



# TOWN OF KILL DEVIL HILLS

Land Where Flight Began

## PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that the Town of Kill Devil Hills Board of Adjustment has scheduled a regular meeting for Tuesday, January 30, 2024, at 5:00 p.m., in the Town Hall Meeting Room, 102 Town Hall Drive, Kill Devil Hills.

## AGENDA

### Call to Order and Roll Call

Approval of the Minutes of July 26, 2022 and September 26, 2023

Ongoing Business

New Business

1. Election of Chairperson and Vice Chairperson
2. Smith, Michael G. & Green, Deborah H. – 106 East Third Street, Parcel Number: 002734000, Pin Number: 988406378800 – Variance from Chapter 153, *Zoning*, §153.053(A)(2) *Zoning Nonconformity* / §153.181(A) *Commercial Zone Setbacks*

### Adjournment

Posted this 15<sup>th</sup> day of January 2024.

  
James Michael O'Dell  
Town Clerk

Copies to: Board of Adjustment members in their meeting materials; Mayor & Board of Commissioners; Town Manager; all Town bulletin boards; KDH Sunshine List including all local news media; KDH Electronic Distribution List; website, social media; file



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(KDH Town Seal)  
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**Coastland Times:** Please publish as a legal ad in the following editions:

01/17/2024

01/24/2024

**Minutes of the July 26, 2022, Meeting of the Kill Devil Hills Board of Adjustment (BOA) held at 5:00 p.m. in the Town Hall Meeting Room, 102 Town Hall Drive, Kill Devil Hills.**

**Members Present:** Chairperson Michael Lowack, Vice Chairperson Ron Seidman II, Toni Dorn, Jason Self, and Alternate Member T. Dillon Heikens

**Members Absent:** Regular member Kevin Cox, and Alternate members Blake Culpepper and Natalie Painter

**Others Present:** Jay Wheless, BOA Attorney; Casey Varnell, Town Attorney; Meredith Guns, Planning Director; Cameron Ray, Assistant Planning Director; Donna Elliott, Zoning Administrator; and James Michael O’Dell, Town Clerk

**Call to Order and Roll Call**

At 5:00 p.m., Chairperson Michael Lowack called this meeting of the Kill Devil Hills Board of Adjustment to order and welcomed all present. The clerk was called upon to conduct the Roll Call:

Toni Dorn	Yes	Dillon Heikens	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

Five members of the Board of Adjustment were present, constituting a quorum.

**Agenda Approval**

Ron Seidman II moved to approve the agenda as presented. Toni Dorn seconded the motion, which was approved by a unanimous, 5-0, vote.

Toni Dorn	Yes	Dillon Heikens	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

## Approval of the Minutes of June 28, 2022

Jason Self moved to approve the minutes for the meeting of June 28, 2022, as presented. Mr. Seidman seconded the motion, which was approved by a unanimous, 5-0, roll call vote.

Toni Dorn	Yes	Dillon Heikens	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

## Ongoing Business

### New Business

Mr. Wheless provided an overview of the rules of procedure for the Board and applicants, noting the operational structure for these quasi-judicial proceedings.

#### 1. **Eric R. and Tenia Maurer – 0 Bay Drive, Parcel Number: 029614001, Pin Number: 987520806669 – Variance from Chapter 153, Zoning §153.116(C) Permitted Uses**

Eric R. and Tenia Maurer have requested a variance from Chapter 153, Zoning §153.116(C) Permitted Uses for property located at 0 Bay Drive, Parcel Number: 029614001, Pin Number: 987520806669, Kill Devil Hills, North Carolina.

Applicant Eric Maurer, Elizabeth Robbins, Thomas Carter, Planning Director Meredith Guns, Assistant Planning Director Cameron Ray, and Zoning Administrator Donna Elliott each undertook a solemn oath.

### Applicant

Elizabeth Robbins, with Casey and Robbins, was present to represent applicants Eric and Tenia Maurer. She noted that the applicants own a primary residence at 605 West Archdale Street, and own a waterfront parcel on Bay Drive less than 200 feet from their primary residence, although not directly across from the primary residence. The primary residence and waterfront parcel were conveyed on two separate dates via two separate deeds. The applicants would like to construct a pier, an accessory use, on the waterfront parcel. Ms. Robbins stated the prohibition of the proposed pier creates an unnecessary hardship as it eliminates the only use of the property due to the Town's zoning and Coastal Area Management Agency (CAMA) requirements. She stated that the best and only use of this property is a pier, an allowable permitted use under the Town's zoning code. The parcel's size requirements do not permit it to be used for any other use, such as the construction of a parking lot or single family dwelling. Without the construction of a pier, the property will be unbuildable, useless, and without value to the owner. Ms. Robbins noted that there are many existing piers in the vicinity that are not on the same lot as the principal use: there are 21 piers located on properties in this section of Bay Drive, and those

accessory structures are not situated on the same lot with the primary structure. They are each separate parcels separated by Bay Drive, and each has its own distinct parcel number. The strict letter of the Town's ordinance is not being enforced.

Ms. Robbins then accessed the online Dare County Geographical Information System (Dare GIS) to provide a visual representation of the property for the BOA. She noted that the property is sound front, located at the end of the "T" intersection of West Archdale Street and Bay Drive. The property's unique location prevents its recombination with another parcel. She noted that the primary residence and the subject property are not directly across the street from each other. A waterfront property was highlighted that was not contiguous or remotely close to its primary lot: a lot owned by K&H Lots, LLC. She noted that K&H owned a Bay Drive waterfront lot and a property at 0 Aycock Street. Ms. Robbins stated that denying this variance, when a permit is allowable and consistent with other lots with piers permitted on parcels other than the primary lot, creates an unnecessary hardship on the applicant. It completely eliminates the owner's use and enjoyment of their waterfront property.

Mr. Self inquired whether the properties owned by K&H Lots, LLC, had a pier and whether they had been recombined. Ms. Robbins replied in the negative. Ms. Dorn inquired when the waterfront lot was purchased, were the applicants aware that there could be an issue with constructing a pier; did the applicants check into this issue at the time of the purchase. Eric Maurer, the applicant, stated that in July 2017, he visited the Town's Planning Department and asked Zoning Administrator Donna Elliott if he could construct a pier on the property if he purchased it. He stated Ms. Elliott replied in the affirmative. He then purchased the property and in December 2017, he later returned to the Planning Department, and Staff replied that the parcel could not be built upon. Mr. Seidman inquired whether there was any written record of his interactions with Town Staff. Mr. Maurer replied in the negative.

Mr. Varnell inquired whether the applicant considered this variance request to vary the use of the waterfront property. Mr. Maurer replied in the negative and that he only wanted to build a dock. Mr. Varnell asked Ms. Robbins whether any of the noncontiguous lots with piers she referenced earlier were separated by anything more than a public right-of-way. She replied not in her calculation in the vicinity, with the exception of the K&H Lots, LLC, lots. Mr. Varnell inquired whether any of the earlier referenced properties, with a primary structure on one parcel and an accessory structure on another parcel but with one owner, have any independently owned lots between them. She replied there were not. Mr. Varnell inquired whether the K&H lots have a secondary structure on the waterfront property. Ms. Robbins replied that she was not aware of any secondary structures.

Mr. Self inquired whether the 21 parcels with accessory structures referenced by Ms. Robbins were physically separated only by the roadway, not separated by a large distance from the parcels with the primary structures. Ms. Robbins replied in the affirmative.

Mr. Lowack inquired about the applicant's parcel, noting that Ms. Robbins referred to the lot with three different lot numbers, asking whether she knew if the lots could be subdivided or whether they been recombined into that one sound front lot. Ms. Robbins did not know; Mr. Maurer replied that it was not uncommon for sound front lots to be multiple lot numbers as one parcel. Mr. Lowack inquired whether a lot such as this could be separated and two different owners build two different piers. Ms. Robbins replied that it was up to an owner whether to divide a parcel. There are CAMA requirements for the size of a parcel if a pier is going to be constructed.

Mr. Wheless inquired whether there is a one-back lot off of Bay Drive that owns a separate soundside parcel with a pier. Ms. Robbins replied in the negative; she noted that her focus had been in the five-block area along Bay Drive.

### **The Town**

Zoning Administrator Donna Elliott stated other piers along Bay Drive that are existing on lots without primary structures on the west side of the road were either combined with the lot across the street by a legal agreement or a recombination plat. These lots are considered contiguous because they are directly across the street from one another. No zoning district allows for accessory structures as an allowed use without a primary structure. Accessory structures without a primary structure could promote uses not allowed and could create parking problems because they do not have requirements. Additionally, other piers in the RL Zone are permitted uses. She noted, for example, that Hayman Pier is listed as a permitted use (G) Town Owned Facility, and the Water Oak Subdivision community pier is also a permitted use (E) Publically Owned Access Area. The definition for lot in the Town Code is "a plot, tract or parcel of land or any number of continuous plots, tracts or parcels of land or plots, tracts, or parcels that would be contiguous if not separated by a public right-of-way in single ownership with or without improvements." She stated that a pier can be built on this lot if it is combined with the parcel across the street and there is a primary structure on that property. The other piers built along Bay Drive are associated with the properties across the street as required by ordinance. Ms. Elliott said if the BOA is considering granting this variance, and can find a unique hardship, Town Staff suggests that the Board consider the precedent that is being set. There are numerous vacant properties in Town. If this variance is granted, anyone owning one of these vacant lots could apply for a similar variance to construct an accessory structure without a primary structure. These accessory structures include, but are not limited to, swimming pools, garages, sheds, decks, driveways / parking areas, walkways, and piers.

Mr. Varnell inquired when Ms. Elliott referred to any vacant lot, did she mean only sound front lots along Bay Drive. She replied that it could be any vacant lot, including oceanfront, between US 158 and NC 12, or anywhere else in town. Mr. Varnell asked that, as the Town Staff member who reviews the applications, did Ms. Elliott consider this parcel a peculiar property. She stated that there are other similar properties, like the K&H property that the applicant referenced.

Mr. Varnell inquired whether she knew of any non-contiguous properties with accessory structures that are separated by more than a public right-of-way, or linked to any one-back lot. Ms. Elliott responded in the negative. Mr. Varnell asked if Ms. Elliott had approved any administrative applications for such uses. Ms. Elliott replied in the negative. He then inquired whether she knew of any secondary structures on the K&H lots that were referenced earlier by the applicant. Ms. Elliott replied she was not aware of any secondary structures on lots of that type. Mr. Varnell inquired whether Ms. Elliott had told the applicant that he could construct a pier on his property. She replied in the negative.

Mr. Lowack inquired about lots having different PIN numbers, whether they had been combined with the lots across the public right-of-way. Ms. Elliott responded that to have an accessory structure, they must be recombined through recombination plat or legal agreement, and the other properties have undertaken that.

Mr. Self asked whether a parcel with a secondary structure, separated by a public right-of-way, like those along Bay Drive, can be sold separately by its owner. Ms. Elliott responded that when the property has been recombined through recombination plat or legal agreement, the parcel cannot be sold separately.

Ms. Robbins, the applicant's attorney, inquired from what was reviewed on Dare GIS, there are a number of noncontiguous lots that have not been recombined. Ms. Elliott replied that the Dare County can give parcels different parcel numbers; however, lots may have separate numbers but are considered one parcel. Any lots with secondary structures have been recombined through plat recombination or through legal agreement.

Mr. Varnell inquired of Assistant Planning Director Cameron Ray whether he was familiar with the Town Code provision with the lots being contiguous. Mr. Ray replied in the affirmative, noting that for the definition of a lot, it does permit a parcel to be considered contiguous, even with a public right-of-way being permitted to split parts of it. Mr. Varnell asked about the contents of such a legal agreement. Mr. Ray stated that a legal agreement would tie the lots together for the purposes of development, and as a result, the two lots could not be sold separately. If done through legal agreement, the Dare County Tax Office listing would not reflect the recombination. If the recombination of properties was accomplished by the recording of a recombination plat, the Tax Office listing would reflect it. However, both the legal agreement and recombination plat have the same effect for parcels: they are recombined into one. Mr. Varnell asked that since the inception of this ordinance, whether any approvals had been issued by the Town that permitted a one-back lot to build an accessory structure on a sound front lot. Mr. Ray replied in the negative. Mr. Lowack asked whether a legal agreement recombining lots required recordation at the court house. Mr. Ray replied that the legal agreement was required to be recorded, and would become part of the deed. The legal agreement was different from a recordation plat because the plat, which would also be recorded, would be processed through mapping, which would result in the Dare GIS site having the information to

**2<sup>nd</sup> Draft**

**V/05/22-07/26/2022 and V/06/22-07/26/2022**

**July 26, 2022 – Board of Adjustment**

**Page 5 of 18**

update. Each deed would require review to verify whether a legal agreement also affected it. Mr. Ray noted that Dare GIS is a reference, but not always accurate for what is on a deed.

Mr. Wheless inquired of Planning Director Meredith Guns whether the Board of Commissioners took into consideration one-back lots when it enacted §153.116(C) of the Town Code. Ms. Guns stated that when the definition of accessory structure was written, requiring that it must be associated with a primary structure, all properties in town were considered, including those on and along Bay Drive. Ms. Guns stated that as a part of her responsibilities, she had drafted the ordinance. The intent of the ordinance was to address situations like this and others, to prevent property owners from building fences to create areas to park vehicles, large sheds on empty lots for storage, and other secondary structures without a proximate link to primary structures.

### **Adjoining Property Owner(s) and / Opposition**

Thomas Carter identified himself as owner of 2607 and 2605 Bay Drive, Kill Devil Hills. Mr. Carter stated that the applicant's residence abuts the east side of his property, which is on the west side of Bay Drive. He expressed no concern about the potential of a pier being constructed on the applicant's lot across from his property, but had concerns about potential vehicles and trash.

Chair Lowack accepted and introduced into evidence the applicant's June 28, 2022, application, supporting documentation, the Town's memorandum, and meeting packet materials. No additional physical evidence was submitted during the hearing. He then closed the evidentiary portion of the session.

Chair Lowack then asked for closing statements:

### **Applicant**

Ms. Robbins stated that the applicant's lot in question is small, not large enough to park any vehicles or other use besides construction of a pier. If it is possible to recombine the applicant's principal use lot with the waterfront parcel where they could not be separated, that could be a possible alternative to satisfy the Town's concerns.

### **The Town**

Mr. Varnell stated the issue with the applicant's proposed recorded legal agreement would be the requirement of the lot to be contiguous. He then read the definition of "lot" from Kill Devil Hills Town Code: "a plot, tract or parcel of land or any number of contiguous plots, tracts or parcels of land or plots, tracts, or parcels that would be contiguous if not separated by a public right-of-way in single ownership with or without improvements." The applicant's principal property with its primary structure is not contiguous with the waterfront lot at issue. These two lots are separated by another independently owned lot, which precludes recombination. Mr. Varnell noted that the

property is neither peculiar nor unique. If the Town would permit the construction of secondary structures noncontiguous parcels, a principal parcel could be purchased anywhere in town and then a sound front property could be purchased and a pier built.

Mr. Varnell noted there was no hardship because it does not exist as to the property but the owner. If the owner of the property across the street owned the property, a secondary structure could be constructed.

Mr. Wheless provided an overview of the decision process: There are four questions set out by the N.C. General Assembly, each of which must be approved by a four-fifths vote. A vote of less than four-fifths on any question will deny the variance. The Board will vote on each question, supporting the decision for that choice.

**Board of Adjustment Findings of Fact for V/05/22-07/26/2022**

The Board of Adjustment established the following findings of fact:

**1. Does a strict application of the ordinance result in an unnecessary hardship to the Applicant?**

Toni Dorn	No	Dillon Heikens	No
Michael Lowack	No	Ron Seidman	No
Jason Self	No		

This conclusion is based on the following FINDINGS OF FACT: The ordinance is technically inapplicable in this instance due to the Town Code’s definition of a “lot.” The parcels in question are not contiguous because they are not only separated by a public right-of-way. As a result, any hardship is not substantial or undue.

**2. Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography?**

Toni Dorn	No	Dillon Heikens	No
Michael Lowack	No	Ron Seidman	No
Jason Self	No		

This conclusion is based on the following FINDINGS OF FACT: Evidence has been submitted that there are other examples of noncontiguous properties with the same owner that were one-back / two-back from a small, sound front parcel with no pier: the property is not peculiar. Other properties are eligible to be recombined with the sound front parcel in question.

3. **Does the hardship result from actions taken by the Applicant (or the Property Owner)?**

Toni Dorn	No	Dillon Heikens	No
Michael Lowack	No	Ron Seidman	No
Jason Self	No		

This conclusion is based on the following FINDINGS OF FACT: The act of purchasing a property with the knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

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

Toni Dorn	No	Dillon Heikens	No
Michael Lowack	No	Ron Seidman	No
Jason Self	No		

This conclusion is based upon all of the above FINDINGS OF FACT listed above, as well as the following: Evidence was presented that the granting of this variance could lead to a number of dangerous accessory uses on separated, non-combined lots. The legislation is clear, and this Board cannot supplant its desire for that of the Kill Devil Hills Board of Commissioners.

Mr. Self moved to deny the variance request for 0 Bay Drive, as submitted and consistent with the application, based on the Findings of Fact. Ms. Dorn seconded the motion, which was approved by a unanimous, 5-0, roll call vote:

Toni Dorn	Yes	Dillon Heikens	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

The variance was DENIED.

Chair Lowack ordered a break in proceedings at 6:19 p.m.

The meeting reconvened at 6:28 p.m.

2. **Raymond Pate – 1006 Alexander Lane, Parcel Number: 002294076, Pin Number: 988409077408 – Variance from Chapter 153, Zoning §153.121(C) Setbacks**

Raymond Pate has requested a variance from Chapter 153, Zoning §153.121(C) Setbacks for a property located at 1006 Alexander Lane, Parcel Number: 002294076, Pin Number: 988409077408, Kill Devil Hills, North Carolina.

Applicant Raymond Pate, Planning Director Meredith Guns, Assistant Planning Director Cameron Ray, and Zoning Administrator Donna Elliott each undertook a solemn oath.

### **Applicant**

On behalf of the applicant, Kevin R. Hornik of the Brough Law Firm, then presented a PowerPoint presentation that provided an overview of the property, variance request, and variance standards. He noted that the property was located in the Residential Low Zone, and that single family dwellings are permitted. He noted a clarification that Town Staff interprets a 23-foot setback (rather than 30-foot) for the property, and the applicant has requested an 8-foot rear yard setback.

Mr. Hornik presented evidence that the applicant, Mr. Raymond Pate, is a licensed professional civil engineer and land surveyor, and requested his designation by the BOA as an expert witness. Applicant's Exhibit 1 was presented and reviewed by the Applicant, which included Mr. Pate's resume, education, licensure, and professional experience in civil engineering, land surveying, and planning and site design. On behalf of the Board, Chair Lowack accepted Mr. Pate as an expert witness.

Mr. Hornik noted that the applicant is owner of the subject property. Mr. Pate stated that he intended to construct a 1,200 square-foot, 2-bedroom house on a concrete slab. Mr. Hornik inquired whether the applicant had spoken with Town Staff regarding the proposed structure. Mr. Pate replied that he had met with Staff, and that the Town Staff's interpretation was that a 30-foot setback would be required, rather than an 8-foot setback that the applicant understood it to be. Upon receiving Staff's responses to his variance application, the applicant stated he was made aware of a 23-foot setback from the property's north lot line and 30-foot setback from the east lot line.

Mr. Hornik then questioned Mr. Pate in his capacity as expert in civil engineering and surveying: When asked if he had completed a survey of the parcel upon its purchase, Mr. Pate answered in the affirmative, and described how, with surveying equipment and a guide, he had located the existing monumentation, and recorded an instrument. Mr. Hornik inquired whether Mr. Pate had discovered any discrepancies in the lot dimensions from what are shown on the recorded plat. Mr. Pate replied there was a 20-foot difference on the south lot line (132 feet) from what is listed on the plat (152 feet). That results in a difference resulting in a 7,492 square-foot lot, under the 7,500 square-foot size requirement, which would be a 10-foot side yard setback. As a result, the property would have an 8-foot side yard setback requirement. Mr. Hornik inquired about the result of the Town's rear yard setbacks on the proposed structure. The applicant replied that it would reduce the building envelope by almost 30%. Mr. Hornik asked whether there are homes constructed on similarly shaped, irregular lots in the Wright Shores subdivision. Mr. Pate replied that there are 10 similar lots in this section, six of which have structures on them. Following an objection by Mr. Varnell, Mr. Hornik inquired of Mr. Pate in his personal capacity, whether he had observed structures constructed similar irregularly shaped lots within the subdivision. Mr.

Pate replied in the affirmative, noting that they are typically two-story structures on pilings, with parking underneath. He stated that his lot is base flood elevation so he can construct a slab on grade. He stated generally that because of the two-story nature of construction on these similarly situated parcels, the building footprint is smaller and likely to remain within two rear yard setbacks. Mr. Hornik inquired in his expert opinion, why building a single story, concrete slab structure on the property is appropriate. Mr. Pate noted it was mainly a convenience; concrete is a better material and will last longer, with no maintenance issues. Pilings will rot over time at the ground level. He stated, in his expert opinion, one-story slab on grade would be a superior construction. The setback requirements would present an unnecessary hardship, and the amount of area left would not be conducive to what structure the applicant proposed to build.

The applicant introduced three letters from local builders, indicating the builders' opinions that the setback requirements make the parcel largely undevelopable and negatively impact the property's value, or that they would not purchase the property subject to the setbacks. Mr. Varnell objected on the grounds of hearsay. Chair Lowack reviewed the letters, and accepted two into evidence: letters from Florez Design Studios, PC, and Ken Green and Associates.

Mr. Hornik inquired of Mr. Pate in his opinion as owner of the property the 23-foot north lot line setback and the 30-foot east lot line setback create an unnecessary hardship for use of the property. Mr. Pate replied in the affirmative. Mr. Hornik then inquired of Mr. Pate in his expert opinion whether the 23-foot north lot line setback and the 30-foot east lot line setback create an unnecessary hardship on the develop-ability for use as a single family dwelling. Mr. Pate replied in the affirmative.

Mr. Hornik asked if the applicant was familiar with section two of the Wright Shores subdivision plat and the number of similarly situated, irregularly shaped lots. Mr. Pate responded affirmatively, and noted 10 similar lots, out of more than 83 individual lots on the plat section (lots numbered 22-105). Those 10 lots are not common to the neighborhood. There are more than 200 lots in Wright Shores subdivision, with 38 similarly situated, irregularly shaped lots, of which 27 have single family dwellings. Mr. Pate stated his opinion that an unnecessary hardship is created due to the north and east rear yard setbacks on these irregularly shaped lots, a condition not common within the subdivision.

Mr. Hornik submitted into evidence two ESRI documents discussing GIS mapping portal measurements, and their accuracy. He noted that everyone was familiar with the disclaimer on the Dare GIS website that details how the measurements are not exact. With no objection, the documents were admitted into evidence. Mr. Hornik stated that ESRI noted that the standard deviation for points between which GIS measurements are taken is approximately .59 feet, a little more than half a foot; between two points, it would be 1.2 feet. As a result, Mr. Hornik contended that some structures on similarly shaped lots do not conform to the Town's setback requirements, and that the submitted ESRI documents explain the methodology and standard deviation for its mapping tools and measurements. Mr. Varnell objected, noting that the submitted documents highlight the standard deviation and purport to represent accuracy.

However, the competent evidence that the Board is being asked to rely upon is disclaimed by its creator of that evidence as not to be relied upon. He stated that the Dare GIS information is not certified, and to be competent evidence, there must be certification by licensed engineers or surveyors, especially as to the other lots to which the applicant may testify.

Mr. Varnell noted that if the testimony regards a 30-foot setback on the similar, irregularly shaped lots, that will be incorrect. Thirty feet is not a hard line rear setback in the Town Code; it is calculated at 20% of the depth of the lot. Mr. Hornik concurred with Mr. Varnell. Chair Lowack allowed submission of Dare GIS records; however, he directed that the square footage of each lot was to be presented when reviewing them, since there is a threshold to be met where they change.

Mr. Hornik submitted the Dare GIS property records of the six similarly situated lots with dwelling constructed on them; each has lot and structure square footage. Those subject properties are within 30 feet of the rear yard setbacks. Mr. Hornik then reviewed the Dare GIS parcel information, noting that each of the properties are within 30 feet of one or both of the rear yard setbacks, based on the GIS measurements that the applicant performed, which the applicant acknowledges are subject to the disclaimer. Mr. Wheless inquired whether each of the slides correspond to the property records. Mr. Hornik replied in the affirmative, stating that each property record is three pages in length.

Mr. Hornik inquired of Mr. Pate whether his property is similar to 10 other lots shown on the section map of the subdivision, and that those irregular lots are 1/8 of the total lots. Mr. Pate replied in the affirmative, and stated that they are not common, and as a result, peculiar. Mr. Hornik asked if the applicant prepared the plat for the Wright Shores subdivision. Mr. Pate replied in the negative.

Mr. Hornik then read aloud Section 153.115(a) of the Town Code, highlighting the purpose of the Residential Low Zone: “The Low Density Residential (RL) Zone is established as an area in which the principle use of the land is for single-family residences and is intended to preserve and enhance low-to-medium density neighborhoods;” and Section 153.001, which states that the intent of the zoning ordinance is to “... conserv[e] the value of buildings and encouraging the most appropriate use of land throughout the town.” Mr. Hornik inquired whether the applicant was attempting to make use of the property for a single family dwelling and if the rear yard setbacks would harm the value of his property. Mr. Pate replied in the affirmative to both.

Mr. Lowack inquired whether any analysis was made to determine whether the similar properties’ building placement coincided with the 20% setback requirements. Mr. Hornik replied in the negative, stating that calculations were not made for lot depth due to late information received from the Town Staff.

Mr. Seidman highlighted the property at 806 Frances Lane, which is very similar in property layout, and has a 1,140 square-foot structure, with three bedrooms and two baths. He noted that

it is possible to construct a 1,200-foot building on an almost identical property, but the applicant has indicated that it was not possible.

Mr. Self inquired of Mr. Hornik about inaccuracies of platted lot lines in the Dare GIS information, and whether the evidence that was submitted regarding measurement errors also affect the county overlay of the plat. Mr. Hornik replied that he was not prepared to make speculation.

Mr. Varnell inquired of the applicant whether before he purchased the property, did he, utilizing his expertise, determine what could or could not be built on the property in the due diligence phase. Mr. Pate indicated that he assumed the setback requirements.

Mr. Varnell inquired whether the ordinance setting the two rear setbacks was in place when he purchased the property. Mr. Pate replied that it was Ms. Guns' opinion. Mr. Varnell asked Mr. Pate whether there was no Town Code provision that required the setback. Mr. Pate responded none of which he knew. Mr. Varnell inquired about the late information received by the applicant, which was directly from Town Code: he inquired whether the Town Code is available to the public. Mr. Pate replied in the affirmative. Mr. Varnell asked whether the applicant could have read the Town Code to determine what building options were available with his property. Mr. Pate replied that Ms. Guns would not discuss the issue, but the Town Code was available to access.

Mr. Varnell asked whether there were similarly shaped lots as the applicant's, and if they would be subject to the same setbacks as his property. Mr. Pate replied that they should, but they are not. Mr. Varnell inquired whether the applicant could testify the other similarly shaped properties definitively do not comply with the Town Code. Mr. Pate replied that he could not definitively state that the similar properties do not comply with Town Code.

Mr. Lowack inquired in the applicant's original drawing, the house is on slab; what is the intended parking. Mr. Pate replied it would just be an unenclosed pad, and that due to the current setbacks, the house's layout would make the house almost unlivable due to the shallowness.

### **The Town**

On behalf of the Town, Mr. Varnell called Cameron Ray, Assistant Planning Director for Kill Devil Hills. Mr. Varnell inquired whether Mr. Ray had reviewed the application, and whether he had formed any opinion. Mr. Ray answered in the affirmative, and that he was surprised by the applicant's misinterpretation of Section 153.121(C) of the Town Code that there was a 30-foot rear yard setback, rather than 20% of total depth of the lot, not to exceed 30 feet. Mr. Varnell requested that Section 153.121(C) of the Town Code be submitted as evidence. There was no objection and Chair Lowack received and accepted it.

Mr. Varnell asked Mr. Ray to explain the ordinance as it pertains to the applicant's property. Mr. Ray stated the rear lot line is measured from the furthest line from the front yard lot line, the one adjacent to the right-of-way. With the applicant's parcel, the west line is a side lot line, the south line is a side lot line, the street lot line is the front lot line, and the north line and east line are rear lot lines. Then calculate 20% depth of the west lot line and the south lot line to create the rear yard setback. It is 20% of the depth, not to exceed 30 feet. Mr. Ray stated that 30 feet was the maximum, so deep lots in town do not result in 60-foot rear yard setbacks. Mr. Varnell inquired whether Mr. Ray recalled approving any form of application that varied from setback requirements for these similar, irregularly shaped lots. Mr. Ray responded the negative. Mr. Varnell asked whether the Town required similar properties to comply with the required setbacks. Mr. Ray replied in the affirmative. Mr. Varnell asked whether this type of lot was peculiar in any way. Mr. Ray responded that the applicant noted there were over 30 irregularly shaped lots in the Wright Shores subdivision, and that the town had many subdivisions with cul-de-sac lots that are irregularly shaped, so he did not consider the applicant's parcel unique or peculiar in Kill Devil Hills.

Mr. Varnell inquired when an application for a building permit is submitted to the Town, whether applicants also submit site plans that are sealed by licensed surveyors. Mr. Ray responded in the affirmative, noting they were sealed by licensed surveyors or design professionals. Mr. Varnell asked whether Town Staff was legally obligated to rely on the surveyor's report. Mr. Ray replied in the affirmative, and if there appears to be a discrepancy, it will be compared to the recorded subdivision plat.

Mr. Varnell provided a document, which Mr. Ray identified as a survey signed by M. Douglas Styons, Professional Licensed Surveyor, for 910 Console Lane. Mr. Varnell inquired whether the survey was as this tendered as part of a site plan. Mr. Ray replied in the affirmative, noting that it was submitted as part of a site plan, and that the survey would have been relied upon in the review process. Mr. Varnell requested that it be entered into evidence. Mr. Wheless inquired whether the document was from Town records. Mr. Ray responded in the affirmative. With no objection, Chair Lowack accepted the document. In referencing the survey of 910 Console, Mr. Varnell inquired whether this construction required to comply with the same setbacks from which the applicant is requesting a variance. Mr. Ray replied that the lot was the similar, irregular shape as the applicant's lot, and said that the building was not constructed on a piling system. Mr. Varnell inquired whether other lots in the Wright Shores subdivision have been made to comply with the setback requirements. Mr. Ray replied in the affirmative. Mr. Varnell provided documents to Mr. Ray, and inquired whether all of the properties were irregular lots with two rear lot lines and setbacks were in Kill Devil Hills. Mr. Ray responded affirmatively, noting that they are surveys from previous site plan submittals reviewed by Town Staff. With no objection, Mr. Varnell requested admission of the surveys as evidence.

Mr. Varnell referenced a survey for 806 Frances Lane, Lot 94, Section 2 (PIN 988405171607) of Wright Shores subdivision, which the applicant had earlier proffered. He inquired whether that parcel was a similarly shaped lot, and was the landowner required to comply with the rear yard

setback requirements. Mr. Ray responded affirmatively, stating that the 20% rear yard setback applied in that instance. Referencing the remaining submitted surveys, Mr. Varnell inquired whether all of the lots were similarly shaped and were they required to comply with the setbacks. Mr. Ray responded in the affirmative. Mr. Varnell inquired whether this applicant's request complies with the spirit and intention of the ordinance. Mr. Ray replied in the negative, noting the applicant's property with the setbacks as listed under the Town Code still provide a buildable area similar to other properties in the subdivision. The opportunity to develop the property consistent with the Residential Low Zone district exists.

Mr. Hornik asked Mr. Ray to read aloud Section 153.121(C) and inquired whether Mr. Ray stated that the setback is measured from the rear property line. Mr. Hornik then read aloud the definition of lot line, rear, from definitions Section 153.002: "LOT LINE, REAR. The lot boundary opposite and most distant from the front lot line. In the case of a pointed or irregular lot, it shall be an imaginary line parallel to and farthest from the front lot line, not less than 30 feet long and wholly within the lot."

Mr. Hornik inquired whether Mr. Ray was testifying that setbacks that Town Staff are imposing are not being measured from the lot line, rear, as defined by the Town Code. Mr. Ray replied that he was testifying that the applicant's property had two rear lot lines due to the configuration. Mr. Hornik inquired whether Staff is choosing to interpret this property as having two rear lot lines rather than one rear lot line. Mr. Hornik asked whether there was some ambiguity or inconsistency between what Staff are interpreting and imposing on the subject property versus the plain language of the ordinance. Mr. Ray disagreed, noting that with all of the site plans that have been included into evidence, setbacks were enforced uniformly town-wide. Mr. Hornik asked whether the setbacks were enforced pursuant to Staff's interpretation which imposes two separate rear lot lines as opposed to one rear lot line as defined under the zoning ordinance. Mr. Ray responded in the affirmative.

Mr. Lowack inquired whether there is a specific point or specific set of points for an accurate, uniform measurement to be taken on all of these lots. Mr. Ray responded that for lots that do not have a rear lot line, that section of the ordinance creates a lot line at 30 feet, and that is how the setback is measured.

Mr. Wheless asked whether there was a definition of the total depth of the lot. Mr. Ray replied in the affirmative, and read aloud "the average distance from the street lot line of the lot to its rear line, measured in the general direction of the side lines of the lot." Mr. Self inquired at what point does a property line become a rear property line rather than a side property line in properties with multiple angles. Mr. Ray replied that it is the lot line most distant from the front lot line.

Mr. Varnell called Planning Director Meredith Guns, and inquired when the imaginary rear line comes into analysis. She replied that in a rectangular lot, it is easily identified, with a front line, two sides, and a rear. For a five-sided lot, an imaginary line is created that reaches an apex

between two of the five sides, and the rear yard is set between two side lot lines, there is a front, two side, and perpendicular line, resulting in a five-sided lot. In a cul-de-sac lot, there is four sided lot, but the lot line curves to follow the rear lot line. It is an irregularly shaped lot, so the rear lot line does not make a square, resulting in a five-sided lot, with two rear yards.

Mr. Varnell inquired whether Ms. Guns was aware if this ordinance is utilized by other localities. Ms. Guns replied she did not know.

Mr. Hornik noted that Ms. Guns had indicated that a lot must have two side yard lines, and inquired where in the zoning ordinance required two side yards. She read the definition of yard, rear: “YARD, REAR. A yard extending across the rear of the lot between side lot lines. Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line,” and “YARD, SIDE. A yard extending from the rear line of the required front yard to the rear yard. Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.”

Mr. Hornik then asked Ms. Guns to read Lot line, side: “LOT LINE, SIDE. Any lot boundary line not a front lot line or rear lot line.” Mr. Hornik inquired whether this was circular, and that there could be multiple, reasonable interpretations of the zoning ordinance with respect to the rear lot line and measurements. Ms. Guns replied that there was an interpretation to be made and that it has been consistently applied.

Mr. Self inquired what year the ordinance was enacted. Ms. Guns stated the original rear yard ordinance was enacted in the 1980s, refined in 1992 and 2001.

Chair Lowack accepted into evidence the following:

- Applicant: Mr. Pate’s resume, Flores letter, Green letter, GIS measurements, letters from ERIS, Dare County property records (18 pages).
- Town: Staff comments, five surveys, Section 153.121, setbacks with highlighted rear yard.
- BOA meeting packet.

Chair Lowack then asked for closing statements:

### **Applicant**

Mr. Hornik stated that the Board had heard evidence that the applicant will suffer an unnecessary hardship based on the strict application of Town Staff’s interpretation of the ordinance. Evidence has been presented with technical and engineering reasons why a two-story home would not be appropriate for this lot. Additionally, the imposition of setbacks would negatively

affect the value of his property. This lot is peculiar, as the shape is not common through town or Wright Shores subdivision. Additionally, the applicant did not draw the subdivision plat.

**The Town**

Mr. Varnell stated that this is not an appeal of a Town Staff administrative decision or interpretation. This hearing determines whether Staff’s interpretation can be varied from, if the factors are met. With regard to the testimony on the applicant’s house; no site plan has been submitted, and the plan shared at this hearing can change. The applicant has testified of a hardship; yet, evidence has been proffered that indicates that a reasonable structure can be built. A variance request cannot be based on whether the property owner can build the house he wishes to build. Potentially 20% of the lots in Wright Shores suffer from the same irregularity that the applicant seeks a variance from, and are subject to the same ordinances. This property is far from unique, as is evidenced by competent, sealed survey documents. Those exact setback requirements were imposed on those similar properties, even when suggested they did not comply with the ordinance. The spirit and intent of the ordinance allows homes to be built, but the applicant cannot build the home he wants to build: variances cannot and should not be easily granted.

**Board of Adjustment Findings of Fact for V/06/22-07/26/2022**

The Board of Adjustment established the following findings of fact:

**1. Does a strict application of the ordinance result in an unnecessary hardship to the Applicant?**

Toni Dorn	No	Dillon Heikens	No
Michael Lowack	No	Ron Seidman	No
Jason Self	No		

This conclusion is based on the following FINDINGS OF FACT: This property is not unbuildable with the current setback requirements: dwellings can be constructed on the parcel. Although the applicant’s testimony indicated that the slab construction was appropriate for the lot, other testimony states that slab construction rather than pilings construction on this property is a preference.

**2. Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography?**

Toni Dorn	No	Dillon Heikens	No
Michael Lowack	No	Ron Seidman	No
Jason Self	No		

This conclusion is based on the following FINDINGS OF FACT: Twenty percent of the lots in the subdivision have a similar, irregular shape, even though may not be exact in dimensions. The configuration is common in the neighborhood.

3. **Does the hardship result from actions taken by the Applicant (or the Property Owner)?**

Toni Dorn	Yes	Dillon Heikens	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

This conclusion is based on the following FINDINGS OF FACT: The act of purchasing a property with the knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. However, the applicant did not exercise due diligence during the purchase with completion of a survey and review of the Town ordinances.

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

Toni Dorn	No	Dillon Heikens	No
Michael Lowack	No	Ron Seidman	No
Jason Self	No		

This conclusion is based upon all of the above FINDINGS OF FACT listed above, as well as the following: Like similarly shaped irregular lots, the property seems to have been consistently treated consistently under Town Code over the last 20 years. Evidence was presented that all similar lots with structures in the same subdivision appear to comply with the consistent application of the ordinance.

Mr. Heikens moved to deny the variance request for 1006 Alexander Lane, as submitted and consistent with the application, based on the Findings of Fact. Ms. Dorn seconded the motion, which was approved by a unanimous, 5-0, roll call vote:

Toni Dorn	Yes	Dillon Heikens	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

The variance was DENIED.

## Adjournment

There being no further business before the Board of Adjustment at this time, Mr. Seidman moved to adjourn. Mr. Self seconded the motion, which was approved by a unanimous, 5-0, roll call vote:

Toni Dorn	Yes	Dillon Heikens	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

The meeting adjourned at 8:36 p.m.

Submitted by:

James Michael O'Dell  
Town Clerk

**Minutes of the September 26, 2023, Meeting of the Kill Devil Hills Board of Adjustment (BOA) held at 5:00 p.m. in the Town Hall Meeting Room, 102 Town Hall Drive, Kill Devil Hills.**

**Members Present:** Chairperson Michael Lowack, Vice Chairperson Ron Seidman II, Kevin Cox, Toni Dorn, and Jason Self

**Members Absent:** Alternate members Blake Culpepper, T. Dillon Heikens, and Natalie Painter

**Others Present:** Jay Wheless, BOA Attorney; Casey Varnell, Town Attorney; Meredith Guns, Planning Director; Cameron Ray, Assistant Planning Director; and James Michael O’Dell, Town Clerk

**Call to Order and Roll Call**

At 5:05 p.m., Chairperson Michael Lowack called this meeting of the Kill Devil Hills Board of Adjustment to order and welcomed all present. The clerk was called upon to conduct the Roll Call:

Toni Dorn	Yes	Kevin Cox	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

Five members of the Board of Adjustment were present, constituting a quorum.

**Agenda Approval**

Kevin moved to approve the agenda as presented. Ron Seidman II seconded the motion, which was approved by a unanimous, 5-0, vote.

Toni Dorn	Yes	Kevin Cox	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

**Approval of the Minutes of July 26, 2022**

Chair Lowack dispensed with the review and approval of the minutes of the July 26, 2022, Board of Adjustment meeting.

**Ongoing Business**

**New Business**

**1. Election of Chairperson and Vice Chairperson**

Town Clerk James Michael O’Dell conducted the election of the Chairperson and Vice Chairperson:

Chairperson Mr. Seidman nominated Michael Lowack as Chairperson. Mr. Cox seconded the nomination. With no other nominations, Michael Lowack was elected as Chairperson with a unanimous, 5-0, roll call vote.

Toni Dorn	Yes	Kevin Cox	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

Vice Chairperson Mr. Self nominated Ron Seidman as Vice Chairperson. Mr. Cox seconded the nomination. With no other nominations, Ron Seidman was elected as Vice Chairperson with a unanimous, 5-0, roll call vote.

Toni Dorn	Yes	Kevin Cox	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

**2. Dominion NC Power – Notice of Appeal – 1900 North Croatan Highway, Appeal of Stop Work Order and §153.080 Electrical and Communication Service: interpretation prohibiting overhead power**

Virginia Electric and Power Company d/b/a/ Dominion Energy North Carolina (Dominion) has requested an appeal of a Stop Work Order for 1900 North Croatan Highway, and §153.080 Electrical and Communication Service: interpretation prohibiting overhead power.

Mr. Wheless provided an overview of the rules of procedure for the Board and Appellant, noting the operational structure for quasi-judicial proceedings. He noted that the Board may affirm in whole or in part the Stop Work Order, reverse in whole or in part the Stop Work Order, or modify the Stop Work Order. For this issue, each decision requires a simple majority (three-fifths) vote.

Conflicts of interest or challenges for cause

Mr. Wheless inquired whether each member had a fixed opinion on this matter that is not susceptible to change or sway. Each member responded in the negative. Mr. Wheless then

inquired whether each member had a close familial, business, or associational relationship with any party. Each member responded in the negative.

Mr. Wheless inquired of the Appellant's and Town's attorneys whether each challenged any Board member for cause. Both responded in the negative.

Mr. Wheless inquired of Mr. Varnell whether the Town stipulated that Dominion Power had standing in this issue. Mr. Varnell replied in the affirmative.

Matthew Rhoad, Will Foxwell, Katherine "Winnie" Wade, Meredith Guns, and Cameron Ray each undertook a solemn oath.

## **Opening Statements**

### **The Appellant**

Matthew Rhoad, of Smith Anderson Law Firm and representing Dominion, the Appellant, identified Dominion Representatives Will Foxwell, Supervisor of Electric Distribution Design; and Katherine "Winnie" Wade, External Affairs Manager. Mr. Rhoad stated that Dominion was appealing a Stop Work Order and requesting an interpretation of Town Code section 153.080 regarding the Wawa Convenience Store site at 1900 North Croatan Highway. The site plan was submitted and approved, and site plan amendments were also submitted by the developer. The original site plan included underground electrical service to the property; however, the amended site plan submitted detailing overhead facilities was submitted in April 2023. The developer received an email from Town Staff stating that the site plan amendments were fine. Based on that, the developer told Dominion to install power to the site, resulting in a power pole on east side of US 158 (Croatan Highway) and another on the Wawa site, with aerial power lines between the two over the highway. On July 19, after work was complete, Dominion received an emailed Stop Work Order detailing that the work at the site was in violation of Section 153.080. The Stop Work Order was also affixed to the site's power pole. The developer subsequently submitted a new site plan with underground power facilities; a building permit has been issued since by the Town. The Appellant is in process of removing the installed power infrastructure and placing it underground. Additionally, the Town's Stop Work Order has been revoked. Mr. Rhoad stated that Dominion has questions regarding section 153.080, its interpretation, and its application. Since the ordinance's inception in 1999, Dominion has installed approximately 2,000 power poles in Kill Devil Hills. Town Staff has interpreted the ordinance one way for 24 years, but now there's a different interpretation.

### **The Town**

Town Attorney Casey Varnell noted that when the appeal was filed, there were two items before the Board of Adjustment: whether Town Staff appropriately interpreted section 153.080 of the Town Code, which prevents construction or installation of overhead distribution lines for

electronic and communication service; and when learning of the installation of the overhead distribution lines at 1900 North Croatan Highway, whether the Town applied the ordinance as written. The Stop Work Order has been lifted and Dominion is going to install the distribution lines underground. The Stop Work Order was issued after Town Staff learned that overhead distribution lines were being installed at the work site. At the time the notice of violation and Stop Work Order were issued, the Appellant was proceeding under a set of plans that had not yet been approved. Site plans showing overhead distribution lines were never approved. The order met all statutory requirements and specified the work to be stopped and the reason it needed to stop. The questions before the Board are whether there was a clear ordinance in place and whether the Town applied the ordinance as written in this instance.

### **Appellant**

In referencing the Appellant's notice of appeal and statement, Mr. Rhoad highlighted the six grounds of appeal:

1. Stop Work Order: the order is arguably moot because it has been revoked, and whether it was properly noticed, delivered, posted, and entered will not be addressed. The Appellant is concerned with the ordinance's interpretation.
2. Jurisdiction: there is no jurisdiction for the Town to regulate this issue. The Appellant is governed by the N.C. Utilities Commission, and its authority preempts the Town's authority to apply and interpret the ordinance in this manner. The Utilities Commission has the authority to dictate how and where facilities are installed, noting *State ex rel Utilities Comm'n v. Town of Kill Devil Hills*.
3. The Town has no authority because it unreasonably interferes with the Appellant's obligation to provide reasonably priced electric service to its service territory. It restricts the Appellant's authority to expand to new customers or expand services.
4. Part of the overhead facilities in question are within the N.C. Department of Transportation (NCDOT) right-of-way on Croatan Highway (NC 158). The Town has some control of the area due to agreements with NCDOT, but NCDOT owns the road right-of-way. The Town does not have the authority to dictate how the Appellant goes through the NCDOT right-of-way, especially with zoning ordinances.
5. Section 153.080 of the Town Code was introduced in 1999, and has been amended several times. For the past 24 years, the ordinance has not been interpreted in this manner. The Town has interpreted this ordinance by its actions in its application and has not appealed. The Town is attempting to change its interpretation without having to go through any legislative process. For the last 24 years, approximately 2,000 utility poles have been placed within the town limits; until this one pole was installed, the ordinance has not been interpreted in this way. It is a selective and inconsistent interpretation. Other service infrastructure has been installed by other providers that would violate the ordinance if the Town interpreted the ordinance in this manner. Mr. Rhoad noted that for example, there is a 5G telecommunications facility on the site in question, in which the Town has not issued a Stop Work Order. This ordinance interpretation only is being applied to this one Dominion utility pole.

6. Site plans: Town Staff previously emailed the developer that the above-ground power was approved on the site plan. The electrical infrastructure is now being installed underground because the developer is essentially under duress because Wawa wants to move forward with the development; this alternative installation does not result in the issue being moot. Mr. Rhoad agreed with the Town's response that jurisdiction, Town's authority, and constitutionality are not under the Board's jurisdiction; however, the past ordinance interpretations and the site plan amendment create a legally-binding interpretation that was not appealed, and the Town is attempting to circumvent it with a new interpretation. If the Town interpreted Section 153.080 as it has done for the last 24 years, none of the issues are present. The Town is selectively enforcing the ordinance, as Town Staff asserts that it has not observed 2,000 poles that were installed in Kill Devil Hills over the past 24 years that violate the Town's ordinance. The Appellant cannot wait to install a utility pole and determine whether Town Staff will change its interpretation of the ordinance. With regard to site plan amendments, there was a Town Staff approval of the overhead electrical facilities that was not appealed, which is a binding interpretation. The final issue is that there are other parts of the ordinance that are vague and need interpretation. Mr. Rhoad noted, for example, that "distribution line" is utilized, but there is no definition of the term with regard to height, voltage, location or other descriptor. Additionally, the term "extended" is not defined; the Appellant does not know if the ordinance governs the replacement or upgrade of existing infrastructure, resulting in underground facilities being required. Mr. Rhoads stated that *Webster's Dictionary* defines "extending" as "to spread or stretch forth; to cause to be longer; to cause to be a greater area or volume; to make available." The Appellant asked the Board to interpret the term "extending" facilities to be only where new lines are being installed where there was not a line before. If service ends, and the Appellant would extend infrastructure another 200 feet, for example, that is an extension; however, installation of a new pole or a new structure, replacing a structure, or upgrade of existing structures are not extensions. It is a distribution line being modified or upgraded. If the Board finds that this ordinance applies to Dominion, the Appellant asked for interpretation of the terms "distribution line" and "extending."

Mr. Self inquired when the Appellant installs a utility pole whether the Town is provided notice. Mr. Rhoad replied that no ordinance or statute requires notification, so typically there is no notice. Mr. Self noted that the Town was not made aware of the 2,000 utility pole installations. Mr. Rhoad replied that the Town was not made aware individually of the installations; however, each development requires building inspections and site plan approvals, so most of the utility poles are reviewed by the Town through processes.

Mr. Lowack inquired whether the approximately 2,000 utility poles that have been installed were only new poles or if that number also included replacement poles. Will Foxwell replied that data set that was pulled resulting in the 2,000 poles since 1999 included new poles for new construction and replacement poles for existing infrastructure. Mr. Lowack inquired how many of the 2,000 poles were replacement. Mr. Foxwell responded he did not know the answer.

In referencing the 2009 case, Mr. Lowack recalled that transmission utility lines were structurally high because of high voltage, whereas he understood distribution lines were the ones that broke it down and distributed electricity to the neighborhoods. Mr. Rhoads replied that transmission lines have a higher clearance that is required by code because they are higher voltage. Yet, the Court's determination was that the Utilities Commission and Dominion decide what service facilities are needed, where they are to be located, and how they are to be installed: the case did not hinge upon transmission versus distribution lines, and no distinction was made by the court between the two facilities. The Utilities Commission is tasked with overseeing all of the Appellant's facilities partially because of the rates. Costs incurred as a result of municipal-level regulation is borne by the remainder of the state's utility customers.

Mr. Wheless inquired that in the Appellant's technical and engineering world whether the words "transmission lines" have a meaning. Mr. Rhoad responded that in an industry sense, a transmission line is utilized from a generating source to a substation, or between substations, and typically carries a higher voltage. Mr. Foxwell concurred. Mr. Rhoad stated that a distribution line is beyond the substation. Mr. Rhoad stated that is how the Appellant and the industry categorize the lines, but the Appellant has requested the Town Code's interpretation because it is unsure how the Town is applying it because Town Staff is changing interpretation. Height and voltage are not accurate assessments of whether a line is a transmission or distribution line. Mr. Wheless referenced the tall electrical poles on the east side of US 158 in Kill Devil Hills. Mr. Rhoad replied those structures contain both transmission and distribution lines. Mr. Wheless inquired of the line that came across US 158 to a smaller utility pole on the westside of US 158 at the site in question, whether it would be considered a distribution line. Mr. Rhoad responded that, internally, the Appellant would consider it a distribution line: it is distributing from the substation to the transformer. The transformer then steps it down to electrical service that can be utilized by the customer. Mr. Wheless then inquired, that according to the *Webster's Dictionary* definition earlier provided to the Board by the Appellant, whether that would not be an extension of a distribution line. Mr. Rhoad replied in the affirmative. He then stated that Dominion was requesting clarification to eliminate any vagueness, and used the example of replacing a utility pole damaged by a vehicle.

Mr. Varnell inquired if the following definition would be accurate: a transmission line would run from substation to substation and a distribution line would run from a substation to an individual property, distributing electrical power to an individual property. Mr. Rhoad replied yes, but not necessarily distributed to an individual property. When the voltage is stepped down from the substation to distribution, it may go to the property via a transformer or group of properties via transformer. Mr. Foxwell replied that the distribution line that Mr. Varnell described could feed other step up or step down transformers that either raise or lower voltage before arriving at the end user. Mr. Varnell inquired about the big transmission lines running from substation to substation. Mr. Rhoad replied in the affirmative but noted that the term "big" would not always be accurate. The Appellant would consider transmission lines to be from the generating source

to substation or substation to substation – feeding the substation, and not going out to distribution.

Mr. Varnell inquired about the approximately 2,000 utility poles referenced by the Appellant, and whether they were within existing distribution corridors with overhead lines already existing or new service poles that expanded from an existing corridor. Mr. Foxwell replied that it was a mixture of both. Mr. Varnell inquired whether some of the existing pole installations with overhead distribution lines would be in accordance with the Town’s ordinance. Mr. Rhoad objected, noting that it was the interpretation that the Appellant was requesting. Mr. Varnell referenced the number of utility poles installed over 24 years, and inquired whether the Appellant intended to introduce the report with the pole data. Mr. Rhoad responded in the negative.

### **The Town**

Mr. Varnell asked Cameron Ray to identify himself. Mr. Ray replied that he was the Assistant Planning Director in the Planning and Inspections Department for the Town of Kill Devil Hills. He stated he has worked for the Town for a total of 8 years, 4 years as Assistant Planning Director. Mr. Varnell presented Mr. Ray with a document, which was part of the admitted meeting materials, and asked him to identify it. Mr. Ray identified the document as a Notice of Violation and Stop Work Order, dated August 16, 2023. Mr. Varnell inquired whether Mr. Ray prepared and issued the document, and whether it was his understanding that this document was the subject of the Appellant’s appeal. Mr. Ray responded in the affirmative.

Mr. Varnell asked Mr. Ray to explain why the Notice of Violation and Stop Work Order were issued. Mr. Ray stated that the Town was made aware from a Public Services inspection of a new utility pole with overhead electrical service to the site on July 18, 2023. At that time, Town Staff checked the site to verify that a utility pole with overhead lines had been installed. He referenced two photos from the submitted materials: one dated August 2022, with no work at the site, and another dated July 2023 that shows an installed utility pole with overhead distribution line across US 158. Mr. Ray stated that Staff’s interpretation that all of the elements: the distribution line, utility pole, and transformer were included in Section 153.080:

“All new electrical, communication services and TV distribution lines and all conduits used for the distribution of such signals located within the town shall be placed underground from the point of separation from the distribution line to the structure of the ultimate user. Existing distribution lines that are in place overhead on the effective date of this regulation may be extended only if such extensions are placed underground. Transformers and enclosures containing switches, meters, capacitors and the like may be pad mounted as an exception to the above.”

Mr. Ray stated that Staff’s interpretation was that the point of separation was from the existing distribution line east of US 158. He then referenced the July 2023 photo, noting that the

extension and transformer were overhead; as a result, it was Staff's interpretation that all of the elements at the site were in violation of Section 153.080.

Mr. Varnell asked Mr. Ray to further describe the photos he referenced earlier. Mr. Ray stated the July 18, 2023, image was taken by Public Services Staff when they were conducting an inspection on Fourth Street. The additional set of photos were taken from Google Street Maps, from August 2022 and July 2023. Based on the information in the photo provided by Public Services, Mr. Ray notified Dominion of the violation and requested a meeting with Staff to discuss the violation. On July 20, the site was posted with the Stop Work Order.

Mr. Ray noted that soon afterward, Town Staff met with Dominion Staff to discuss the order; however, he did not attend due to illness. Mr. Varnell asked Mr. Ray to describe the current status of the site and the Stop Work Order. Mr. Ray replied that the Stop Work Order had been revoked. On August 24, 2023, the property owner provided the Town a copy of a draft proposal from Dominion, which was incorporated into a plan that did meet the Town's requirements for overhead service. On the same day, the Town issued a revised permit and released set of construction drawings that were required to be picked up by the project's general contractor, who did not pick up the released construction drawings until September 6, 2023. Venture Construction was issued the permit on September 6, 2023. The Stop Work Order was lifted and revoked; however, the site was still in violation because of the overhead pole. As of September 25, 2023, Mr. Ray witnessed work in the right-of-way to bore the power line underneath US 158. Mr. Varnell asked Mr. Ray to identify another document in the meeting materials, and explain it. Mr. Ray identified Permit #BJ2023-160, which is the permit for the Wawa building and site construction, including a change of contractor and change in plan that was originally approved by the Board of Commissioners in August 2022. The permit was issued and picked up by the contractor on September 6, 2023, and there are clear conditions for the developer and contractor for bringing the site into compliance with Town Code Section 153.080. Mr. Varnell inquired whether this was the most recent and approved by the Town. Mr. Ray replied in the affirmative. Mr. Varnell asked Mr. Ray to describe what the plan showed with regard to power distribution on the site. Mr. Ray replied that plan shows the site being served by an underground distribution line under US 158 to a pad-mounted transformer on the east side of the property, along with the removal of power pole, transformers, and distribution line that were in violation of the ordinance. Mr. Varnell inquired why the plan complies with Section 153.080 of the Town Code. Mr. Ray responded that the most recently submitted plan complies because it shows the extension from the previous overhead distribution line is underground and the transformer does follow the exception which is pad mounted: this most recent plan clearly showed compliance.

Mr. Varnell referred to earlier plans that had been previously referenced, with the assertion that Town Staff had approved plans with overhead distribution, and asked for Mr. Ray's description of timeline of any amended site plans. Mr. Ray stated that Kimley Horn, the property owner's designer firm, contacted the Town in February 2023 to share it was looking to make changes to the appearance of the building and the interior layout. Staff communicated that because of the significant extent of the proposed changes, additional review by the Planning Board and Board of Commissioners would be required. As a result, the designer firm decided to keep a similar building design from the original plan, with an interior layout change and change the truck delivery door from the building's north side to its south side. Mr. Ray stated that this part of the

**1<sup>st</sup> Draft**

**A1/23-09/26/2023**

**September 26, 2023 – Board of Adjustment**

**Page 8 of 16**

process was all communicated through telephone calls or conference calls. The developer and designer submitted five sets of building plans and five sets of site plans at that time with no application memorandum or explanation as to what the planned changes were. Mr. Ray indicated that it was understood by Staff from the telephone conversations to be interior layout changes along with the relocation of the delivery ramp. Mr. Varnell inquired what on the plans were changed. Mr. Ray responded that the building change included interior layout changes, including the location of the coolers and the point-of-sales counter and the delivery area. Mr. Varnell inquired about whether the plans included overhead power distribution service to the site. Mr. Ray replied that overhead power was included on the updated plans, but that the plans were not distributed for Staff review by Public Services or the Town Engineer because it was not indicated by the designer that there were any site changes at 1900 North Croatan Highway. Mr. Varnell inquired whether there was any Town approval of the amended plan for the installation of overhead distribution lines. Mr. Ray stated there was not; he noted that there had been an email referenced earlier from Planning Staff in April 2023 that the building plans had been approved, and that the building plans would need picked up by the general contractor when that was decided. Mr. Ray stated no site plans were approved showing the overhead distribution. He noted that it was brought to the Town's attention in August 2023 that that plans submitted in April 2023 did show overhead distribution. Mr. Varnell inquired whether it was detailed in the Town's Notice of Violation that site plans had been submitted that had not been approved. Mr. Ray replied in the affirmative.

Mr. Varnell asked Mr. Ray if he was aware of any site plans that he had approved since this ordinance's inception that approved an overhead distribution line not in compliance in this ordinance. Mr. Ray replied in the negative, and noted the instance with the carwash on Eighth Street and US 158, where overhead distribution was permitted at that site. He noted that existing overhead electrical distribution lines run along the western and southern boundaries of the lot. Another pole had to be added within the distribution system due to the driveway of the carwash; however, it was Staff's interpretation that it was not a violation of Section 153.080 because it was within the existing distribution line and not an extension.

Mr. Varnell asked Mr. Ray whether he was aware of any sites that are not in compliance with the ordinance, with the exception of any sites prior to the ordinance's 1999 enactment. Mr. Ray replied that apart from existing nonconformities created from sites prior to the ordinance enactment, he was not aware of any sites not in compliance since the ordinance's development. Mr. Varnell asked for Mr. Ray's understanding of electrical transmission lines versus distribution lines. Mr. Ray responded that transmission lines are higher voltage lines from substation to substation or from a generating facility to a substation. Distribution lines go from a substation to a client, development, or other town at some point with power. Mr. Varnell asked Mr. Ray's interpretation of the word "extension." Mr. Ray replied that it would mean to lengthen or extend an existing system. He stated it was easy to read and interpret: if there is a clear distribution line, extending service to a new client or running a new distribution line, lengthening the distribution system. Mr. Varnell inquired of Mr. Ray in issuing this Notice of Violation what he found to be a noncompliant extension. Mr. Ray replied from the point of separation of the existing distribution line, across US 158 to the newly installed pole at the 1900 North Croatan Highway

site. Mr. Varnell inquired whether Mr. Ray believed Staff applied a clear ordinance in a fair manner. Mr. Ray responded in the affirmative.

Mr. Rhoad inquired whether Planning Staff learned of the utility pole at the Wawa property when the Public Services Department made them aware. Mr. Ray replied in the affirmative. Mr. Rhoad inquired about the Public Services Department. Mr. Ray stated that that the Public Services Department manages the Town's streets, solid waste, and water infrastructure. Mr. Rhoad inquired how Public Services was on site to make Planning Staff aware. Mr. Ray replied that Public Services Staff was at the site because it was inspecting the stabilization of the Fourth Street right-of-way in conjunction with a Town project widening the street. Mr. Rhoad inquired whether the Public Services Department had notified Mr. Ray on other instances of the installation of new utility poles in his time with the Town. Mr. Varnell objected: relevance. The objection was overruled. Mr. Rhoad inquired whether anyone else at the Town had notified Mr. Ray of a new utility pole in the Town. Mr. Ray replied in the negative. Mr. Rhoad inquired whether Mr. Ray had ever noticed a new pole installation in Town before. Mr. Ray replied in the negative. Mr. Ray stated that he has noticed poles that have been replaced due to damage or relocated because of improvements to existing distribution lines, but not a new pole. Mr. Rhoad inquired whether the Town conducts inspections of developments for certificates of occupancy and to ensure zoning compliance. Mr. Ray replied in the affirmative. Mr. Rhoad inquired that if a site plan was approved that showed underground, and a pole was installed overhead, whether it would come to the Town's attention during those inspections. Mr. Ray replied that it would come to the Town's attention. The Town conducts inspections based on improvements. Mr. Ray stated the Town had not conducted a zoning inspection of the site in this instance because the contractor who made the site pad ready was gone and done. The Town was awaiting an application submittal for a new contractor, and there had not been a zoning inspection at the site for over a month. Mr. Rhoad inquired whether Mr. Ray was aware of the installation of any utility poles installed in the town since July 18, 2023. Mr. Ray responded the utility pole at 1900 North Croatan Highway. Mr. Rhoad inquired about any other poles. Mr. Ray responded in the negative. Mr. Rhoad inquired whether Mr. Ray was aware of the 5G cellular distributed antenna pole on the Wawa property. Mr. Ray replied that he was familiar with the antenna pole on the US 158 right-of-way, but stated that he would defer to Mr. Varnell to speak to it when the ordinance was clarified in 2019 to clarified telecommunications services. Mr. Rhoad inquired how that utility pole was allowed when the ordinance clearly states that all communications services must be underground, just like it does electric. Mr. Ray stated that he would defer to Mr. Varnell on that issue. Mr. Rhoad noted that since Mr. Ray had provided an interpretation of the ordinance for electrical service in this instance, why was there a distinction. Mr. Ray replied that there had been a statutory legal interpretation from legal counsel. However, for Town right-of-ways, there are none, unless it is on an existing overhead distribution pole. Mr. Rhoad, in referencing the Eighth Street carwash example, inquired if it was Mr. Ray's ordinance interpretation that with a new facility in an existing distribution corridor, it is not an extension because it is not adding length to the distribution line. Mr. Ray responded in the affirmative. Mr. Rhoad asked whether the three new transformers that are pole-mounted at the carwash side would also not be inappropriate ordinance because it is within the existing corridor. Mr. Ray

**1<sup>st</sup> Draft**

**A1/23-09/26/2023**

**September 26, 2023 – Board of Adjustment**

**Page 10 of 16**

replied in the affirmative. Mr. Rhoad inquired whether Mr. Ray's interpretation of distribution lines was of lines from a substation to the end user, and was that his interpretation prior to this meeting. Mr. Ray replied in the affirmative to both. In citing the ordinance, Mr. Rhoad referenced being "... underground from the point of separation from the distribution line to the structure of the ultimate user," and asked Mr. Ray's interpretation of where a line separates from the distribution line. Mr. Ray replied that the separation would be from where the new extension is coming from the existing pole of the distribution line. Mr. Rhoad inquired whether that would be an extension of the distribution line. Mr. Ray responded where the point of separation is, which would have to connect to the existing distribution pole. From that point extending would be the point of separation, from the point of separation of the existing distribution line. Mr. Rhoad stated that Mr. Ray's interpretation is an extension of the distribution line is the point from which you are separating from the distribution line, and that triggers the ordinance. Mr. Ray replied in the affirmative. Mr. Rhoad stated that the ordinance states two different things: the line has to be underground from the point of separation from the distribution line and it also says that extensions of the distribution line have to be underground. He asked, in Mr. Ray's interpretation, the difference between the two. Mr. Ray stated that they are talking a case specific spot, noting that they are dropping down a pole within an existing distribution system, and going underground. The point of separation and existing distribution lines only extended if underground, they are the same thing. Mr. Rhoad stated that they are two different sentences, and that the Appellant cannot have an issue like this be a case by case basis. Mr. Ray responded that it was clear that when a new distribution line extends from an existing distribution line that the point of separation and the extension are the same thing.

Mr. Rhoad inquired how long Mr. Ray has lived in Kill Devil Hills. Mr. Ray responded 10 years. Mr. Rhoad inquired whether he was not aware of any new utility poles during that time, other than the one at this site. Mr. Ray responded in the negative. Mr. Rhoads inquired whether there had been any internal discussions regarding the ordinance and why it had not been applied in the past. Mr. Ray responded in the negative. Mr. Rhoad inquired whether he was aware of any other types of poles that have been installed, other than by Dominion or the 5G pole referenced earlier. Mr. Ray responded that in regard to electrical, communication, or TV distribution, other than the small cell, no. Mr. Rhoad inquired whether there were any other 5G poles of which Mr. Ray was aware and how many were there. Mr. Ray replied in the affirmative, but noted he was unaware of the number. The Town has received several applications over the past few years. Mr. Rhoad inquired what other types of poles have been installed that Mr. Ray does not think triggers the ordinance. Mr. Ray responded that he could not think of any. To further clarify, Mr. Rhoad inquired, other than the Wawa pole and the 5G pole, whether Mr. Ray has not noticed other poles installed in the last 10 years. Mr. Ray responded that he was speaking in regards to electrical, communication, and TV. Mr. Rhoad replied that he was referring to any poles that Mr. Ray would say would not trigger ordinance. Mr. Ray replied whether Mr. Rhoad included light poles, mail boxes, and STOP signs. Mr. Rhoad responded yes, any poles. Mr. Ray responded in the affirmative; quite a few. Mr. Rhoad inquired what poles do not come under the ordinance. Mr. Ray responded that the only ones that apply under the ordinance are clear – electrical, communications, and TV distribution. Mr. Rhoad inquired whether light poles apply. Mr. Ray responded in the negative. Mr. Rhoad stated that 5G poles

do not apply. Mr. Ray responded that 5G poles are governed by the ordinance; the Town has denied several applications for them in Town right-of-ways. Mr. Rhoad inquired why the Town has permitted the ones that have been permitted; why does it allow some 5G poles and do not permit others. Mr. Ray stated that he deferred to the Town Attorney. There are state statutes that address small node 5G wireless facilities. Mr. Rhoad stated that if there are state statutes speak to whether a municipality can regulate placement of equipment like that, it is going to control whatever the Town ordinance says. Mr. Ray stated he deferred to the Town Attorney. Mr. Rhoad asked that in Mr. Ray's experience, that had been the case with the 5G poles. Mr. Ray responded in the affirmative, noting that was statutory changes for 5G wireless facilities in state right-of-ways; however, in Town right-of-way, numerous ones have not been permitted due to Section 153.080.

Mr. Rhoad inquired as to Mr. Ray's previous positions with the Town. Mr. Ray responded that prior to four years as Assistant Planning Director, he was in the role of Senior Planner for two years, and a Building Inspector prior to that position. Mr. Rhoad inquired whether Mr. Ray had witnessed a lot of development in the Town in those eight years and whether they had received electrical service. Mr. Ray responded affirmatively. Mr. Rhoad inquired again whether Mr. Ray had seen a utility pole installed. Mr. Ray stated that he could not speak to any new poles, as he previously stated. Mr. Rhoad inquired whether Mr. Ray was responsible for inspections for building or zoning compliance. Mr. Ray responded at times he has inspected, as there are seven members of Staff. Mr. Rhoad inquired if sites were inspected, the site plans stated that power was to be underground or were silent and a pole was noted, it would have triggered the ordinance. Mr. Ray responded in the affirmative. Mr. Rhoad stated that there were no instances that he was aware of in 24 years that a pole was installed and it was inspected for building permit or zoning compliance. Mr. Ray replied in the negative.

Mr. Varnell inquired about Section 153.080, and asked Mr. Ray to read the portion that included the extension or extended:

“Existing distribution lines that are in place overhead on the effective date of this regulation may be extended only if such extensions are placed underground.”

Mr. Varnell then asked Mr. Ray to read the first sentence of the ordinance:

“All new electrical, communication services and TV distribution lines and all conduits used for the distribution of such signals located within the town shall be placed underground from the point of separation from the distribution line to the structure of the ultimate user.”

Mr. Varnell inquired whether the ordinance worked if there were existing distribution lines in place. Mr. Ray responded that with the latter portion of the ordinance that he had read, yes. The first sentence in the ordinance references all new, which must be underground.

With regard to small cell wireless, Mr. Varnell referenced Mr. Ray's earlier testimony that the state statute does not permit the Town to regulate in state right-of-ways. He inquired what the

result would be if the Town was approached by a provider to install a new pole in a Town right-of-way. Mr. Ray responded that Staff would deny the request because of Section 153.080; state statute does not control in the Town right-of-way or on private property.

Chair Lowack asked for the process timeline. Mr. Ray stated that application would be submitted on the third Tuesday of the month, with review by the Planning Board on the third Tuesday of the following month. Then, typically on the second Monday of the following month there would be review by the Board of Commissioners and potential action on that use. The Board of Commissioners approved the site plan in August 2022, which showed services being underground. Upon Board of Commissioners approval, Staff provided the applicant and property owner an approval memorandum, requesting five copies of the approved site plan, and noting that the applicant had 365 days to secure a building permit before the site plan expired. The applicant applied for a building permit, which was issued to Fred Smith Company. The company did some site clearing, stormwater management, and right-of-way work. The property owner put it out for bid looking for a new contractor to construct the building. In April 2023, there was no application for changes to the site plan. Staff was led to believe that there would only be internal changes and the change of a delivery door. There were site plans submitted at the same time, but there were no notes on sheet one indicating that there would be any revisions to be changed on the site. In referring to his previous testimony, the site plans were not circulated for review because no application or memorandum was submitted that there was going to be a change in any of the utilities. After that point, Venture Construction contacted the Town, which is the general contractor, and the Town has sent the firm the information needed for bonding, licensing, etc.

Mr. Rhoads inquired that the Stop Work Order was revoked after plans were submitted showing that line would be underground under US 158 and a pad-mount transformer installed on the Wawa property. Mr. Ray responded in the affirmative. Mr. Rhoad inquired that Mr. Ray just previously testified that the Town cannot regulate anything regarding 5G on a right-of-way not owned by the Town. Mr. Ray responded that he was not referencing anything about electrical, but stated that his earlier testimony deferred to the Town Attorney. Mr. Ray stated that he alluded to a state statute specifically to 5G small cell wireless. Mr. Rhoad inquired whether it was Mr. Ray's interpretation that the Town can require Dominion to put electric facilities underground, even if they are in a right-of-way not owned by the Town. Mr. Ray responded in the affirmative. Mr. Rhoad inquired that underground utility placement was a requirement for the revocation of the Stop Work Order that Dominion go underground under NCDOT's right-of-way as well. Mr. Ray responded that the original plan was for Dominion to provide electrical service from the rear of the property, which would not have required electrical service to come from the east side of US 158. Mr. Ray stated that, however, the plan that was submitted by the designer to show compliance was that it crossed under US 158, although the Town did not require electrical service to come from that direction. Mr. Rhoad inquired that if electrical service was going to cross US 158, it would have to be underground or the Stop Work Order would not have been revoked. Mr. Ray answered in the affirmative. Mr. Rhoad asked if Dominion had placed the pole inside of NCDOT's right-of-way rather than on the Wawa

property, whether it would have been permitted under the ordinance. Mr. Ray responded the negative.

Mr. Seidman inquired if a vehicle crashes and breaks a pole or poles, it can be replaced with no issue. Mr. Ray responded in the affirmative, noting that it was a repair or replacement, not an extension.

Chair Lowack then asked for closing statements:

### **The Town**

Mr. Varnell stated as to the Appellant's grounds for appeal, the Stop Work Order, procedural or other deficiency is moot. The Stop Work Order has been lifted. Any time someone references in a Board of Adjustment hearing the authority of a Town to act, you are delegating legislative authority in an unconstitutional manner to the Board of Adjustment. If the Town does not have authority to act, that results in an unenforceable law, striking down that particular law: the question is better for Dare County Superior Court to determine. He noted *Jackson v Board of Adjustment*, which does not give a Board of Adjustment unrivaled discretion to make or strike laws. In this case, the issue is whether there is an ordinance that clearly states there cannot be overhead distribution lines and whether the Town has appropriately interpreted and enforced it. As far as the site plans, at no time were the amended site plans approved, and neither the property owner nor Dominion were given permission to move forward. When the Town learned of the changes to the site plan, it prompted an addition to the Notice of Violation, noting that the Appellant was operating under site plans that had not been approved by the Town. No evidence has been presented that the Town approved the amended site plan. Mr. Varnell clarified the state statute regarding 5G towers; this does not mean that the Town does not have ability to regulate its right-of-ways.

### **Appellant**

Dominion is seeking interpretation that the way the ordinance has been applied for 24 years, and that it does not apply to these facilities. It is now being interpreted differently for some reason. The 5G towers are an unanswered issue by Town Staff. Additionally, for a Staff conducting building and zoning inspections, it is unusual that none of the installed poles over the last 24 years have been noticed. The Town does not own NCDOT's right-of-way, but requires the Appellant to bury lines on it. What if NCDOT objected? If the Board finds that this new ordinance interpretation does apply to Dominion, the Appellant requests interpretation on what is a distribution line, as Town Staff cannot distinguish between the first and second sentence examples of the ordinance. The Appellant is fine with the interpretation if the Board finds the ordinance is applicable to Dominion if the extension is additional length outside the corridor, not upgrades, maintenance, or replacement projects.

Mr. Wheless provided an overview of the decision process: The Board will vote on each question, supporting the decision for that choice through a simple 3/5 majority. The Board has three options:

- Affirm in whole or in part the Stop Work Order;
- Reverse in whole or in part the Stop Work Order; or
- Modify the Stop Work Order

**Board of Adjustment Discussion and Decision for A1/23-09/26/2023**

Chair Lowack asked the members if any had ever seen any newly installed utility poles. Members responded that one had ever noticed new poles. Mr. Cox stated that the BOA does not make policy, but may interpret it. He then inquired if the BOA could change an ordinance. Mr. Wheless replied that the BOA cannot change the ordinance, as that is a legislative matter; however, one of the BOA’s powers is that it serves in an advisory capacity, and could make a recommendation that the Town Staff and Board of Commissioners that an ordinance need review. Mr. Cox inquired whether NCDOT’s permission was required for electrical lines to be placed under US 158 in its right-of-way. Mr. Wheless responded that permission was implied from the evidence submitted. Mr. Cox then inquired whether it was the same situation with overhead line placement on the NCDOT right-of-way. Mr. Wheless replied that although no evidence had been presented, real property law would suggest that an owner’s rights to a property would extend from the depths of the center of the earth to heavens above. It would normally include the space above a right-of-way.

Mr. Self noted the earlier statement by the Appellant that the Town can only regulate buildings based on zoning has been proven incorrect because the Town can regulate bulkheads, piers, fences, among others. He expressed concern about the 5G tower legislation that had been referenced, but noted no evidence was presented. Chair Lowack noted that the Town has the right to issue Stop Work Order in this instance. There was a breakdown in communication between the different contractors that lead to the changes on subsequent site plans. Mr. Self and Mr. Seidman noted that the ordinance was clearly written, and the issued Stop Work Order, based on the ordinance’s existing language, was appropriate.

Ron Seidman moved to affirm the Stop Work Order and Notice in whole. Ms. Dorn seconded the motion, which was approved by a unanimous, 5-0, vote.

Toni Dorn	Yes	Kevin Cox	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

Do you find that the Section 153.080 is enforceable against Dominion Energy North Carolina?

Toni Dorn	Yes	Kevin Cox	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

Mr. Wheless noted that the Appellant had requested an interpretation of the ordinance. The BOA could proceed to provide an interpretation itself, forward a recommendation to the Board of Commissioners for review, or take no action.

Mr. Seidman moved to recommend that Town Staff and the Board of Commissioners examine Town Code Section 153.080 and determine whether it needs further clarification. Mr. Self seconded the motion, which was approved by a unanimous, 5-0 vote.

Toni Dorn	Yes	Kevin Cox	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

### **Adjournment**

There being no further business before the Board of Adjustment at this time, Mr. Self moved to adjourn. Mr. Cox seconded the motion, which was approved by a unanimous, 5-0, roll call vote:

Toni Dorn	Yes	Kevin Cox	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

The meeting adjourned at 7:05 p.m.

Submitted by:

James Michael O'Dell  
Town Clerk



# Kill Devil Hills

North Carolina

## VARIANCE APPLICATION

Planning and Inspections Department

(252) 449 – 5318

102 Town Hall Drive

Kill Devil Hills, NC 27948

**FEE: \$500.00**

The purpose of this application is to *request* a variance, or an exception to the Town Zoning Code, and it aims to help citizens seek relief from unnecessary hardship resulting from the strict enforcement of such code. However, ***a variance is not a right***. It may be granted to an application only if the applicant establishes compliance with the hardship criteria established in NCGS §160D-705.

**Required attachments/submittals for an application for a variance:**

- 1.) A completed application
- 2.) Typed metes and bounds description of the property (or portion of property). *A recorded deed is sufficient, if the deed describes only the subject property.*
- 3.) A print out of the Dare County Tax Records showing the names and addresses of all immediately adjacent property owners, including any that are directly across the street/road/highway
- 4.) Application Fee, ***which is nonrefundable***

**\*\*\*Important:** If any of the above requirements are not present at the time of submittal of the Application for a Variance, the application will be deemed incomplete and will not be accepted.\*\*\*

\*Please note, calls, conversations or other communications with any member of the Board of Adjustment prior to the meeting cannot be considered in the final decision and may result in the Board Members' recusal due to a conflict of interest. If adjacent property owners are to testify on behalf of the applicant, they must be present at the hearing. Petitions and written consent may be accepted by the Board of Adjustment, but they cannot be used as a basis for the decision.

**Certification:**

I (we) hereby acknowledge and say that the information contained herein and herewith is true and that this application shall not be scheduled for official consideration until all of the required contents are submitted in proper form to the Town of Kill Devil Hills Planning and Inspections Department.

Applicant Name (Please Print):

*Michael G. Smith*

Applicant Signature:

*Michael G. Smith*

Date:

*10/27/2023*

**For Staff Use Only:**

Fee Received by:

*Dorinda Elliott*

Date:

*11/2/23*



Town of Kill Devil Hills  
North Carolina

**Application for a Variance**

(Please Type or Print)

**Applicant**

Name:

Michael G. Smith & Deborah H. Green

Address: 104 Commerce Street  
Smithfield, VA 23430

Telephone Number:

757-576-4203

Email:

barnbuildings@msn.com

Property Address: 106 East Third Street; Kill Devil Hills, NC 27948

Parcel Number: 002734000

Area of Property (acres or square feet):  
0.248 acres; 13,837 sq ft

**Owner**

Name:

Michael G. Smith & Deborah H. Green

Address: 106 East Third Street  
Kill Devil Hills, NC 27948

Telephone Number:

757-620-9419

Email:

barnbuildings@msn.com

PIN Number: 988406378800

Lot Width: 130  
Lot Depth: 150



Town of Kill Devil Hills  
North Carolina

Application for a Variance

Current Zoning Classification: C

Existing Land Use: Residence

Surrounding Land Use:

North: Theatre

South: Vacant

East: Residence

West: Residence

Description of Variance Request:

To remove plexi glass and screens in existing porch and replace with high impact rated windows with creens; no new construction or change of footprint

I (we) Michael G. Smith & Deborah H. Green, hereby petition the Kill Devil Hills Board of Adjustment for a variance from the literal provisions of the Kill Devil Hills Zoning Ordinance because under the interpretation given to me by the Zoning Administrator, I (we) am/are prohibited from using the parcel of land described in this application in the manner that I have proposed. I (we) request a variance from the following provisions of the ordinance:

The front porch is in the minium setback line per survey attached. The home was built in 1965 and set back lines were established after the home was built

To the end that the above-mentioned property can be used in the manner described herein:

By allowing the installation of windows with screens will further protect the property from the weather and will add safety to the property. We have had homeless people staying on our porch in the past and have cut screens to enter, thus the security of windows would be a deterrent for the public to enter and ultimately causing property damage and the safety of the public



Town of Kill Devil Hills  
North Carolina

**Application for a Variance**

**Facts Relevant to the Issuance of a Variance:**

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board of Adjustment is required to reach the determination that:

1. there are unnecessary hardship(s) to the applicant if the strict letter of the ordinance is carried out;
2. the hardship results from conditions that are peculiar to the property, such as location, size, or topography;
3. the hardship did not result from actions taken by the applicant or the property owner.

In the in the pages that follow, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board of Adjustment that it can properly reach these conclusions:

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*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.*

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Town of Kill Devil Hills  
North Carolina

**Application for a Variance**

1. That there are any unnecessary hardships in the manner of carrying out the strict letter of the ordinance:

*Applicant comment*, as Statement(s) of Fact:

The strict letter of the ordinance does not allow the owner to improve the  
property to ensure the protection of the property and the safety of the public  
by entering the property thus doing harm to themselves

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**Staff Comment**, as Statement(s) of Fact:



Town of Kill Devil Hills  
North Carolina

**Application for a Variance**

2. That the hardship results from conditions that are peculiar to the property, such as location, size, or topography:

*Applicant comment*, as Statement(s) of Fact:

While not all of the front porch is in the MSBL (per survey attached) it still

has to meet the requirements of the town as if it was a new build thus not allowing any improvements to the said request

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*Staff Comment*, as Statement(s) of Fact:

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Town of Kill Devil Hills  
North Carolina

**Application for a Variance**

3. That the hardship did not result from actions taken by the applicant or the property owner:

*Applicant comment*, as Statement(s) of Fact:

As stated the existing footprint of the home has been there since 1965 and no new construction to change the footprint has been added by the present owner

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**Staff Comment**, as Statement(s) of Fact:

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Town of Kill Devil Hills  
North Carolina

**Application for a Variance**

- 4. That the variance request is consistent with the spirit, purpose, and intent of the ordinance, such that public safety and welfare is secured and substantial justice has been achieved:

*Applicant comment*, as Statement(s) of Fact:

By requesting this variance it allows the owner to improve and protect the property and the public

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*Staff Comment*, as Statement(s) of Fact:

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PAID

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TOWN OF  
KILL DEVIL HILLS

Town of Kill Devil Hills Planning and Inspections  
252-449-5318

### NON-REFUNDABLE FEES

Date: 11/2/23

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Board of Adjustments | <input type="checkbox"/> Exempt plat/Subdivision        |
| <input type="checkbox"/> CAMA                            | <input type="checkbox"/> Fines and/or Re-Inspection Fee |
| <input type="checkbox"/> Copies                          | <input type="checkbox"/> Site Plan Review               |
| <input type="checkbox"/> Text Amendment                  | <input type="checkbox"/> Permit Re-instatement          |
| <input type="checkbox"/> Other: _____                    |   |

Amount: \$500.00

Received From: Michael Smith

Description: 106 E. Third Street  
Front and side yard variance request

Received by: Donna Elliott

Director of  
Planning and Inspection  
MEREDITH GUNS

Building Inspector  
MARTY SHAW  
CHARLES THUMAN

Code Enforcement Officer  
JORDAN BLYTHE



Assistant Director of  
Planning and Inspection  
CAMERON RAY

Senior Planner  
RYAN LANG

Zoning Administrator  
DONNA ELLIOTT

**THE TOWN OF KILL DEVIL HILLS**  
NORTH CAROLINA

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**PLANNING DEPARTMENT**

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**NOTICE OF VIOLATION**

October 12, 2023

MICHAEL SMITH  
104 COMMERCE ST  
SMITHFIELD, VA 23430

Please be advised that this letter serves notice of your violation of Ch. 150.01 & 150.20:

**§ 150.01 COMPLIANCE WITH ZONING REGULATIONS; SETBACK CERTIFICATION.**

(A) All construction and additions to present buildings must conform to the requirements of Ch. 153 and Ch. 151.

**§ 150.20 BUILDING PERMIT REQUIRED.**

No person shall commence construction of any kind within the town without first securing a permit from the Planning and Inspections Department therefor and in accordance with development review and building permit fee schedules.

All construction shall comply with NC Building Code requirements.

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Date of violation: **10/12/23**  
Location: **106 E THIRD ST.**

Date of letter: **10/12/23**  
PIN: **988406378800**

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Nature of violation:

- **Enclosing of nonconforming porch to sunroom without permit.**

Required actions:

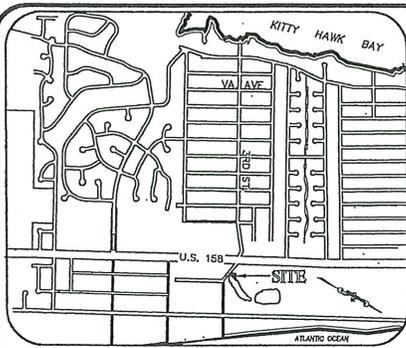
1. **Obtain building permit.**
2. **Return porch to original state.**

If you fail to acquire a building permit within 15 days, you may be assessed a graduated penalty starting at \$50 per day per Chapter 10, General Provisions, Section 10.99 of the Town Code. Each day's continuing violation shall be a separate and distinct offense (Section 10.99 (c) and GS 160A-175(g)).

If you have any questions, please contact me at 252-449-5316.

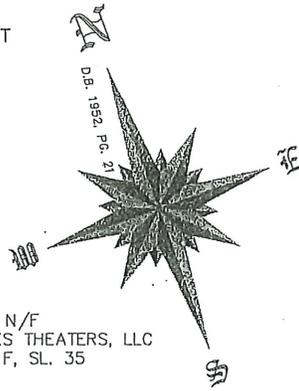
  
Jordan Blythe  
Code Enforcement Officer

First Class & Certified Mail #: 7020 2450 0001 6017 7183



**LEGEND:**

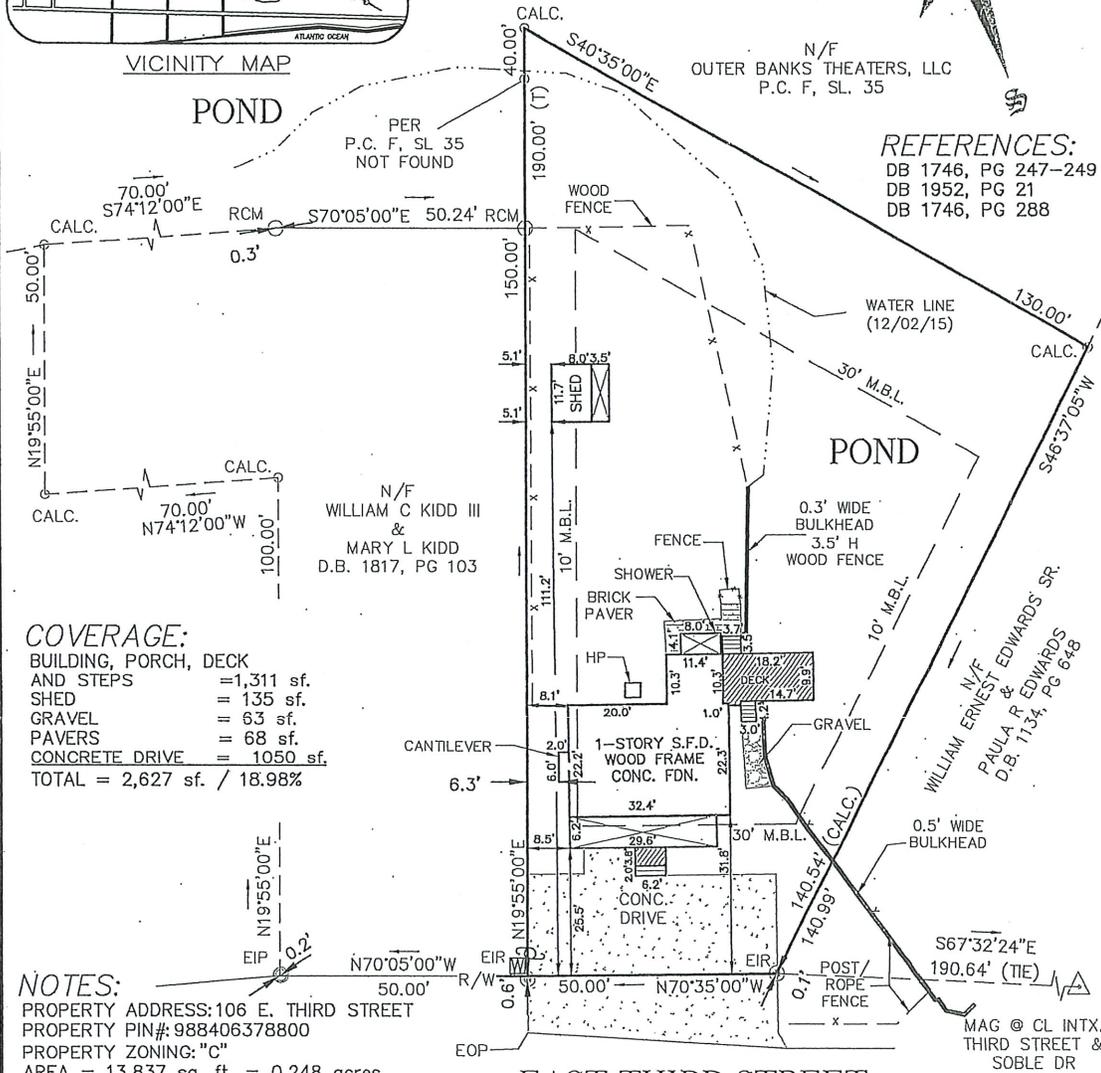
- ⊙ RCM - ROUND CONCRETE MONUMENT
- ⊙ EIR - EXISTING IRON ROD
- ⊙ EIP - EXISTING IRON PIPE
- △ PK - PK NAIL
- CALC- CALCULATED POINT
- ⊙ POWER POLE
- ⊙ WATER METER
- EOP - EDGE OF PAVEMENT
- R/W - RIGHT OF WAY



N/F  
OUTER BANKS THEATERS, LLC  
P.C. F, SL. 35

**REFERENCES:**

- DB 1746, PG 247-249
- DB 1952, PG 21
- DB 1746, PG 288

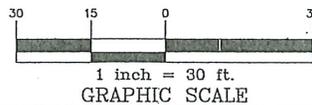


**COVERAGE:**

BUILDING, PORCH, DECK AND STEPS	= 1,311 sf.
SHED	= 135 sf.
GRAVEL	= 63 sf.
PAVERS	= 68 sf.
CONCRETE DRIVE	= 1050 sf.
<b>TOTAL</b>	<b>= 2,627 sf. / 18.98%</b>

**NOTES:**

PROPERTY ADDRESS: 106 E. THIRD STREET  
 PROPERTY PIN#: 988406378800  
 PROPERTY ZONING: "C"  
 AREA = 13,837 sq. ft. = 0.248 acres  
 AREA CALCULATED BY COORDINATE METHOD.  
 LOT SUBJECT TO EASEMENTS & COVENANTS OF RECORD.  
 PROPERTY SUBJECT TO A FULL AND ACCURATE TITLE SEARCH.  
 LOT MAY BE IN AN AREA OF ENVIRONMENTAL CONCERN  
 INDIVIDUAL PERMITS MAY BE REQUIRED.  
 SETBACKS AS PER TOWN OF KILL DEVIL HILLS AND MUST BE VERIFIED.  
 SURVEYOR MAKES NO CERTIFICATION AS TO SETBACKS.  
 SUBDIVISION AS RECORDED IN P.C. M.B. 1952, PG. 21. D.C.R.  
 PROPERTY IS LOCATED IN F.I.R.M. AE (EL. 8.3)  
 MAP NO.: 3720988400J; INDEX DATED: 09-20-2006  
 SUBJECT TO CHANGE BY F.E.M.A.



UPDATE: AS BUILT 5/16/17 BW  
 SHED DIM. 6/7/17 BW

I, CARLOS F. GOMEZ, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION. THAT THE BOUNDARIES NOT ACTUALLY SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN EXISTING RECORDS AND THAT THIS MAP WAS NOT PREPARED TO BE RECORDED. THE RATIO OF PRECISION IS 1/10000 AS CALCULATED. WITNESS MY HAND AND SEAL AT THIS 7th DAY OF JULY 2017.

P.L.S. L-3241

FILE NO. S2526.14  
 SURVEY DATE 12-2-15  
 CAD FILE S2526ASB  
 SCALE 1" = 30'  
 DRAWN BW  
 FIELD BOOK 93/72

AS BUILT:  
**MICHAEL G. SMITH & DEBORAH H. GREEN**  
 1/4 ACRE PARCEL OF LAND IN KILL DEVIL HILLS  
 PARCEL NUMBER: 002734000  
 KILL DEVIL HILLS

ATLANTIC TWSP DARE COUNTY NORTH CAROLINA



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

Director of  
Planning and Inspections  
MEREDITH GUNS



Assistant Director of  
Planning and Inspections  
CAMERON RAY

Building Inspector  
MARTY SHAW  
CHARLES THUMAN

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Code Enforcement Officer  
JORDAN BLYTHE

Zoning Administrator  
DONNA ELLIOTT

**THE TOWN OF KILL DEVIL HILLS**  
NORTH CAROLINA

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**PLANNING DEPARTMENT**

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January 12, 2024

Memorandum

To: Michael O'Dell, Town Clerk

From: Donna Elliott, Zoning Administrator *DE*

Subject: Variance Application – 106 E. Third Street: Request for Variance

Staff has reviewed the Variance application submitted for 106 E. Third Street. The application fails to cite the particular ordinance provision that is being requested for a variance at this property. However, the application refers to the attached site plan that shows the "front porch" encroaching on the front and side yard setback. A Notice of Violation was issued on October 12, 2023, to this property for an addition of gross floor area without a permit. In working with the property owner, a permit could not be issued due to the violation of the Town Code. The property owner was instructed that the enclosed porch would either have to meet setback requirements or be converted back to a screened porch. This property is an existing nonconformity; it is prohibited to increase a nonconformity, which an addition not in compliance with setback requirements would be in this instance. In order for a variance to be granted for the work that has been constructed at this property, a variance to Town Code's **§153.053(A)(2) Zoning Nonconformity** and **§153.181(A) Commercial Zone Setbacks** shall be considered and are the basis of staffs comments to questions 1-4 of the Variance application. Staff's comments are offered below:

1. That there are any unnecessary hardships in the manner of carrying out the strict letter of the ordinance:

**Staff Comment**, as Statement(s) of Fact:

There are no unnecessary hardships that prohibit adherence to the ordinance. The Town Code provides clear code requirements for zoning nonconformities that is not an unnecessary hardship for this property. The house encroaches on the front (south) and side (west) yard setback. The conversion of an existing nonconformity to a higher use, covered screen porch to enclosed porch, is by definition considered "Gross Floor Area" and the addition must meet setback requirements along with other Federal, State, and Local ordinances. The hardship listed by the applicant are inapplicable to the

variance. Below are the code references in regards to conversion of a Zoning Nonconformity (153.053) and definitions (153.002) for clear Town Code interpretation:

**§ 153.053 ZONING NONCONFORMITY.**

Where, on the effective date of this chapter, there is a zoning nonconformity, such nonconformity may be continued so long as it remains lawful, subject to the following provisions:

(A) Single-family and duplex nonconforming structures shall be subject to the following provisions:

(2) Any zoning nonconformity may be modified by an addition, structural alteration, reconstruction/repair or remodel in a manner which does not increase its nonconformity where the cost of that addition, structural alteration, reconstruction/repair or remodel is less than 50% of structural valuation and subject to the following provisions.

**§ 153.002 DEFINITIONS.**

**ADDITION.** Any construction that increases the size of a building or site features in terms of site coverage (parking, walkways, structures, etc.), height, length, width, or gross floor area.

**FLOOR AREA, GROSS.** The sum of the horizontal areas of several stories of a building measured from the exterior walls. **GROSS FLOOR AREA** shall include: (a) heated areas, (b) enclosed porches, (c) enclosed stairwells, (d) elevator shafts, and (e) outdoor restaurants and customer seating areas covered or uncovered. In atriums, the projected area of each floor, where the resulting space would be of habitable height, shall be included in **GROSS FLOOR AREA**. **GROSS FLOOR AREA** shall not include: (a) interior or partially enclosed parking spaces, (b) attic or storage areas where the floor to ceiling height is less than six feet, (c) covered or open decks not part of restaurant seating, or (d) outdoor pools or pool decks.

**PORCH, ENCLOSED.** A deck or porch fully enclosed by materials other than screening, which may or may not be conditioned space.

2. That the hardship results from conditions that are peculiar to the property, such as location, size, or topography:

**Staff Comment**, as Statement(s) of Fact:

Any improvements must meet setbacks and any other Federal, State, and Local ordinances. There are other houses along this street that have similar lots, therefore this property does not have peculiar conditions creating hardship. There are no peculiar elements to the property in regards to location, size, or topography. The structure is a common existing Zoning nonconformity, but the land location, size, and topography are standard throughout town.

3. That the hardship did not result from actions taken by the applicant or the property owner:

**Staff Comment**, as Statement(s) of Fact:

The applicant completed the work of enclosing the screened porch without obtaining a building permit. The property received a complaint and was inspected by the Town and found the property to be in violation. The notice of violation was issued to the property owner on October 12, 2023. The hardship expressed by the applicant is a direct result of the applicant's action, which is working without required permits or approval.

4. *That the variance request is consistent with the spirit, purpose, and intent of the ordinance, such that public safety and welfare is secured and substantial justice has been achieved:*

**Staff Comment**, as Statement(s) of Fact:

This variance request is not consistent with the spirit, purpose and intent of the ordinance. The Town Code requirements provide a clear regulatory path for what can be approved at an existing zoning nonconformity and the setbacks can be met. By enclosing the porch, public safety and welfare are not secured and substantial justice is not met. The newly enclosed area can either meet setback requirements or the space can be converted back to the original screen porch, which has been in place for many years. These improvements, completed by the applicant without permits, do not improve overall public safety and would create an injustice for other nonconformities that have followed Federal, State, and Local regulations.



Director of  
Planning and Inspection  
MEREDITH GUNS

Building Inspector  
MARTY SHAW  
CHARLES THUMAN

Code Enforcement Officer  
JORDAN BLYTHE



Assistant Director of  
Planning and Inspection  
CAMERON RAY

Senior Planner  
RYAN LANG

Zoning Administrator  
DONNA ELLIOTT

**THE TOWN OF KILL DEVIL HILLS**  
NORTH CAROLINA

---

**PLANNING DEPARTMENT**

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**NOTICE OF VIOLATION**

October 12, 2023

MICHAEL SMITH  
104 COMMERCE ST  
SMITHFIELD, VA 23430

Please be advised that this letter serves notice of your violation of Ch. 150.01 & 150.20:

**§ 150.01 COMPLIANCE WITH ZONING REGULATIONS; SETBACK CERTIFICATION.**

(A) All construction and additions to present buildings must conform to the requirements of Ch. 153 and Ch. 151.

**§ 150.20 BUILDING PERMIT REQUIRED.**

No person shall commence construction of any kind within the town without first securing a permit from the Planning and Inspections Department therefor and in accordance with development review and building permit fee schedules.

All construction shall comply with NC Building Code requirements.

---

Date of violation: **10/12/23**  
Location: **106 E THIRD ST.**

Date of letter: **10/12/23**  
PIN: **988406378800**

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Nature of violation:

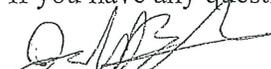
- **Enclosing of nonconforming porch to sunroom without permit.**

Required actions:

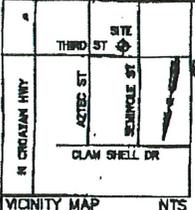
1. **Obtain building permit.**
2. **Return porch to original state.**

If you fail to acquire a building permit within 15 days, you may be assessed a graduated penalty starting at \$50 per day per Chapter 10, General Provisions, Section 10.99 of the Town Code. Each day's continuing violation shall be a separate and distinct offense (Section 10.99 (c) and GS 160A-175(g)).

If you have any questions, please contact me at 252-449-5316.

  
Jordan Blythe  
Code Enforcement Officer

First Class & Certified Mail #: 7020 2450 0001 6017 7183



### DECK ADDITION SITE PLAN

BEING LOT 3, BLOCK 2, SECTION 1, CROATAN SHORES, INC. SUBDIVISION  
 AS RECORDED IN MAP BOOK 1 AT PAGE 40  
 ATLANTIC TOWNSHIP, DARE COUNTY, NORTH CAROLINA  
 SURVEYED TO BENEFIT:

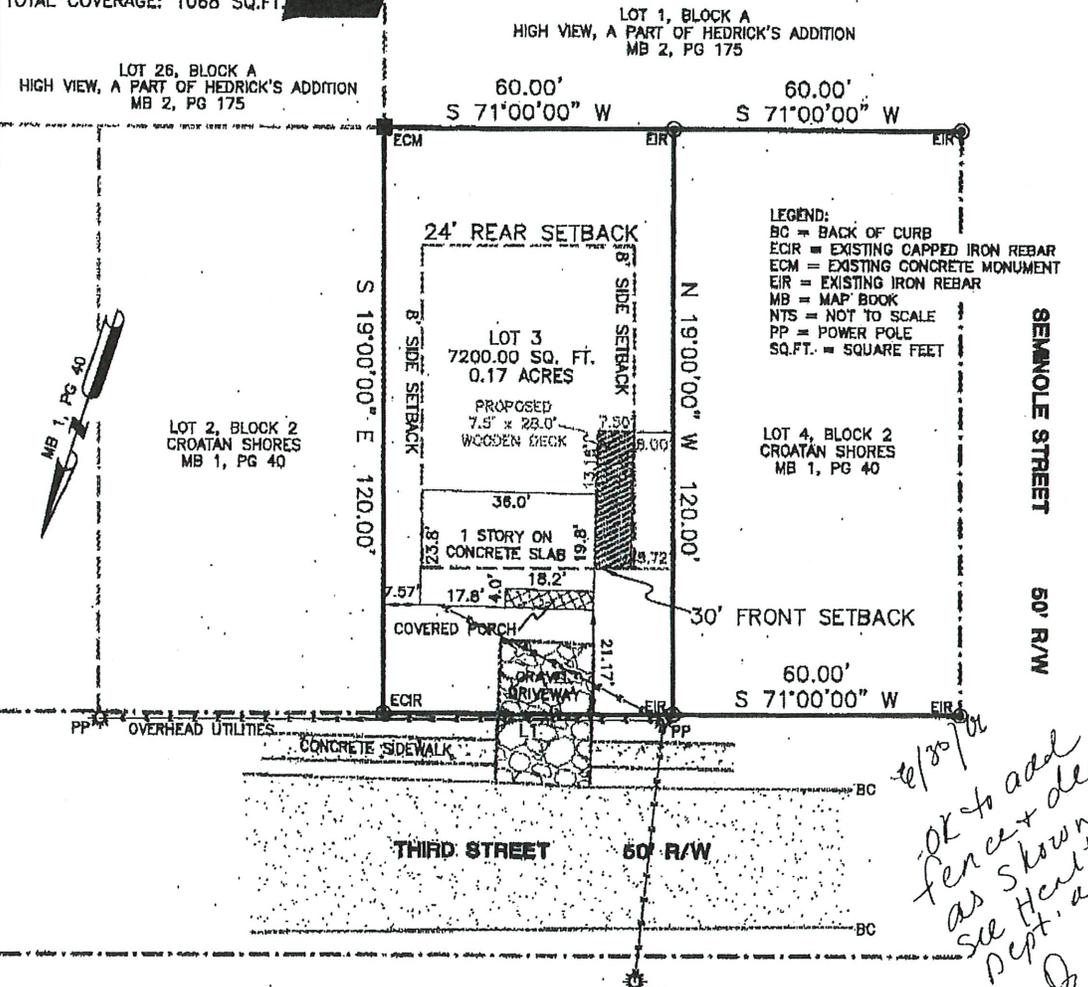
[REDACTED] R

#### NOTES:

- 1) THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.
- 2) THE SUBJECT PROPERTY SHOWN HEREON LIES WITHIN A FEMA DESIGNATED FLOOD HAZARD ZONE [REDACTED] AS SHOWN ON COMMUNITY PANEL # 375353 0002 C DATED APRIL 2, 1993. SUBJECT TO CHANGE BY FEMA.
- 3) IRON PINS AT ALL LOT CORNERS UNLESS OTHERWISE NOTED HEREON.
- 4) UNDERGROUND UTILITIES, IF ANY, WERE NOT LOCATED BY THIS SURVEY.
- 5) AREA DETERMINED BY COORDINATES.
- 6) SUBJECT TO TITLE SEARCH AND TO ANY AND/OR ALL RIGHTS OF WAYS, ENFORCEABLE RESTRICTIONS, AND/OR EASEMENTS OF RECORD WHETHER SHOWN HEREON OR NOT.
- 7) THE MINIMUM SETBACK LINES SHOWN HEREON ARE PER THE CURRENT TOWN OF KILL DEVIL HILLS ZONING ORDINANCE AND ARE AS FOLLOWS:  
 FRONT: 30'; SIDE: 8'; REAR: 20% OF LOT DEPTH NOT TO EXCEED 30'.

LOT COVERAGE  
 EXISTING HOUSE: 858 SQ.FT.  
 TOTAL COVERAGE: 1068 SQ.FT. [REDACTED]

LINE	BEARING	DISTANCE
L1	N 71°00'00" E	60.00'



I, C. ROBERT MOORE III, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION FROM INFORMATION CONTAINED IN DEED BOOK 1638 AT PAGE 172; THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED BY BROKEN LINES AND AS BEING FROM INFORMATION FOUND IN PUBLIC RECORDS AS REFERENCED HEREON; THAT THE RATIO OF PRECISION, AS CALCULATED, EXCEEDS 1:10000 BEFORE ANY ADJUSTMENTS WERE MADE; AND THAT THIS SURVEY COMPLIES WITH THE STANDARDS OF PRACTICE. WITNESS MY ORIGINAL SIGNATURE AND OFFICIAL SEAL THIS 30TH DAY OF JUNE, A.D., 2006.

*C. Robert Moore III*  
 C. ROBERT MOORE III L-4184

0' 30' 60' 90'  
 GRAPHIC SCALE (IN FEET) 1"=30'

**ADVANTAGE LAND SURVEYING, P.C.**  
 312 REGGIE OWENS DRIVE  
 HARBINGER, N.C., 27941  
 PH: 242-491-6944  
 FAX: 252-491-6945  
 EMAIL: [advantagesurvey@earthlink.net](mailto:advantagesurvey@earthlink.net)  
 C. ROBERT MOORE III, PLS

DRAWN: RAM DATE: 6/30/2006  
 APPROVED: CRM SCALE: 1" = 30'  
 JOB #: 06070 FB: 3, PG: 49

**NORTH CAROLINA PROFESSIONAL LAND SURVEYORS**  
 SEAL L-4184  
 C. ROBERT MOORE III

*12/30/06  
 OK to add  
 fence + deck  
 as shown  
 see Hedrick  
 dept. app.  
 RM*



Dare County - Property Records

002485000  
305 W THIRD ST, KILL DEVIL HILLS, NC,  
27948

HOLDER, GLENN P  
HOLDER, MEREDITH W  
9515 WILLIAMSVILLE RD  
MECHANICSVILLE, VA,23116, USA

Assessed Value  
\$182,200

PARCEL INFORMATION

Parcel ID	002485000	PIN	988410278223
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	KILL DEVIL HILLS	Neighborhood	07130005
Zoning Code	RL	Zoning Desc.	RESIDENTIAL LOW DENSITY
Subdivision Code	C605	Subdivision	CROATAN SHORES INC SEC 1
Legal Desc.	LOT: 3 BLK: 2 SEC: 1		
Plat Cab Slide	PL: 1 SL: 40		
Deed Date	03/04/2021	Book / Page	<a href="#">2476 / 0461</a>
Tax Status	Taxable		

SECONDARY OWNERS

No data to display

ASSESSMENT DETAILS

REAL ESTATE ASSESSED VALUE

Land Value	\$84,000
Building Value	\$97,000
Other Improvements	\$1,200
<b>Total Assessed</b>	<b>\$182,200</b>

BILLING VALUE

Land Value	\$84,000
Building Value	\$97,000
Other Improvements	\$1,200
<b>Total Value</b>	<b>\$182,200</b>

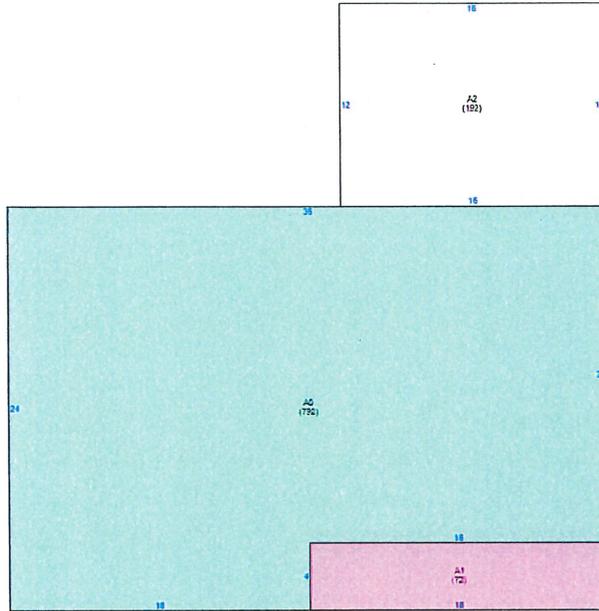
LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G13-07-Residential Subdivision	7,000	0.1607	\$84,000
<b>Total Assessed</b>	<b>7,000</b>	<b>0.1607</b>	<b>\$84,000</b>

BUILDINGS

**BUILDING #:** 1

Year Built	1964
Finished Area	792 SqFt
Stories	1
Style	FLAT ROOF
Exterior Wall	CONC BLOCK
Heating / Cooling	CENTRAL A/C
Fuel Type	ELECTRIC
Bedroom(s)	2
Full Bath(s)	1
Half Bath(s)	0
Fireplace(s)	1
Attached Garage	NO
Units	N/A



	AREA INDEX	AREA
	0	792
+	1	72
11 - OFP OPEN FRAME PORCH		
+	2	192
31 - DCK WOOD DECK		

**OTHER IMPROVEMENTS**

BUILDING #	DESCRIPTION	YEAR BUILT	QTY	SIZE / COUNT
1	RS1 - FRAME UTILITY SHED	2000	1	64

**RECENT SALES HISTORY**

The sales history includes only qualified sales made since January 1, 2016. A sale is qualified when it has been verified, by the appraiser, as an arm's length transaction for fair market value. Only qualified sales are considered in the appraisal process.

DEED DATE	SALE PRICE	DEED REFERENCE	DEED TYPE	GRANTOR	GRANTEE
03/04/2021	\$207,050	2476 / 0461	I - IMPROVED	NACL, LLC	HOLDER, GLENN P

**VALUE CHANGES**

The value change history shows only changes in appraised value; it does not show exemptions, exclusions or deferrals that could reduce a property's taxable value. If any of these are in effect for a particular tax year, it will be shown on the property tax bill for that year. It is also possible that some previous value changes might be missing from this list or listed in the wrong order.

REVALUATION EFFECTIVE DATE	ASSESSED VALUE
01/01/2020	\$176,400
01/01/2019	\$101,200
01/01/2005	\$154,300

**PERMITS**

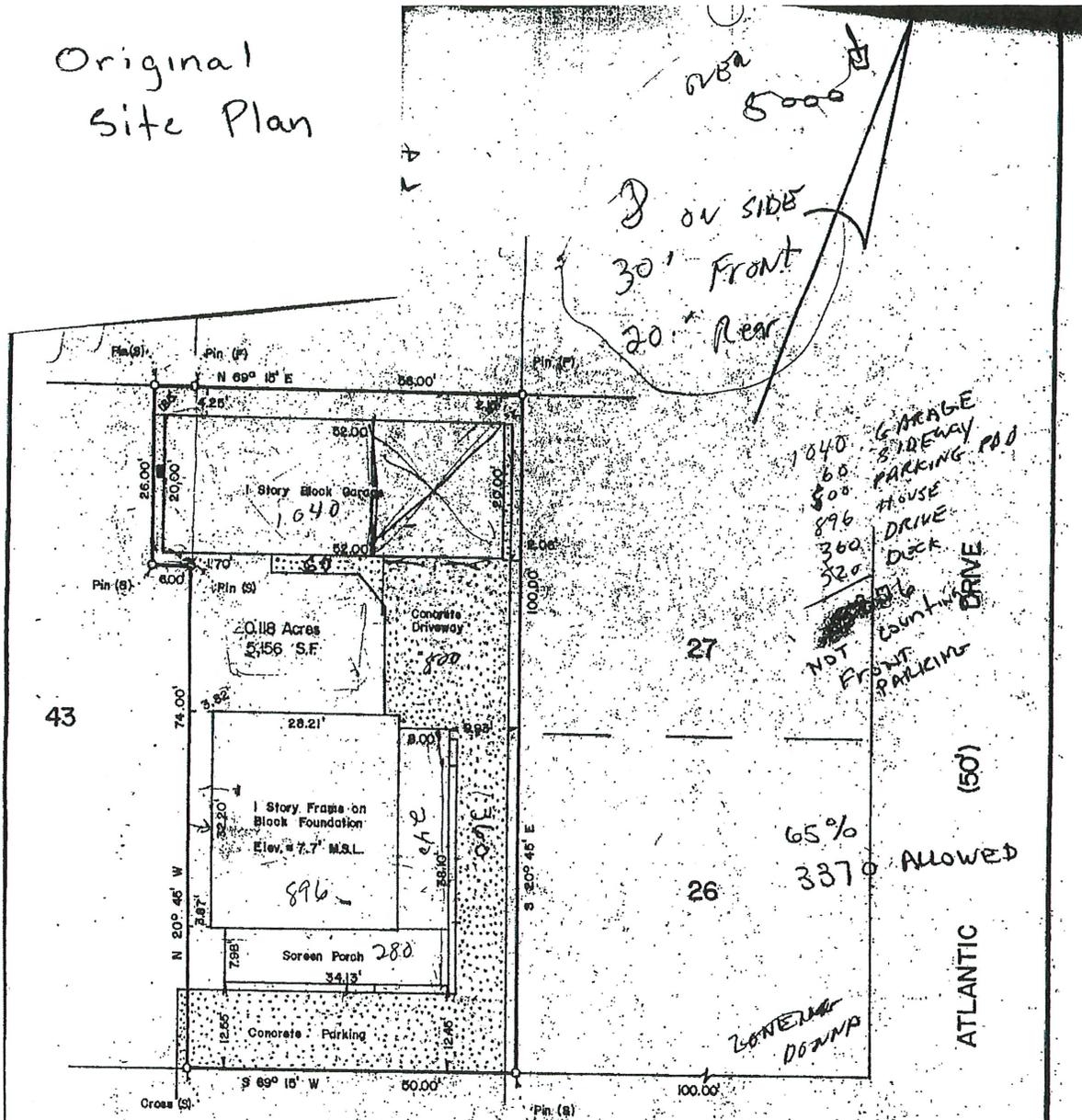
Permits issued in the past 6 years. All information deemed reliable but not guaranteed. For more information, please visit Dare County's [searchable permit site](#).

No data to display



Data last updated: 12/06/2023

Original  
Site Plan



AVALON (50') DRIVE

I, H.F. Pyatt, Jr. certify that this plat was drawn from an actual field land survey, that the error of closure as calculated by latitudes and departures is  $\frac{1}{10,000}$ , that it was prepared in accordance with G.S. 47-30 as amended.

Witness my hand and seal this 5th day of September, A.D. 1980.



*H.F. Pyatt, Jr.*  
R.L.S. 1508

PHYSICAL SURVEY  
FOR CAROL CUSHMAN  
OF LOT 42 & PART OF LOT 43  
AVALON BEACH (M.B. 1, PG. 107)  
ATLANTIC TOWNSHIP, DARE COUNTY, NORTH CAROLINA

Rev.: May 26, 1983  
Date: September 4, 1980  
Scale: 1" = 20'  
File: 160-80-6-43

Professional Land Services, Inc.  
Hilly Hawk, North Carolina



Dare County - Property Records

009133000  
118 E AVALON DR, KILL DEVIL HILLS, NC,  
27948

BALCIK, SANDRA A  
-  
1513 ABERS CREEK RD  
PITTSBURGH, PA,15239, USA

Assessed Value  
\$352,200

PARCEL INFORMATION

Parcel ID	009133000	PIN	988517204905
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	KILL DEVIL HILLS	Neighborhood	07060017
Zoning Code	C	Zoning Desc.	COMMERCIAL
Subdivision Code	A300	Subdivision	AVALON BEACH
Legal Desc.	LOT: 42, PT OF 43 BLK: SEC:		
Plat Cab Slide	PL: 1 SL: 107		
Deed Date	01/03/2020	Book / Page	2346 / 0440
Tax Status	Taxable		

SECONDARY OWNERS

Owner(s)	BALCIK, SANDRA A, BALCIK, CHARLES R
Address	1513 ABERS CREEK RD, PITTSBURGH, PA, 15239, USA

ASSESSMENT DETAILS

REAL ESTATE ASSESSED VALUE

Land Value	\$177,500
Building Value	\$162,100
Other Improvements	\$12,600
Total Assessed	\$352,200

BILLING VALUE

Land Value	\$177,500
Building Value	\$162,100
Other Improvements	\$12,600
Total Value	\$352,200

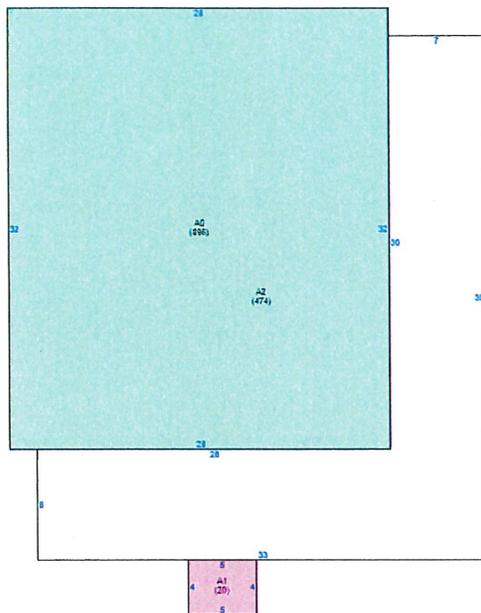
LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G06-07-Ocean Influence D	5,000	0.1148	\$177,500
Total Assessed	5,000	0.1148	\$177,500

BUILDINGS

BUILDING #: 1

Year Built	2011
Finished Area	896 SqFt
Stories	1
Style	BEACH BOX
Exterior Wall	VINYL / ALUMINUM
Heating / Cooling	CENTRAL A/C
Fuel Type	ELECTRIC
Bedroom(s)	3
Full Bath(s)	1
Half Bath(s)	0
Fireplace(s)	0
Attached Garage	NO
Units	N/A



AREA INDEX	AREA
0	896
+ 1	20
31 - DCK WOOD DECK	
+ 2	474
11 - OFP OPEN FRAME PORCH	

OTHER IMPROVEMENTS

BUILDING #	DESCRIPTION	YEAR BUILT	QTY	SIZE / COUNT
1	RG1 - FRAME OR CB DETACHED GARAGE	1980	1	1040

RECENT SALES HISTORY

The sales history includes only qualified sales made since January 1, 2016. A sale is qualified when it has been verified, by the appraiser, as an arm's length transaction for fair market value. Only qualified sales are considered in the appraisal process.

No data to display

VALUE CHANGES

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REVALUATION EFFECTIVE DATE	ASSESSED VALUE
01/01/2020	\$352,200
01/01/2013	\$292,300
01/01/2005	\$270,200

PERMITS

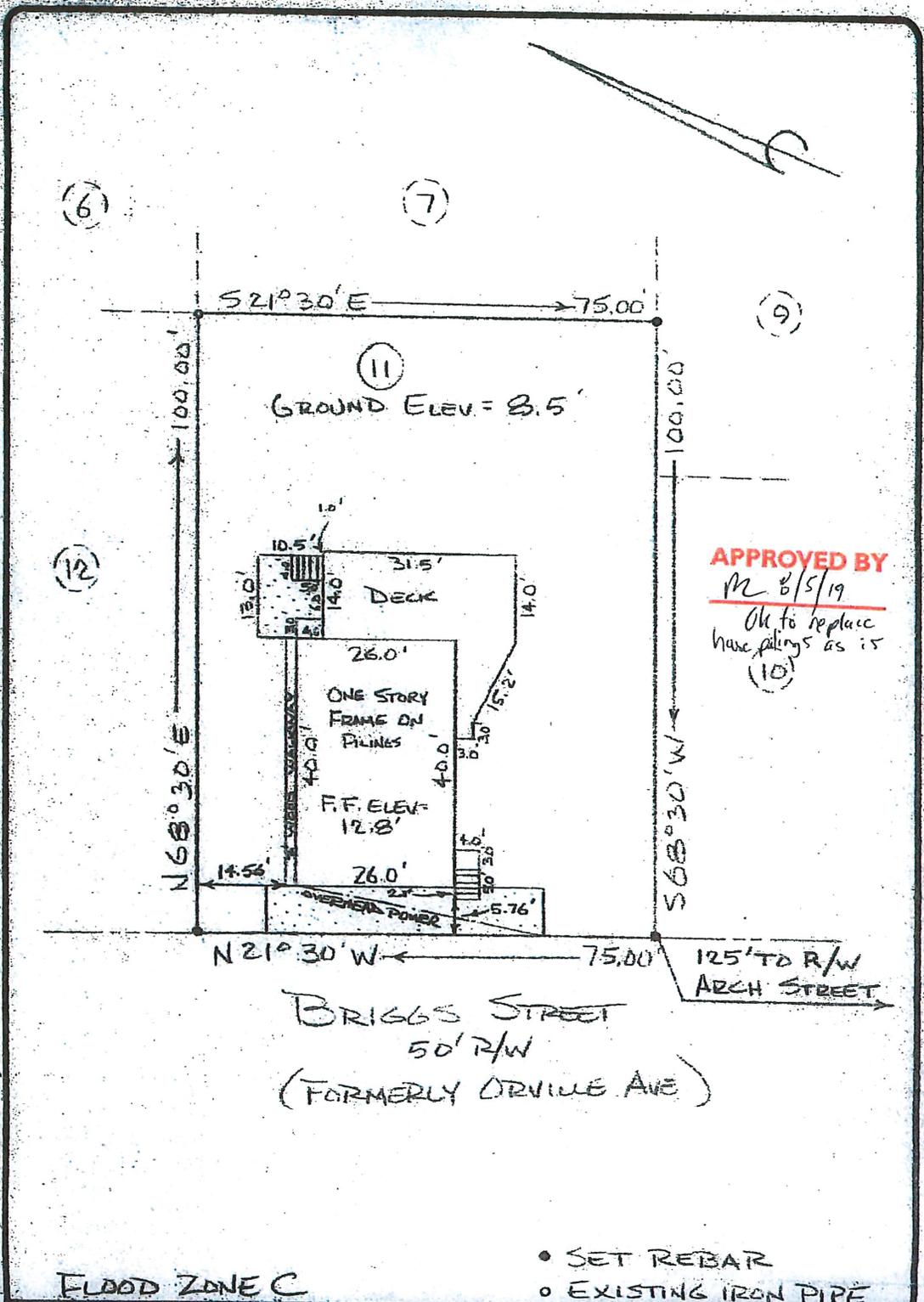
Permits issued in the past 6 years. All information deemed reliable but not guaranteed. For more information, please visit Dare County's [searchable permit site](#).

DATE	PERMIT #	PURPOSE	PERMIT AMOUNT
06/29/2011	DM2011-5	RES DWELLING DEMO	\$5,000
06/15/2011	BJ2011-136	RES NEW DWELLING	\$125,000



009133-000 07-988517-485 02/12

Data last updated: 12/06/2023



**APPROVED BY**  
M 6/5/19  
 Ok to replace  
 have pilings as is  
 (10)

FLOOD ZONE C

- SET REBAR
- EXISTING IRON PIPE

I, DONALD E. WOOD hereby certify that this map is correct and that the buildings lie wholly on the lot and that there are no encroachments of other buildings on the said lot.

*[Signature]*  
 L-1324

DATE 9-5-88  
 DRAWN HL  
 CHECKED DEW  
 SCALE 1"=20'  
 FILE NO. 210-86

SURVEY FOR  
 ROBERT W. & GINA R. WINDSOR  
 KILL DEVIL HILLS TOWNSHIP, DADE COUNTY, N.C.  
 LOT 11, BLOCK 3  
 ORVILLE BEACH  
 RECORDED IN M.B. 2, PG. 144, D.C.R.

**BA** BISSELL/TRIANGLE ASSOCIATES  
 ENGINEERS, PLANNERS & SURVEYORS  
 City Dunes Professional Center  
 475 S. Highway - 138 Bypass  
 Kitty Hawk, N.C. 27949  
 P.O. Box 1334  
 Kill Devil Hills, N.C. 27948  
 (252) 241-3266

P-078-26



Dare County - Property Records

000010000  
3305 BRIGGS ST, KILL DEVIL HILLS, NC,  
27948

WINDSOR, GINA R  
4701 SNOWMASS RD  
GLEN ALLEN, VA, 23060, USA

Assessed Value  
\$235,000

PARCEL INFORMATION

Parcel ID	000010000	PIN	988513041739
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	KILL DEVIL HILLS	Neighborhood	07060018
Zoning Code	C	Zoning Desc.	COMMERCIAL
Subdivision Code	0560	Subdivision	ORVILLE BEACH AMENDED BL
Legal Desc.	LOT: 11 BLK: 3 SEC:		
Plat Cab Slide	PL: 2 SL: 75		
Deed Date	01/17/2019	Book / Page	<a href="#">WB 19 E / 0030</a>
Tax Status	Taxable		

SECONDARY OWNERS

No data to display

ASSESSMENT DETAILS

REAL ESTATE ASSESSED VALUE

Land Value	\$148,500
Building Value	\$84,900
Other Improvements	\$1,600
Total Assessed	\$235,000

BILLING VALUE

Land Value	\$148,500
Building Value	\$84,900
Other Improvements	\$1,600
Total Value	\$235,000

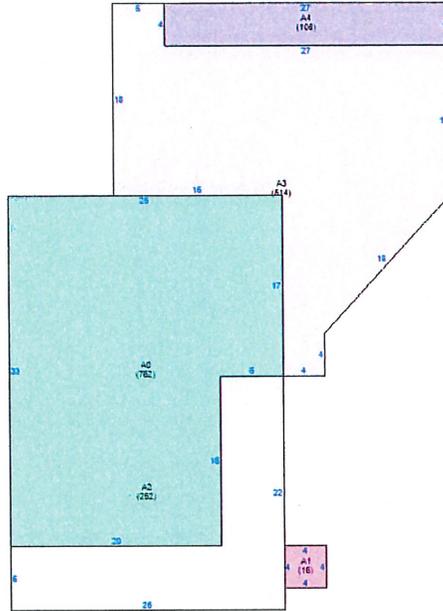
LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G06-07-Ocean Influence D	7,500	0.1722	\$148,500
Total Assessed	7,500	0.1722	\$148,500

BUILDINGS

BUILDING #: 1

Year Built	1955
Finished Area	762 SqFt
Stories	1
Style	BUNGALOW OR OLD STYLE
Exterior Wall	MODERN FRAME
Heating / Cooling	CENTRAL A/C
Fuel Type	ELECTRIC
Bedroom(s)	1
Full Bath(s)	1
Half Bath(s)	0
Fireplace(s)	0
Attached Garage	NO
Units	N/A



AREA INDEX	AREA
0	762
+ 1	16
31 - DCK WOOD DECK	
+ 2	252
11 - OFP OPEN FRAME PORCH	
+ 3	614
31 - DCK WOOD DECK	
+ 4	108
29 - RMP WHEELCHAIR RAMP	

OTHER IMPROVEMENTS

BUILDING #	DESCRIPTION	YEAR BUILT	QTY	SIZE / COUNT
1	RS1 - FRAME UTILITY SHED	1970	1	120

RECENT SALES HISTORY

The sales history includes only qualified sales made since January 1, 2016. A sale is qualified when it has been verified, by the appraiser, as an arm's length transaction for fair market value. Only qualified sales are considered in the appraisal process.  
No data to display

VALUE CHANGES

The value change history shows only changes in appraised value; it does not show exemptions, exclusions or deferrals that could reduce a property's taxable value. If any of these are in effect for a particular tax year, it will be shown on the property tax bill for that year. It is also possible that some previous value changes might be missing from this list or listed in the wrong order.

REVALUATION EFFECTIVE DATE	ASSESSED VALUE
01/01/2020	\$235,000
01/01/2013	\$153,200
01/01/2005	\$204,100

PERMITS

1 minute looked in the past 6 years. All information obtained remains but not guaranteed. For more information, please visit our website [permit site](#).

DATE	PERMIT #	PURPOSE	PERMIT AMOUNT
05/15/2014	BP2014-063	RES DWELLING CHANGE	\$7,400



Data last updated: 12/06/2023

I, WILLIAM S. JONES, JR., P.L.S., CERTIFY THAT UNDER MY DIRECTION AND SUPERVISION THIS PLAT WAS DRAWN FROM AN ACTUAL FIELD LAND SURVEY MADE BY ME FROM INFORMATION AS REFERENCED HEREON, AND THAT THE RATIO OF PRECISION IS 1:10,000+. WITNESS MY HAND AND SEAL THIS 17<sup>th</sup> DAY OF October, 2007

*W.S. Jones, Jr.*  
WILLIAM S. JONES, JR., P.L.S. L-2532



VICINITY MAP  
N.T.S.

LOT 19

LOT 20

LOT 21

LOT 28  
7,700 S.F.

LOT 29

LOT 27

YARDARM LANE

COVE COURT - 50' R/W

PHYSICAL SURVEY FOR  
PAUL G. GLENN  
LOT 28, SECTION 1, THE LANDING  
FLAT CAB. A, SLIDES 75 & 76  
TOWN OF KILL DEVIL HILLS  
DARE COUNTY, NORTH CAROLINA  
SURVEYED 10-16-07



- NOTES:
- 1) SURVEYOR MAKES NO CERTIFICATION AS TO BUILDING SETBACK LINES. THEY MUST BE VERIFIED BY OWNER.
  - 2) FIRM ZONE AE (EL. 8.3') 37209884007 - 9-20-06

FILE NO. 07378

WILLIAM S. JONES, JR., P.L.S., PA.  
303 WEST ARCHDALE STREET  
KILL DEVIL HILLS, N.C. 27948  
P (252) 441-5673 F (252) 441-0925

DATE: 10-16-07

SCALE: 1" = 20'

DWN BY: G.V.S.



Dare County - Property Records

003535000  
102 COVE CT, KILL DEVIL HILLS, NC,  
27948

PAUL, PETER H  
PAUL, BARBARA G  
102 COVE CT  
KILL DEVIL HILLS, NC, 27948, USA

Assessed Value  
\$310,600

PARCEL INFORMATION

Parcel ID	003535000	PIN	988415544834
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	KILL DEVIL HILLS	Neighborhood	07130017
Zoning Code	RL	Zoning Desc.	RESIDENTIAL LOW DENSITY
Subdivision Code	L070	Subdivision	LANDING SECTION 1, THE
Legal Desc.	LOT: 28 BLK: SEC: 1		
Plat Cab Slide	PL: A SL: 75		
Deed Date	02/22/2008	Book / Page	1758 / 0248
Tax Status	Taxable		

SECONDARY OWNERS

No data to display

ASSESSMENT DETAILS

REAL ESTATE ASSESSED VALUE

Land Value	\$148,400
Building Value	\$162,200
Other Improvements	\$0
Total Assessed	\$310,600

BILLING VALUE

Land Value	\$148,400
Building Value	\$162,200
Other Improvements	\$0
Total Value	\$310,600

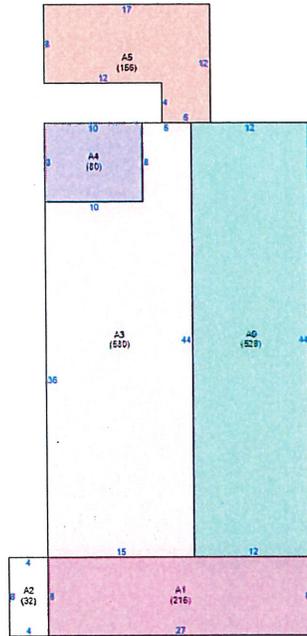
LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G13-07-Residential Subdivision	8,000	0.1837	\$148,400
Total Assessed	8,000	0.1837	\$148,400

BUILDINGS

**BUILDING #:** 1

Year Built	1979
Finished Area	1,188 SqFt
Stories	1
Style	BEACH BOX
Exterior Wall	VINYL / ALUMINUM
Heating / Cooling	CENTRAL A/C
Fuel Type	ELECTRIC
Bedroom(s)	3
Full Bath(s)	2
Half Bath(s)	0
Fireplace(s)	0
Attached Garage	YES
Units	N/A



	AREA INDEX	AREA
	0	528
+	1	216
11 - OFP OPEN FRAME PORCH		
+	2	32
31 - DCK WOOD DECK		
+	3	580
10 - 1S FR ONE STORY FRAME		
+	4	80
14 - FR UT FRAME UTILITY BUILDING		
10 - 1S FR ONE STORY FRAME		
+	5	156
31 - DCK WOOD DECK		

**OTHER IMPROVEMENTS**

No data to display

**RECENT SALES HISTORY**

The sales history includes only qualified sales made since January 1, 2016. A sale is qualified when it has been verified, by the appraiser, as an arm's length transaction for fair market value. Only qualified sales are considered in the appraisal process.

No data to display

**VALUE CHANGES**

The value change history shows only changes in appraised value; it does not show exemptions, exclusions or deferrals that could reduce a property's taxable value. If any of these are in effect for a particular tax year, it will be shown on the property tax bill for that year. It is also possible that some previous value changes might be missing from this list or listed in the wrong order.

REVALUATION EFFECTIVE DATE
01/01/2020
01/01/2013
01/01/2005

ASSESSED VALUE
\$310,600
\$298,700

V/01/24-01/30/24: Submitted by Town

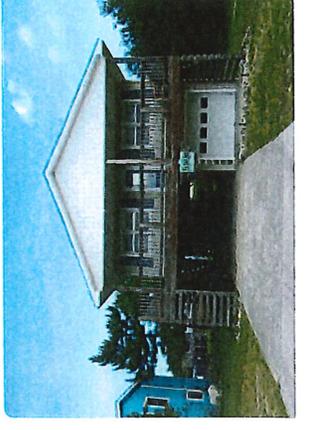
PERMITS

Permits issued in the past 6 years. All information deemed reliable but not guaranteed. For more information, please visit Dare County's [searchable permit site](#).

No data to display



Data last updated: 12/06/2023



Tax District: Kill Devil Hills  
 Subdivision: Landing Section 1, The  
 Lot BLK-Sec: Lot 28 Blk: Sec: 1  
 Property Use: Residential  
 Building Type: Beach Box  
 Year Built: 1979

Owners: Paul, Peter H -Primary  
 Owner  
 Paul, Barbara G -Primary Owner  
 Building Value: \$162,200  
 Land Value: \$148,400  
 Misc Value: \$0  
 Total Value: \$310,600

102 Cove CT  
 Kill Devil Hills NC, 27948  
 Parcel: 005353000  
 Pin: 988415544834

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.





Dare County - Property Records

003909000  
101 PINEHURST AVE, KILL DEVIL HILLS,  
NC, 27948

TERRY, LINDA W  
101 PINEHURST AVE  
KILL DEVIL HILLS, NC, 27948, USA

Assessed Value  
\$242,600

PARCEL INFORMATION

Parcel ID	003909000	PIN	988419711079
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	KILL DEVIL HILLS	Neighborhood	07130017
Zoning Code	RL	Zoning Desc.	RESIDENTIAL LOW DENSITY
Subdivision Code	K630	Subdivision	KITTY HAWK SHORES - REVISI
Legal Desc.	LOT: 13 & PT 14 BLK: 39 SEC:		
Plat Cab Slide	PL: 1 SL: 126		
Deed Date	01/31/2007	Book / Page	1716 / 0499
Tax Status	Taxable		

SECONDARY OWNERS

No data to display

ASSESSMENT DETAILS

REAL ESTATE ASSESSED VALUE

Land Value	\$125,000
Building Value	\$116,500
Other Improvements	\$1,100
Total Assessed	\$242,600

BILLING VALUE

Land Value	\$125,000
Building Value	\$116,500
Other Improvements	\$1,100
Total Value	\$242,600

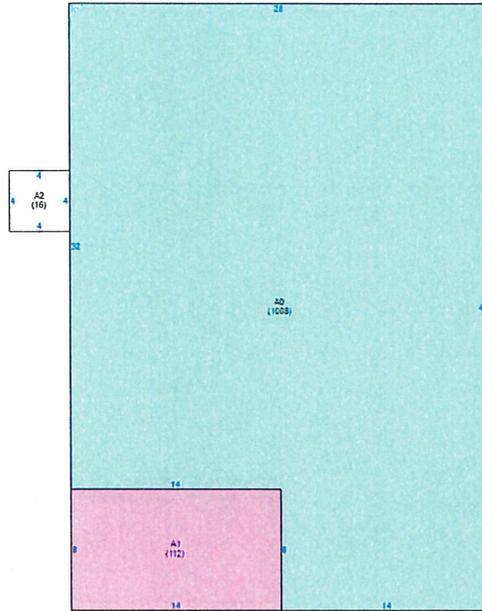
LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G13-07-Residential Subdivision	7,500	0.1722	\$125,000
Total Assessed	7,500	0.1722	\$125,000

BUILDINGS

BUILDING # 1

Year Built	1965
Finished Area	1,008 SqFt
Stories	1
Style	BUNGALOW OR OLD STYLE
Exterior Wall	VINYL / ALUMINUM
Heating / Cooling	CENTRAL A/C
Fuel Type	ELECTRIC
Bedroom(s)	3
Full Bath(s)	2
Half Bath(s)	0
Fireplace(s)	0
Attached Garage	NO
Units	N/A



	AREA INDEX	AREA
	0	1008
+	1	112
<b>11 - OFP OPEN FRAME PORCH</b>		
+	2	16
<b>31 - DCK WOOD DECK</b>		

OTHER IMPROVEMENTS

BUILDING #	DESCRIPTION	YEAR BUILT	QTY	SIZE / COUNT
1	RS1 - FRAME UTILITY SHED	1991	1	64

RECENT SALES HISTORY

The sales history includes only qualified sales made since January 1, 2016. A sale is qualified when it has been verified, by the appraiser, as an arm's length transaction for fair market value. Only qualified sales are considered in the appraisal process.  
No data to display

VALUE CHANGES

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REVALUATION EFFECTIVE DATE	ASSESSED VALUE
01/01/2020	\$242,600
01/01/2013	\$169,500
01/01/2005	\$277,900

PERMITS

Permits issued in the past 6 years. All information deemed reliable but not guaranteed. For more information, please visit Dare County's [searchable permit site](#).

DATE	PERMIT #	PURPOSE	PERMIT AMOUNT
12/18/2014	BJ2014-195	RES REMODELING	\$10,000



**003909-000 07-988419-126 06/11**

Data last updated: 12/06/2023



003167000

1619 SIR WALTER RD,  
KILL DEVIL HILLS, NC,  
27948

BEACH, JOHN L JR  
113 BENJAMIN CIR  
WASHINGTON, NC, 27889, USA

Assessed Value  
**\$349,500**



003167-000 07-988410-234 03/11



PARCEL INFORMATION

Parcel ID	003167000	PIN	988410469576
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	KILL DEVIL HILLS	Neighborhood	07070017
Zoning Code	RL	Zoning Desc.	RESIDENTIAL LOW DENSITY
Subdivision Code	W090	Subdivision	W R DEATON - DELRAY BEAC
Legal Desc.	LOT: 29 & PT 28 BLK: C SEC: 1		
Plat Cab Slide	PL: 1 SL: 161		
Deed Date	10/22/2013	Book / Page	<a href="#">1944 / 0029</a>
Tax Status	Taxable		

SECONDARY OWNERS

No data to display

ASSESSMENT DETAILS

REAL ESTATE ASSESSED VALUE

Land Value	\$200,000
Building Value	\$133,100
Other Improvements	\$16,400
Total Assessed	\$349,500

BILLING VALUE

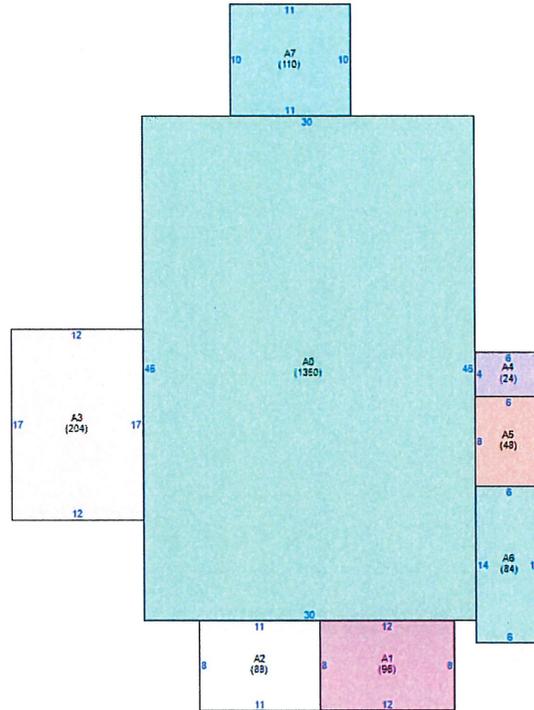
Land Value	\$200,000
Building Value	\$133,100
Other Improvements	\$16,400
Total Value	\$349,500

LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G07-07-Ocean Influence E	11,000	0.2525	\$200,000
Total Assessed	11,000	0.2525	\$200,000

BUILDINGS

BUILDING #	1
Year Built	1961
Finished Area	1,350 SqFt
Stories	1
Style	BEACH BOX
Exterior Wall	ASBESTOS
Heating / Cooling	CENTRAL A/C
Fuel Type	ELECTRIC
Bedroom(s)	2
Full Bath(s)	1
Half Bath(s)	0
Fireplace(s)	1
Attached Garage	NO
Units	N/A



AREA INDEX	AREA
0	1350
+ 1	96
11 - OFP OPEN FRAME PORCH	
+ 2	88
11 - OFP OPEN FRAME PORCH	
+ 3	204
31 - DCK WOOD DECK	
+ 4	24
32 - CANPY CANOPY	
+ 5	48
11 - OFP OPEN FRAME PORCH	
+ 6	84
31 - DCK WOOD DECK	
+ 7	110
31 - DCK WOOD DECK	

OTHER IMPROVEMENTS

BUILDING #	DESCRIPTION	YEAR BUILT	QTY	SIZE / COUNT
2	WD1 - WOOD DECK OR RAMP	1992	1	100
3	RG1 - FRAME OR CB DETACHED GARAGE	2003	1	768

RECENT SALES HISTORY

V/01/24-01/30/24: Submitted by Town

...length transaction for fair market value. Only qualified sales are considered in the appraisal process.  
No data to display

#### VALUE CHANGES

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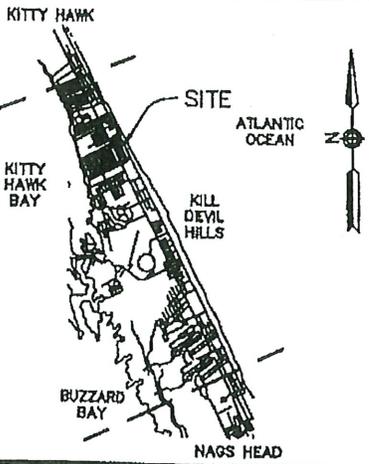
REVALUATION EFFECTIVE DATE	ASSESSED VALUE
01/01/2020	\$349,500
01/01/2013	\$242,900
01/01/2005	\$366,000

#### PERMITS

Permits issued in the past 6 years. All information deemed reliable but not guaranteed. For more information, please visit Dare County's [searchable permit site](#).

DATE	PERMIT #	PURPOSE	PERMIT AMOUNT
01/23/2015	BP2015-004	RES DWELLING CHANGE	\$4,800

Data last updated: 12/06/2023



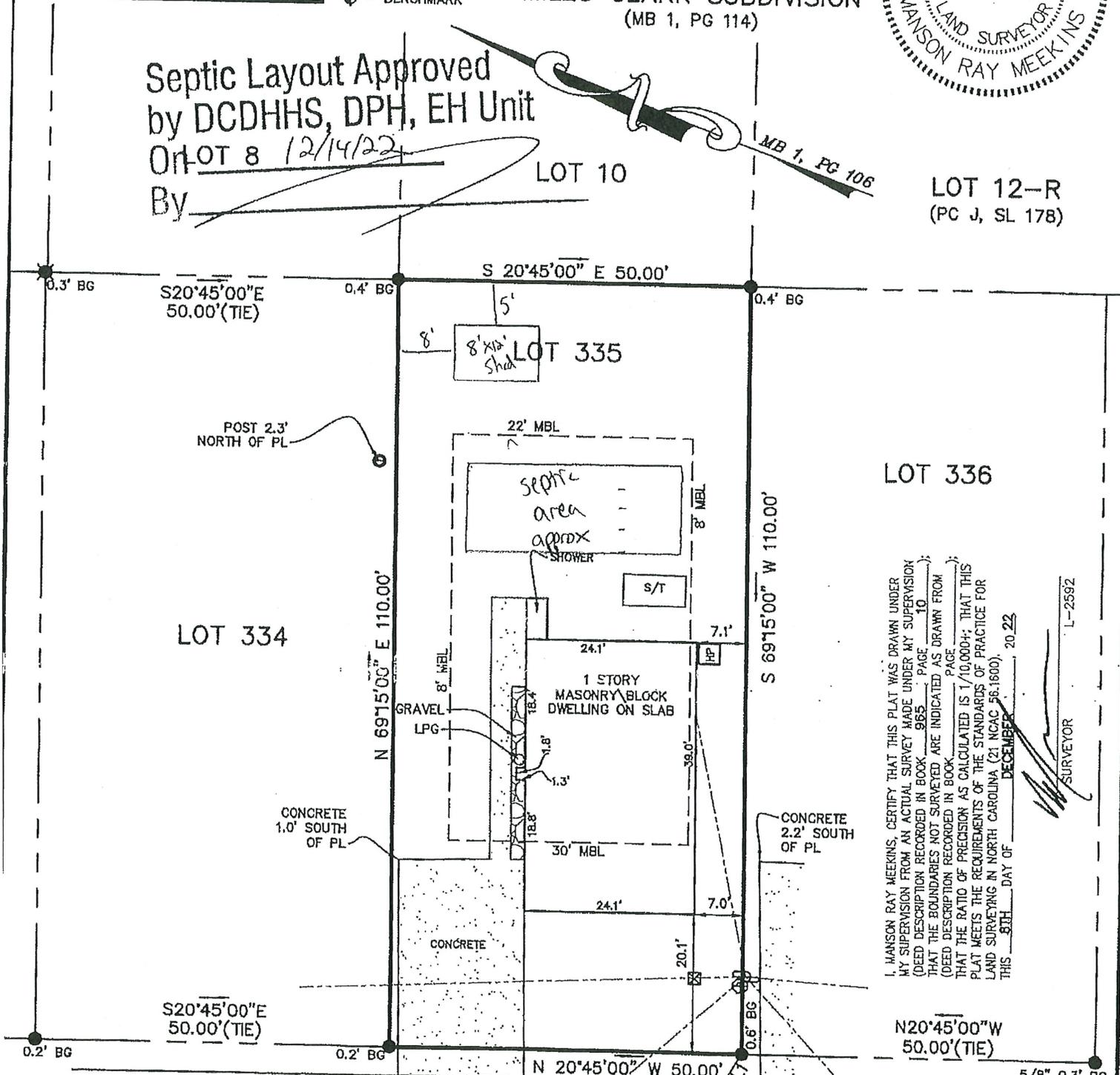
- LEGEND**
- - EX. 2" PIPE
  - - EX. 1/2" REBAR
  - - REBAR SET
  - - EX. CONC. MON.
  - - CONC. MON. SET
  - ▲ - EX. MAG NAIL
  - △ - MAG NAIL SET
  - ⊗ - SEWER SERVICE
  - ⊕ - WATER METER
  - ⊙ - PHONE PEDESTAL
  - ⊕ - C.A.T.V.
  - ⊕ - UTILITY POLE
  - ⊕ - GUY WIRE
  - ⊕ - FIRE HYDRANT
  - ⊕ - ELECT. TRANS.
  - AG - ABOVE GRADE
  - BG - BELOW GRADE
  - PL - PROPERTY LINE
  - ⊕ - WATER VALVE
  - ⊕ - BENCHMARK

- NOTES:**
1. THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH AND EASEMENTS & RESTRICTIONS OF RECORD.
  2. AREA BY COORDINATE COMPUTATION = 5,500 S.F.
  3. F.I.R.M. ZONE: "X" (R.F.P.E. 8.0')
  4. PIN NO.: 07 988518 20 8618
  5. RECORDED REFERENCE: M.B. 1, PG 106; D.B. 985, PG. 10
  6. MINIMUM BUILDING LINES (MBL), IF SHOWN HEREON, ARE PER THE CURRENT LOCAL ZONING REGULATIONS. OTHER SETBACKS AND/OR RESTRICTIONS MAY APPLY AND MUST BE VERIFIED PRIOR TO CONSTRUCTION.
  7. ELEVATIONS (NAVD 1988):  
 LOW GROUND ● BUILDING = 6.3'  
 HIGH GROUND ● BUILDING = 6.8'  
 FIRST FLOOR = 7.61'  
 UTILITY/STORAGE ROOM = N/A
  8. EXISTING LOT COVERAGE: 1,593 S.F. (29.0%)



N/F  
 MILES CLARK SUBDIVISION  
 (MB 1, PG 114)

Septic Layout Approved  
 by DCDHHS, DPH, EH Unit  
 On LOT 8 12/14/22  
 By \_\_\_\_\_



LOT 336

I, MANSION RAY MEEKINS, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 965, PAGE 10) THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM (DEED DESCRIPTION RECORDED IN BOOK \_\_\_\_\_ PAGE \_\_\_\_\_) THAT THE RATIO OF PRECISION AS CALCULATED IS 1/10,000.4; THAT THIS PLAT MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56.1600).  
 THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022

\_\_\_\_\_  
 SURVEYOR L-2592

Dare County - Property Records

001784000  
 2049 NEW BERN ST, KILL DEVIL HILLS,  
 NC, 27948

STORY, KENNETH E  
 DEBORAH B STORY  
 405 FAIRVIEW DR  
 FRANKLIN, VA, 23851, USA

Assessed Value  
**\$272,900**

PARCEL INFORMATION

Parcel ID	001784000	PIN	988518208618
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	KILL DEVIL HILLS	Neighborhood	07050017
Zoning Code	C	Zoning Desc.	COMMERCIAL
Subdivision Code	A310	Subdivision	AVALON BEACH ANNEX 1
Legal Desc.	LOT: 335 BLK: SEC:		
Plat Cab Slide	PL: 1 SL: 106		
Deed Date	11/30/1994	Book / Page	0965 / 0010
Tax Status	Taxable		

SECONDARY OWNERS

No data to display

ASSESSMENT DETAILS

REAL ESTATE ASSESSED VALUE

Land Value	\$184,500
Building Value	\$86,100
Other Improvements	\$2,300
<b>Total Assessed</b>	<b>\$272,900</b>

BILLING VALUE

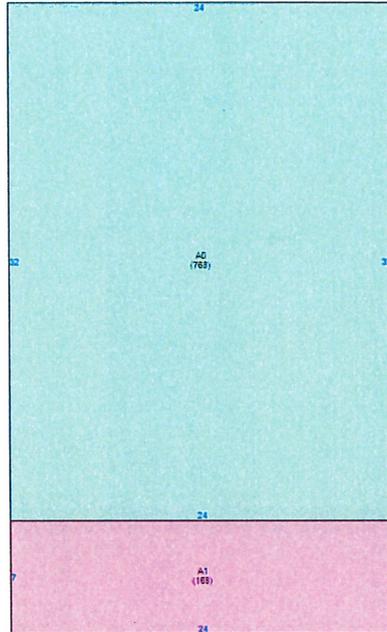
Land Value	\$184,500
Building Value	\$86,100
Other Improvements	\$0
<b>Total Value</b>	<b>\$270,600</b>

LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G05-07-Ocean Influence C	5,500	0.1263	\$184,500
<b>Total Assessed</b>	<b>5,500</b>	<b>0.1263</b>	<b>\$184,500</b>

BUILDINGS

BUILDING #: 1	
Year Built	1960
Finished Area	768 SqFt
Stories	1
Style	FLAT ROOF
Exterior Wall	STUCCO
Heating / Cooling	CENTRAL A/C
Fuel Type	ELECTRIC
Bedroom(s)	2
Full Bath(s)	1
Half Bath(s)	0
Fireplace(s)	0
Attached Garage	NO
Units	N/A



	AREA INDEX	AREA
	0	768
+	1	168

11 - OFP OPEN FRAME PORCH

**OTHER IMPROVEMENTS**

BUILDING #	DESCRIPTION	YEAR BUILT	QTY	SIZE / COUNT
1	RS1 - FRAME UTILITY SHED	2023	1	96

**RECENT SALES HISTORY**

The sales history includes only qualified sales made since January 1, 2016. A sale is qualified when it has been verified, by the appraiser, as an arm's length transaction for fair market value. Only qualified sales are considered in the appraisal process.

No data to display

**VALUE CHANGES**

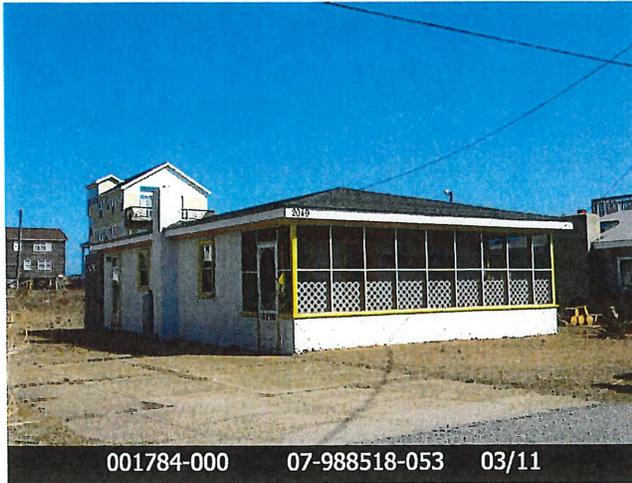
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REVALUATION EFFECTIVE DATE	ASSESSED VALUE
01/01/2020	\$270,600
01/01/2013	\$212,600
01/01/2005	\$282,800

**PERMITS**

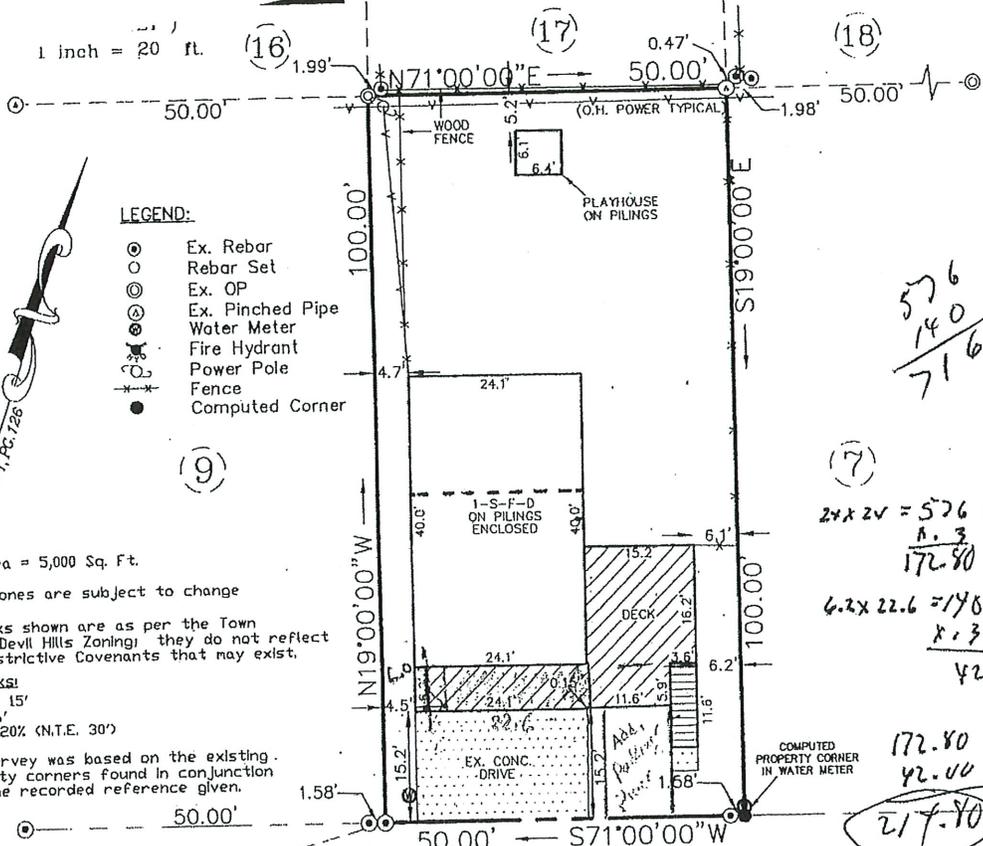
Permits issued in the past 6 years. All information deemed reliable but not guaranteed. For more information, please visit Dare County's [searchable permit site](#).

DATE	PERMIT #	PURPOSE	PERMIT AMOUNT
12/15/2022	BP2022-293	RES NEW MISC	\$5,400



Data last updated: 12/06/2023

1 inch = 20 ft.



**LEGEND:**

- ⊙ Ex. Rebar
- Rebar Set
- ⊙ Ex. OP
- ⊙ Ex. Pinched Pipe
- ⊙ Water Meter
- ⊙ Fire Hydrant
- ⊙ Power Pole
- ⊙ Fence
- Computed Corner

**NOTES:**

Lot Area = 5,000 Sq. Ft.

Flood Zones are subject to change

Setbacks shown are as per the Town of Kill Devil Hills Zoning; they do not reflect any Restrictive Covenants that may exist.

**Setbacks:**

Front: 15'  
Side: 6'  
Rear: 20% (N.T.E. 30')

This survey was based on the existing property corners found in conjunction with the recorded reference given.

576  
140  
716

24 x 24 = 576 *Removal*  
1.3  
172.80

6.2 x 22.6 = 140 *Can't*  
8.3  
42

172.80  
42.00  
217.80

**E. ST. CLAIR STREET (60' R/W)**

Lot Coverage = 1,884 Sq. Ft. (37.7%)

*etc. to add mud entry, dining table & closet per attached plan & ZBA. Variance must inspect downstairs.*

I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plat was drawn from an actual field land survey that the error of closure as calculated by latitudes and departures is at least 1:10,000;

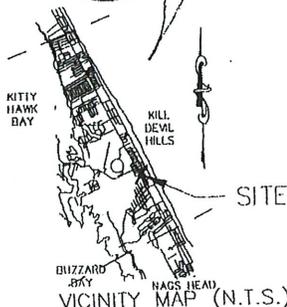
Witness my hand and seal this 12th day of January A.D. 2004

P.L.S.

L-3227



*See attached*



LOT 8, BLOCK 33, *Variance*  
KITTY HAWK SHORES—REVISED MAP

SURVEYED FOR  
**KENNETH GUNS SR.  
and VIVIAN GUNS**

ATLANTIC TOWNSHIP  
KILL DEVIL HILLS

DARE COUNTY  
NORTH CAROLINA

DATE: 1-4-05  
REV. DATE:

F.I.R.M.: 375353 0003 C  
F.I.R.M. DATE: 4-2-93  
FLOOD ZONE: AE(9')  
REC. REF. D.B. 1386/252  
M.B. 1, PG. 126  
PIN NO.: 07988308890549

SCALE: 1" = 20'  
FILE NO.: 04-344  
DWG NO.: 04344P

*Styons Surveying Services*  
2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948  
Phone: (252) 441-1415 Fax: (252) 480-1182

Any unauthorized use or alteration of this document is prohibited  
A red seal must be present for this to be an original document

**TOWN OF KILL DEVIL HILLS  
STATE OF NORTH CAROLINA**

**ORDER GRANTING/DENYING A VARIANCE**

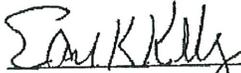
The Board of Adjustment of the Town of Kill Devil Hills, having held a public hearing on June 28, 2005 to consider application number 05-4, submitted by Kenneth W. Guns, Sr. and Vivian Guns a request for a VARIANCE to use the property located at Lot 8, Block 33, Kitty Hawk Shores-Revised Map, 108 E. St. Clair Street in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS.

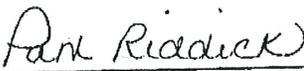
1. It is the Board of Adjustment's CONCLUSION that, if the Applicant complies with the literal terms of the ordinance, specifically section(s) 153.181(A)-Setbacks, he can secure a reasonable return from, or make reasonable use of, his property. This conclusion is based on the following FINDINGS OF FACT: House was purchased in the present state.
2. It is the Board of Adjustment's CONCLUSION that the hardship of which the Applicant complains **does not result** from unique circumstances related to the Applicant's land. This conclusion is based on the following FINDINGS OF FACT: Conflicts in surveys; age of house; no records available.
3. It is the Board of Adjustment's CONCLUSION that the hardship is **not** the result of the Applicant's own actions. This conclusion is based on the following FINDINGS OF FACT: Entire west side of house is too close to the property line.
4. It is the Board of Adjustment's CONCLUSION that, if granted, the variance **will** be in harmony with the general purpose and intent of the ordinance and (will/will not) preserve its spirit. This conclusion is based upon all of the FINDINGS OF FACT listed above, as well as the following: Applicant will bring downstairs enclosure into compliance by acquiring permits.
5. It is the Board of Adjustment's CONCLUSION that, if granted, the variance (will/will not) secure the public safety welfare and **will** do substantial justice. This conclusion is based upon all of the FINDINGS OF FACT listed above, as well as the following: House to be brought into compliance with all federal, state and local building codes.

THEREFORE, based upon all of the foregoing, IT IS ORDERED that the application for a variance be **GRANTED**, subject to the following conditions: Variance granted only

**for the purpose of bringing the first floor (downstairs) enclosure into compliance as it relates to current federal, state and local building codes. This variance does not apply to the requested proposed improvements/addition.**

Ordered this 28<sup>th</sup> day of June, 2005.

  
\_\_\_\_\_  
Earl K. Kelly, Vice-Chairperson

  
\_\_\_\_\_  
Pam Riddick, Secretary

NOTE: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Dare County within thirty (30) days from the date of the filing of the order or the date of delivery of the order to the applicant whichever is later. See Section 21-10.3.4 of the Kill Devil Hills Town Code.

NAME: \_\_\_\_\_

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

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

**4/5 Vote is necessary on each question in order to grant a variance.**

- (1) Does a strict application of the ordinance result in an unnecessary hardship to the Applicant?

YES \_\_\_\_\_ NO \_\_\_\_\_

(It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)

- (2) Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography?

YES \_\_\_\_\_ NO \_\_\_\_\_

(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) Does the hardship result from actions taken by the applicant (or the property owner)?  
Voting yes is for *denial* of the variance.

YES \_\_\_\_\_ NO \_\_\_\_\_

(The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.)

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

YES \_\_\_\_\_ NO \_\_\_\_\_

NOTES:

- No change in permitted uses may be authorized by variance.
- Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.
- Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

**Return this page (signed) to the CLERK after the meeting.**



**TOWN OF KILL DEVIL HILLS**  
Land Where Flight Began

**§ 153.053 ZONING NONCONFORMITY.**

Where, on the effective date of this chapter, there is a zoning nonconformity, such nonconformity may be continued so long as it remains lawful, subject to the following provisions:

(A) Single-family and duplex nonconforming structures shall be subject to the following provisions:

(1) Any zoning nonconformity where the cost of the addition, structural alteration, reconstruction/repair or remodel exceeds 50% of the structural valuation the site shall be brought into compliance with the regulations of this chapter. Multiple projects/approvals cannot cumulatively exceed 50% of the structural valuation within 365 days.

(2) Any zoning nonconformity may be modified by an addition, structural alteration, reconstruction/repair or remodel in a manner which does not increase its nonconformity where the cost of that addition, structural alteration, reconstruction/repair or remodel is less than 50% of structural valuation and subject to the following provisions.

(a) Increases to the gross floor area of the principal structure and/or addition of a bedroom(s), with the exception of unheated storage areas, shall require all parking and driveways be brought into compliance with this chapter.

**§ 153.181 SETBACKS.**

(A) Buildings erected in the commercial zone for residential purposes, including single-family dwellings, multi-family dwellings, hotels, motels and such other like buildings, shall abide by the setback requirements of the High Density Residential (RH) Zone governing such buildings.

**HIGH DENSITY RESIDENTIAL ZONE (RH)**

**§ 153.161 SETBACKS.**

(A) *Side yard.*

(1) The minimum side yard setback requirements on a lot with an area of 5,000 square feet or less shall be six feet from each side.

(2) The minimum side yard setback requirements on a lot with an area of more than 5,000 square feet but not more than 7,500 square feet shall be eight feet from each side.

(3) The minimum side yard setback requirements on a lot with an area exceeding 7,500 square feet shall be ten feet from each side.

(4) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area shall have an additional two feet of side yard setback.

(5) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area equipped with a fire suppression system reviewed, approved, and inspected annually by the Fire Chief or his or her designee, shall be exempt from division (A)(4) above.

(B) *Front yard.*

(1) The minimum front yard setback requirements on a lot with an area of 5,000 square feet or less shall be 15 feet from the front property line.

(2) The minimum front yard setback requirements on a lot with an area of more than 5,000 square feet but not more than 7,500 square feet shall be 30 feet from the front property line.

(3) The minimum front yard setback requirements on a lot with an area exceeding 7,500 square feet shall be 30 feet from the front property line.

(C) *Rear yard.* The minimum rear yard setback requirement on any lot shall be 20% of the total depth of the lot, but shall not exceed 30 feet from the rear property line.

(D) *Double frontage.*

(1) The minimum rear yard setback requirements on any double-frontage lot with an area of 5,000 square feet or less shall be 20% of the lot depth.

(2) The required front yard setback for all lots over 5,000 square feet shall be provided on both front and rear of a double frontage lot.

(E) *Corner lot.*

(1) The minimum setback requirements on a corner lot with an area of 5,000 square feet or less shall be as follows:

(a) Side yard: 6 feet.

(b) Side street: 7½ feet.

(2) The minimum setback requirements on a corner lot with an area of more than 5,000 square feet but not more than 7,500 square feet shall be as follows:

(a) Side yard: 8 feet.

(b) Side street: 15 feet.

(3) The minimum setback requirements on a corner lot exceeding 7,500 square feet shall be as follows:

(a) Side yard: 10 feet.

(b) Side street: 15 feet.





## Dare County - Property Records

002734000  
106 E THIRD ST, KILL DEVIL HILLS, NC,  
27948SMITH, MICHAEL G  
GREEN, DEBORAH H  
104 COMMERCE ST  
SMITHFIELD, VA,23430, USAAssessed Value  
\$279,400

## PARCEL INFORMATION

Parcel ID	002734000	PIN	988406378800
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	KILL DEVIL HILLS	Neighborhood	07080017
Zoning Code	C	Zoning Desc.	COMMERCIAL
Subdivision Code	0000	Subdivision	SUBDIVISION - NONE
Legal Desc.	LOT: BLK: SEC:		
Plat Cab Slide	PL: SL:		
Deed Date	02/14/2014	Book / Page	<a href="#">1952 / 0021</a>
Tax Status	Taxable		

## SECONDARY OWNERS

No data to display

## ASSESSMENT DETAILS

## REAL ESTATE ASSESSED VALUE

Land Value	\$172,800
Building Value	\$103,400
Other Improvements	\$3,200
Total Assessed	\$279,400

## BILLING VALUE

Land Value	\$172,800
Building Value	\$103,400
Other Improvements	\$3,200
Total Value	\$279,400

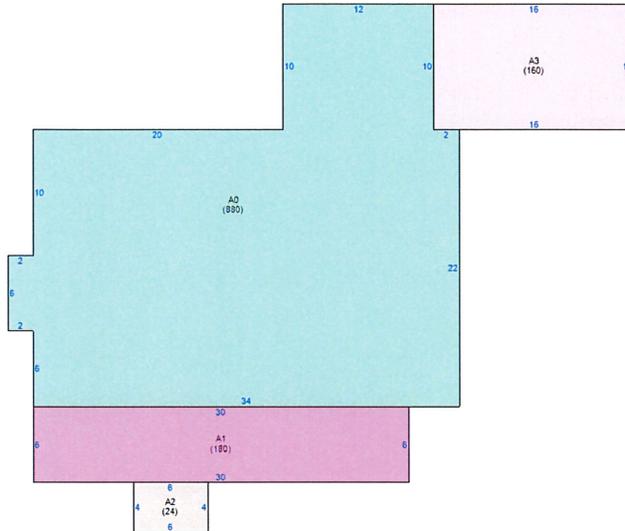
## LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G08-07-Ocean Influence F	14,000	0.3214	\$172,800
Total Assessed	14,000	0.3214	\$172,800

## BUILDINGS

**BUILDING #:** 1

Year Built	1965
Finished Area	880 SqFt
Stories	1
Style	FLAT ROOF
Exterior Wall	MODERN FRAME
Heating / Cooling	CENTRAL A/C
Fuel Type	ELECTRIC
Bedroom(s)	2
Full Bath(s)	1
Half Bath(s)	0
Fireplace(s)	0
Attached Garage	NO
Units	N/A



AREA INDEX	AREA
0	880
+ 1	180
11 - OFF OPEN FRAME PORCH	
+ 2	24
31 - DCK WOOD DECK	
+ 3	160
31 - DCK WOOD DECK	

**OTHER IMPROVEMENTS**

BUILDING #	DESCRIPTION	YEAR BUILT	QTY	SIZE / COUNT
1	RS1 - FRAME UTILITY SHED	2016	1	96
2	WD1 - WOOD DECK OR RAMP	2016	1	36
3	RC2 - CANOPY	2016	1	36

**RECENT SALES HISTORY**

The sales history includes only qualified sales made since January 1, 2016. A sale is qualified when it has been verified, by the appraiser, as an arm's length transaction for fair market value. Only qualified sales are considered in the appraisal process.  
No data to display

**VALUE CHANGES**

The value change history shows only changes in appraised value; it does not show exemptions, exclusions or deferrals that could reduce a property's taxable value. If any of these are in effect for a particular tax year, it will be shown on the property tax bill for that year. It is also possible that some previous value changes might be missing from this list or listed in the wrong order.

REVALUATION EFFECTIVE DATE	ASSESSED VALUE
01/01/2020	\$279,400
01/01/2013	\$180,400
01/01/2005	\$272,100

**PERMITS**

DATE	PERMIT #	PURPOSE	PERMIT AMOUNT
04/13/2018	BP2018-063	RES NEW MISC	\$2,500
12/18/2015	ZP2015-074	RES NEW MISC	\$2,000



Data last updated: 01/21/2024



## Dare County - Property Records

002736000  
 1803 N CROATAN HWY, KILL DEVIL HILLS,  
 NC, 27948

OUTER BANKS THEATERS, LLC  
 -  
 PO BOX 1056  
 REISTERSTOWN, MD,21136, USA

Assessed Value  
 -  
 \$5,527,400

## PARCEL INFORMATION

Parcel ID	002736000	PIN	988406386196
Land Use Code	5000	Land Use Description	RECREATIONAL
District	KILL DEVIL HILLS	Neighborhood	07524499
Zoning Code	C	Zoning Desc.	COMMERCIAL
Subdivision Code	0000	Subdivision	SUBDIVISION - NONE
Legal Desc.	LOT: BLK: SEC:		
Plat Cab Slide	PL: F SL: 35		
Deed Date	07/30/2003	Book / Page	<a href="#">1510 / 0048</a>
Tax Status	Taxable		

## SECONDARY OWNERS

No data to display

## ASSESSMENT DETAILS

## REAL ESTATE ASSESSED VALUE

Land Value	\$2,141,800
Building Value	\$3,152,900
Other Improvements	\$232,700
Total Assessed	\$5,527,400

## BILLING VALUE

Land Value	\$2,141,800
Building Value	\$3,152,900
Other Improvements	\$232,700
Total Value	\$5,527,400

## LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G52-07-Commercial Highway Primary	251,995	5.785	\$2,140,900
2 G23-07-Marsh Acreage	84,942	1.95	\$900
Total Assessed	336,937	7.735	\$2,141,800

## BUILDINGS





**THE TOWN OF KILL DEVIL HILLS**  
NORTH CAROLINA

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**BOARD OF ADJUSTMENT**

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January 19, 2024

Outer Banks Theaters, LLC  
PO Box 1056  
Reisterstown, MD 21136

Dear Adjacent Property Owner(s):

The purpose of this letter is to advise you that a variance application has been submitted to the Town of Kill Devil Hills by the property owner of 106 East Third Street. You are receiving this notice as an adjacent property owner (1803 North Croatan Highway, Kill Devil Hills, Parcel number: 002736000). The nature of the application is to seek relief from Chapter 153, *Zoning*, §153.053(A)(2) *Zoning Nonconformity* / §153.181(A) *Commercial Zone Setbacks*.

The Board of Adjustment will hold a public hearing on this matter on Tuesday, January 30, 2024, at 5:00 p.m. in the Town Hall Meeting Room, located at 102 Town Hall Drive, Kill Devil Hills, NC 27949. At that time, you may appear and present any arguments you may have for or against the granting of this variance.

Should you have any questions, please do not hesitate to contact Donna Elliott, Zoning Administrator, at 252-449-5310 or by email at [donna@kdhnc.com](mailto:donna@kdhnc.com).

Sincerely,

James Michael O'Dell  
Town Clerk



## Dare County - Property Records

002733000  
104 E THIRD ST, KILL DEVIL HILLS, NC,  
27948KIDD, WILLIAM C III  
KIDD, MARY L  
2721 VAN DYKE AVE  
RALEIGH, NC, 27607, USAAssessed Value  
\$320,300

## PARCEL INFORMATION

Parcel ID	002733000	PIN	988406377832
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	KILL DEVIL HILLS	Neighborhood	07080017
Zoning Code	C	Zoning Desc.	COMMERCIAL
Subdivision Code	0000	Subdivision	SUBDIVISION - NONE
Legal Desc.	LOT: BLK: SEC:		
Plat Cab Slide	PL: J SL: 86		
Deed Date	07/12/2019	Book / Page	<a href="#">2311 / 0471</a>
Tax Status	Taxable		

## SECONDARY OWNERS

No data to display

## ASSESSMENT DETAILS

## REAL ESTATE ASSESSED VALUE

Land Value	\$175,500
Building Value	\$143,900
Other Improvements	\$900
Total Assessed	\$320,300

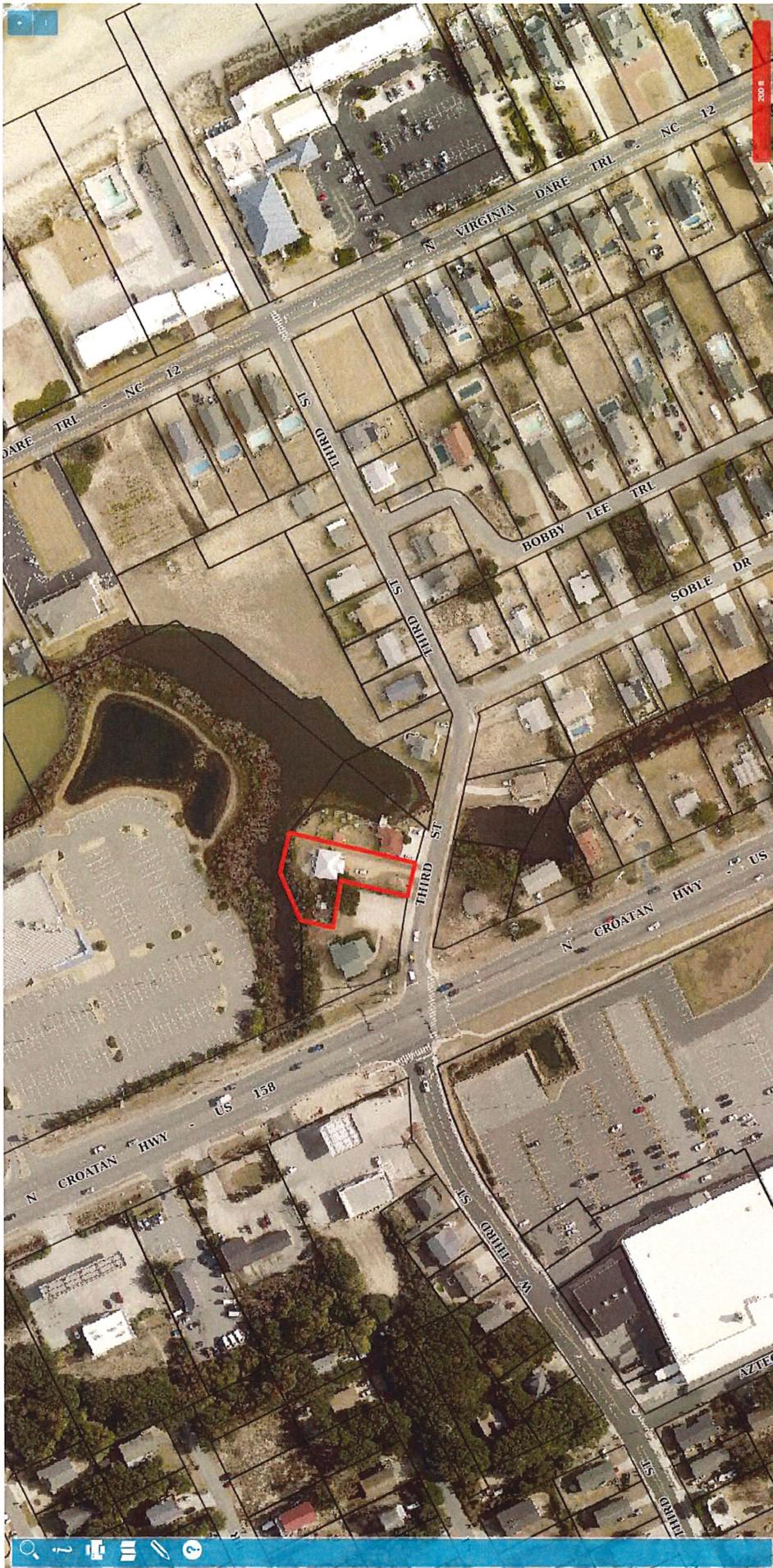
## BILLING VALUE

Land Value	\$175,500
Building Value	\$129,700
Other Improvements	\$900
Total Value	\$306,100

## LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G08-07-Ocean Influence F	14,500	0.3329	\$175,500
Total Assessed	14,500	0.3329	\$175,500

## BUILDINGS





THE TOWN OF KILL DEVIL HILLS  
NORTH CAROLINA

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BOARD OF ADJUSTMENT

---

January 19, 2024

William C. & Mary L. Kidd  
2721 Van Dyke Avenue  
Raleigh, NC 27607

Dear Adjacent Property Owner(s):

The purpose of this letter is to advise you that a variance application has been submitted to the Town of Kill Devil Hills by the property owner of 106 East Third Street. You are receiving this notice as an adjacent property owner (104 East Third Street, Kill Devil Hills, Parcel number: 002733000). The nature of the application is to seek relief from Chapter 153, *Zoning*, §153.053(A)(2) *Zoning Nonconformity* / §153.181(A) *Commercial Zone Setbacks*.

The Board of Adjustment will hold a public hearing on this matter on Tuesday, January 30, 2024, at 5:00 p.m. in the Town Hall Meeting Room, located at 102 Town Hall Drive, Kill Devil Hills, NC 27949. At that time, you may appear and present any arguments you may have for or against the granting of this variance.

Should you have any questions, please do not hesitate to contact Donna Elliott, Zoning Administrator, at 252-449-5310 or by email at [donna@kdhnc.com](mailto:donna@kdhnc.com).

Sincerely,



James Michael O'Dell  
Town Clerk



## Dare County - Property Records

002949000  
 101 E THIRD ST, KILL DEVIL HILLS, NC,  
 27948

MARROQUIN, PEDRO  
 -  
 24 DUCKWOODS DR  
 KITTY HAWK, NC, 27949, USA

Assessed Value  
 \$153,600

## PARCEL INFORMATION

Parcel ID	002949000	PIN	988406377604
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	KILL DEVIL HILLS	Neighborhood	07080017
Zoning Code	RL	Zoning Desc.	RESIDENTIAL LOW DENSITY
Subdivision Code	L350	Subdivision	LONG LAKE
Legal Desc.	LOT: 18 & BLK: SEC:		
Plat Cab Slide	PL: 3 SL: 47		
Deed Date	03/24/2005	Book / Page	<a href="#">1621 / 0044</a>
Tax Status	Taxable		

## SECONDARY OWNERS

No data to display

## ASSESSMENT DETAILS

## REAL ESTATE ASSESSED VALUE

Land Value	\$153,100
Building Value	\$500
Other Improvements	\$0
Total Assessed	\$153,600

## BILLING VALUE

Land Value	\$153,100
Building Value	\$500
Other Improvements	\$0
Total Value	\$153,600

## LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G08-07-Ocean Influence F	13,500	0.3099	\$153,100
Total Assessed	13,500	0.3099	\$153,100

## BUILDINGS





**THE TOWN OF KILL DEVIL HILLS**  
NORTH CAROLINA

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**BOARD OF ADJUSTMENT**

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January 19, 2024

Pedro Marroquin  
24 Duckwoods Drive  
Kitty Hawk, NC 27949

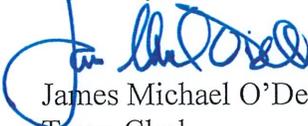
Dear Adjacent Property Owner(s):

The purpose of this letter is to advise you that a variance application has been submitted to the Town of Kill Devil Hills by the property owner of 106 East Third Street. You are receiving this notice as an adjacent property owner (101 East Third Street, Kill Devil Hills, Parcel number: 002949000). The nature of the application is to seek relief from Chapter 153, *Zoning*, §153.053(A)(2) *Zoning Nonconformity* / §153.181(A) *Commercial Zone Setbacks*.

The Board of Adjustment will hold a public hearing on this matter on Tuesday, January 30, 2024, at 5:00 p.m. in the Town Hall Meeting Room, located at 102 Town Hall Drive, Kill Devil Hills, NC 27949. At that time, you may appear and present any arguments you may have for or against the granting of this variance.

Should you have any questions, please do not hesitate to contact Donna Elliott, Zoning Administrator, at 252-449-5310 or by email at [donna@kdhnc.com](mailto:donna@kdhnc.com).

Sincerely,

  
James Michael O'Dell  
Town Clerk



## Dare County - Property Records

002950000  
 105 E THIRD ST, KILL DEVIL HILLS, NC,  
 27948

KYGER, CHRISTINE A  
 -  
 105 E THIRD ST  
 KILL DEVIL HILLS, NC,27948, USA

Assessed Value  
 \$255,600

## PARCEL INFORMATION

Parcel ID	002950000	PIN	988406378642
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	KILL DEVIL HILLS	Neighborhood	07080017
Zoning Code	RL	Zoning Desc.	RESIDENTIAL LOW DENSITY
Subdivision Code	L350	Subdivision	LONG LAKE
Legal Desc.	LOT: 19 BLK: SEC:		
Plat Cab Slide	PL: 3 SL: 47		
Deed Date	07/24/2023	Book / Page	<a href="#">2691 / 0903</a>
Tax Status	Taxable		

## SECONDARY OWNERS

No data to display

## ASSESSMENT DETAILS

## REAL ESTATE ASSESSED VALUE

Land Value	\$158,000
Building Value	\$78,700
Other Improvements	\$18,900
Total Assessed	\$255,600

## BILLING VALUE

Land Value	\$158,000
Building Value	\$78,700
Other Improvements	\$18,900
Total Value	\$255,600

## LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G08-07-Ocean Influence F	14,500	0.3329	\$158,000
Total Assessed	14,500	0.3329	\$158,000

## BUILDINGS





**THE TOWN OF KILL DEVIL HILLS**  
NORTH CAROLINA

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**BOARD OF ADJUSTMENT**

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January 19, 2024

Christine A. Kyger  
105 East Third Street  
Kill Devil Hills, NC 27948

Dear Adjacent Property Owner(s):

The purpose of this letter is to advise you that a variance application has been submitted to the Town of Kill Devil Hills by the property owner of 106 East Third Street. You are receiving this notice as an adjacent property owner (105 East Third Street, Kill Devil Hills, Parcel number: 002950000). The nature of the application is to seek relief from Chapter 153, *Zoning*, §153.053(A)(2) *Zoning Nonconformity* / §153.181(A) *Commercial Zone Setbacks*.

The Board of Adjustment will hold a public hearing on this matter on Tuesday, January 30, 2024, at 5:00 p.m. in the Town Hall Meeting Room, located at 102 Town Hall Drive, Kill Devil Hills, NC 27949. At that time, you may appear and present any arguments you may have for or against the granting of this variance.

Should you have any questions, please do not hesitate to contact Donna Elliott, Zoning Administrator, at 252-449-5310 or by email at [donna@kdhnc.com](mailto:donna@kdhnc.com).

Sincerely,



James Michael O'Dell  
Town Clerk



Dare County - Property Records

002735000  
108 E THIRD ST, KILL DEVIL HILLS, NC,  
27948

EDWARDS, MELANIE LOU  
-  
P.O. BOX 7124  
KILL DEVIL HILLS, NC,27948, USA

Assessed Value  
\$274,900

PARCEL INFORMATION

Parcel ID	002735000	PIN	988406378785
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	KILL DEVIL HILLS	Neighborhood	07080017
Zoning Code	C	Zoning Desc.	COMMERCIAL
Subdivision Code	0000	Subdivision	SUBDIVISION - NONE
Legal Desc.	LOT: BLK: SEC:		
Plat Cab Slide	PL: SL:		
Deed Date	06/25/2021	Book / Page	<a href="#">2520 / 0630</a>
Tax Status	Taxable		

SECONDARY OWNERS

No data to display

ASSESSMENT DETAILS

REAL ESTATE ASSESSED VALUE

Land Value	\$188,300
Building Value	\$86,600
Other Improvements	\$0
Total Assessed	\$274,900

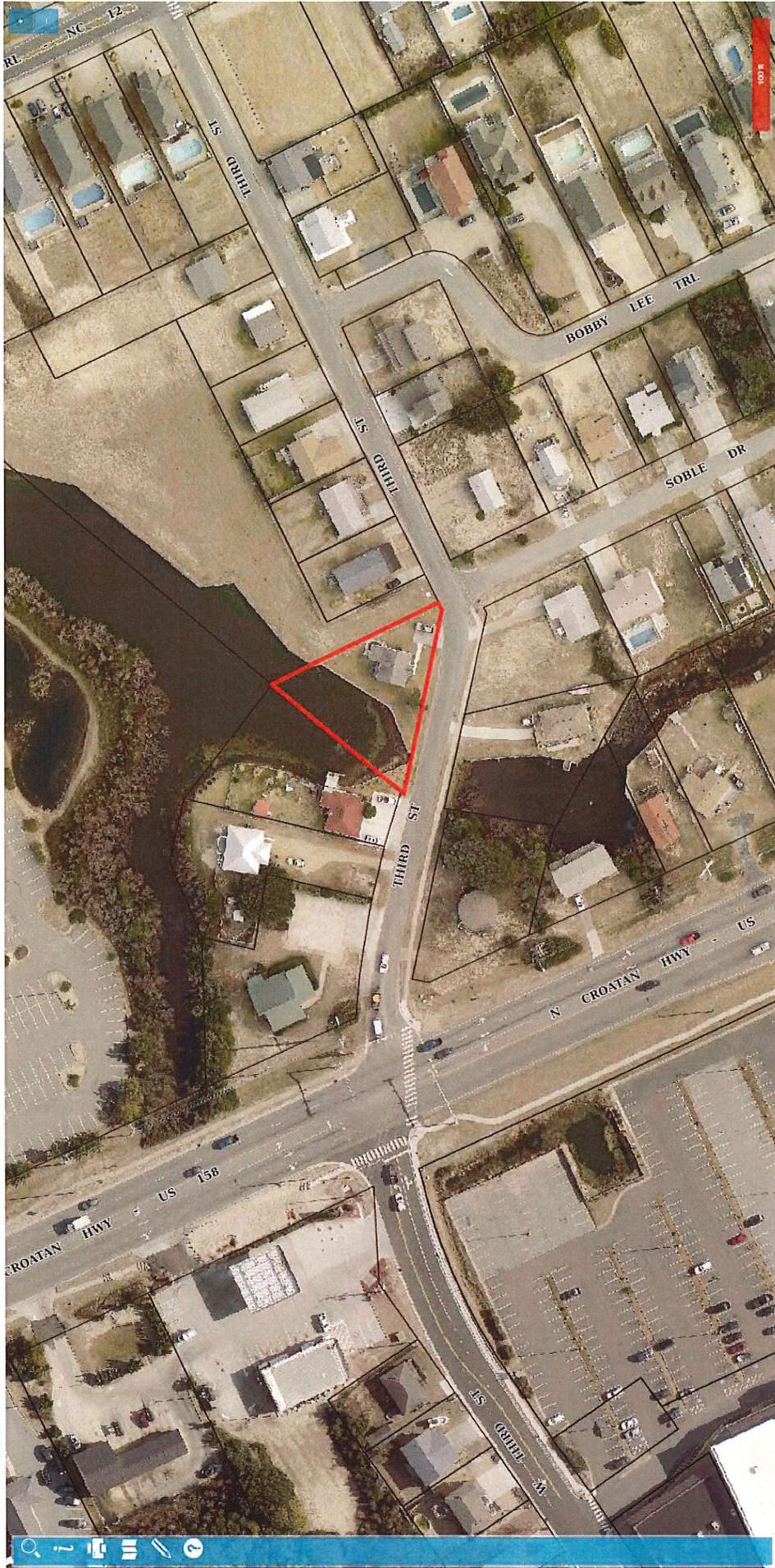
BILLING VALUE

Land Value	\$188,300
Building Value	\$86,600
Other Improvements	\$0
Total Value	\$274,900

LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G08-07-Ocean Influence F	13,000	0.2984	\$188,300
Total Assessed	13,000	0.2984	\$188,300

BUILDINGS





**THE TOWN OF KILL DEVIL HILLS**  
NORTH CAROLINA

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**BOARD OF ADJUSTMENT**

---

January 19, 2024

Melanie L. Edwards  
PO Box 7124  
Kill Devil Hills, NC 27948

Dear Adjacent Property Owner(s):

The purpose of this letter is to advise you that a variance application has been submitted to the Town of Kill Devil Hills by the property owner of 106 East Third Street. You are receiving this notice as an adjacent property owner (108 East Third Street, Kill Devil Hills, Parcel number: 002735000). The nature of the application is to seek relief from Chapter 153, *Zoning*, §153.053(A)(2) *Zoning Nonconformity* / §153.181(A) *Commercial Zone Setbacks*.

The Board of Adjustment will hold a public hearing on this matter on Tuesday, January 30, 2024, at 5:00 p.m. in the Town Hall Meeting Room, located at 102 Town Hall Drive, Kill Devil Hills, NC 27949. At that time, you may appear and present any arguments you may have for or against the granting of this variance.

Should you have any questions, please do not hesitate to contact Donna Elliott, Zoning Administrator, at 252-449-5310 or by email at [donna@kdhnc.com](mailto:donna@kdhnc.com).

Sincerely,

  
James Michael O'Dell  
Town Clerk

Dare County - Property Records

002312001  
 0 E THIRD ST, KILL DEVIL HILLS, NC,  
 27948

3RD STREET HOLDINGS LLC  
 -  
 46 LAKESIDE CV  
 THE WOODLANDS, TX, 77380, USA

Assessed Value  
 \$121,200

PARCEL INFORMATION

Parcel ID	002312001	PIN	988406470987
Land Use Code	0010	Land Use Description	VACANT LAND (PRIVATE)
District	KILL DEVIL HILLS	Neighborhood	07510099
Zoning Code	C	Zoning Desc.	COMMERCIAL
Subdivision Code	C600	Subdivision	CROATAN SHORES AMENDED
Legal Desc.	LOT- BLK: SEC:		
Plat Cab Slide	PL- SL:		
Deed Date	10/25/2023	Book / Page	2704 / 0515
Tax Status	Taxable		

SECONDARY OWNERS

No data to display

ASSESSMENT DETAILS

REAL ESTATE ASSESSED VALUE

Land Value	\$121,200
Building Value	\$0
Other Improvements	\$0
Total Assessed	\$121,200

BILLING VALUE

Land Value	-
Building Value	-
Other Improvements	-
Total Value	-

LAND

LAND DESCRIPTION	SQFT	ACRES	LAND VALUE
1 G55-07-Commercial Hwy Residual	60,595	1.3911	\$121,200
Total Assessed	60,595	1.3911	\$121,200

BUILDINGS

No data to display

OTHER IMPROVEMENTS

No data to display

RECENT SALES HISTORY

The sales history includes only qualified sales made since January 1, 2016. A sale is qualified when it has been verified, by the appraiser, as an arm's length transaction for fair market value. Only qualified sales are considered in the appraisal process.

DEED DATE	SALE PRICE	DEED REFERENCE	DEED TYPE	GRANTOR	GRANTEE
10/25/2023	\$2,100,000	2704 / 0515	V - VACANT	C & S REALTY CORPORATION	3RD STREET HOLDINGS LLC

VALUE CHANGES

The value change history shows only changes in appraised value; it does not show exemptions, exclusions or deferrals that could reduce a property's taxable value. If any of these are in effect for a particular tax year, it will be shown on the property tax bill for that year. It is also possible that some previous value changes might be missing from this list or listed in the wrong order.

REVALUATION EFFECTIVE DATE	ASSESSED VALUE
01/01/2020	-
01/01/2013	-
01/01/2005	-

PERMITS

Permits issued in the past 6 years. All information deemed reliable but not guaranteed. For more information, please visit Dare County's [searchable permit site](#).

No data to display







**THE TOWN OF KILL DEVIL HILLS**  
NORTH CAROLINA

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**BOARD OF ADJUSTMENT**

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January 19, 2024

3<sup>rd</sup> Street Holdings, LLC  
46 Lakeside CV  
The Woodlands, TX 77380

Dear Adjacent Property Owner(s):

The purpose of this letter is to advise you that a variance application has been submitted to the Town of Kill Devil Hills by the property owner of 106 East Third Street. You are receiving this notice as an adjacent property owner (0 East Third Street, Kill Devil Hills, Parcel number: 002312001). The nature of the application is to seek relief from Chapter 153, *Zoning*, §153.053(A)(2) *Zoning Nonconformity* / §153.181(A) *Commercial Zone Setbacks*.

The Board of Adjustment will hold a public hearing on this matter on Tuesday, January 30, 2024, at 5:00 p.m. in the Town Hall Meeting Room, located at 102 Town Hall Drive, Kill Devil Hills, NC 27949. At that time, you may appear and present any arguments you may have for or against the granting of this variance.

Should you have any questions, please do not hesitate to contact Donna Elliott, Zoning Administrator, at 252-449-5310 or by email at [donna@kdhnc.com](mailto:donna@kdhnc.com).

Sincerely,



James Michael O'Dell  
Town Clerk

**From:** mkie butler <[mikebutler1512@gmail.com](mailto:mikebutler1512@gmail.com)>

**Sent:** Sunday, January 21, 2024 12:26 PM

**To:** Guns, Meredith <[MEREDITH@kdhnc.com](mailto:MEREDITH@kdhnc.com)>

**Subject:** Variance Request

My name is Michael Butler and I am sending you this email in support of Mr. Mike Smith's request for a Variance at his property located at 106 East 3rd in KDH.

I also have a property located in KDH at 2035 Elizabeth City

I along with the neighbors on 3rd street support Mr. Smith in his request for a variance on his property. Mr. Smith has always been an inspiration for his fellow neighbors in the neighborhood. He is always the first one cleaning and fixing up his and the neighbors property after a storm or some other type catastrophe on 3rd street.

Mr. Smith has always kept neighbors and other officials aware of his intentions when it came to improvements in the area.

KDH is fortunate to have someone with Mr. Smith honesty and integrity residing in the area.

If I can be of further assistance please contact me at 7576130084 or [mikebutler1512@gmail.com](mailto:mikebutler1512@gmail.com)

Thank You in advance for your consideration on this matter.

Michael K Butler

# TOWN OF KILL DEVIL HILLS

# PUBLIC HEARING

DATE: Tuesday, January 30, 2024

TIME: 5:00 p.m.

LOCATION: Town Hall Meeting Room

**KILL DEVIL TOWN HALL**

**102 Town Hall Drive**

**Kill Devil Hills, NC**

APPLICATION: Michael G & Deborah H.

Smith - 106 East Third Street - Parcel No.

002734000, PIN: 988406378800 - Variance from

Chapter 153, Zoning, §153.053(A)(2) Zoning Nonconformity

153.181(A) Commercial zone Setbacks

**For more information about this application contact the  
Planning and Inspections Dept. at (252) 449-5318**

