

Kitty Hawk Board of Adjustment
Minutes
July 1, 2025

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 listing 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 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 permittable 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.