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**Kitty Hawk Board of Adjustment Meeting
October 21, 2025 ~ 4:00 p.m.
Kitty Hawk Municipal Building**

Agenda

1. Call to Order/Attendance
2. Approval of Minutes from December 19, 2024 Meeting
3. Approval of Minutes from July 1, 2025 Meeting
4. Town Manager Presentation
 - a. Elected and Appointed Board Members Operating Guidelines for High Quality Governance
5. Swearing In of Speakers

***** NOTE: The Board of Adjustment is quasi-judicial body and anyone participating in a public hearing before the Board must be sworn in prior to speaking. When appearing before the Board, please state your name and address for the record and address the Board members in a courteous manner.***

6. 207 Jejac – Applicant is requesting a variance to reduce the front yard setback from 25 feet to 15 feet.
 - a. Public Hearing
 - b. Board Deliberation & Decision
7. 119 Jejac – Applicant is requesting a variance to reduce the rear yard setback from 25 feet to 12.8 feet.
 - c. Public Hearing
 - d. Board Deliberation & Decision
8. Other Business:
 - a. Chairman Meads
 - b. Board of Adjustment Members
 - c. Town Attorney
 - d. Planning Director
 - a. Set meeting day discussion
9. Adjourn

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Agenda

- 1 Call to Order/Attendance
2. Approval of Minutes from October 15, 2024 Meeting
3. Swearing In of Speakers

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4. Appeal- Appeal of staff interpretation of Sec. 42-251(d)(1) regarding building area
5. Other Business:
 - a. Chairman Meads
 - b. Board of Adjustment Members
 - c. Town Attorney
 - d. Planning Director
6. Adjourn

1.) Call to Order/ Attendance

Chairman Meads: Called the meeting to order at approximately 6:00 p.m., the attendance was noted by Jessica Everett.

Board Members Present:

Blair Meads, Chairman
Abby Berquist
Kipp Tabb, Alternate
William Yetzer, Alternate
Natalie Smith

Staff Present:

Rob Testerman, Director of Planning and Inspections
Casey Varnell, Town Attorney
Jessica Everett, Administrative Zoning Technician/ BoA Clerk
e Zoning Technician/Clerk to the Board

2.) Approval of Minutes from October 15, 2024 meeting

Kip Tabb moved that the board approve the minutes of the October 15, 2024, meeting. Seconded by William Yetzer. With a call for the vote, the motion carried 5-0.

3.) Swearing in of Speakers

Chairman Meads: At this time, I guess it'd be appropriate to swear in.

Mr. Gallop: We can go ahead and skip that. I'll cover that.

Chairman Meads For this meeting, Ben Gallop is going to help us and so I'm going to turn it over to him to go over our guidelines.

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Ben Gallop: Thank you, Mr. Chairman. To the rest of the Board of Adjustment members, some of whom I've met and others with whom I haven't, I had the chance to speak with a couple of you. I'm Ben Gallup. I'm going to represent the board as an entity tonight, and as Mr. Varnell said, he will represent the town and staff. The applicants will be represented by Mr. Ellis, who is wearing the blue tie. And because of the bunch of attorneys being involved in this being a quasi-judicial hearing, the reason I'm here is to help guide y'all through that process to get you in the right ballpark in the proper way to answer the question that's before you tonight. And you'll have two fine attorneys who will tell you what those questions are and what their position is on what the answer should be, and you'll have an opportunity to decide which one you agree with when the hearing's done. And as part of this I usually have a script that I go through that's boring but it also gives you a little bit of a reminder and it gives everyone else a reminder of what a quasi-judicial hearing is and what it isn't and what it's about and so I'm going to step my way through that and work my way through the process. Everybody's ready.

Mr. Gallop: So, we're here today to hear and decide on an appeal application submitted by GHK Development Inc. and GEG Real Estate LLC regarding October 15, 2024, formal interpretation issued by the town's Director of Planning and Inspections, which interpreted town code section 42-251(d)1 as it relates to a proposed development of a self-storage facility at 6100 Croatan Highway. Please bear with me while I provide a brief overview of the Board of Adjustment for those who may not be familiar with how it functions, and as a reminder to those who are familiar. The Board of Adjustment is a formal quasi-judicial board which operates under rules and procedures set forth by statute in a fashion similar to a court of law. The board's decisions must be based upon substantial, competent, material, factual evidence presented under oath at this hearing. While the board is not strictly bound by the courtroom rules of evidence, it is guided by those rules and the general statutes as to what evidence is admissible. Hearsay, generalizations, speculation, most lay witness opinions may be subject to objections precluding them from being considered in the board's decision-making process. In that regard we ask that anyone who's going to testify restrict your testimony to only factual information that is relevant to the limited issues under consideration. Testimony by all witnesses must be given under oath. All witnesses must go to the lectern and identify themselves in order to provide their testimony. No other discussion by the audience is allowed. Any physical evidence presented will be made part of the official record of the proceedings and be retained by the board clerk. Parties may object to testimony and cross-examine one another's witnesses and members of the general public who provide testimony. Parties' counsel will be provided with an opportunity for closing arguments at the end of the evidentiary portion of the hearing. If you have an attorney, then questioning objections and arguments must come from your attorney. It's imperative that no member of this board participates in or vote on any quasi-judicial matter in a manner that would violate an affected person's constitutional rights to an impartial decision-maker. Impermissible violations of due process include, but are not limited to, one, having a fixed opinion prior to the hearing of the matter that is not susceptible to change, two, undisclosed ex parte communications, and three, having a close familial business or other associational relationship with an affected person or financial interest in the outcome of the matter. Previously undisclosed ex parte communications, so those would be

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communications with a party without the other party present, which have not caused you to develop a fixed opinion, may be cured through disclosure of the facts or information obtained on the record. A party or a member of the board, including the board member at issue, may object to any member's participation for lack of impartiality. If an objection is raised to a member's participation that member does not choose to recuse himself or herself, the remaining member shall by majority vote rule on the objection. Do any of you have any conflicts which would potentially make you an impartial decision-maker or have any undisclosed communications or information you would like to disclose at this time? Seeing all no's. Do any parties have any objection to any member's participation in this hearing? No. Hearing none from both the applicant and the town. So, let me give you a quick roadmap of the process for today's hearings. First, I'll ask if there are any motions by the parties. I don't expect that there are any. They didn't mention any a little while ago. The parties as we've discussed are the town and the applicant in this case. Upon opening the evidentiary hearing, we'll go first to the town, which will provide their testimony, and then to the applicant and each time that someone comes up to testify, the other side will have an opportunity to cross-examine and possibly to again have the other side the first person come back up and testify again. At the end of the party's testimony, we'll open it up briefly for the general public to see if there's someone in the general public I'm not seeing, but a couple of people here, but if someone shows up from the general public who wishes to provide evidence, that will be their opportunity. They will not be allowed to call or ask questions of witnesses, make objections, or make arguments, and their testimony will need to be factual and relevant to the issues. Once we complete the evidence the parties will have a brief opportunity provide closing arguments to put together their position for the board's consideration and following the closing arguments the board will deliberate on the issues in the appeal and attempt to reach a decision whether to reverse or affirm wholly or partly or modify the decision that was appealed from and you'll have the opportunity to make any order or requirement or decision that ought to be made as if you were the official who made the decision initially. So tonight, you have in front of you a decision by the planning director any decision that he could have made you could change his decision to be that decision.

Ms. Smith: Can you back up to the beginning of that paragraph and read that part again, reverse?

Mr. Gallop: You can reverse, affirm wholly or partly or modify the decision. In looking at it it's the vast majority of cases are reversed or affirm rather than modify and they're usually wholly or partly and in this case I think the high likelihood is that you'll be in one of those two categories rather than one of the others but I wouldn't set that in stone until we get to the end of that. I don't see any other formal parties that have any interest in intervening. We've already discussed Mr. Ellis. Do you have any motions or anything that you'd like to hear before the evidentiary stuff?

Mr. Ellis: None

Mr. Gallop: How about you, Mr. Varnell?

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Mr. Varnell: None

Mr. Gallop: Okay. All right, so we'll move on to the hearing on the merits of the appeal, and we'll open the evidentiary portion of the hearing. All persons who expect to give testimony to this during this hearing, please step forward to be sworn in. Lawyers intending to provide arguments only and not substantive evidence need not be sworn.

The Clerk for the Board, Jessica Everett, swore in by oath those persons who would be offering testimony during the hearing.

- Rob Testerman, Director of Planning & Inspections, Town of Kitty Hawk
- Eddie Goodrich, applicant

4.) Appeal- Appeal of staff interpretation of Sec. 42-251(d)(1) regarding building area

Mr. Gallop: so now, we'll move forward with the town's evidentiary showing. And before I get into that Mr. Varnell and Mr. Ellis both agreed that all of the information in the notice of appeal that was included in the packet and in the statements of the town, everything that was included in the packet is in the record and is evidence that they've all that both agreed would be led into the case.

Mr. Varnell: I'll call Rob Testerman. Can you state your full name for the record please?

Mr. Testerman: Robert Testerman.

Mr. Varnell: And Rob, what's your official passage in the county?

Mr. Testerman: I'm the Director of Planning and Inspections.

Mr. Varnell: How long have you been a director of planning and inspections?

Mr. Testerman: For the Town of Kitty Hawk, just over 10 years.

Mr. Varnell: And Rob, we're here tonight for an appeal of its own interpretation. Just for the record, can you explain to them what ordinance is subject to this appeal? What particular ordinance? Or portion thereof.

Mr. Testerman: It's section 42-251(d)(1). A portion of that language states that no use of an owner or tenant on the site shall exceed the maximum area of 40,000 square feet of building area, as shown on the commercial sites.

Mr. Varnell: Rob, does that come from a larger ordinance? Is that a portion of a different chapter of our code?

Mr. Testerman: It's a section for the BC2 Beach Commercial District.

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Mr. Varnell: And it's governing what?

Mr. Testerman: It's the dimensional requirements.

Mr. Varnell: And to that particular portion of the ordinance, were you asked in writing for formal zoning interpretation?

Mr. Testerman: I was.

Mr. Varnell: As Ben said, we've got some exhibits that are attached to our application. The applicants application and our response to that. So, I would point to Exhibit 3 in our application. Rob, is that the written zoning interpretation that you issued?

Mr. Testerman: It is.

Mr. Varnell: And what date did you issue that?

Mr. Testerman: October 15th, 2024.

Mr. Varnell: And did the applicant request that you issue this interpretation of this particular code provision?

Mr. Testerman: They did.

Mr. Varnell: And after review of the code provision, as you said, section 42-251 (d)(1) what particular portion of that ordinance was the applicant contesting, or questioning?

Mr. Testerman: Requesting an interpretation of the maximum area of 40,000 square feet of building area, whether that refers to the total building area or the square footage. My interpretation was that it refers to the total building area.

Mr. Varnell: And the example of a multi-story building, for example, how in your opinion would the building area be calculated?

Mr. Testerman: The area of each floor, totaled together, would be the total building area.

Mr. Varnell: And what you were doing, whether it was research, whether it was just knowledge to you, what factors led you to this interpretation?

Mr. Testerman: Typically, if our zoning ordinance doesn't contain a specific definition, we will refer back to these common definitions, in my mind and practice that I've seen in building areas as long as it's talking about the total square footage. When you're looking at real estate listings, you see the area of the dwelling, it's talking about the area of all floors combined. In my dealings with a building inspector and the building code, it refers to the area enclosed in the four walls multiplied by the story of the building area.

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Mr. Varnell: And what you just described there, is that a definition from a particular code?

Mr. Testerman: I won't say it's the quote definition, but it's generally what the building code says for the building area.

Mr. Varnell: And didn't you recite that portion of the building code within your application?

Mr. Testerman: It is in the building code.

Mr. Varnell: And again, from the building code, using that language, it is your interpretation that the North Carolina Building Code says the building area is the total area contained within the four walls of the building.

Mr. Testerman: Yes.

Mr. Varnell: And you had mentioned Mr. David Lewis. Who is that?

Mr. Testerman: That's our Chief Building Inspector.

Mr. Varnell: And did Mr. Lewis send an opinion?

Mr. Testerman: He did send an email of opinion.

Mr. Varnell: And is that exhibit 4 attached to our response to the applicant?

Mr. Testerman: Yes.

Mr. Varnell: And would you just, for the board what was Mr. Lewis's opinion? Stated directly.

Mr. Testerman: He stated a building area is total square footage of the entire building. The square footage is based on the total of the completed project for each floor.

Mr. Varnell: And was there something within, I believe, in your response at least, was there something within the intent portion of our ordinance and or land use plan that you feel is somewhat at least persuasive in this matter?

Mr. Testerman: Yes. The BC2 district and the scope and intent, and I don't recall the code of the section off the top of my head, it states that the BC2 is intended for medium intensity commercial development. Specifically, it states that big box retail is not appropriate for that use. And while the proposed use here is not big box retail, the scale of the development could be comparable in my opinion.

Mr. Varnell: Are you talking about proposed use? What do you mean?

Mr. Testerman: I mean the mini warehouse facility.

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Mr. Varnell: Okay. And how many square feet was the proposed use in this case? How many square feet was that mini warehouse going to be?

Mr. Testerman: 105,000 square feet.

Mr. Varnell: And, again, just for reference, 105,000 square feet is the total area of that building inside all four walls. How many stories?

Mr. Testerman: Three stories.

Mr. Varnell: At this point, Rob, I will let you speak as to anything else you think may be relevant to this matter, I'd like to make sure the board understood precisely what we were disputing and arguing over tonight and how and why we came to your opinion. So I'll turn it over to you. If you don't have anything, we'll press the board for questions.

Mr. Gallop: Mr. Ellis, do you have any questions for Mr. Testerman?

Mr. Ellis: Rob, what is the date of your report that you were going over with Casey?

Mr. Testerman: Can you repeat that response

Mr. Ellis: Whatever he gave you to get you to pull it up.

Mr. Testerman: Let me get it off my desk.

Mr. Varnell: Rob, he's talking about these two docs.

Mr. Testerman: Oh, okay. The interpretation was dated October 15th, 2024, and the opinion of the Chief Building Inspector was dated December 12th, 2024.

Mr. Ellis: So the building inspector was just a few days ago?

Mr. Testerman: Yes, when I asked him to put in writing his opinion.

Mr. Ellis: And did he cite any authority, or was that just his pure and simple statement that an e-mail from him would nullify the cite?

Mr. Testerman: My thought would be the authority of the Chief Building Inspector, and in the definition from the building code.

Mr. Ellis: All right. Does he cite the building code in that statement?

Mr. Testerman: I believe he did.

Mr. Ellis: And then he says that a building area is a total square footage of the entire building. There's no code provision in the town code that says that. Is that true?

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Mr. Testerman: Right. The town code does not provide a specific definition for building area.

Mr. Ellis: And that's why we're here. Because the word building area, as used in the ordinance we're talking about, is not defined in the town code, correct?

Mr. Testerman: Correct.

Mr. Ellis: The square of floor area, gross is defined.

Mr. Testerman: Correct.

Mr. Ellis: All right. And that means what you said, a total square footage of the entire building, every floor.

Mr. Testerman: Correct.

Mr. Ellis: And the building footprint is defined.

Mr. Testerman: He said that.

Mr. Ellis: You're the planning director. Is the building footprint defined in the town code?

Mr. Testerman: I believe so. I don't have the Town Code in front of me. I can pull it up.

Mr. Ellis: It is defined in the list of definitions in Chapter 42 of the town code. And what is the building footprint? How is that defined?

Mr. Testerman: I'll have to defer back to the building code definition.

Mr. Ellis: Isn't it basically just whatever area on the ground the building actually sits on?

Mr. Testerman: That would be my general understanding, but to give the definition of the town code, I would have to pull it up.

Mr. Ellis: But, again, is it just as easy to say that building area is building footprint is building area is total gross footage?

Mr. Testerman: I Don't believe so. I think if it was referring to building footprint, Section 42-251, you'd want to state building footprint.

Mr. Ellis: Okay. But it also does not state floor area gross, does it?

Mr. Testerman: It doesn't.

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Mr. Ellis: It doesn't say either one of them. That's our dilemma. That's what we're trying to define is what this building area means as used in this ordinance. Correct?

Mr. Testerman: Correct.

Mr. Ellis: And in your interpretation came at the end of a fairly lengthy process. Is that true?

Mr. Testerman: The formal interpretation?

Mr. Ellis: Yes

Mr. Testerman: Yes.

Mr. Ellis: In other words, Mr. Goodrich, the owner of the land and its developer, Mr. Cobb, had submitted a proposed site plan for an extra space storage, self-storage facility. And it was initiated in January or May 2024?

Mr. Testerman: Correspondence began in January. The application came in May.

Mr. Ellis: And, again, the architect asked you what that 40,000 square foot of building area would have meant. Correct?

Mr. Testerman: Correct.

Mr. Ellis: And you told him you'd have to get back to him.

Mr. Testerman: Correct.

Mr. Ellis: And that you wanted to talk to the town attorney.

Mr. Testerman: Correct

Mr. Ellis: And subsequently, you told him that your thinking was that it meant the total floor area gross. And as a result of that, Mr. Varnell recommended that there be a text amendment made specifically about the building footprint.

Mr. Testerman: I believe the response was that a text amendment would be required to exceed 40,000 square feet, something to that nature.

Mr. Ellis: Well, again, what the text amendment, you're familiar with a text amendment, and you were familiar that what it attempted to do was say that 40,000 square foot was the limit of the building area. It didn't limit the total floor area or gross of the whole building.

Mr. Testerman: Right. And if I recall correctly, specifically for mini warehouse facilities, a 40,000 square feet footprint and defines the number of floors as the 35-foot height-wise.

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Mr. Ellis: And actually, what was proposed was 105,000 floor area, gross.

Mr. Testerman: 105,000 square feet floor area, gross.

Mr. Ellis: And that was 35,000 on each floor and three floors.

Mr. Testerman: That's right.

Mr. Ellis: And no problem with the building height it was within the height limitations

Mr. Testerman: Right

Mr. Ellis: So that got submitted and the planning commission unanimously approved each one of them, right? The text amendment and the special use permit application.

Mr. Testerman: They recommended it. They're an advisory body, the chairman is very clear at each meeting that the council is not bound by their recommendation.

Mr. Ellis: But they recommended it to pass. Correct?

Mr. Testerman: Correct.

Mr. Ellis: And then got to Town Council and that's where the text amendment was denied.

Mr. Testerman: Correct

Mr. Ellis: Do you acknowledge that there's been some confusion on one of them?

Mr. Yetzer: Sir, who recommended it unanimously?

Mr. Ellis: The Planning Board, The Planning Commission.

Mr. Yetzer: All right.

Mr. Ellis: They got to the Town Council and the text amendment had to be acted on first. Correct?

Mr. Testerman: Yes

Mr. Ellis: And there was some confusion on whether it's the text amendment that was applicable in the beach commercial or the village commercial district.

Mr. Testerman: I can't speak for what the council thought if there was some confusion. I know there was a discrepancy initially in the minutes referred to VC versus BC. As Casey mentioned when I spoke to him, on a recording the difference between B and a V, is

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difficult. I have to correct his name, from Casey Barnell to Varnell, quite often. I can't speak to what the individual council members thought.

Mr. Ellis: Do you remember some comments Councilwoman Walker that didn't like anything like that on Kitty Hawk Road or in Kitty Hawk Village?

Mr. Testerman: I do not recall the exact words.

Mr. Ellis: So those comment were made, that's applicable to the VC, Village Commercial District. Correct?

(25:12 - 25:34)

Mr. Testerman: If it was in Kitty Hawk Village, The Woods Road it would be BC or VR district

Mr. Ellis: And then, again, the minutes, in fact, the Town Council just corrected the minutes as past assembly. Is that correct?

Mr. Testerman: Correct. At that time the Town Clerk, acknowledged the mishearing of the transcription and brought it forward.

Mr. Ellis: And if anybody's interested, obviously the video of that meeting in August would be the best evidence of that.

Mr. Testerman: Yes

Mr. Ellis: All right, so that tax amendment gets denied, which means the Town Council never even looked at the special use permit and the site plan for the proposed project.

Mr. Testerman: Correct. To be able to approve the special use permit and the site plan the text amendment, as was discussed with the applicant previously, the text amendment had to be approved first without the text amendment the site plan couldn't be approved. Hence, the square footage exceeding the maximum limit.

Mr. Ellis: But it was never even considered.

Mr. Testerman: Correct.

Mr. Ellis: Once the text amendment was denied the applicant, that was it.

Mr. Testerman: Correct.

Mr. Ellis: So they never got to present their plans, their site plan or discuss what the views were and how the plan blended in with where it was proposed.

Mr. Testerman: Correct. They didn't meet the requirements of the ordinance. So, the text amendment was denied, so there was no need to look at the special use.

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Mr. Ellis: So after that occurred, that's when Mr. Goodrich, Mr. Cobb, and I got on the phone with, emailed to you and Casey and said, you know, we really want to see if there's a way to find a way through this to the time and money that's been spent on this plan. Remember that?

Mr. Testerman: Yes

Mr. Ellis: Remember when we had a Zoom call in August?

Mr. Testerman: Yes.

Mr. Ellis: Do you remember that we were all on the same page, that we really didn't need the text amendment? That the amendment dealt with building area which meant building footprint, not gross floor area?

Mr. Testerman: I do not recall being in agreement with that. Understanding where that argument could be made and bringing it forward to see if the Council would agree to that. And then, I believe, Casey asked for something in writing to be able to bring forward to Council. I believe what was submitted in writing caused us to take a further look at it and kind of reaffirm our original position.

Mr. Ellis: But, again, do you admit that when Mr. Goodrich and I and Mr. Cobb hung up from that Zoom call, that we were under the impression that you and Casey were on board with our interpretation that building area meant building footprint?

Mr. Testerman: I can't speak to what your impression was. I remember not saying much on the call and was kind of nodding and listening and then speaking to Casey after the call.

Mr. Ellis: But do you remember at any time in that call saying, hello guys, I've already told you, here's my interpretation in January of this year, that it means floor area gross, it doesn't mean building footprint.

Mr. Testerman: No, because in the years I've been doing this, I try not to be one of the, come down on it, I try to work with people and hear people out but I don't like being the one with an iron fist.

Mr. Ellis: All right, so you admit you didn't say that during that call?

Mr. Testerman: Correct.

Mr. Ellis: All right. And you admit that Casey asked me to submit something on behalf of the applicant to see if that would get the wheels turning on perhaps looking at this again?

Mr. Testerman: Yes.

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Mr. Ellis: And I did that, and he and I went back and forth on a couple of letters and emails and that sort of thing?

Mr. Testerman: Yes.

Mr. Ellis: And then eventually, he sends me an email on October 7th, and I'll give you a copy of it, and that includes Exhibit 8 of the applicant's exhibit. Do you remember that email?

Mr. Yetzer: Excuse me, what exhibit?

Mr. Ellis: It's exhibit 8, and I apologize, this is, I'm walking out of the office and didn't bring a copy for all of you guys this morning.

Ms. Berquist: What's the date of that email?

Mr. Testerman: October 7th, 2024.

Mr. Tabb: All right, so that was an email on October 7th?

Mr. Ellis: Yes, sir. It's an email from Casey to me dated October 7th, 2024.

Mr. Meads: It's near the end of your packet.

Mr. Tabb: It is?

Mr. Testerman: It would be in the notice of appeal, not the staff report.

Mr. Ellis: Again, this exhibit is not in your packet, but I meant to bring extra copies tonight, and didn't, so don't look for it, it's not there. The one I got, is right here. So, can you read, the first two paragraphs of number two from Casey.

Mr. Testerman: It states, concerning the interpretation of, quote, the building area, from the current special use ordinance, governing mini warehouses, Rob was able to locate several items of correspondence, which occurred during January through April of 2024. These written exchanges were primarily between Rob, Gordo, Eddy and Jerry Ducote, agent of GHK Development in form of electronic email. I have attached the same hereto for your ease of reference. Unbeknownst to Rob and myself, when we first spoke via Zoom several weeks ago, the precise issue of Planning Director's interpretation of the building area was addressed within these email exchanges. Specifically, on January 16th, 2024, Mr. Ducote asked Rob to confirm whether the 40,000 square feet is a total building area or a building footprint area. In requesting this interpretation, Mr. Ducote made it clear that the 40,000 square foot structure in total size would take the proposed development out of the realm of economic sense.

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Mr. Ellis: But what Casey said was, from the notes to Rob or myself, when we spoke via Zoom several weeks ago. So again, you understood that he was walking away from the Zoom conversation.

Mr. Testerman: I think unbeknownst to him, the emails that were exchanged in January were ten weeks prior and it wasn't something that the forefront of my mind at all. And Casey was there, he was able to find them.

Mr. Ellis: And once we got that email, that's when we asked you to put a formal opinion to which we could respond.

Mr. Testerman: Sure

Mr. Ellis: And that's why we're here tonight.

Mr. Testerman: Correct

Mr. Ellis: and we're asking them to tell us what the ordinance 42-251(b)(1), what it means when it says 40,000 square feet of building area as shown on the commercial site plan.

Mr. Testerman: Correct

Mr. Ellis: And that, again, a building area is not defined in the town plan. Correct?

Mr. Testerman: Correct.

Mr. Ellis: The building footprint is and floor area gross is, but not building area.

Mr. Testerman: Correct

Mr. Ellis: It is your interpretation that building area means floor area gross as used in this ordinance?

Mr. Testerman: My interpretation is total building area. Total square footage.

Mr. Ellis: But do you know that it could mean building footprint?

Mr. Testerman: I don't believe building footprint unless it is a one story building.

Mr. Ellis: Again, building area is not defined. Right?

Mr. Testerman: Correct.

Mr. Ellis: And the word building area is used not floor area gross which is defined.

Mr. Testerman: Correct.

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Mr. Ellis: And the building area is used not building footprint which is defined.

Mr. Testerman: Correct

Mr. Ellis: And I think that's all my questions.

Mr. Gallop: Thank you. Mr. Varnell, do you have any follow-up questions, redirect for Mr. Testerman?

Mr. Varnell: Rob, just for the record, if the board members want to take a look at the string of emails that was referenced just now during Rob's testimony, Rob, is it accurate to say that Exhibit 2 attached to your application is an accurate copy of those emails starting in January between you and the applicant and or you and representatives?

Mr. Testerman: Yes.

Mr. Varnell: And is it your opinion that the question posed in those emails in January of some 10 months before the Zoom call was being read, is your understanding or opinion that that is a precise question asked of you? What we're here about tonight, was that a precise question asked of you then? As far as interpretation is concerned?

Mr. Testerman: That's how I took it, yes.

Mr. Varnell: And in this email, how would you characterize your response or the Town's response to that request for interpretation back in January some 10 months ago?

Mr. Testerman: I felt it was accepted.

Mr. Varnell: And is it the same exact response that you're testifying to today? Having your interpretation then in January? Is it the same response you're testifying to today?

Mr. Testerman: Yes.

Mr. Varnell: And just, so you've established that building area is not defined, there's no dispute over that, correct?

Mr. Testerman: Correct.

Mr. Varnell: The floor area ratio is. Building footprint is. is the term building area are those two words within those two words that are defined? Isn't floor area, you've got area. You've got building footprint, so it's building. If you put building footprint and floor area together, containing now the word building area? Phrase building area. What would be your definition of the combination of building footprint and floor area? So, it's referring to the building.

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Mr. Testerman: Say that one more time

Mr. Varnell: So we've got the building footprint, that's defined. We've got floor area gross, that's defined. Well what's up tonight for consideration is the phrase building area. So we've got two definitions, floor area and the building footprint. If you use those, does that equal, if you conglomerate two definitions, right, is that the total square footage of a building? Would that be your understanding?

Mr. Testerman: Yes, the total floor area.

Mr. Varnell: For each floor atop the building footprint?

Mr. Testerman: Yes.

Mr. Varnell: Okay, thank you.

Mr. Gallop: Anything else, Mr. Ellis? Mr. Ellis, before you go for it, are we sure that they're getting recorded?

Ms. Everett: Yes

Mr. Gallop: Okay, I just saw the microphones were kind of facing away and I just wanted to make sure that all this was on the record and being recorded.

Mr. Ellis: Ready?

Mr. Gallop: Yes, sir.

Mr. Ellis: Robert, basic math, geometry, algebra, how do you calculate area? So, it's two dimensions.

Mr. Testerman: For a two-dimensional plane, you know, sure. We commonly talk about buildings and I'm talking about a block.

Mr. Ellis: Which is three-dimensional.

Mr. Testerman: Right.

Mr. Ellis: Okay. And a commercial site plan, is that typically a two-dimensional document?

Mr. Testerman: Typically, the site plan itself is typically two-dimensional, but there's typically reference to the overall size of this elevation.

Mr. Ellis: Okay, I might have noticed some things of that that explain that, but basically what you visualize is two-dimensional. What's shown on the, what's moving on the map. And

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again, the coordinates in question talk about the 40,000 square feet of building area as shown on the commercial site plan, isn't that what it says?

Mr. Testerman: It is.

Mr. Ellis: And again, the commercial site plan is a two-dimensional picture.

Mr. Testerman: The site plan is an areal view looking down.

Mr. Ellis: Which is two-dimensional. Thank you.

Mr. Gallop: Mr. Varnell.

Mr. Varnell: On that commercial site plan, was it prepared by a licensed professional engineer on behalf of the applicant?

Mr. Testerman: I believe it was

Mr. Varnell: And that professional engineer, how many square feet on this two-dimensional site plan, how many square feet did he identify that building had?

Mr. Testerman: 105,000 square feet.

Mr. Varnell: Thank you.

Mr. Ellis: How many per floor

Mr. Testerman: I don't recall

Mr. Varnell: We rest.

Mr. Gallop: Do you have any more, you don't have any more evidence?

Mr. Varnell: We would now rest.

Mr. Gallop: Mr. Ellis, do you have anyone who you'd like to have testify?

Mr. Ellis: Yes. Mr. Goodrich

Mr. Gallop: Mr. Testerman, you can sit down now if you'd like.

Mr. Yetzer: Are we going to have time to ask Rob questions?

Mr. Gallop: Do you have any questions for Rob?

Mr. Yetzer: I have a whole bunch of questions.

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Mr. Gallop: Let's back up and let Mr. Testament again. I'm sorry about that.

Mr. Yetzer: Do I got to use this button thing? It's green.

Mr. Testerman: If it's green, you're good.

Mr. Yetzer: All right. Rob, just what, as a planner and a professional and somebody who's been doing this forever, what is the intent of that paragraph that we're arguing about tonight? What is it there for?

Mr. Testerman: My reading is, so we've got the BC1, which is our general beach commercial, BC2, which is beach commercial, and then the BC3, which is the area for big box retailers, higher intensity commercial development. So, the BC1 is lower, I guess a lower intensity development scale. The same language exists in the BC1, except it's limited to 25,000 square feet of building area. And then the BC2 is supposed to be kind of a medium intensity commercial development. And then, as I mentioned, the BC3 is where the Wal-Mart and the Harris Teeter and the larger intensity commercial use.

Mr. Yetzer: In that paragraph, it says the site can't be over seven acres, which means it could be 6.99.

Mr. Testerman: Correct.

Mr. Yetzer: This site is about five?

Mr. Testerman: I believe so.

Mr. Yetzer: If you want a three-story building, and it can only be 40,000 square total, three floors, that's 13,300 building footprint.

Mr. Testerman: Correct.

Mr. Yetzer: More or less. That's only about 5% of that lot being covered by the building. And I believe this zone allows 60 to 72%, depending on permeable pavement.

Mr. Testerman: Correct. And there is language in that same section, I believe it's in the intent, where it says You can find that in the staff response that was provided to you. So it says, unless otherwise stated, the section applies to the BC2 commercial district. The BC2 district is established to provide for the development of commercial facilities in Kitty Hawk Beach to furnish a broad range of services and commodities to serve the entire community. The BC2 district has been established to provide for the commercial needs of the town. The commercial development within the BC2 district will be characterized by medium-sized to large-sized land parcels with commercial development of medium intensity. Commercial centers may be authorized in this district, but large shopping centers or shopping malls and big-box retail wholesale businesses exceed the scale development

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plan for the district. So, the commercial centers, as I read it, is dealing more with, it's zoned BC1, but kind of the same with the Dune Shops, the area where the veterinary office is just to the north. So, it's a larger overall building, but there are multiple tenants, users inside. The language that we're here talking about tonight, it also says that no use of an owner or tenant on the site shall exceed the maximum area of 40,000 square feet. So it's saying you can have multiple users on site up to the 40,000 square feet of building area, but no one user, no one tenant is going to exceed that amount.

Mr. Yetzer: So I can have a 400,000 square foot building as long as nobody's over 40, they're good? I mean, let's just say we have this dream huge parcel, well, whatever. Whatever 72% of 6.99 is.

Mr. Testerman: Right. I mean, that's the way it reads. No use of an owner or tenant on the site shall exceed the maximum area of 40,000 square feet of building.

Ms. Smith: With respect to that part of the conversation, since the site plan has another building on it, that's not relevant?

Mr. Testerman: No, there's no issue with that. I believe it's a 10,000 square foot multi-unit commercial building.

Ms. Smith: Right.

Mr. Testerman: The specific uses weren't identified in the proposal for that, but if there's retail or what have you, that could be done by right.

Ms. Smith: But since it's a separate building, it doesn't play into the square footage?

Mr. Testerman: Correct.

Ms. Smith: Okay, thank you.

Mr. Yetzer: So if these guys made three shell companies and they said, we each are going to own one third of this self-storage thing, you'd have to, okay it?

Mr. Testerman: I would probably defer to Casey on that.

Mr. Yetzer: It seems to me this paragraph is trying to limit density, right?

Mr. Testerman: I believe so, yes.

Mr. Yetzer: All right. Is self-storage allowed in BC2?

Mr. Testerman It is permitted in a planned commercial development as a special use, not in the BC2 district. But the site in question has been approved as a planned commercial development, and then there was a previous text amendment that got mini storage

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warehouse facilities allowed as a special use permit within the planned commercial development. The P.C.D. is an overlay district that can be applied through a rezoning legislative decision, rezoning either the BC1, BC2, I think BC3 districts. There's certain site considerations that has to be considered. A certain size has a certain road front that we have to handle all the things that have to be met.

Mr. Yetzer: And that, what did you call it, P.U.C. or whatever?

Mr. Testerman: Beach commercial.

Mr. Yetzer: I mean, the special overlay?

Mr. Testerman: So, the language in the P.C.D. says that, you know, it refers back to the underlying zoning district when you're looking at the lot coverage and dimensional requirements and this falls under dimensional requirements. The P.C.D. kind of gives a little bit more flexibility for development. Different uses have been written specifically into the P.C.D. There's language in there for when calculating lot coverage, roadways within the P.C.D. aren't counted towards the sidewalk. So, it gives a little greater flexibility than just the standard BC2 and BC1.

Mr. Yetzer: Well, a P.C.D. then, that has to get approved by council and the whole thing.

Mr. Testerman: Correct.

Mr. Yetzer: And they can say, no, we don't think a self-storage is what we need in this town. And if they can get a majority, that's the end of it, correct?

Mr. Testerman: Correct.

Mr. Yetzer: Because it isn't allowed in that district.

Mr. Testerman: Well, the P.C.D. is already in place.

Mr. Yetzer: Oh, it's in place. And self-storage is allowed.

Mr. Testerman: The text amendment to make self-storage allowed is a special use permit with a list of specific requirements.

Mr. Yetzer: Okay. I think that's all I got.

Mr. Gallop: Does somebody else have a question?

Mr. Meads: Is the same language or similar language used in BC3?

Mr. Testerman: Regarding square footage?

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Mr. Meads: Yeah, how does BC3 read?

Mr. Testerman: I believe it is listed in BC3 district. I can, I don't know, pull it up in the middle of this? I'm not sure they have that up. I don't recall if it's in there or not.

But I think the BC3, I believe, was specifically written for that small area where big lots, retailers are. So, I don't think that language is included in it.

Mr. Tab:b Could you, or is there somewhere in town code that says, this is the square footage that we allocate to this site, that we allocate for your footprint or whatever you want to call that, and this is the total amount of square footage for the structure?

Mr. Testerman: I don't believe there's anything like that specifically in there. There's the language in the BC1 and BC2 regarding the square footage that we're talking about tonight. And then the rest of the site constraints are going to be dictated by your lot coverage, building requirements, open space requirements.

Mr. Tabb: Well, I guess my question would be, though, I mean, could you say, well, this is what, this structure is 40,000 square feet is what we permit, but you can have up to 120,000 square feet of space, allowing for three stories, three floors.

Mr. Testerman: If I'm understanding the question correctly, that's basically what the text amendment request was that was denied.

Mr. Tabb: I know, right, but my question is, could there be specific language in, or is there specific language that says that somewhere in other areas in the town code?

Mr. Testerman: I don't believe there's any existing. It could be drafted and proposed to Council.

Mr. Yetzer: Is the proposed bigger building three stories of self-storage? Is that what it is?

Mr. Testerman: Yes, sir.

Mr. Yetzer: Do you have any idea what kind of septic load that is? Okay. I'm not seeing a lot of room for septic, nor do I think you need a lot of toilets in a self-storage.

Mr. Gallop: I'll backtrack again, and Mr. Ellis, now is your opportunity. And had I followed my script, I would not have made that mistake.

Mr. Ellis: I think included in our appeal, was some small copies of what was submitted to the town as the site plan. And Mr. Cobb sent us some bigger ones, if you all are interested in seeing the bigger copies.

Mr. Ellis: State your name for the record.

Mr. Goodrich: My name is George Edward Goodrich.

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Mr. Ellis: Where do you live?

Mr. Goodrich: I live at 111 East Baltic Street, Nags Head, North Carolina.

Mr. Ellis: And how long have you lived in Dare County?

Mr. Goodrich: Since 1983.

Mr. Ellis: How are you employed?

Mr. Goodrich: I am a real estate broker, a real estate developer, and I am in the utility business, sewer utility business.

Mr. Ellis: Who do you work for when you did real estate?

Mr. Goodrich: I associated with Village Realty.

Mr. Ellis: Do you own the property that we are talking about here tonight?

Mr. Goodrich: Yes

Mr. Ellis: You acquired it as a bigger track and you since gotten permission and spun off what is the 7-Eleven

Mr. Goodrich: Yes. That's correct. The property had an old service station on it. It had been there for around 20 years, and I went through the process of dealing with the Division of Environmental Quality. I removed it, sold it to a group that built a 7-Eleven. The only neighbors we have are the State of North Carolina, the Dominion North Carolina Power, an automobile repair shop, and a candy shop.

Mr. Ellis: And you entered into a contract to sell the property to GHK

Mr. Goodrich: I did.

Mr. Ellis: And again your understanding of how it works with them on this process is they would like to develop it to mainly include an extra space, a self-storage facility.

Mr. Goodrich: That's correct.

Mr. Ellis: Have you seen the plans for the remainder?

Mr. Goodrich: I have.

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Mr. Ellis: All right. Tell us, just sort of, you know, without going into great detail, from the moment this project, when Mr. Cobb came to you with this project and you all went to the town, where has it gone since then?

Mr. Goodrich: I met Mr. Kolb, in the fall of last year, about this time, as a matter of fact, and he's a developer. He develops Walgreens. The Publics in Kill Devil Hills would be something y'all would recognize. It was a company's about 50 years old. And he was interested in buying the property and building a self-storage warehouse facility. And, of course, I showed it to him. He liked it. We started working on it in January of last year. And everything went very well. We were sailing along. We got, you know, we had all our permits from the State of North Carolina that we needed, let's put it that way, and the federal government. And we went to the , and it was unanimously approved. And then at the Town Council meeting, everything seemed to go sideways for a minute. We were denied on by 4-1.

Mr. Ellis: And what was denied was a text amendment

Mr. Goodrich: That's correct.

Mr. Ellis: It was, again, the language we've been talking about in the town code section 42-251(d)1, which says that no use of an owner or tenant on the site shall exceed the maximum area of 40,000 square feet of the building area as shown on the commercial site plan. That's correct. And do you remember in January that Rob Testerman, the planning director, said in an e-mail that it was his thinking that this applies to the total area of the building?

Mr. Goodrich: By refreshing my memory, it would be e-mails, yes.

Mr. Ellis: And that you and Mr. Kolb decided to submit a text amendment?

Mr. Goodrich: We decided that was the more practical than arguing about it, let's put it that way, the path of least resistance.

Mr. Ellis: In other words, as opposed to arguing under the interpretation at that point in time, you accepted the town's recommendation on how to handle it and move forward.

Mr. Goodrich: That's the way I remember it.

Mr. Ellis: And when the Town Council denied the testimony, that's when you went back to the drawing board?

Mr. Goodrich: That's correct.

Mr. Ellis: And tell us, in your understanding of what you believe this ordinance has written, what, in fact, his interpretation is.

Mr. Goodrich: Well, it says what it says, no more, no less. First, I'd like to mention something about the word area. Area doesn't mean anything. This is a meeting area. Outside is a

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parking area. Everything else is a vacation area. So, building area doesn't mean anything until you look at it in the context of a sentence. And if it meant floor space, it should have said floor space. If it said gross building area, it should say gross building area. But what it says is building area as shown on a commercial site plan, which to me means the area of which you can build upon. I've talked to a lot of people over the past couple of months, and everybody that I asked what building area was...

Mr. Varnell: Objection, hearsay

Mr. Gallop: Sustained

Mr. Ellis: Sustained.

Mr. Goodrich: I understand. Where was I?

Mr. Ellis: Well, in other words, what do you think it means and why do you think it means that?

Mr. Goodrich: I think it means when you take a parcel of land and apply all the restrictions, setbacks, front, rear, and side, area for septic, open space, and any other restrictions that you have, you have an area that you can build on, and that's the building area.

Mr. Ellis: And you're familiar with site plans?

Mr. Goodrich: Very, very familiar.

Mr. Ellis: What do you understand site plans to mean, and show?

Mr. Goodrich: Well, site plans show driveways and parking areas. They show buildings and the building's footprint. They don't necessarily show the square footage, except for the footprint square footage. Wetlands, anything else, there may be a restriction on building on that particular area.

Mr. Ellis: Is there a difference between a site plan and a construction plan?

Mr. Goodrich: There's quite a bit of a difference. A construction plan is three-dimensional, something an architect would draw or an engineer would draw. You don't have to be an architect to draw a house plan, but a site plan is two-dimensional.

Mr. Ellis: I'm showing you the site plan proposed master plan for this proposed development for the extra space storage facility.

Mr. Ellis: Do you see the facility shown on that site plan?

Mr. Goodrich: I do.

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Mr. Ellis: Is it located on the property that you were going to sell GHK?

Mr. Goodrich: It is.

Mr. Ellis: And what does it show as the square footage of the storage facility?

Mr. Goodrich: The footprint is 35,000 square feet, three stories, 34 foot height.

Mr. Ellis: So, 35,000 is less than the 40,000 requirement in the ordinance.

Mr. Goodrich: That's correct.

Mr. Ellis: Does it also show in the notes what the floor area gross is?

Mr. Goodrich: I'm putting my glasses on for that one. I'm sure it does.

Mr. Testerman: It does..

Mr. Goodrich: Yes, it does.

Mr. Ellis: What does it say?

Mr. Goodrich: 105,000.

Mr. Ellis: Which would be three stories times 35,000.

Mr. Goodrich: That's correct.

Mr. Ellis: Do you remember the Zoom call we had with Mr. Varnell and Mr. Testament in August of 2024?

Mr. Goodrich: I remember you and Mr. Kolb on that Zoom call. I think I missed it. I think I was traveling. But I remember the content of it.

Mr. Ellis: Okay, so you weren't a part of it.

Mr. Goodrich: No.

Mr. Ellis: And at some point in time, did you understand that the town, at least through their attorney and planning director, agreed with our interpretation of the ordinance?

Mr. Goodrich: I remember being told that.

Mr. Ellis: And at some point in time, that changed.

Mr. Goodrich: Correct.

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Mr. Ellis: And then when we asked for a determination from the planning director, we could get a view of this ordinance.

Mr. Goodrich: Yes.

Mr. Ellis: Anything else you would like to tell this board?

Mr. Goodrich: I'd like to give the board the North Carolina General Statutes in Section 160, which is the section that gives municipalities in the state of North Carolina the power that they have to govern, to regulate, sub-divide property, and things like that.

Mr. Ellis: Here is Mr. Varnell's copy.

Mr. Goodrich: This is, the definition here is the site plan. And again, you will see that it clearly separates what a building area is and what is not a building area.

Mr. Ellis: And I would just point out to the board that this statute that Mr. Goodrich handed us has been replaced by Chapter 160D, but that that definition is still in the statute. Anything else you want to tell the board?

Mr. Goodrich: I would like to say that this is far more simple than it's been tonight. It says building area on the site plan. That's all it says. It doesn't say footprint. It doesn't say gross floor space. It says building area on the site plan. And that's where you can build.

Mr. Ellis: Thank you. Mr. Barnhill may have some questions for you. Mr. Varnell.

Mr. Gallop: Mr. Varnell

Mr. Varnell: Mr. Goodrich, I only have one. And it could just be housekeeping The site plan that you handed us that showed the 35,000 square foot building footprint, did you say that was the site plan that was part of the council package in the meeting where ultimately the text amendment that you guys put together got denied? Is that correct? I just wanted to clarify, you were not saying that was the same site plan in that particular package?

Mr. Goodrich: What now?

Mr. Varnell: This site plan here, showing 35,000 square foot building footprint, are you saying that this is the same site plan that was presented to council as part of the hearing where there was a deny?

Mr. Goodrich: Unless someone changed something, but I don't know. Yes, it is the same thing.

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Mr. Varnell: As Rob testified to the fact that it had a 105,000 square foot footprint. Well, not footprint, but 105,000 square feet was what was shown. There was no mention of 35,000 square foot footprint.

Mr. Yetzer: Is this what council saw? Because this doesn't have 35.

Mr. Smith: This is different than what's in our packet.

Mr. Varnell: What does that one say?

Mr. Yetzer: It says self-storage, plus or minus 105,000 square foot, three stories.

Mr. Varnell: That is what I believe was presented to council. That's what Rob testified to. I just wanted to point that out. I missed you when you said you were describing this as a site plan or the one presented to council. I knew the one presented to council had the 105,000 designation on it, and I just didn't see it on this.

Mr. Ellis: I don't think anything was presented to council. The footprint is 35,000. The total gross floor space would be three times that.

Mr. Varnell: Right. Oh, and I'm not saying that you are trying to slide something by on us by any means. I just want clarification as to what council actually saw.

Mr. Yetzer: I have questions. This one's more for you, sir. Because you weren't on the Zoom call, right?

Mr. Goodrich: Pardon me?

Mr. Yetzer: You were not on the Zoom call.

Mr. Goodrich: No, I was not.

Mr. Yetzer: Okay. So, during the Zoom call, you guys had some sort of vibe that the town was agreeing that that area meant building footprint. Do you have anything in writing from the town that says that?

Mr. Gallop: Hold on, just one second, just to make sure. The complexity here of whether or not you've got to be sworn to do this, I'd prefer that you...

Mr. Varnell: I don't object to this.

Mr. Yetzer: It's a real easy question. He doesn't need to be sworn in.

Mr. Gallop: Well, it's a lawyer thing about the difference between facts and argument. I just want to make sure that we're covering the right... That's all I'm here for tonight is to make sure we're following the right steps. All right.

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Swearing in of Mr. Hood Ellis, Attorney

Ms. Everett: Raise your right hand. Do you swear or affirm that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. Gallop: And also, there's a number of questions I've wanted to ask him for years while he was under oath.

Mr. Ellis: I plead the 5th

Mr. Yetzer: Do you have anything in writing from anybody in the town saying they agree that the 40,000 is building footprint?

Mr. Ellis: Nothing. Nothing in writing other than my notes from that conversation where I can still remember, as if it was yesterday, that Casey went on to say that the building footprint, that it meant, you know, you apply the setbacks, you apply all the environmental restrictions and whatever's left, it's the building area that you can build on.

Mr. Yetzer: Understood. Thank you.

Mr. Gallop: Any other questions for Mr. Goodrich? Or I guess Mr. Ellis is technically testifying at this point.

Ms. Smith: I have a question. I think we just went over this a little bit, but the original site plan says 105 square feet, and the handout you gave us says 35,000 square feet footprint. Why did you change it?

Mr. Ellis: I think to make it clear that the 105 applies to the whole building, and the 35 applies to the footprint. The 105 was on the original document set sent up to the town, and then when that, again, issue came up, they went back and put 35 on it.

Mr. Gallop: Any other questions? Any cross-exam, Mr. Varnell?

Mr. Varnell: No.

Mr. Gallop: Any redirect, Mr. Ellis?

Mr. Ellis: No sir.

Mr. Gallop: Any further witnesses, Mr. Ellis? No sir. Thank you, Mr. Goodrich.

Mr. Gallop: Thank you. Are there any members of the public here who have any interest in providing testimony this evening? Seeing no one. Any rebuttal evidence, Mr. Varnell? Any additional witnesses?

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Mr. Varnell: No. Thank you.

Mr. Gallop: So now we'll move on to have brief closing arguments from, well, they may not be brief, but we'll call them brief, closing arguments from the party's council, and we'll start with the town, and then we'll have the applicant's council provide arguments, and after that we'll close the hearing and the board will deliberate.

Mr. Varnell: All right. Thanks for listening to us, guys. And those are good questions, actually, as a matter of fact. You were certainly paying attention, and I appreciate that. And I'll keep mine brief. What evidence you've heard tonight from us and that I don't believe has been in any way conferred by the applicant is that the town planning director and their building inspector have both timed the general definition and use in zone from a general standpoint of building area is the total square foot feet of the building. And I would remind you that this is also the only evidence our planning director and our Building Inspector have been presented by someone who has to interpret these things every day before the meeting.

That is true. And again, their take on this is based in large part on the fact that the N.C. Building Code, as Rob said in his application, and as he testified to it, the N.C. Building Code defines building area as the space within the area within the confines of the walls of a building. We're talking walls. We're outside of this 2D argument, this two-dimensional argument, this argument of a site plan. The Building Code defines it specifically as a combined wall. We're now 3D. So note, this is a 3D measurement. It's exactly what the Building Code tells us. And based on that interpretation, it becomes the total square footage. And just as Rob said in his response, you know, building area, again, is the area included within the surrounding exterior walls. A three-story building has exterior walls on all three levels. And thus, the area within the surrounding exterior walls on each level make up the building. So it is total space times the number of floors, which is also stated, which is also, again, in the Building Code, as he put it in his application, the way in which the Building Code defines how you calculate building. Now, as has been stated, there's also no definition of building area in our code. We submit to that. However, as Rob told you, what you do in those instances as a planner is you look at the common usage of the term. You look to other codes that may have a proper definition of that term to provide you an interpretation of whatever is presented to you. If you have a code that doesn't have that word particularly or phrase particularly defined, you also heard this exactly when he did it. He took the Building Code. That's a code that we're bound by no matter what. We only serve the state.

And that's why that code, that precise code, it actually is part of our ordinance because it's incorporated by reference in full. It's exactly what Mr. David Lewis has to deal with every day, has to interpret every day. Now, I would note that Rob, he did point this out, but I think it is critical to note the intent of the BC2, which is the district that we're talking about. That language concerning PCDs is talking about PCDs within the BC2. The intent per our code, the intent of that is to encourage medium-intensity development. Now, Rob told you he feels the applicant's interpretation is not in line with this code. It is not medium-intensity. This is large-intensity. Somebody asked the question, does the BC3 have the same language, the same limiting language? And Rob says, no, he doesn't believe that it does. What I would point out to you is the reason for that. That's in Rob's application. The BC3 is where our big-box retailers are permitted. You've got Home Depot. That's 120,394 square feet. That's how

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big that is. Harris Teeter, 65,000 square feet. Walmart, 127,914 square feet. That's big-box retailers, what we consider big-box retailers. That's why we've only allowed those to be built in the BC3. And here, we've got a menu. What's at stake, or what's perhaps subject, if this gets approved or, better said, if we don't affirm, our interpretation is 105,000 square foot, mini-square foot warehouse in the BC2, not the BC3. Thank you guys very much. I appreciate your time.

Mr. Yetzer: Casey, are you sworn in?

Mr. Varnell: We do ask that we hope that you affirm the Council's interpretation.

Mr. Yetzer: Can I ask a Casey question? You can close it. Well, is it a, I mean. I don't care.

Mr. Gallop: Mr. Ellis, do you have an objection to him asking Mr. Varnell a question?

Mr. Ellis: No

Mr. Yetzer: Is there anything in the building code that pertains to site plans?

Mr. Varnell: I'm sure. I have no idea what it says.

Mr. Yetzer: I bet it doesn't. And you want to know why? Because the building code deals with buildings.

Mr. Varnell: Right.

Mr. Yetzer: And a building, especially around here, is almost the smallest part of a site plan. It's the turd factory. It's the parking. It's the everything else. That's the work in a site plan around here.

Mr. Varnell: Or any site plan.

Mr. Yetzer: Yes.

Mr. Varnell: All I will say is uniformly, the term building area here has been applied as Rob has stated.

Mr. Yetzer: Okay.

Mr. Varnell: Thank you. Any more?

Mr. Gallop: Mr. Ellis?

Mr. Ellis: I'll pass out those memorandums that I did, it sort of outlines our argument. On behalf of Mr. Goodrich, and Mr. Cobb, we thank you for your attention to this tonight. Again, the reason we're here is we spent a lot of time and money getting here.

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And we feel pretty strongly about, again, our position, which is that this code that we've been looking at, building area, means building footprint when used in the context of a commercial site plan. Again, we started in January, and Rob at that point said it was his thinking that it meant building area meant the overall size of the building. And again, the project architect, Mr. Goodrich, Mr. Cobb, decided, okay, let's do the text amendment if that's what the town has recommended. This is the path of least resistance. They did, and as you heard, that sort of cratered after the planning commission unanimously approved, we got to the town council, and they denied it. We think there was some confusion that they thought we were talking about a village commercial, village, village. Again, district as opposed to beach commercial. The feedback is it may have happened. So that's when we went back to Mr. Varnell and Rob and said, you know, we've got a lot invested in this thing. What path are we trying to go forward? And we ended up on that Zoom call, and again, at that point in time, we all got off the phone, you know, saying hallelujah. They agreed we really didn't need a text amendment. The building area refers to the building footprint, not the floor area gross. So we proceeded down that, had some more correspondence, and that's when, again, we got hit in the face with what I call Exhibit 8, which was an email from Casey saying, unbeknownst to Rob or myself, this issue's already been decided by Rob back in January. Well, you know, why didn't you tell us that in August? But anyway, so that's why we asked for a formal opinion from Rob, a formal interpretation, and we repealed from that to here. Again, it's important to know that the building area that's used in this ordinance is not defined. It doesn't say the building footprint, and it doesn't say the floor area gross as the town wants it to say. We want it to say the building footprint, but, you know, it doesn't say what even one of us wants it to say, but it's going to say whatever y'all determine it says. I hear the discussion about Mr. Lewis and being the building inspector and all the heavy reliance the town places on the building code, but we disagree with that. We don't think the two are related. Again, there's a case in North Carolina that's cited in my brief. I can find it.

It's the town of, it's on page 11 of my brief at the top. It's the *Cardinal v. Town of Madison Board of Adjustments*, a 1991 case from the Court of Appeals, and it said that, the quote I've got from that case is that if the inspector's authority was the state building code, it's also worth noting that the North Carolina Court of Appeals has held that it was inappropriate for the zoning administrator to rely on the definitions from the state building code rather the definitions in the zoning code and it was defined in the zoning code than the administrator is to rely on the term's customary dictionary definition. So that's a case in the Court of Appeals where they said don't mix the two. Don't mix the building code with your zoning and your land use and local land use regulations go to the dictionary and other ways to find common, ordinary meaning for words. We put on page, early on in our brief, page 9 and one over page 10 some rules of construction that courts customarily apply when they're interpreting statutes. Similar to you, you're the Board of Adjustments, you've got to interpret this provision, and I think Ben will tell you, it's your call. You're not bound by what Rob determined. You're not bound by what I argued. It's your right to declare what you believe that or this provision means. The other thing I want to point out on page 11, and this was something that Mr. Goodrich found on looking at, Googling, on AI, Artificial Intelligence. If you look sort of toward the middle of the page where it got single-spaced, this is the definition that AI has for a building area. On a commercial site plan, the building area refers to the designated space on the property where the building structure will be constructed,

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typically outlined by a solid line and clearly marked with dimensions, including the exact footprint of the building within the overall site boundaries. That's the definition in AI of what building area means on a commercial site plan, which is clearly what we've have here. Again, construction plans for the building code are three-dimensional. We're talking about site plans that are two-dimensional, and Mr. Goodrich, that definition that's recited in now what is Chapter 160D-102(29), is the definition of a site plan. The relationship, lot lines, and the existing or proposed uses of building structures on the lot. Again, it's a two-dimensional picture. So, again, in summary, I'm sure we can beat over the head, but we believe the building area as used in this code provision means building footprint. We believe that's based on common ordinary definitions of area, how you compute area as we did in junior high math, length times width. There was no three-dimensional in it. The building code is not the authority to go to according to the court of appeals. We believe that we've cited other sources that talk about similar, including the AI definition, that clearly say that it's the building footprint. Our request is that you would find that Rob's determination was in error and declare that the building area as used in section 42-251 (b)(1) means the area occupied by the proposed building, the building footprint, not the floor area gross, which represents the total area of the building, measured by taking the outside dimensions of each floor. The big box, medium density, there's no evidence to believe that. If you want to really go to extremes and observe results, we can argue that, hey, we're going to have however many units of self-storage space that are going to be rented, so we're going to have multiple tenants. If we had multiple tenants, then we could divide that into 40,000 square feet and really bring it way down. Again, the thought process on big box and medium density, again, properly applied, this 40,000 square foot limitation is the building footprint, and that's all this board should be concerned with. That's what the ordinance says, and we're under that, and we're committed to go forward based on that interpretation. Thank you very much for your attention.

Mr. Gallop: Thank you, Mr. Ellis. Does anybody have any questions for him?

Mr. Yetzer: Are you looking at me?

Mr. Gallop: Yeah. With that, we will close the evidentiary hearing portion of the meeting, and now for the members of the board, it would be your opportunity to deliberate, and again, I'll reiterate what I said earlier as your options. You may reverse or affirm wholly or partly or may modify the town's decision being appealed from, and you can make any order or decision that ought to be made regarding that, and you essentially have the same power that Mr. Testerman had, so you sit in his shoes to reevaluate what you've heard and apply the ordinance in the manner that you've determined it applies, and if that's contrary to Mr. Testerman's decision, then that would be a reversal. If it's the same as Mr. Testerman's decision, it would be an affirmance, and if it's some other area, then it would be some modification.

Ms. Smith: Do you need a motion to allow the public hearing or anything like that?

Mr. Gallop: No, ma'am.

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Mr. Meads: At this time, we can discuss.

Mr. Yetzer: Blair, I have a question for you. You know the building code roughly. I know you don't know chapter, book, and verse. It's like knowing the tax code, but I mean, it is basically foundation up. That's what it deals with, correct?

Mr. Meads: For the most part, yeah. There are some references, I think, to cite in there, but typically, it's dealing with the structure itself.

Mr. Yetzer: I'll give you guys my two cents. As a surveyor, I've done site plans, lots of them. Not a lot of commercial, but because they're so obnoxious that I can't wrap my mind around them. I've actually surveyed in this area. I know this parcel. Nothing much can go in there that requires septic. This thing is, there isn't a lot of high ground there. Really, you're looking at about the only use other than deer habitat that you can do there. To me, this paragraph is all about density. The one we're talking about. To me, density is two-dimensional. How much is covering this size lot? I don't believe the building code is that relevant to site plans. Site plans is engineering, and engineers think we depict the third dimension two-dimensionally. That's what we do. We don't think about levels. When we design our stormwater, that's all about two dimensions. We don't care if there's 100 stories of building there. All we care about is how much is going to come off that roof. To me, and I hope one of you guys can talk me out of it, to me, it's a two-dimensional thing. If they wanted to, this doesn't make sense. When you have up to a seven-acre parcel that can only have a 13,000 and change building on it, if it's three stories, does that make sense? It doesn't make sense to me. That's what they're saying. If they wanted it to be limited that way, they should have rewrote it. This is horrible right here.

Ms. Berquist: From a different perspective, I think if our job is to decide whether we are for how it was interpreted, and I see the interpretation as also including the use and the scale of things, not just the potential based on the other parts of the code, then that's something to consider also, not just what could be allowed.

Mr. Yetzer: I'm not going to lie to you. I don't want a mini storage literally a half mile from my house, but if it fits and that's the way it goes. If I didn't like it, I should have bought that parcel from him and made it keep it what it is.

Ms. Smith: I don't think what any of us want to see or not see is really relevant. We're just here to define building area and nothing else. I think it's been confusing from the start, starting with the architect. The town code is not specific in defining it.

Mr. Tabb: Blair, you mentioned on plans that it almost seems like you're saying when you're looking at those plans, you're really talking about square footage. I mean not square footage, I mean your total volume. Is that correct?

Mr. Meads: Well, it lists the total volume on there.

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Mr. Tabb: Right, but when you, yeah, I understand that. The thing that I keep coming back to is you could certainly say that we allow a, we're going to use the word footprint just for argument, that you have a 40,000 square foot footprint and a maximum of X amount of square footage in your building. You could say 105,000, 120,000, whatever. You could certainly differentiate the two, is that correct?

Mr. Meads: You could, yes. I mean I guess we're looking at this definition the way it's written.

Mr. Tabb: Yeah, well that's why I'm asking.

Mr. Meads: Yeah, I mean this is a tough one. Yeah. I mean it.

Ms. Smith: I mean the bottom line is the town does not define building area.

Mr. Meads: Right, and they define floor area, gross, and they define building footprint.

Ms. Smith: Is there legal precedent for, if we determine that language is ambiguous or confusing, that, you know, the tie goes to the property owner or is that just our opinion?

Mr. Gallop: In general, in North Carolina the tie goes to the property owner if you find that it's ambiguous because the Supreme Court, and it reiterated this last week actually, or a week before last, that in an opinion that it released, that when there's an ambiguous term that the free use of land prevails. And so that's always in favor of the property owner. However, to get the ambiguity, it may take you more steps than not having a clear answer in the definition. So I think when, if you look on page 9 of Mr. Ellis' memorandum, he's provided some rules of construction that start in the middle of the page.

Mr. Tabb: Where are you at here?

Mr. Gallop: Page 9 of the memorandum that Mr. Ellis handed up. And that's where you start in general. There's not much argument that these aren't the rules, the basic rules of how you construct and understand either an ordinance or any other legislation. And this is how you would look at it at federal legislation or state legislation or local legislation. But you start with the clear, plain, and unambiguous language. If the language is clear, if you can define that by common ordinary means, then you don't necessarily get that ambiguity just because other terms might be defined. You may get there. But I think that the starting place would be to look and see if the terms on their own are clear as to what they mean in that sentence. And one thing, I hear people talking about a definition. It's not a definition. It's in a sentence, it's in a paragraph, it's in an overall ordinance, and it's not trying to define what those terms mean. It's a sentence that means something. And so, the question kind of, you're looking to provide a definition to some degree to those terms, but it's in the context of that concept that's there. It's not like it's in the definition section and you're rewriting it somehow or it doesn't have something next to it.

Ms. Smith: The town code does have a definition section, though, doesn't it?

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Mr. Gallop: It does. And that's where the building footprint and the gross floor area. So the two possible choices are both defined, but they're not in that sentence.

Ms. Smith: Right. I mean, I also did the research on how the AI definition and North Carolina building code and international building code and, you know, there was nothing consistent in my opinion. I would be happy to make a motion if there's no further discussion.

Mr. Yetzer: Wait, what are our choices for motions?

Mr. Gallop: Affirm, reverse, or modify generally.

Mr. Tabb: Can I ask another quick question? So, in other words, if, as an example, we say, okay, we find that, in fact, that the 105,000 is defined for Mr. Goodrich, does that mean that going forward, the town then is going to be held to that standard on all buildings unless the town rewrites certain languages?

Mr. Gallop: It's, this board is said to not be a precedent-setting board. You're not a court in that you set precedent. You're not an appellate court. You're more like the superior court. You would be used as guidance in future individual situations. However, there would be probably expectations of consistency for issues that came to you about that same question. But really what you're here for tonight is really to decide it on this interpretation. And the interesting part of this is the interpretation that was requested. You look at the facts that are provided. So it's, it could have been something different. It could have, there could have been no prior text amendment or application. There could be no site plan. They could have, it could be someone who comes in for an interpretation and just says, I've got a building that's going to be 35,000 square feet footprint and three stories and have the same size floor on all stories. What, can I get it approved under this provision? And it wouldn't have had any of the rest of the things. And my point in telling you that is you're looking at the facts that were provided as part of the question. And I think that's what the ultimate question was.

Mr. Yetzer: Yeah, I mean, I think a lot of this evidence is moot. You could just say this is a nondescript building for whatever purpose I think I might want to use it for and it's going to be this big. Can I do it?

Mr. Gallop: It's essentially that.

Mr. Tabb: The use of the building is irrelevant.

Mr. Yetzer: Yeah

Mr. Tabb: Yes.

Ms. Smith: And the town can update their code later, but you're saying that's not relevant to what we're discussing.

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Mr. Gallop: Correct. Well, let me take that back. The town may and may or may not be able to.

Ms. Smith: Not with respect to this.

Mr. Gallop: But what you're considering doesn't, shouldn't, you shouldn't be affected about what they can or can't change.

Ms. Smith: Okay. May I make a motion or do you want me to move this up?

Motion

Ms. Smith: I make a motion to reverse the town zoning interpretation in favor of the applicant.

Mr. Meads: We have a motion to reverse. Do we have a second?

Mr. Yetzer: I second.

Mr. Meads: At this time, we'll take a vote. All in favor?

Aye: Yetzer, Smith, Meads

All opposed?

Nay: Berquist, Tabb

Mr. Gallop: The motion passes. 3-2

Ms. Smith: I thought Rob said it had to be four-fifths vote

Mr. Gallop: Only for variance.

Ms. Smith: I had it backwards

Mr. Gallop: Yes, ma'am. And it used to be for appeals, too, but they changed that. The next question is, so y'all have made a decision. That needs to be reduced to writing and, you know, and you need to approve that order. In recent years, the way those statutes have changed, there's a somewhat open question about whether or not that has to come back to you to be approved. My opinion is to reduce the risk of it being an issue that it should. And what I usually recommend is that, like in court, the prevailing party, you ask the prevailing party to prepare a written decision with findings of fact that meet your decision, and circulate that with opposing counsel. Mr. Ellis would prepare a written decision, circulate it with Mr. Varnell, and at your next meeting, or if we have to have a special meeting, we would come back and, I did this recently with another board, and the parties agreed, ultimately agreed, on what was to be presented and signed. If that doesn't happen, then Mr. Ellis may present an order, and Mr. Varnell may present an order, and you would have to decide or mix and match between them. But that's how that would go. That would be my recommendation to go forward. And so that would be, unless somebody objects, that

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would be within your discretion to direct Mr. Ellis to prepare that decision and circulate it with Mr. Varnell. And once they've either agreed or agreed not to agree, then we put it back in front of you at a meeting in the future to vote upon. And that wouldn't be an opportunity to change your decision, but it's an opportunity to make sure that everything that needs to be on the table is there.

Mr. Tabb: At that point, we're affirming the language that they present is what we're doing.

Mr. Gallop: Correct.

Mr. Yetzer: I know, but will we need the same five folks?

Mr. Gallop: No.

Mr. Varnell: I think we will be all right with that.

Mr. Gallop: You good with that too, Mr. Ellis? Are you okay with that as well?

Mr. Ellis: Absolutely.

Mr. Meads: All right, so I guess at this time we'll wait for that. We'll move forward with that.

5.) Other Business

Mr. Meads: So we'll move on to other business. And we'll go with, I guess, comments. This was a very difficult task that we had tonight. I have struggled with this the entire meeting. The fact that it refers to the commercial site plan, that is what really confuses it or gives me more reason to believe that it's talking about footprint. So, this is not an easy one. I hope we don't have any more like this for a while. Any other comments?

Mr. Yetzer: I hope this causes the language to change. Because that language is embarrassing.

Ms. Berquist: It seems like it could be easy to solve the problem going forward.

Ms. Smith: The town has an opportunity now to clarify their intentions.

Mr. Meads: All right, so any other comments?

Mr. Testerman: If you guys don't have any, I just got two quick things. One, and I think, Ben, you might have been alluding to it, we might not have the chance to change it because any changes that we make that would be considered down zoning are now kind of out the window, thanks to state legislation. Also, I just wanted to note member Christine Buckner. She served on the Board of Adjustment for several years, and on the Rec Committee before that. She, unfortunately, passed away on November 2nd. So, I just want to take a minute to

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acknowledge that and thank her for her many years of service to the town. Our condolences.

Ms. Smith: And this is also my last meeting on behalf of the area.

Chairman Meads: What?

Ms. Smith: And it was an exciting one.

Mr. Tabb: Go out with a bang, right?

6.) Adjourned

Chairman Meads: All right. Well, if there are no further questions or comments, we'll close this meeting. The meeting is adjourned. Thank you, guys.

Meeting Adjourned at 7:47 p.m.

Respectfully Submitted by

Jessica M Everett

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Agenda

1. Call to Order/Attendance
2. Approval of Minutes from January 27, 2025 Meeting
3. Swearing in of Speakers:
***Note: "The Board of Adjustment is a quasi-judicial body and anyone participating in a public hearing before the Board must be sworn in prior to speaking. When appearing before the Board, please state your name and address for the record and address the Board in a courteous manner."*
4. 5416 N Croatan Hwy. – Applicant is required to reduce the minimum rear yard setback, reduce the minimum open space requirement and increase the maximum lot coverage requirement.
 - a. Public Hearing
 - b. Board Deliberation & Decision
5. Other Business
 - a. Chairman Meads
 - b. Board of Adjustment Members
 - c. Planning Director
6. Adjourn

1) Call to Order/Attendance:

Chairman Meads called the meeting to order at approximately 4:00 p.m., with the attendance noted by Rob Testerman

Board Members Present:

Blair Meads, Chairman, Abby Berquist, Vice-Chair
Mark Perry, Justin Langley, Francis Dunn

Board Members Absent:

William Yetzer

Staff Present:

Rob Testerman, Director of Planning & Inspections
Alsu Lewis, Administrative Planning Assistant, Lauren Garrett, Town Clerk/PIO

2) Approval of Minutes from January 27, 2025

Vice-Chair, Berquist moved that the Board approve the minutes of the January 27, 2025, meeting, seconded by Mr. Langley. With a call for the vote, the motion carried 4-0

3) Swearing In of Speakers

Chairman Meads invited persons planning to participate during the public hearing to come forward. The Town Clerk then swore in by oath those persons who would be offering testimony during the public hearing.

- Rob Testerman – Director of Planning & Inspections, Town of Kitty Hawk
- Greg Schmidt – Representative from Kimley Horn

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4) **5416 N Croatan Hwy.** – Applicant is required to reduce the minimum rear yard setback, reduce the minimum open space requirement and increase the maximum lot coverage requirement.

- a. Public Hearing
- b. Board Deliberation & Decision

Chairman Meads: At this time, Casey, do you mind kind of running through what we're doing?

Mr. Varnell: No problem, absolutely. Welcome Fran, Mark, and Justin. I'm Casey Varnell. I'm the town attorney, but also in scenarios such as this, I generally serve as the Board of Adjustments attorney as well. So, I'll be here to advise you guys on any of the legal items that may pop up. But just to give you guys, since this is obviously your first meeting, but also your first variance. So, a variance, short and simple, in terms of what's occurring here is we've got certain code provisions that Rob has spelled out in the report that he issued on this. Those code provisions, whatever the applicant is proposing, don't, the proposal doesn't comply with the particular provisions that Rob has referenced. So thus, they're seeking to vary from those provisions. And you guys are the board that is the appropriate regulatory body to make such a determination. I want to note that what we're doing here is what's known as a quasi-judicial proceeding. So that means that not only must the evidence that's presented be competent, substantial, material, and relevant to whatever the factors that Rob has put in the report, but also the factors I'll briefly go over here in a second. The evidence must be relevant to all of these factors in order to convince you that they meet the criteria for the variance. Competence is perhaps the most sticky scenario that you'll find in these type proceedings. And I say that because, given it's quasi-judicial, it's not enough for someone, a layperson, to just testify as to their opinion. So, if someone wants to put on evidence as to whether or not the variance or the proposed use is going to, just again, it's just hypothetically speaking, but affect the value of surrounding or adjacent properties, you would need an individual who's certified to make those findings, such as a licensed appraiser. So, again, just bearing that in mind, and if you have any questions as the evidence is presented, or better said, after the evidence is presented, then just let me know. I'll go over the factors really quick, and these are, Rob has spelled them out in more detail, provided some insight as to how they pertain to this particular application. But just reading directly from Chapter 160D, with variances, what you're looking at here, what you're going to determine is whether or not there's an unnecessary hardship that would result from carrying out the strict letter of the ordinance as we have it written. To do this, there's certain factors that you guys are going to consider, and again, just verbatim here, what an unnecessary hardship would result from the strict application of the particular code ordinance, or the particular ordinance provisions. Note that it is not necessary to demonstrate that in the absence of the variance, no reasonable use can be made of the property. Number two, that a hardship results from conditions that are peculiar to the property. This could be the location, size, topography of the given site that's subject of the application. It should be noted that hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood and or general public, may not be the basis for granting a variance. And the way I like to describe that is, just because I want something a certain way, doesn't necessarily make that a hardship.

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Number three, the hardship did not result from actions taken by the property owner. The property owner didn't, whoever's applying, didn't cause their own hardship. And number four, the requested variance is consistent with the spirit, purpose, and intent of the regulation itself, or the code provisions subject to this application, such that public safety is secured and substantial justice is achieved. So those are the factors you guys are going to be considering today. I would note, and this is not a scenario, Rob, correct me if I'm wrong, where a use, where they're asking to vary from the permitted uses or special uses. They're not asking for any type of use variance, correct?

Mr. Testerman: Correct.

Mr. Varnell: And I say that because that's not allowed, that you can't ask for a variance as far as what uses you're making of the property. But that's not subject of today's application. I'll now end with saying you guys can, in the event you approve the variance, you can place appropriate conditions on any such approval, so long as those conditions are reasonably related to why you approved the variance. I'll stop with that and let Rob take over. And I guess if you have any questions about what I just said at the outset, let's go ahead and discuss those.

Mr. Testerman: I'm just going to give a brief overview of the requested variances, and I'll turn it over to the applicants to provide their evidence for the request. So, it's three separate, or three variances included in this request. The first is section 42-250D4. That establishes the minimum rear yard setback at 20 feet. They have requested the variance to reduce the rear yard to 10 foot setback. Section 42-250(5), maximum allowable lot coverage by principal use in all accessory structures is 60%. Use of permeable pavement shall allow maximum lot coverage physical area of 72%. And then it goes on about permeable pavement, permeable pavement failure. The requested variance would increase the lot coverage maximum up to 82% with the use of permeable pavement. And then the third one, just kind of by default, 42-250D8 has a minimum of 25% open space requirement. If the lot coverage is going up to 82%, then the open space is getting reduced down to 18%. So that was just kind of included in there. The proposed project is development of a gas station and convenience store. Casey just kind of hit on this a little bit. Gas stations are permitted as a special use in the BC-1 zoning district, subject to other certain conditions of approval. If the variance gets approved, or if not, and they rework the plan, the next step would be going to the Planning Board and Town Council for the special use permit, which would be another quasi-judicial decision. The supporting documentation in the report that was sent out, the application with the narrative from the applicant, the conceptual site plan of the proposed development submitted by the applicant, and then staff included aerial imagery of the subject parcel along with the staff findings, how the site kind of relates to each of the different factors that you're supposed to be weighing in your decision. Just some general information about the property and the area. It's presently developed with a vacant former bank building on site. It's zoned BC-1, General Beach Commercial. The existing conditions per a 2011 as-built survey, the site area is 50,525 square feet. The current building and canopy areas consist of 6,415 square feet, and parking and concrete make up another 21,217 square feet, for a total of 27,632 square feet, which is 54.7% lot coverage. The adjacent properties in the area to the east and west are both zoned BC-1. This Carawan Seafood and the Atlantic Union Bank. South is zoned BC-3, which is the more intense

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commercial zoning district. It contains the Walmart development and north is Southern Shores zoned C, their general commercial. That contains First National Bank, Taco Bell, and Wells Fargo Bank. I'll let the applicants take over and present their information. And the packet that passed out before the meeting is a hard copy of what they've got prepared.

Mr. Varnell: I'm going to say one quick little follow-up for the three newest. It was probably somewhat intuitive in what I just said, but those factors I was discussing, all four, you must find that they meet all four. It's not enough to just say they meet even three out of the four, for example. They must qualify or prove to you that they meet any and all factors required of them. And it's a four-fifths majority as well, because we do have five members that are voting today. It's a four-fifths majority.

Mr. Gallop: Thank you, Mr. Varnell. My name's Ben Gallop some of you know me. I'm a new face to some of the rest of you, but I'm an attorney. My office is in Nags Head. I do local government work around this part of the state. I'm here representing Two Farms, also known as Royal Farms. We've got here with us today, we've got a representative from Royal Farms, we've got John Thompson in the blue shirt, Nathan Hall in the gray shirt. We've got Greg Schmidt here, who is our engineering representative from Kimley Horn. And this is Bruce Williams in the blue jacket, who's the owner of the property that my client is applying for the variance for. First let me thank y'all for coming here on my hot, although somewhat cooler than the hot that we've had for the last week, hot Tuesday afternoon, with this being the only thing on the agenda that has any substance to it. So, we appreciate you taking the time in listening to us today. Our primary witness will be Mr. Schmidt, and I'll call him up to let him give a presentation, but the other folks are all here in case you have any questions. At the end, I'll probably do a little wrap-up on my end and step through the standards and show you what's been presented to you and how it all came out. Thank you again for having us today and taking the time out of your life to be here.

Mr. Schmidt: Mr. Chair, Ms. Vice-Chair, members of the board, I appreciate the opportunity to be here today. My name is Greg Schmidt with Kimley Horn. We're a civil engineering consulting firm. Local business address is up in Virginia Beach at 4525 Main Street, Suite 1000. I will walk through the packet a little bit that Rob had handed out. Exhibit 1 is kind of our conceptual rendering of what the site will look like. Exhibit 2 is the pared-down version of that same dimensional layout, but just without the colors and landscaping. And then Exhibit 3 is your building elevation. So, the building elevations, just as you look at these that are presented in here, this is the prototypical Royal Farms product using hardy plank siding, Azek trim, standing seam metal roof. As Rob had alluded to, we will need a special use permit for the gas station use and understand that there might be some desire to throw some coastal flavor into the stone and brick from what's there today. But as it relates to the application that we're talking about, I think much of this is good and fun and will likely come up if we can get through this and the special use permit. I want to focus on a few things and appreciate Rob's assistance in navigating this process and getting to this point. I want to focus on what would have been the latest gas station developed in the town of Kitty Hawk, the 7-Eleven up the road there, right as you come over the bridge and the causeway. That project was developed in 2020, I believe. It's my understanding that that was subdivided out of a larger parcel. That parcel also has on-site sewer treatment.

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There is new access to Route 158 there, and that one you do see in the staff report complies with everything that we're asking for. I think the biggest differentiator there is that that was subdivided from a larger parcel, so they were able to design that parcel limitations to meet the strict adherence to the code. The site we're looking at here, located out front of Walmart, is, as Rob mentioned, in the BC-1 zoning district. It's also located within the Invest and Improve land use area in the land use plan. This is a great opportunity to take what has been a vacant bank for a couple of years and follow that land use plan and what the comprehensive guidelines are for the town to invest and improve in a parcel to bring back a tax basis and employment to the town of Kitty Hawk.

Again, this kind of sits between what I would say are the two largest retail shopping centers located within the town of Kitty Hawk. It has shared access through the shopping center to Walmart. It has a right-in, right-out access to 158 there. That will remain unchanged. It has a wastewater treatment plant that serves much of all that shopping center. So, in this particular case, when we look at intensity of use, this particular site doesn't need an on-site drain field. This will go to a wastewater treatment plant that is part of the shopping center and be conveyed to a drain field that is part of the shopping center. Many of the commercial sites, and when we get into strict adherence with the code, intensity of use is usually highly limited by that need for on-site sewer disposal in the town. In this particular case, that's not something we are constrained by on this property. Maintenance of the existing access, if you turn to Exhibit 4, I do have an alternate layout that shows compliance with the strict adherence of the code. It does result in the loss of three parking spaces, which we are already pretty heavily constrained on. It shows reduced drive-by widths, and then it shows a single fuel canopy right at that existing access that's to remain. The layout that we are looking at as Exhibit 1, the maintenance of that existing access is not only critical to the shopping center, it's also critical to the operations of a gas station and being able to maneuver fuel trucks, to maneuver pedestrian vehicles efficiently and safely into and out of the site. What we were able to do with the increased impervious cover is split those fuel canopies to allow for protected driveway through the middle of the fuel canopy. What that allows is for vehicular traffic to free-flow in and out of the site without being impacted and having to drive actually underneath the fuel canopy. Truck deliveries, as I had mentioned, it's anticipated that truck deliveries will come in probably through the signal off of 158, and they will loop in that shared drive with Walmart there. The fuel tank pad is on the left side, just behind the fuel canopy. So that truck will have to loop in and then exit back out to 158. It will go down and make the loop about a mile down the road there. But being able to have a fuel tank pad where the truck can stage and unload fuel at any time of the day without inhibiting pedestrian and vehicular traffic, emergency vehicular traffic, is really important. I know if you're familiar with the 7-Eleven, their fuel tank pad is kind of in the back, but it does inhibit some of that traffic flow from one of their right-in, right-outs off of the highway there. So, we're trying to prevent that from happening on this particular site. Also on the alternate exhibit, something as simple as trash collection, you might think it's pretty benign, but being able to have access to the dumpster enclosure without having to drive through parking spaces is also something we're looking at in how that comes into the layout. I do want to point to, exhibit 2, it shows it a little bit better. There is a rather mature stand of vegetation in what I'll call the southeast corner there. It's on the bank parcel that's next door, but the plan would be to preserve all that existing mature vegetation. One of the

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other things that we understand, intensity development is a big deal. From stormwater compliance, from just appearance and compliance with the character of what's around it. You can see on the conceptual landscape plan, we will have a significant improvement in the amount of plant material, even with the reduced green space that is located on site from the existing condition today. Royal Farms does a good job. They have an in-house landscape architect that we collaborate with to make sure that, based on the zone and the character of the district that we're in, that those plantings are native species and will survive and flourish, even in an intensely developed environment. I do want to point out, with this parcel being an out parcel to an existing shopping center and being just over an acre, if you look at even the bank site next door, I think there's a small strip of land that I think is computed in with much of that calculation for intensity of that development, that is green space along the main commercial access to the right-hand side of the bank. But when you compare the two side by side, what we're proposing here, I would argue, from a development perspective, is in conformance and character with the surrounding and adjacent developments. If I were to summarize, I know I'm rambling on here a little bit, but to summarize, we're looking at constraints with how vehicles get into and out of site by utilizing that existing right-in-right-out. We're constrained by the parcel dimensions and not being able to acquire more land to expand the footprint to be able to meet the strict adherence of the code. And then we're also paying a lot of attention to the safety and efficiency in which vehicles maneuver from the shared shopping center access drive through the site and that connection there, which is really important to the survival of the adjacent businesses. And then finally, the fact that we do not have to do on-site sewer disposal here is a bit of a differentiator, maybe something that's a little bit more unique to this setting than you would find otherwise. I know we do have some Royal Farms representatives here. The nearest site is up there in Grandy and Currituck, which I'm sure many of you have driven past. They prepare made-to-order prepared food. They provide a high-quality product from an architectural and site maintenance perspective. I think this is a good opportunity to invest and improve in the town of Kitty Hawk and what is one of the larger shopping centers to be able to take that vacancy out of the market and put something here that's a little bit more meaningful. With that, I guess I'll open it up for questions.

Vice-Chair Berquist: If a variance is not approved, is the intention to go forward to the Planning Board with Exhibit 4?

Mr. Schmidt: No, I believe that if the variance is not approved, it would be determined by the developer that this site is not suitable for their use. And I'll add to that, Royal Farms, I don't know how many stores we have, John, quite a few. And through the development process, what ends up happening is there's a booklet, a design standard that Royal Farms has developed to allow their sites to operate efficiently and safely. And we are already, even in the proposal in front of you, really pushing the limits on those minimums and what we like to do as designers when we're designing gas stations.

Chairman Meads: Tell me again how the fuel delivery, how will that truck turn around?

Mr. Schmidt: Sure, if you're looking at the screen, the truck would turn right in at the signal heading towards Walmart, just to the right of the screen. So, it would turn in right at that signal, it would come in the Walmart shared shopping center drive behind the store, and

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then it would turn right into the second entrance. At one point it would then loop around the outside edge of the canopy and exit back right to 158.

Chairman Meads: Any other questions?

Mr. Schmidt: Rob, did you have anything to add?

Mr. Gallop: I think that would be our only witness that's going to testify. I'd be glad to provide a little wrap up, if we could get to that point. I don't know if you all have any witnesses to put on?

Mr. Varnell: No. Well, and I'm not representing the town today.

Mr. Gallop: I guess not. But at your convenience, Mr. Chair, if you want me to go through the standards and just kind of give a little bit of a wrap up and summary of how each one of those was hit, I'd be glad to do that now, or if you all have questions or deliberations, I'll leave them.

Vice-Chair Berquist: I have one question for you.

Mr. Gallop I'll attempt to answer.

Vice-Chair Berquist: Have any of the ordinances involved in this variance request been changed or added since the property was acquired, like, almost 10 years ago?

Mr. Gallop: I am not sure. My guess would be yes, because the development seems to be different in that area than it is today. I mean, if you look at each one of the different properties, they're all a little bit different, but I'm not sure when those changed. I mean, clearly the Carawan Seafood was different at some point, but I don't know when everything was developed, so I'm not sure when the changes were made. But there definitely have been changes in that area in some way.

Mr. Testerman: I can speak to that. The only change to any of these that's happened in the past 10 and a half years, since I've been here, was maybe five years ago, the lot coverage, it used to just be maximum lot coverage of 60%, and then, I think it was 2019, the language to get that extra lot coverage for permeable pavement was added to it.

Vice-Chair Berquist: So nothing more restrictive has occurred since then?

Mr. Testerman: No.

Mr. Gallop: And that's one thing I would note. Rob, are you aware, the other properties that you listed in your staff report, none of them have any permeable pavement, do they?

Mr. Testerman: Not that I'm aware of. I didn't, it wasn't noted on the site plans.

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Mr. Gallop: And you're aware of whether or not any of the properties right there along the 158 from the ABC store through the now Front Porch, have any permeable pavement?

Mr. Testerman: Not to my knowledge, and if they do, it was not done to get that extra lot coverage.

Mr. Gallop: First thing I'd ask, if there aren't any other questions.

Vice-Chair Berquist: That's all.

Mr. Gallop: Council. First thing I'd ask, Mr. Chair, is that we admit into evidence all the package materials and staff materials in the exhibits that Mr. Schmidt presented, if that would be appropriate.

Chairman Meads: I think that's appropriate.

Mr. Varnell: I see no issue with that. Accepted, Chairman. Into evidence?

Chairman Meads: Accepted into evidence, yes.

Mr. Gallop: Thank you very much, Mr. Chairman. And I'm somewhat new to this whole concept of reading glasses, so I'm going to try and balance looking at you and looking at my documents here. But just to go through the standards, the way it starts out is that this board shall grant. So, if you meet these requirements, the board doesn't really have a choice but to grant a variance if there's an unnecessary hardship shown. And the way you show the unnecessary hardship is by going through the four standards that Mr. Varnell went through. And that's a change, it came about about 10 or 15 years ago. It used to be it had to be an unreasonable hardship. And what that meant was that you had to show that there could be no reasonable use of the property in order to get a variance. It was really, really hard. And what the legislature did was it changed the language to make it easier to get a variance, or more likely to get a variance. So, it changed it from unreasonable to unnecessary. This is a hardship that isn't necessary for this developer to get approved to do its development. And you'll see when we get to the first standard that what it says is an unnecessary hardship will result from the strict application of the regulation. And then the rest of that under the statute says it is not necessary to demonstrate that in the absence of a variance no reasonable use can be made of the property. And that was another attempt by the General Assembly to make it easier and simpler and more available to developers to be able to get a variance. In this case, we're asking to vary the rear yard setback from 20 to 10, the lot coverage with permeable pavement from 72% to 82%, and the associated open space requirement from 25% to 18%, which as Mr. Testerman pointed out was that's the only way the numbers can work, if it goes up 82%. And the application of these provisions as they're written are an unnecessary hardship. And they drive this because they limit the ability of fuel trucks to safely and efficiently enter and exit the site along with traffic of customers at the same time. One thing that was important in this that Mr. Schmidt pointed out was this isn't just a convenience store the way this applicant does their business. It's also an in-and-out food processing store. You know, you go in and get food, and so people are in and out at a different rate and a different quality of carrying more things. More things in the parking lot are going on than there are in a typical convenience store. So that safety with the

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interaction of parking and trucks and users of the property is important to the applicant. It's also an efficiency issue that is unnecessary in this case to keep going. One other thing that was pointed out in the application there that I know Mr. Schmidt brought up was if you don't have it, these variances in the parking has to be so limited that it's going to be a parking issue, number one, in terms of having enough parking places. And then it's going to be a practical parking issue in that people are going to start overflowing and spilling over into the Walmart parking lot or the adjacent bank parking lot. And then those people are also going to have to cross that inner shopping center road that we all know is hard enough sometimes just to get into Walmart in a vehicle, much less walk across that because there are cars coming from every direction. So that's how they meet the unnecessary hardship of the first standard that results from the ordinance. And then the next one basically focuses on why this property is peculiar in terms of location, size, fire, and things like that. And what Mr. Schmidt pointed out to you is that the location and size of this property are what make it peculiar. In particular, it's a commercial site bounded by a shopping center or roadway that's in the shopping center. It's bounded by a US-158 on the north, which includes a big power line easement. And then it's bounded by commercial properties on the either side. Another important aspect is the three entryways, which, as Mr. Schmidt pointed out, they don't have any intent to change that. So there won't be any change. All the changes that are being requested are going to be internal to the site. How this site interacts with the highway and how this site interacts with the inner shopping center road will change. But having those three access points is peculiar and different. Mr. Testerman included some notes about the different gas stations and stuff in his staff report. All of those, as you all are well aware of, have entries onto highways or roads. All of them, rather than into a main commercial shopping center entrance or roadway. So that makes this site different and peculiar. It's also a very high-traffic area in terms of, I guess, the gas station up there by the gas station by Southern Shores Town Hall is high-traffic area, too. But all sides of this, in both exits and entrances, are a high-traffic area in terms of the number of cars. And the traffic is moving slower on that shopping center road, but there's still a lot of traffic. And the size is limited. It's a bigger site in an aerial than the actual size is. So, if you look at the size, because of that right-of-way and that utility and the big green space out front, the size of the property is limiting for this use. Again, it's inefficient for trucks and traffic at the same time. And it restricts the desire, as Mr. Schmidt pointed out, that trying to maintain as much of the vegetation that is already there, at least in that southeast corner, is a further restriction on this particular property trying to evolve. So that's why it meets the second standard. The third standard, everybody agrees, it's not their fault. So, we can skip through that one pretty quickly. As Mr. Testerman pointed out that it is not the fault of the applicant this isn't something that they created this hardship. And just in case you were wondering, the law says that just because they buy it with some issue, doesn't mean that that's the creation of a hardship. So, that's the third standard and why they meet that. And then the most interesting standard here, probably, is the last standard. And it's kind of the most subjective. It's got spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice achieved. Spirit, purpose, and intent of the regulation. First of all, this is a BC-1 Mr. Testerman pointed out that the convenience store gas station use is an approved use that will have to get a special use permit. But it's something that the legislative body, the board of commissioners, the town council, has decided is a use that can be had in this area. So, the concept of it meets with the purpose. And the setback faces the interior roadway rather than other buildings or the number of those other gas stations that

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were presented. They have really big rear setbacks because they backed up the residential or they backed up something else that had a 60-foot setback. But in this case, it doesn't really back up anything but a roadway and a parking lot at the Walmart. And, of course, the historical reason for setbacks is to try and separate buildings to keep them fire and other damage. And certainly that wouldn't be the case by reducing the intent of the setback in the back. Lot coverage. If you compare the requested lot coverage to the sites at the ABC store, Wendy, and the bank just to the east, and you consider the fact that none of them have permeable pavement, and you just take a look at the area. There's an area in the packet that shows all three of them, or all of those sites from the ABC store all the way up to the front porch. And if you look at them and you take away that sliver of grass that's by the entrance to the shopping center that's not part of the site for the bank, and then look at it at the same time at our proposed plan, they don't look that much different in terms of actual visual lot coverage because a lot of those sites look open and look like they have a lot less lot coverage because of that easement out in front. And then you take into account permeable pavement and the size of the buildings in comparison, and the size of the buildings and the percentage of the property that's taken out of the buildings. There's an argument there that if the permeable pavement works as it should, that there's less lot coverage there than all of the other sites around it, even if you go to the 82%. And then open space, again, the functional, practical effect of this property for people driving by on the highway is it's not going to look much different in terms of open space from what it does now or from what the neighboring properties do. The vast amount of all the open space in that area is that easement area up front this is DOT and or utilities. So looking at it, it's going to be the same. Then the other part that's important about open space is a lot of the properties in this town and all the towns on the other end of the county, they use their septic area to get open space. They said, you know, we're going to satisfy the open space requirement because we've got to have septic anyway so we can have this big green area. They don't have to have septic. And they're a rare place on the Outer Banks that's got wastewater treatment. And the permeable pavement and the wastewater treatment, this should be something that meets the spirit in allowing this use. And lastly, almost all of this is related to safety. I mean, I suppose some of it could be just related to the pain and convenience of the guy driving the truck. It's not easy to get into a tight site. It's not easy for customers to park in the funny parking places. But the reality is what that all comes down to is that if users and equipment and vehicles can all use the site at the same time safely, then that's to the benefit of the applicant, to the benefit of the town, and to the benefit of all its users. So that's how you get all four of the standards being met. Provided that, as Mr. Varnell pointed out, there's substantial, competent, relevant evidence to show that on the record today. And we appreciate your consideration again this afternoon.

Chairman Meads: Thank you, Mr. Gallop.

Mr. Varnell: Do you guys have any questions for Mr. Gallop? Then I have just one question just to make sure it's on the record. As to the peculiarity of the lot itself, without the DOT, the substantial taking that occurred by the DOT in that right-of-way, would this, you know, if we were in a typical scenario where that property line, well, I'm going to call it the northernmost based on the way this is turned, but that northernmost property line, if it ran out near that road and all that green space wasn't there, would the plan be accomplishable according to our ordinance as it's written? And if you don't know, that's okay.

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Mr. Gallop: I don't know, but just looking at it, you know, if you look at the Carawan's, the Carawan's must have happened before all that happened, and they've got their drive there, and that could go back over there where the septic area is. You're only talking about a 10% coverage difference. You can conclude that there's more than 10% grass there, that would meet the open space requirement and then I think it would be close enough to shift the building forward 10 feet, and they would probably meet it if the lot was that big, I think it would probably meet it. I think what it is if this board could look at those pictures and find it would probably meet it.

Mr. Varnell: I mean, I'm not disagreeing, but I just was curious as to the response. Thank you.

Mr. Schmidt: Yeah, we're talking about 10,000 square feet to get to that 10%, so I would argue easily 10,000 square feet of green area. Thanks.

Mr. Gallop: Mr. Schmidt pointed out that it would only need 10,000 square feet. They're saying it's a microphone if you are wondering why I'm repeating it. He pointed out that it was only needed for 10,000 more square feet. And it is pretty clear that there is that much in that grassy area upfront.

Chairman Meads: Do y'all have any questions for Rob at this time? All right, so I guess at this time it would be our chance to discuss amongst each other. Casey, I know one time we kind of went through each item. I don't know if that's appropriate here. Should we discuss it first?

Mr. Varnell: You can go whichever way you want. Obviously, though, what you could do is go through each particular standard, since each requires a yes vote, and make a motion as to whether or not it meets. So, you're going to go yay or nay, depending on what the question is. If it's seconded, then you could then discuss. In other words, you have the ability to discuss once the motion is on the floor for that particular factor, or you could just have an open discussion right now about whatever you guys want before making any motion on any standard.

Chairman Meads: I guess I'll just start with open comments first. Does anybody have any open discussion about what they're trying to do here as far as how you feel about it?

Mr. Perry: Let me just ask this. Between making this work with our current standards and what they're asking, we're losing three parking spots, five feet on each drive aisle and ten feet between the fuel canopy and the parking spots in front of the store. Is that correct? There's 26 spots around the store on the one that would meet our code, and seven to the east side, there's 28 on what they're asking, and eight.

So, it looks like if we're to meet our current standard, they would lose three parking spots. The drive aisles are 25 feet now instead of 30, and there's ten feet between the fuel canopy and the parking spots. Am I missing anything else?

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Vice-Chair Berquist: Well, there's the gap between the canopies.

Mr. Perry: There's the one canopy, yes?

Vice-Chair Berquist: Yes. And the location of the fuel tanks.

Mr. Perry: So, Casey It's all or nothing, right?

Mr. Varnell: Correct. So they have to meet every single factor that we've been discussing. That's right.

Chairman Meads: I guess my, you know, one of my main concerns is our lot coverage being increased that much.

Vice-Chair Berquist: I agree.

Chairman Meads: Is it an unnecessary hardship? You know, it's a hardship, but I don't know that it's unnecessary per our ordinance. I guess we could argue that it's an unnecessary hardship in other situations, but that's what our town has agreed to on our coverage guidelines. So I think that's a hard one for me to get over.

Vice-Chair Berquist: I agree. When you look at both of those plans and you lose that back setback, you have parking spaces that are almost immediately where the access points are on both sides. When we talk about seasonal effect of volume around here and the fact that their business model is quick service, that's a lot of coming and going, and this is a really busy thoroughfare to have people backing up immediately right there. People don't pay attention enough as it is. I think that this buffer, and as you can see in some of the adjacent ones, doesn't have the same impact from that. And then you talk about vegetation and landscaping and visual acuity also. I see that as a negative of decreasing that setback.

Chairman Meads: Did you all hear that?

Vice-Chair Berquist: And a safety issue.

Mr. Varnell: I was going to just ask, are you kind of couching all of that in the public safety prong of this?

Vice-Chair Berquist: I am.

Mr. Varnell: We'll get more than that when you guys vote. I just wanted to make sure I was following.

Vice-Chair Berquist: It very much seems obvious that the exhibit 2 would allow for easier fuel transport and flow of traffic. So, I don't have any disagreement with safety and flow related to that part of it, but this area does seem like a safety issue on both sides. With that buffer not being there. And if that's a reason to go forward with a modified version, then I'm

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not sure I agree with that. You know, we also have every other gas station in Kitty Hawk compliant.

Chairman Meads: Right. And so, you could argue that the septic, the on-site waste water would help meet these guidelines.

Vice-Chair Berquist: Unless, as you said, a lot of people use the septic area as a green space too.

Chairman Meads: Right, and that's something I hadn't thought of, so I can agree with that.

Vice-Chair Berquist: I have a problem with number 1, really. I don't know.

Chairman Meads: Any other questions or comments? If not, I mean, we can go through. We can start with number 1 and vote on it if you guys would like. Unless you have more questions or comments.

Ms. Dunn: No, I agree with Abby as far as the parking right there. I mean, I think that's an issue. I don't know. It's like the buildings being inside that. That may be a lesser issue. So, I mean, whatever you guys want to do. I'm going to say, you know, follow your lead.

Mr. Langley: Well, do we know what the first parking spot is to that roadway? Like the distance? Like, if they were willing to take those first two spots out, because I agree that people backing out, they're probably going to pull in. That may become an issue. But the parking lot being expanded for everything else. Emergency vehicles and gas tanks. But if it's those two parking spots, the first two on each side, could that be accommodated?

Vice-Chair Berquist: So, we do have an option to approve variance with conditional things.

Mr. Varnell: As long as they're rationally related to the factors that you're considering.

Vice-Chair Berquist: Like a safety situation?

Mr. Varnell: If the issue is safety, then that could be a condition that you, if again, if you approve it. We're only doing conditions if we approve the variance.

Mr. Testerman: And doing that, if it works for the applicant, it would actually reduce the coverage and increase the open space as well. If you take those southernmost two parking spaces out.

Vice-Chair Berquist: There's only one on the left side and two on the right side.

Mr. Varnell: If you all will talk into the mic.

Vice-Chair Berquist: Sorry, I was just saying that it looks as though, you know, with the potential of eliminating those southernmost parking spots without moving the building, it

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doesn't seem like there's a safety issue with the building being a ten-foot setback, is what I was going to say.

Mr. Gallop: I just wanted to say that their design is their preference, but they understand that if you wanted to condition it on taking out those south parking places, all three of them, that they'd be willing to. They would also be agreeable to that condition that these variances only apply to this particular type of use because the variances would continue to go on with the land and you don't necessarily want your lot coverage in open space. If they don't do it and then a bank comes in, it might not work for you, but for this particular use, to satisfy the end of it, since the goal is public safety, they're glad we don't have a condition that limits it to this type of, you know, convenience store.

Vice-Chair Berquist I think that's much more amenable and does increase the potential green space also.

Mr. Testerman: I just ask for clarification also because it mentioned in the application that the lot coverage was 82% with the use of permeable pavement. Was that meaning everything in excess of 60% was going to be permeable pavement?

Mr. Schmidt That's right.

Mr. Testerman: I just want to make it clear on the record. Thank you.

Chairman Meads: I think it might be easiest for us if we just go through each item and vote on it. Would you agree, Casey?

Mr. Varnell: Yes, I do. I do absolutely agree with that.

Chairman Meads: So, I think at this point, we would need a motion to vote on item number one.

Ms. Dunn: I'll make a motion.

Mr. Varnell: And when proposing it, actually go forward. I was going to say what I would generally do or what boards generally do is say, you know, I make a motion that this does not amount to an unnecessary hardship or this does amount to an unnecessary hardship, whichever way you guys are flowing, whoever makes that motion. And then once it's seconded, you can discuss further and then the vote would be on yay or nay. Okay.

Chairman Meads: Could I get a motion on item number one?

MOTION

Ms. Dunn: I'll make a motion. I'll make a motion that it does meet the unnecessary hardship.

Mr. Varnell: So, the motion is that an unnecessary hardship would result from the strict application of the ordinance in this particular instance.

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Chairman Meads: Can I get a second?

Vice-Chair Berquist: I'll second.

Chairman Meads: All right, so the motion has been made that there is an unnecessary hardship created by the strict application of this ordinance. So now we can discuss this. I'd like to get input from everybody. Do you feel like this is an unnecessary hardship that's created from the strict application?

Ms. Dunn: I do think that with the wider drives, like the driveway, it's safer and has better access. But I am also concerned about the safety of parking spaces.

Chairman Meads: So, I'm going to go back to the unnecessary hardship. In my opinion, it is a hardship, but I don't, I personally don't feel like that it's unnecessary. I think that our ordinances are put in place to avoid too much hard space. There are lots of times when development is done that certainly it's much easier if we could cover 100% of the lot and we could get a lot more, you could get a lot more out of that lot. So, our town has put these ordinances in place to keep things like that from happening. So you could argue that it's a hardship, but I don't know that it's unnecessary. So that's what we need to, you know, that's what we need to vote on, is this an unnecessary hardship. So, is it unnecessary that our lot coverage is set at 60% for commercial development plus our permissible pavement allowance? Was it 12%?

Vice-Chair Berquist: Yeah. 12%.

Chairman Meads: So, for lot coverage, is that unnecessary? So that's kind of where, that's where I'm at on it.

Vice-Chair Berquist: I don't think so.

Mr. Varnell: For what it's worth, Mr. Gallop, absolutely correct that it's not, it's no longer, certainly not any longer necessary to show that no reasonable use can be made of the property, right, in the absence of the variance. But you are entitled to consider what type of use can be made of the property if the ordinance were followed. That could go into your consideration as to whether this is unnecessary or not. So, I'm just throwing, I'm not issuing an opinion, I'm just throwing out there what you are entitled to consider on this particular factor.

Chairman Meads: So, with that, does anybody else have a comment on the unnecessary hardship created? If not, I think we can go for a vote. So, your motion to approve item number one as an unnecessary hardship. So, we agreeing with the applicant that that is an unnecessary hardship. Is that correct?

Mr. Varnell: That's the motion that's on the floor. That's correct.

Chairman Meads: So, at this point, all in favor, say aye.

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Mr. Varnell: And if you say aye again, you're voting that this is an unnecessary hardship.

Chairman Meads: So, at this point, all in favor of the motion? Aye.

VOTE: Unanimous

Mr. Varnell: Okay, so. What was the vote on that?

Vice-Chair Berquist: Five.

Mr. Varnell: Five, was it unanimous?

Vice-Chair Berquist: Yes.

Mr. Varnell: Okay.

Vice-Chair Berquist: Should we just make a motion on the second one then?

Mr. Varnell: Yeah, we still need to make a finding on all of them.

MOTION

Vice-Chair Berquist: Okay. I'll make a motion to say that hardship results from the conditions peculiar to the subject property.

Chairman Meads: Okay. Can I get a second?

Ms. Dunn: I'll second.

Chairman Meads: Okay. All right, so we have a motion and we have a second.
That the hardship results from conditions peculiar to the subject property.

Mr. Varnell: You know, I'm bootstrapped here. Just because you found that there was no unnecessary hardship, the language of the statute is the hardship. And as Chairman Mead said, he has no disagreement with the fact that it is a hardship. The question initially was, was it unnecessary? So, you're entitled to consider this without a finding on the unnecessary portion of that. That's correct. And one other thing I would point out, which is why I asked Mr. Gallop about that easement, is that, in my mind, would be something you guys are entitled to consider as to items which are peculiar because you're entitled to consider how many commercial properties in Kitty Hawk have such a large area of DOT right-of-way restricting the size or the ability to develop a particular parcel.

Vice-Chair Berquist: And I agree that it looks like that is peculiar to the property.

Chairman Meads: I would certainly agree.

Vice-Chair Berquist: And it's definitely considering the adjacent properties as well.

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Chairman Meads: So, I would agree with that. Any questions or shall we vote? So, all in favor that the hardship results from the conditions procured in the subject property?

Aye – Chairman Meads, Vice-Chair Berquist, Ms. Dunn, Mr. Langley

All opposed? Mr. Perry

Vote: 4-1 in favor

Vice-Chair Berquist: Okay, so then the third one, we can make a motion to say there is a hardship that is not the result of actions taken by the applicant or property owner.

Mr. Varnell: And I'll ask this, because it's still one that's confusing, where the no is actually approval of the item. So, did the hardship result from actions taken by the applicant?

Vice-Chair Berquist: Or I can say a motion to vote that a hardship is the result of actions taken by the applicant. That would be easier.

Chairman Meads: Or is, or is not.

Mr. Varnell: Yes, absolutely. Either way you want to go.

Vice-Chair Berquist: Okay, so I'll just motion to say the hardship is not the result of the actions taken by the applicant.

Mr. Langley: Second.

Vice-Chair Berquist: I'm happy to vote on that. Are you guys ready to vote on that?

Chairman Meads: Okay. So all in favor that the hardship is not a result of the actions taken by the applicant or property owner? All in favor? Aye.

VOTE: Unanimous

Mr. Varnell: Yeah, that would have been a unanimous vote that they did meet the requirements of that particular standard. That's correct.

Chairman Meads: All right, requested variances in harmony with the spirit, purpose, and intent of our ordinance. Any discussion?

Mr. Varnell: And if you would, I'm sorry, I don't have the sheet in front of me. Do we have it broken down to where there is a follow-up to that that discusses the public safety?

Chairman Meads: Yes

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Mr. Varnell: Okay, got it. I know we, between Kitty Hawk and Kill Devil Hills, I sometimes get the applications confused as far as how the vote goes. So okay, there is a separate item for public safety. Understood.

Chairman Meads: So, number four, is it in harmony with the spirit, purpose, and intent of our ordinance or the town's ordinance? I guess we can make a motion, then we can discuss.

MOTION

Vice-Chair Berquist: I'll make a motion. A motion that the variance is in harmony with spirit, purpose, and intent of the ordinance.

Ms. Dunn: I'll second.

Chairman Meads: Any discussion on this?

Vice-Chair Berquist: I feel like it is with the spirit of the commercial area, obviously, and the use of surrounding properties and the nature of what goes on in that area. So I don't, and with trying to preserve, you know, even if it's limited green space, the aesthetic seems to be very consistent with that. So, I don't have a problem with saying that it's outside of that scope.

Chairman Meads: Right. Any other comments on that?

Mr. Perry: You were saying the variance is out. Say that, explain it a little more.

Vice-Chair Berquist: That the variance is in harmony with spirit, purpose, and intent of the ordinance with regard to the location and other businesses around it and maximizing the use of green space with the reduction of green space and the consistency of use in the area and in the zoning there.

Mr. Perry: So your motion is that the increase to 82% lot coverage is in the spirit and harmony of our ordinance?

Vice-Chair Berquist: Yes, that was the motion, yes.

Mr. Varnell: But considering also the, you can consider the amount of permeable pavement that's being used within that increase in lot coverage as well. I'm not, again, opining either way, but that's I believe why the applicant went through whether or not other properties use permeable pavement, other adjacent or surrounding or nearby properties use permeable pavement versus impermeable. So those two, the increase in the permeable I would state to you could go hand in hand as far as your consideration of this. I think the something else is you can consider the invest and improve item proposed and discussed by the applicant as is stated for this area in our land use plan. That's something else that you guys can take into consideration.

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Chairman Meads: So this would be the overall development and it would include all three variances in the overall development and the way it's proposed on this?

Vice-Chair Berquist: The plan as a whole.

Mr. Varnell: Correct.

Vice-Chair Berquist: Which I agree with.

Mr. Perry: If I vote yay, that means I approve of 82% lot coverage. Is that what you're saying?

Chairman Meads: Well, you would be approving that it's in harmony with the intention.

Vice-Chair Berquist: That the overall plan is in harmony with the intention, not specific to lot coverage.

Mr. Perry: Not in harmony with the ordinance, but the variance itself? Or the variance is in harmony with the ordinance?

Chairman Meads: The overall development, I guess we would say in this particular portion, would be in harmony with the spirit or the purpose and intent of the ordinances that we have in place.

Vice-Chair Berquist: That it's not a vast deviation from like the goals of having a commercial property in that area. I think of it in the greater sense of the development of that area.

It's not an obscure use of that. It seems consistent with everything else.

Chairman Meads: Any other discussion or comment? If not, I move we vote all in favor that the requested variance is in harmony with the spirit, purpose, and intent of the ordinance.

VOTE

Aye – Chairman Meads, Vice-Chair Berquist, Ms. Dunn, Mr. Langley

All opposed? Mr. Perry

Vote: 4-1 in favor .

Chairman Meads: Okay, so 4-1. So, that one passed.

Mr. Varnell: Okay, 4 out of 5 then.

Chairman Meads: And the last would be the requested variance, the minimum possible to make reasonable use of the land, building, or structure. Is the requested variance the minimum possible to make reasonable use of the land, building, or structure?

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Mr. Testerman: If I could just interrupt on that one for a second. I didn't include that part in the staff report for the staff findings because that is an outdated part of our zoning ordinance that needs to be brought into compliance with. That's the part that Ben was referring to that the state statute or the state legislature said they don't have to make that finding anymore.

Mr. Varnell: Correct. So you can strike that.

Mr. Testerman: As I was preparing my staff work for this one, I noticed that it's still in there and it needs to come out.

Vice-Chair Berquist: But that was just on their application piece. So public safety is actually a portion of the one that we just voted on. If you look at Exhibit D, so that was not in the question as it was listed on the application. It is listed as a requirement for us accepting that.

Chairman Meads: Okay. On Exhibit D.

Vice-Chair Berquist: Yes.

Chairman Meads: Okay. Alright and that one passed.

Vice-Chair Berquist: It did. But we did not.

Chairman Meads: We didn't discuss the safety.

Vice-Chair Berquist: No we didn't and we did not voice the motion as such. Is there any way to strike a motion and re-bring that one up?

Mr. Varnell: In conjunction there with the previous motion, just add to that.

MOTION

Vice-Chair Berquist: Okay well then in conjunction with the previous motion to include that public safety is secured and justice is achieved. And can we re-vote?

Mr. Varnell: Yep.

Vice-Chair Berquist: I would say that including safety as a part of that motion is worth re-voting on since we have discussed at length what we feel is safe about that.

Chairman Meads: So do we have a second to that? Amendment to the vote.

Mr. Varnell: And the question here is, does this variance, is it designed or requested in such a way that public safety and substantial, well public safety I think it was what the motion was, is being achieved?

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Chairman Meads: I'll second that one. Okay. Any new discussion on the public safety side of it?

Vice-Chair Berquist: I would say the same thing but I think the bigger part of the public safety that's positive is related to flow except for on that rear setback. And then I guess to really decide whether or not that that is more negative or outweighs the positive flow of obviously fueling and the rest of traffic around that area.

Chairman Meads: So will this section be on condition that those immediate parking spaces were removed?

Vice-Chair Berquist: Only if the rest of the variance is approved.

Mr. Varnell: Yeah, I was going to say since number one, didn't pass that means the variance doesn't pass either. So, there's no reason for you guys to provide conditions. Conditions would only come into play in the event of approval.

Chairman Meads: Okay. All right. So, we'll vote on item number four, including the public safety. All in favor that it is in harmony with the spirit and public safety say aye.

Aye- Chairman Meads

All opposed? Vice-Chair Berquist, Ms. Dunn, Mr. Perry, Mr. Langley
VOTE: 1-4 against

Chairman Meads: All right. Motion appeals.

Vice-Chair Berquist: It seems by this discussion I don't know if we have other motions to further discuss things but by everyone's consent on this that we don't have unanimous or 4-5ths agreement on all four items.

Chairman Meads: Correct. So, at this point I guess the variance would not pass at this point.

Is there not anything else that needs to be done on that?

Mr. Varnell: No. That's correct.

Chairman Meads: Okay. It appears that we met two of the items and two of the items we didn't meet so. So, a motion?

Mr. Varnell: I think just to clear the record that a motion to deny the variance just make that motion seconded and then have that vote.

MOTION

Chairman Meads: So, at this time I'll make a motion to deny the variance that's been applied for today.

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Mr. Varnell: For failure to meet the two items that you just discussed.

Chairman Meads: For failure to meet items one and items four in our packet.

Vice-Chair Berquist: I'll second. Motion seconded. All in favor? Aye

VOTE: Unanimous

Chairman Meads: Rob, do we have anything else that we need to discuss?

Mr. Testerman: Nothing for me.

5) Other Business:

Chairman Meads: Okay. So, I guess at this point I just want to welcome our new members.

Welcome y'all here. You got thrown into the fire. That's your first go-around.

I'd like to thank our applicant, Mr. Cahoon, thank you. Thank you for coming out. Mr.

Gallop. Do any of our members have anything, any comments? Casey?

Mr. Varnell: I have nothing. And Rob?

Mr. Testerman: Welcome.

Mr. Varnell: I would say Welcome too.

Chairman Meads: All right. At this point this meeting is adjourned. Thank everybody for attending today.

6) Adjourn

Chairman Meads adjourned the meeting at 5:19 pm.

Respectfully Submitted by Jessica Everett, Administrative Zoning Technician/Clerk to the Board.



**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.

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.

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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www.kittyhawkncc.gov

MEMORANDUM

TO: Chairman Meads and Board of Adjustment Members
FROM: Rob Testerman, AICP, CFM Director of Planning & Inspections
DATE: October 21, 2025
RE: Application for variance from the minimum front building setback standards to develop 207 Jejac Drive.

REQUESTED VARIANCE

The applicant requests a 10-foot variance from the minimum 25-foot front building setback requirement in Section 42-247(d)(3) of the Town Code.

Approval of the variance would allow construction of a single-family dwelling as close as 15 feet from the front property line at 207 Jejac Drive.

PROPOSED PROJECT

The property is currently undeveloped.

The applicant proposes to construct a new single-family dwelling on the property, with the adjusted front yard setback.

A detailed site plan for the proposed new dwelling has not been submitted at this time. All other dimensional requirements would be required (rear and side yard setbacks, lot coverage, etc)

SUBMITTED MATERIALS

Applicant Submissions:

- **Variance Application** describing the justification for the request.
- **Exhibit A** – Site survey with hand-drawn proposal
- **Exhibit B** – Site photos

Staff Submissions:

- **Exhibit C** – Aerial image of 207 Jejac Drive and surrounding properties (source: Dare County GIS).
-

ORDINANCE REFERENCES

Town Code Section 42-247(d)(3) – *Dimensional Requirements in the Beach Residential (BR-1) District:*

Dwelling Size (sq. ft.)	Side Setback (ft.)	Front & Rear Setbacks (ft.)
3,000 and under	10	25
3,001 – 3,500	12.5	25
3,501 – 4,000	15	25
4,001 – 5,000	17.5	25
5,001 – 6,000	20	25
6,001 and over	25	25

PROPERTY AND AREA INFORMATION

- **Parcel Size:** 10,150 sq. ft. (nonconforming; current minimum = 15,000 sq. ft.)
- **Lot Dimensions:** 145 ft. frontage × 70 ft. depth
- **Zoning:** Beach Residential (BR-1)
- **Surrounding Zoning and Land Uses:**
 - **East:** BR-1, single-family dwelling
 - **West:** BR-1, single-family dwelling
 - **North (across Jejac Dr.):** BR-2, 8.15-acre undeveloped parcel
 - **South:** Town of Kill Devil Hills, single-family dwellings

Due to the shallow 70-foot lot depth, applying the standard 25-foot front and rear setbacks leaves only 20 feet of buildable depth, which substantially limits redevelopment potential on the site.

DEVELOPMENT PATTERN ON JEJAC DRIVE

All ten (10) residential lots along the south side of Jejac Drive were created in the Kitty Dunes II Subdivision (1971), prior to the Town's incorporation. Nine of the ten parcels are developed.

Address	Approx. House Depth	Rear Setback	Front Setback (approximate)	Year Built
107 Jejac Dr.	25 ft	11 ft	32.5' (house), 29 ft (deck)	1978
113 Jejac Dr.	27 ft	12.5 ft	25 ft (house), 17' (deck)	1985
119 Jejac Dr.	33 ft	13 ft	26 ft	1978
201 Jejac Dr.	30 ft	10 ft	25 ft (house), 17 ft (deck)	1985
207 Jejac Dr.	—	—	—	<i>Variance Pending</i>
213 Jejac Dr.	34 ft	10 ft	25 ft (house), 18 ft (deck)	1986
301 Jejac Dr.	25 ft	13 ft	23 ft (house), 17 ft (deck)	1978
307 Jejac Dr.	40 ft	10 ft	30 ft (house), 21' (deck)	1984
313 Jejac Dr.	36 ft	12 ft	25 ft (stairs)	2013
319 Jejac Dr.	31 ft	13 ft	25 ft (deck), 21 ft (stairs)	2022

Findings:

- Six (6) of these encroach into the front setback. Uncovered decks and stairs are permitted to encroach up to 4' into the front yard setback, so 307 and 319 appear to be compliant.
 - All nine (9) existing residences encroach into the rear setback.
 - Variances were formally granted for 313 and 319 Jejac Drive.
 - No record of variances was found for the other homes developed post-incorporation.
-

ADDITIONAL BACKGROUND

- The subject and adjoining properties were platted under Dare County jurisdiction prior to the Town's formation in 1981.
 - Many lots along Jejac Drive are nonconforming in area (10,150 sq. ft.) and depth (70 ft.) under current BR-1 standards.
 - Application of both front and rear setbacks substantially restricts usable building area, creating practical difficulties for redevelopment.
 - Lot coverage in the BR-1 district is limited to 30%, with up to 38% permitted if additional area consists of open decking or permeable pavement.
 - No detailed site plan for the proposed new dwelling has yet been provided for staff review.
-

SUMMARY

The applicant seeks relief from a dimensional standard that has proven challenging for similarly sized lots along Jejac Drive. Staff notes that:

- Strict application of the 25-foot front and rear yard standard would result in a 20-foot deep building envelope, limiting reasonable development of the site.
 - Numerous properties in the same subdivision exhibit comparable setbacks.
 - While the majority of the houses themselves on Jejac meet the 25' front yard setback, four of them have decks that encroach further than is currently permitted, to a distance that is comparable to the requested variance.
-

VARIANCE CONSIDERATIONS

In order to grant the variance, the Board must make the following findings:

(1) Unnecessary hardship would result from the strict application of the ordinance. 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.

(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 granting of a variance shall not be regarded as a self-created hardship.

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

Directions to the Subject Property

(from Kitty Hawk Post Office, Hwy. 158 & Kitty Hawk Road)

Drive 0.9 mile south on N. Croatan Highway (Hwy. 158).

Turn right onto Jejac Drive (just before Henry's restaurant).

Drive west for approximately 830 feet.

207 Jejac Drive is located on the left side of the road.

STAFF FINDINGS

207 JEJAC DRIVE

- 1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved which are not applicable to other land structures, or buildings in the same zoning district?**

Yes. The minimal depth of the subject property (70 feet) does not allow for the construction of a typical, reasonably sized residence. With minimum building setbacks of 25 feet from the front and rear property lines, the remaining building area is only 20 feet in depth (not much wider than a single-wide mobile home). For comparison's sake, most lots created under the Town's current subdivision standards have a depth of 150 feet or more. Even the smallest, older lots in the areas "between the highways" have depths of 100 feet, which provides a more traditional building area.

- 2. Would a literal interpretation of the zoning code deprive the applicant of rights commonly enjoyed by other properties in the same district?**

Yes. As noted above, a combination of the setback regulations and the design of these lots create a lot with developable area that is 20' deep, and a total of 2,500 sq ft.

- 3. Do the special conditions and circumstances result from the actions of the applicant?**

No. The current dimensions of the subject property were created by a subdivision plat approved by Dare County and recorded in 1971, prior to the incorporation of the Town of Kitty Hawk and long before the applicant entered into a contract to purchase the property.

- 4. Would granting the variance confer special privileges to the applicant that are denied to other land structures, or buildings in the same zoning district?**

No. While all of structures along Jejac Dr. encroach into the rear setback, several have decks that encroach farther into the front setback than is currently allowed as well. The requested 15' setback is not significantly closer to the road way than the existing encroaching decks.

- 5. Is the requested variance in harmony with the general purpose and intent of the zoning code?**

Yes. Setback requirements are generally adopted for the purposes of securing safety from fire, providing privacy, preventing overcrowding, and achieving a desired pattern of development. With a setback of 15' from the front property, any future structure would still be 25' from the rear property line. Given that Jejac Dr. is long and straight, allowing a house 15' from the property line would not create any sight restrictions for motorists.

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VARIANCE APPLICATION FORM

BOARD OF ADJUSTMENT TOWN OF KITTY HAWK

Date Submitted: _____

APPLICANT:

Name: Robert Jenkins

Mailing Address: 316 Cameron St., Kill Devil Hills, NC 27948

Telephone(s): 704-657-3316

Email: rob.casedetail@gmail.com

PROPERTY OWNER(S):

Name(s): Christy Cheek Jenkins

Mailing Address: 316 Cameron St., Kill Devil Hills, NC 27948

Telephone(s): 252-619-7294

Email: kristicheek@hotmail.com

PROPERTY INFORMATION:

Property Address/Location: 207 JeJac Dr., Kitty Hawk, NC 27949

Dare County PIN #: 987516-84-6757

Zoning District: Kitty Hawk Use of Property: Residential

VARIANCE REQUEST:

Applicable Ordinance Section: Minimum Setback Requirements

Ordinance Requirement: House Size of 3000 sq. ft. and under. Front Yard Setback Required is 25' and Rear Yard Setback Required is 25'.

Variance Requested: Front Yard Setback Adjusted to 15'

The Kitty Hawk Board of Adjustment, with a vote of four-fifths of the membership, may grant a variance from a specific provision of the Zoning Ordinance. Consistent with the State Enabling Act, Section 42-74 of the Town Code states that the Board of Adjustment is required to reach certain conclusions as a prerequisite to granting a variance. The following questions are intended to offer the petitioner an opportunity to address these criteria for the Board. Please answer each question as completely as possible.

1. Describe how an unnecessary hardship would be created by strict application of the ordinance.

Since the lot is only 70' deep, the minimum setback requirements only allows for a home to be built with a 20' depth. The depth of 20' for a home is quite limiting in floor space and would not allow for any full size vehicles to fit adequately into a 20' depth garage. We are looking to build a garage unit with the living area on the 2nd floor. The home plan we have in mind is a square home and allows us to accommodate for the existing natural landscape without the removal of trees. We intend to keep the lot in its' natural setting and a house that is square will allow us to do this.

2. Explain how the hardship results from conditions peculiar to the subject property, such as location, size, or topography.

The lot is rectangular. The dimensions are 145' in width and 70' in depth. Also, there is a well established live oak in the middle of the lot which we don't want to remove. We are limiting our build in width, and prefer to build a smaller square home to accommodate for the existing landscape & forestry. We intend to build our home on the West side of the lot which is relatively cleared. Pictures & a survey of the lot are attached to provide you with a visual reference of the landscape and natural beauty of the lot. We intend to build the home where the trampoline is located.

3. Describe how the hardship is not the result of actions taken by the applicant or property owner.

Since the lot is of such a rectangular size and the ordinance only allows for a depth of 20' to build a home, the hardship is due to the original layout of the plat along with the current minimum setback requirements.

4. Explain how the requested variance is in harmony with the spirit, purpose, and intent of the ordinance.

Being there are already established homes on the back of the property, to allow for a home to be built 10' closer to the street property line, it will not infringe on the adjacent property in regards to a closeness of proximity, nor will any water runoff affect adjacent properties or structures due to the elevation of the lot. This variance will also allow for a sufficient septic field to be placed on the back of the property (behind the home) which will not interfere with the existing trees. Furthermore, the property across the street from this lot is not developable and remains a natural wooded area.

I certify that all the information presented in this application and attachments is accurate to the best of my knowledge, information, and belief.

PROPERTY OWNER
SIGNATURE

DATE



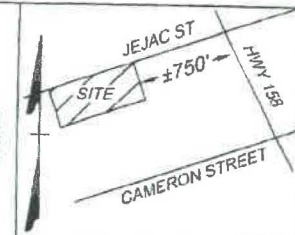
PROPERTY OWNER
SIGNATURE

9/8/25

DATE

Printed on 08/27/2020 at 10:00 AM by J. Sawyer

I, JASON A. MIZELLE, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION; DEED DESCRIPTION RECORDED IN DEED BOOK 1939, PAGE 277; THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN THE REFERENCES SHOWN HEREON; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.



VICINITY MAP - MAP NOT TO SCALE

(F)(11)c. - THAT THE SURVEY IS OF AN EXISTING PARCEL OF LAND
WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER
AND SEAL THIS 27TH DAY OF AUGUST, 2020

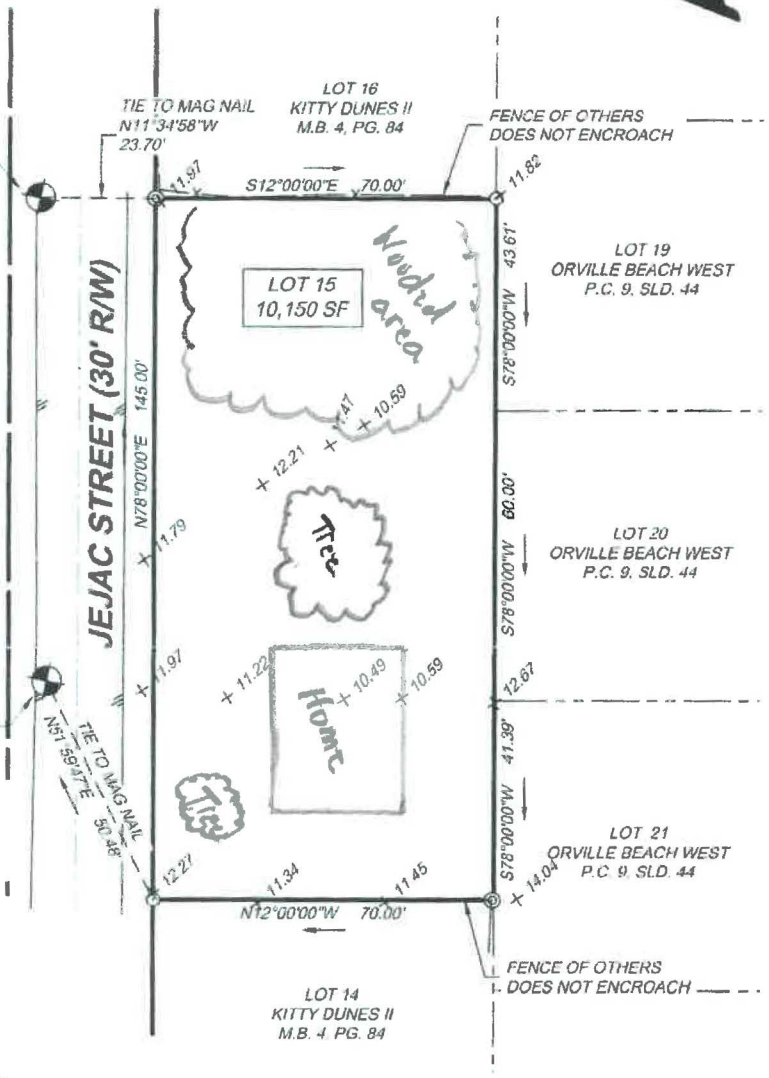
[Signature]
JASON A. MIZELLE, PLS L-4917

NOTES

- 1.) CURRENT OWNER
CHRISTY CHEEK JENKINS
316 CAMERON STREET
KILL DEVIL HILLS, NC 27948
DEED BOOK 2401, PAGE 880
PIN: 987516846757
- ALL DISTANCES SHOWN ARE
HORIZONTAL GROUND DISTANCES.
- 3.) ELEVATIONS SHOWN ARE NAVD 88
DATUM BASED ON LEICA RTK
NETWORK.
- 4.) THIS PROPERTY IS LOCATED IN FLOOD
ZONE "X" AS SHOWN HEREON
PER FEMA MAP PANEL 3720987500K
DATED JUNE 19, 2020 AND SUBJECT
TO CHANGE BY FEMA

TBM MAG NAIL
ELEV 12.35

TBM MAG NAIL
ELEV 11.86



LEGEND

- TEMPORARY BENCHMARK
- EXISTING IRON ROD (EIR)
- EXISTING IRON PIPE (EIP)
- PROPERTY BOUNDARY
- PROPERTY EXTENSION
- RIGHT-OF-WAY
- FENCE
- EDGE OF PAVEMENT
- SPOT GRADE

SCALE 1"=30'



SURVEY AND EXISTING CONDITIONS FOR CHRISTY CHEEK JENKINS BEING LOT 15, KITTY DUNES II, M.B. 4, PG. 84

THIS DRAWING PREPARED AT THE
ELIZABETH CITY OFFICE
1805 West City Drive, Unit E | Elizabeth City, NC 27909
TEL 252.621.5030 www.timmons.com C-1652

YOUR VISION ACHIEVED THROUGH OURS.

Atlantic Township	Dare County
Date: Aug. 27, 2020	Scale: 1" = 30'
Sheet 1 of 1	J.N.: 46481
Drawn by: J. Sawyer	Checked by: J. Mizelle

Approximate location of home.



View facing East, from neighbor's lot.

Our
Approximate
Property
Line.



Street view facing South.



Property
corner
Stake
West
corner

View facing Southeast.



Street view facing Southwest,



This map is prepared from data used for the inventory of the real property for tax purposes. Primary information sources such as recorded deeds, plats, wills, and other primary public records should be consulted for verification of the information contained in this map.



207 Jejac DR
Kitty Hawk NC, 27949
Parcel: 018516000
Pin: 987516846757

Owners: Jenkins, Christy Cheek -
Primary Owner

Building Value: \$0
Land Value: \$177,600
Misc Value: \$0
Total Value: \$177,600

Tax District: Kitty Hawk
Subdivision: Kitty Dunes II
Lot BLK-Sec: Lot: 15 Blk: Sec:
Property Use: Vacant Land (Private)
Building Type:
Year Built:

EXHIBIT C



Post Office Box 549
101 Veterans Memorial Drive
Kitty Hawk, NC 27949



Phone (252) 261-3552
Fax (252) 261-7900
www.kittyhawknc.gov

MEMORANDUM

TO: Chairman Meads and Board of Adjustment Members
FROM: Rob Testerman, AICP, CFM Director of Planning & Inspections
DATE: October 21, 2025
RE: Application for variance from the minimum rear building setback standards to develop 119 Jejac Drive.

REQUESTED VARIANCE

The applicant requests a 12.2-foot variance from the minimum 25-foot rear building setback requirement in Section 42-247(d)(3) of the Town Code.

Approval of the variance would allow construction of a single-family dwelling as close as 12.8 feet from the rear property line at 119 Jejac Drive.

PROPOSED PROJECT

The property currently contains an existing single-family dwelling constructed in 1978, prior to the Town's incorporation. The existing structure is located 12.8 feet from the rear property line and is therefore recognized as a legal nonconforming structure.

The applicant proposes to:

- Construct a new single-family dwelling on the property, and
- Retain the existing dwelling as an accessory dwelling unit (ADU).

According to the site survey (Exhibit A):

- Approximately 161.5 square feet of the existing dwelling and
- 203.78 square feet of existing decking and porch area encroach into the required 25-foot rear setback.

A detailed site plan for the proposed new dwelling has not been submitted at this time.

Relevant Precedent:

In 2022, the Board granted a similar variance for 319 Jejac Drive to reduce the rear setback along the entire property width for a single-family dwelling and accessory structure.

SUBMITTED MATERIALS

Applicant Submissions:

- **Variance Application** describing the justification for the request.
- **Exhibit A** – Site survey illustrating the existing dwelling location and setback encroachments.

Staff Submissions:

- **Exhibit B** – Aerial image of 119 Jejac Drive and surrounding properties (source: Dare County GIS).

ORDINANCE REFERENCES

Town Code Section 42-247(d)(3) – *Dimensional Requirements in the Beach Residential (BR-1) District:*

Dwelling Size (sq. ft.)	Side Setback (ft.)	Front & Rear Setbacks (ft.)
3,000 and under	10	25
3,001 – 3,500	12.5	25
3,501 – 4,000	15	25
4,001 – 5,000	17.5	25
5,001 – 6,000	20	25
6,001 and over	25	25

PROPERTY AND AREA INFORMATION

- **Parcel Size:** 10,150 sq. ft. (nonconforming; current minimum = 15,000 sq. ft.)
- **Lot Dimensions:** 145 ft. frontage × 70 ft. depth
- **Existing Dwelling Size:** 792 sq. ft.
- **Zoning:** Beach Residential (BR-1)

- **Surrounding Zoning and Land Uses:**
 - **East:** BR-1, single-family dwelling
 - **West:** BR-1, single-family dwelling
 - **North (across Jejac Dr.):** BR-2, 8.15-acre undeveloped parcel
 - **South:** Town of Kill Devil Hills, single-family dwellings

Due to the shallow 70-foot lot depth, applying the standard 25-foot front and rear setbacks leaves only 20 feet of buildable depth, which substantially limits redevelopment potential on the site.

DEVELOPMENT PATTERN ON JEJAC DRIVE

All ten (10) residential lots along the south side of Jejac Drive were created in the Kitty Dunes II Subdivision (1971), prior to the Town's incorporation. Nine of the ten parcels are developed.

Address	Approx. House Depth	Rear Setback	Width Encroaching	Year Built
107 Jejac Dr.	25 ft	11 ft	52 ft	1978
113 Jejac Dr.	27 ft	12.5 ft	57 ft	1985
119 Jejac Dr.	33 ft	13 ft	44 ft	1978
201 Jejac Dr.	30 ft	10 ft	56 ft	1985
207 Jejac Dr.	—	—	—	<i>Variance Pending</i>
213 Jejac Dr.	34 ft	10 ft	40 ft	1986
301 Jejac Dr.	25 ft	13 ft	70 ft	1978
307 Jejac Dr.	40 ft	10 ft	37 ft	1984
313 Jejac Dr.	36 ft	12 ft	57 ft	2013
319 Jejac Dr.	31 ft	13 ft	43 ft	2022

Findings:

- All nine (9) existing residences encroach into the rear setback.
- Six (6) of these encroach into the front setback. Uncovered decks and stairs are permitted to encroach up to 4' into the front yard setback, so 307 and 319 appear to be compliant.
- Variances were formally granted for 313 and 319 Jejac Drive.
- No record of variances was found for the other homes developed post-incorporation.

ADDITIONAL BACKGROUND

- The subject and adjoining properties were platted under Dare County jurisdiction prior to the Town's formation in 1981.

- Many lots along Jejac Drive are nonconforming in area (10,150 sq. ft.) and depth (70 ft.) under current BR-1 standards.
- Application of both front and rear setbacks substantially restricts usable building area, creating practical difficulties for redevelopment.
- Lot coverage in the BR-1 district is limited to 30%, with up to 38% permitted if additional area consists of open decking or permeable pavement.
- No site plan or building footprint for the proposed new dwelling has yet been provided for staff review.

SUMMARY

The applicant seeks relief from a dimensional standard that has proven challenging for similarly sized lots along Jejac Drive. Staff notes that:

- The existing dwelling's placement reflects pre-incorporation development patterns.
- Numerous properties in the same subdivision exhibit comparable setbacks.
- Strict application of the 25-foot rear yard standard would result in a 20-foot deep building envelope, limiting reasonable redevelopment of the site.

VARIANCE CONSIDERATIONS

In order to grant the variance, the Board must make the following findings:

- (1) Unnecessary hardship would result from the strict application of the ordinance. 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.
- (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 granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

Directions to the Subject Property

(from Kitty Hawk Post Office, Hwy. 158 & Kitty Hawk Road)
Drive 0.9 mile south on N. Croatan Highway (Hwy. 158).
Turn right onto Jejac Drive (just before Henry's restaurant).
Drive west for approximately 550 feet.
119 Jejac Drive is located on the left side of the road.

STAFF FINDINGS

119 JEJAC DRIVE

- 1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved which are not applicable to other land structures, or buildings in the same zoning district?**

Yes. The minimal depth of the subject property (70 feet) does not allow for the construction of a typical, reasonably sized residence. With minimum building setbacks of 25 feet from the front and rear property lines, the remaining building area is only 20 feet in depth (not much wider than a single-wide mobile home). For comparison's sake, most lots created under the Town's current subdivision standards have a depth of 150 feet or more. Even the smallest, older lots in the areas "between the highways" have depths of 100 feet, which provides a more traditional building area.

- 2. Would a literal interpretation of the zoning code deprive the applicant of rights commonly enjoyed by other properties in the same district?**

Yes. As noted above, a combination of the setback regulations and the design of these lots create a lot with developable area that is 20' deep, and a total of 2,500 sq ft.

- 3. Do the special conditions and circumstances result from the actions of the applicant?**

No. The current dimensions of the subject property were created by a subdivision plat approved by Dare County and recorded in 1971, prior to the incorporation of the Town of Kitty Hawk and long before the applicant entered into a contract to purchase the property.

- 4. Would granting the variance confer special privileges to the applicant that are denied to other land structures, or buildings in the same zoning district?**

No. The variance granted in 2022 for 319 Jejac ran the entire width of the property, with the owners intent of building a secondary structure that also would be 13 feet from the rear property line. While there is no site plan associated with this request, it appears similar in nature.

- 5. Is the requested variance in harmony with the general purpose and intent of the zoning code?**

Yes. Setback requirements are generally adopted for the purposes of securing safety from fire, providing privacy, preventing overcrowding, and achieving a desired pattern of development. With a setback of 12.8' any proposed structure would be at least 55 feet away from any other structure to the rear. Therefore, it appears that the purpose of intent of the setback standards would still be met if the proposed variance is approved.

Post Office Box 549
101 Veterans Memorial Drive
Kitty Hawk, NC 27949



Phone (252) 261-3552
Fax (252) 261-7900
kittyhawknc.gov
info@kittyhawktown.net

VARIANCE APPLICATION FORM

BOARD OF ADJUSTMENT TOWN OF KITTY HAWK

Date Submitted: _____

APPLICANT:

Name: Richard Lytle

Mailing Address: ____ 113 sunrise View Kitty Hawk NC 27949

Telephone(s): __ 252-305-3700 _____

Email:

_coastalmodernhomesllc@gmail.com _____

PROPERTY OWNER(S):

Name(s): ____ Richard Lytle Merita Zendeli

Mailing Address: _ 113 sunrise View Kitty Hawk NC 27949

Telephone(s): 252-305-3700 252-202-5154 _____

Email: coastalmodernhomesllc@gmail.com _

PROPERTY INFORMATION:

Property Address/Location: 119 Jejac dr kitty hawk nc 27949

Dare County PIN #: 987516849838

Zoning District: BR-1 Use of Property: residential

VARIANCE REQUEST:

Applicable Ordinance Section: _____

Ordinance Requirement: _____

Variance Requested: Set new 1600 sqft proposed house out side building set back lines to keep in line with existing house and the rest of houses on the street. _____

The Kitty Hawk Board of Adjustment, with a vote of four-fifths of the membership, may grant a variance from a specific provision of the Zoning Ordinance. Consistent with the State Enabling Act, Section 42-74 of the Town Code states that the Board of Adjustment is required to reach certain conclusions as a prerequisite to granting a variance. The following questions are intended to offer the petitioner an opportunity to address these criteria for the Board. Please answer each question as completely as possible.

1. Describe how an unnecessary hardship would be created by strict application of the ordinance.

 It would make the structure look out of place with rest of houses on the street.

2. Explain how the hardship results from conditions peculiar to the subject property, such as location, size, or topography.

There just isn't enough room in set lines on property to make it look right.

3. Describe how the hardship is not the result of actions taken by the applicant or property owner.

All the existing houses on the street are all in the set back due to rezoning I believe

Type to enter text

4. Explain how the requested variance is in harmony with the spirit, purpose, and intent of the ordinance.

___ If I can put new structure in line with rest of the houses it will be a much better looking street _____

5. Is the requested variance the minimum possible to make reasonable use of the land, building, or structure? Please explain.

___ Yes it is due to I have to build 1600 sqft structure to make existing house the ADU

I certify that all the information presented in this application and attachments is accurate to the best of my knowledge, information, and belief.



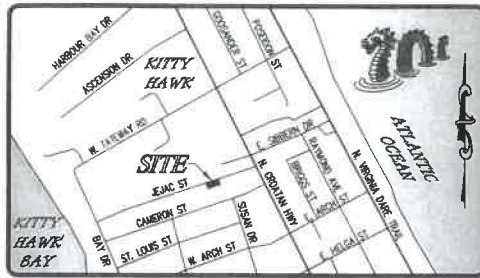
PROPERTY OWNER
SIGNATURE



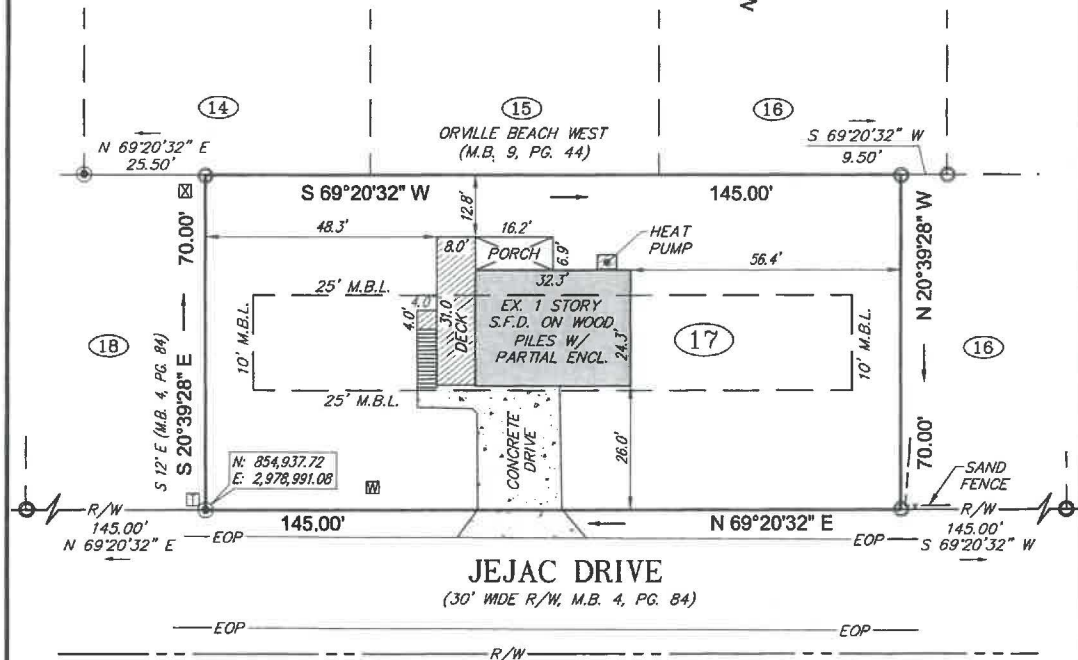
PROPERTY OWNER
SIGNATURE

___ 9-8-25 _____
DATE

___ 9-8-25 _____
DATE



VICINITY MAP
N.T.S.



NOTES:

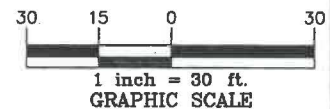
1. PROPERTY ADDRESS: 119 JEAC DRIVE
2. PARCEL: 018518000, PIN: 987516849838
3. LOT ZONING: BR-1 (LOW DENSITY BEACH RESIDENTIAL)
4. AREA = 10,150 sq. ft. = 0.233 acres
5. AREA CALCULATED BY COORDINATE METHOD.
6. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT.
7. THIS PARCEL MAY BE SUBJECT TO EASEMENTS NOT SHOWN HEREON.
8. SETBACKS AS PER TOWN OF KITTY HAWK CURRENT CODE AND MUST BE VERIFIED. SURVEYOR MAKES NO CERTIFICATION AS TO SETBACKS.
9. LOT MAY BE IN AN AREA OF ENVIRONMENTAL CONCERN. INDIVIDUAL PERMITS MAY BE REQUIRED.
10. SUBDIVISION AS RECORDED IN M.B. 4, PG. 84 OF THE DARE COUNTY REGISTRY.
11. PROPERTY IS LOCATED IN F.I.R.M. ZONE X, MAP NO. 3720987500K, DATED JUNE 19, 2020. USE OF LAND WITHIN THE FLOODWAY OR FLOODPLAIN AND FLOOD ZONES SUBJECT TO CHANGE BY FEMA.

LEGEND:

- - EXISTING IRON ROD
- - EXISTING IRON PIPE
- ⊠ - WATER METER
- ⊞ - TRANSFORMER
- ⊞ - TELEPHONE PEDESTAL
- EOP - EDGE OF PAVEMENT
- R/W - RIGHT OF WAY
- M.B.L. - MINIMUM BUILDING LINE
- S.F.D. - SINGLE FAMILY DWELLING
- (18) - LOT NUMBER

EX. LOT COVERAGE:

BLDG, PORCH = 897 sq. ft.
CONCRETE DRIVE = 509 sq. ft.
TOTAL COVERAGE = 1,406 sq. ft. or 13.9% (MAX. 30%)



UPDATE: 2/24/25-SHOW SETBACKS, LOT COVERAGE-JCB
6/3/25-REVISED LOT COVERAGE CALCS-JCB

I, CARLOS F. GOMEZ, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION FROM RECORDED INSTRUMENTS REFERENCED HEREON, THAT THE BOUNDARIES NOT ACTUALLY SURVEYED ARE SHOWN AS BROKEN LINES AND THAT INFORMATION FOUND IN EXISTING RECORDS AND THAT THIS MAP WAS NOT PREPARED TO BE RECORDED. THE RATE OF CLOSURE IS 1:100,000 BY LAT. & DEP. WITH A HORIZONTAL SCALE THIS 21st DAY OF FEBRUARY 2025.

P.L.S.

L-3241

FILE NO.
P1333.25

SURVEY DATE
02/14/25

CAD FILE
P1333PLS

SCALE
1"=30'

DRAWN
JCB

FIELD BOOK
131/42

PHYSICAL LOT SURVEY FOR:

RICHARD LYTLE

LOT 17
KITTY DUNES II
KITTY HAWK

ATLANTIC TWP.

DARE COUNTY

NORTH CAROLINA

Coastal
ENGINEERING & SURVEYING, INC.

C-0836

Civil, Structural, Surveying &
Site Development
4425 N. CROATAN HWY.
P.O. Box 1129
Kitty Hawk, N.C. 27949
(252)-261-4151



This map is prepared from data used for the inventory of the real property for tax purposes. Primary information sources such as recorded deeds, plats, wills, and other primary public records should be consulted for verification of the information contained in this map.

119 Jejac DR
Kitty Hawk NC, 27949
Parcel: 018518000
Pin: 987516849838

Owners: Lytle, Richard -Primary Owner
Zendeli, Merita -Primary Owner
Building Value: \$217,600
Land Value: \$161,400
Misc Value: \$0
Total Value: \$379,000

Tax District: Kitty Hawk
Subdivision: Kitty Dunes II
Lot BLK-Sec: Lot: 17 Blk: Sec:
Property Use: Residential
Building Type: Beach Box
Year Built: 1978

EXHIBIT B

