opposed? Aye. (1), Geraghty

Motion is denied.

Chairman Richeson: And it's no reflection on you, Rob. Now, that brings us to the second half of Item 7.

b.) Section 42-1, Definitions, Clarify Language, Regarding Route Coverage and Route Coverage Physical Area with Regard to Permeable Materials.

Mr. Testerman: All right, I'll start off by saying to disregard the staff report that was in your packet. There's one on your desk tonight. As Mr. Duke Geraghty mentioned, I met with Blair this morning because he knew he wouldn't be here, and I had already been thinking about the language included in the packet, specifically the parts pertaining to artificial turf, gravel, and loose stone used for landscaping or walkways. The staff report that went out in the packet would have included those as part of the lot coverage physical area, which would only go up to 38%. The more I thought about it, my reason for bringing this back was focused on controlling the intensity of the development of a lot. In my mind, the more I considered it, someone wanting an artificial turf backyard or using loose rock for

landscaping, which won't get compacted and will always remain permeable, doesn't affect the intensity of the lot. Whereas, if you build a deck, regardless of its square footage, it might not be impermeable if left open underneath, but it does increase the intensity of the development of your lot. So the revision in front of you tonight continues to allow artificial turf and loose gravel not to count as either lot coverage or the lot coverage physical area, so if you wanted to landscape your whole backyard with stone, that's fine.

Mr. Heath: It includes decks, too?

Mr. Testerman: It does still say that for single-family residential applications, uncovered, open-sided decks that allow water to penetrate through to open pervious material are calculated as lot coverage physical areas. So that would count towards that 38% that falls under the permeable concrete. And I don't know how many saw the – I sent it out in an email this morning. I'm not trying to throw a monkey wrench at the 11th hour right before the meeting. If it's too much to digest on the fly and we want to just revisit it in June, I'm fine with that. Or however you want to think of it. That was just my thinking. The original language that got approved, my intent was that the decks would still be covered under that lot coverage physical area. But that's not what the language said. And it kind of opened it up to, you know, it would be a crazy amount of money, but somebody could go and say, well, I'm going to just cover my whole backyard with a wooden deck. I wouldn't want that maintenance. But that's not what I was going for. So this is an attempt to kind of bring that in, like I said, regulate the intensity of the development, but not tell people that you can't landscape your yard the way you want to because that's going to affect your lot coverage. That was kind of my thinking with it.

Mr. Heath: I don't see anything that we're going to be able to write that makes people always do the right thing. I mean, some guy's going to say, well, here it is. As long as the deck is being able to be penetrated by water and it's not covered, I mean, there's got to be some reasonable. I mean, everybody's reasonable.

Mr. Testerman: And that's what this is trying to do, bring it back to where it would count toward that 30%. Our maximum lot coverage for residential areas is 30%. This includes your concrete driveways, roof structures, and all other impervious materials. In my opinion, you can exceed that limit up to 38% as long as anything over 30% is either permeable concrete or, as I have proposed here, an open, uncovered deck. You could reach that 38% with your decks and still landscape your yard with artificial turf, loose stone, and similar materials, and those wouldn't count against you.

Chairman Richeson: Anyone have any other questions or discussion? I really don't. Anyone care to make a motion?

## **MOTION**

Mr. Spencer: I move to recommend approval of the proposed tax amendment to the sections listed in this staff report, as lot coverage and permeable materials. And that the board has found this proposal to be consistent with the town's adopted land use plan  
Seconded by Chairman Richeson

**Vote: YEAS – unanimous**

**8) Comments**

Chairman Richeson: I only have one comment. Just mentioning a Kitty Hawk kid recently passed away. That's why I have a yellow shirt on. His name was Keith Rainer. He was known as the Kitty Hawk kid. He's a professional surfer. And he grew up here, back when I guess the store was across from my house. And Paris wound up moving to Wilmington. And his stepdad was Bill Mojo Collins, who had a picture of the old store on his album cover. And he wrote a song on his album about Eugene McLaughlin, a former Kitty Hawk police officer known as Captain Kitty Hawk. But they had his memorial service today at Jeanette's Pier, so I just wanted to speak for the family and say something. And that's all I have.

Vice Chairman Parker: None

Mr. Geraghty: Eugene is a good guy. I'm still friends with him. In fact, he married Duke.

Mr. Spencer: Oh, wow. You married Eugene McLaughlin? No.. He did the services for Duke's wedding.

Mr. Morton: None

Mr. Testerman: None

Ms. Everett: None

**9.) Adjourn:**

Hearing no further comments, Chairman Richeson adjourned the May 15, 2025, Kitty Hawk Planning Board meeting at 6:29: p.m.

Respectfully Submitted,

Jessica M. Everett  
Administrative Zoning Technician



## **Town of Kitty Hawk Elected and Appointed Board Members Operating Guidelines for High Quality Governance**

*Board Members must commit to using the following guidelines to ensure high-quality governance:*

1. Honor the expressed will of the majority, respect the concerns of the minority, and give our best efforts to work for the benefit of all.
2. To ensure maximum productivity, the Board should focus on policy-making work, and the staff should focus on day-to-day operational work and provide progress updates.
3. Act with integrity and independence from improper influence as they exercise the duties of their office.
4. Faithfully perform the duties of their office. Board members should act as the 'especially responsible citizen' whom others can trust and respect.
5. Conduct the Work of the Board in an Open and Public Manner. Complying with all applicable laws governing open meetings and public records.
6. Review meeting materials thoroughly and identify any questions, concerns, or points requiring clarification from staff. Whenever possible, questions should be submitted to the staff in advance of the meeting.
7. All interactions should reflect a spirit of mutual respect, transparency, and cooperation.
8. All Town Council members must complete state statutorily mandated Ethics training within the first 90 days of taking office



## **Dress Code for Board Members (Elected and Appointed)**

### **General Expectations**

Board members are expected to present a professional appearance at all official public meetings and events. Attire should reflect the organization's value of professionalism and foster public confidence.

### **Acceptable**

- Slacks, trousers, shorts
- Dresses, skirts
- Blouses, golf-style shirts, or other collared shirts
- Sweaters and turtlenecks

### **Not Acceptable**

- T-shirts with slogans or logos (unless organization-related)
- Athletic wear
- Excessively revealing clothing
- Hats or caps should be removed when conducting meetings in the Town Council chambers (unless for medical/religious reasons)

### **Special Considerations**

- Cultural or religious attire is welcomed and respected.
  - For site visits, community outreach, or outdoor events, appropriate exceptions (e.g., T-shirts, branded polos, safety gear) may apply.
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## **Meeting Attendance for Board Members (Elected and Appointed)**

Board meeting attendance is vital for effective governance and typically requires a quorum (a minimum number of members present) to conduct official business.

1. Make every effort to attend scheduled meetings, arriving on time and prepared to discuss the topics at hand.



## Town of Kitty Hawk Elected and Appointed Board Members Operating Guidelines for High Quality Governance

2. Giving as much notice as possible, notify the Town Clerk or Board Chair in the event you are unable to attend a meeting or you will be late.

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### Acknowledgment and Agreement

I have read and understand the Operating Guidelines for High Quality Government. I agree to abide by these guidelines in order to contribute to a respectful, transparent, and productive process for the Town of Kitty Hawk.

**Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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## MEMORANDUM

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**TO:** John Richeson and Members of the Planning Board  
**FROM:** Rob Testerman, AICP, CFM, CZO, Director of Planning & Inspections  
**DATE:** September 18, 2025  
**RE:** Text Amendment: Variances

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### Attachment- §160D-705

#### Proposal

#### **Sec. 42-74.- Variances**

(a) When unnecessary hardships would result from carrying out the strict letter of this chapter, the board of adjustment shall vary any of the provisions upon a showing of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance **regulation**. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. **A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.**

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify **the** granting of a variance ~~shall is not be regarded as~~ a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance **regulation**, such that public safety is secured and substantial justice is achieved.

~~(5) The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.~~

(b) Notice of the public hearing shall be posted on the subject property at least ten days, but not more than 25 days, in advance of public hearing at which the board is to consider the variance. Notice of the public hearing must be mailed to the person or entity whose application is the subject of the hearing; to the owner of the property that is subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land adjoining the property that is subject of the hearing; and to any other persons entitled to receive notice at least ten days, but not more than 25 days, prior to the hearing for any variance. For the purpose of

applying this standard, an adjoining property is deemed to be any parcel that abuts the subject property or is located directly across a public right-of-way from the subject property. In the absence of evidence to the contrary, the town may rely on Dare County tax listings to determine owners of the property entitled to mailed notice.

(c) Voting on variances. A concurring vote of four-fifths of the board members shall be required to grant a variance. The board may grant the variance as requested, deny the variance, or grant the variance with conditions.

(1) The board of adjustment may impose appropriate conditions on any variance, provided the conditions are reasonably related to the variance.

(2) A violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this chapter.

(d) Under no circumstances shall the board of adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in the district.

### Background & Analysis

The Town's current ordinance requires that, in order to grant a variance, the Board of Adjustment must find that *no reasonable use* of the land, building, or structure is possible without the variance. This standard is more stringent than what is now permitted under state law. Current state statutes clarify that an unnecessary hardship may be demonstrated even if some reasonable use of the property exists without the variance.

In addition, §160D-705 specifies that variances may be granted to provide reasonable accommodations as required by federal or state law, including the Fair Housing Act and the Americans with Disabilities Act.

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### Issue

The Town's ordinance contains a requirement that is inconsistent with current state law and, therefore, unenforceable. It also does not reflect the statutory allowance for variances that provide reasonable accommodations.

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### Proposed Solution

Staff recommends the following amendments to Section 42-74 of the Town Code:

1. Amend Subsection 42-74(a)(2) to include the new language consistent with N.C.G.S. §160D-705(d).
2. Remove Subsection 42-74(a)(5), which contains the outdated "no reasonable use" requirement.

3. Make minor grammatical edits and replace the term “ordinance” with “regulation” where applicable.

These changes will bring the Town’s variance provisions into alignment with state statutes.

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#### **CAMA Land Use Plan**

The Land Use Plan does not include specific policies or goals addressing this matter. However, the proposed amendments are consistent with the Plan’s intent by ensuring the Town’s regulations are compliant with state law.

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#### **Planning Board Action**

The Planning Board is asked to provide the Town Council with a recommendation regarding the text amendment proposal.

Should the Board decide to recommend **approval** of the proposed text amendment, the motion could be worded in the following manner:

“I recommend approval of the proposed amendments to Sec 42-74. The Board has found this proposal to be consistent with the Town’s adopted land use plan.”

Should the Board wish to recommend **denial** of the proposed text amendment, the following motion could be used:

“I recommend denial of the proposed text amendments to Sec. 42-74. The Board finds that this proposal is inconsistent with the Town’s adopted land use plan [Insert any additional justification].”

**§ 160D-705. Quasi-judicial zoning decisions.**

(d) Variances. – When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 17, 50(b), 51(a), (b), (d).)

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## MEMORANDUM

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**TO:** Chairman Richeson and Members of the Planning Board  
**FROM:** Rob Testerman, AICP, CFM, CZO, Planning Director  
**DATE:** September 18, 2025  
**RE:** Commercial Site Plan Review: 5133 Putter Ln

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### Attachments:

- Aerial image of site
- Project narrative
- Revised Site Plan (single sheet)
- Full Plans Set

### Proposal

The applicant has submitted a commercial site plan to develop a currently vacant parcel into additional parking to serve the existing medical offices located to the south. The project proposes approximately 6,771 sq. ft. of asphalt parking area and 1,646 sq. ft. of permeable paver parking area.

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### Background Information

The subject property is zoned Medical Services (MS-1).

Surrounding land uses include:

- **North:** Medical offices (MS-1).
  - **South:** Medical offices (MS-1).
  - **East:** Town-owned property containing a pharmacy, medical office, and the Police Department building. (MS-1)
  - **West (across US 158):** Furniture store and office space (zoned BC-2).
- 

### Staff Analysis

#### **Proposed Use:**

The proposed use is additional parking for the existing medical offices to the south. While standalone parking lots are not specifically identified as a permitted use in the MS-1 district, they

are permitted in the BC-1 and BC-2 districts. In this case, the lot is not intended to function independently, but rather as an accessory parking area to the adjacent medical offices.

**Lot Coverage:**

- Maximum allowed: 60%, or up to 72% when coverage above 60% consists of permeable pavement (Sec. 42-1).
- Proposed: 9,454 sq. ft. total lot coverage physical area (47.27%). Compliant.
  - 7,808 sq ft concrete and asphalt; 1,646 sq ft permeable pavers

**Yards/Setbacks:**

- Per Sec. 42-545, parking lots must be at least 10 ft. from a public right-of-way.
- Proposed: Approximately 44 ft. from the nearest right-of-way. Compliant.

**Access:**

The site will be accessed by:

1. An extension of the parking lot serving the medical offices to the south.
2. A proposed ingress/egress point onto the portion of Putter Lane that extends beyond the private right-of-way onto Town-owned property (5200 N. Croatan Highway).

Approval of this site plan would effectively grant access rights across the Town-owned parcel.

**Drainage:**

Per ordinance, parking lots may not drain across sidewalks or onto adjoining property except into a natural watercourse or drainage easement. The applicant has proposed stormwater management features to retain on-site runoff.

**Internal Circulation:**

- Requirement: 22 ft. drive aisle width for 90-degree parking with two-way traffic (Sec. 42-545).
- Proposed: 22 ft. and 24 ft. drive aisles. Compliant.

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**Recommended Condition of Approval**

- Due to citizen concerns about traffic on Putter Lane during review of the medical office project—and the Town's previous condition restricting the existing access to emergency vehicles only—staff recommends that if access to 5200 N. Croatan Highway is granted, it be restricted to **ingress only from the north (left-turn entry) and egress limited to right-turn only.**
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**Planning Board Action**

The Planning Board is asked to provide the Town Council with a recommendation regarding the proposed site plan for the parking lot expansion.

If the Board chooses to recommend **approval**, the motion may be stated as follows:

“I move to recommend approval of the commercial site plan for 5133 Putter Lane, subject to the condition(s) recommended by staff [INSERT ANY ADDITIONAL CONDITIONS HERE].”

If the Board chooses to recommend **denial**, the motion may be stated as follows:

“I move to recommend denial of the commercial site plan for 5133 Putter Lane, based on the following findings: [CITE SPECIFIC SECTIONS OF THE TOWN CODE OR LAND USE PLAN WITH WHICH THE PROPOSAL IS NOT CONSISTENT].”

**Directions to the Subject Property**

(from Kitty Hawk Post Office, N. Croatan Highway & Kitty Hawk Road)

Turn right, heading north on N Croatan Highway

Drive north for 2.5 miles

The subject parcel will be on the left, an unimproved located between two medical offices.

