



**CURRITUCK COUNTY
NORTH CAROLINA**

April 13, 2017
Minutes – Regular Meeting of the Board of Adjustment

CALL TO ORDER

Attendee Name	Title	Status	Arrived
Zia Montesi	Board Member	Present	
David Palmer	Chairman	Present	
Donna McCloud	Board Member	Absent	
Michael Painter	Vice Chairman	Present	
Vivian Simpson	Board Member	Absent	
Cameron Tabor	Board Member	Present	
Tammy Glave	Senior Planner	Present	
Nick Aisthorpe	Staff Support to Board of Adjustment	Present	
Ben Gallop	Attorney for the Board of Adjustment	Present	

The Currituck County Board of Adjustment held its regular meeting at the Historic Currituck Courthouse, 153 Courthouse Road, Currituck, North Carolina on April 13, 2017. Chairman Palmer called the meeting to order at 7:00 PM.

B. Approval of Agenda

Chairman Palmer asked if there were any changes to tonight's agenda. Mr. Tabor motioned to approve the agenda as presented and Ms. Montesi seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Zia Montesi, Board Member, David Palmer, Chairman, Michael Painter, Vice Chairman, Cameron Tabor, Board Member
ABSENT:	Donna McCloud, Board Member, Vivian Simpson, Board Member

C Ask for Disqualifications

Chairman Palmer asked if there were any conflicts of interest with board members on the item being presented to the board tonight. Both Mr. Tabor and Chairman Palmer said they are neighbors with Mr. Innes, but do not have any business dealings with him.

D Election of Chairman and Vice-Chairman

Chairman Palmer said the Board of Commissioners had not appointed new board members to the Board of Adjustment and called to suspend the election until appointments were

made. Tabor motioned to suspend the election. Mr. Painter seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Zia Montesi, Board Member, David Palmer, Chairman, Michael Painter, Vice Chairman, Cameron Tabor, Board Member
ABSENT:	Donna McCloud, Board Member, Vivian Simpson, Board Member

E Announce Quorum Being Met

Chairman Palmer announced a quorum being met with four of the six members present.

APPROVAL OF MARCH 9, 2017 MINUTES

Chairman Palmer asked if there were any changes to the minutes for March 9, 2017. With no changes to the minutes, Mr. Tabor motioned to approve as presented and Ms. Montesi seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Zia Montesi, Board Member, David Palmer, Chairman, Michael Painter, Vice Chairman, Cameron Tabor, Board Member
ABSENT:	Donna McCloud, Board Member, Vivian Simpson, Board Member

F. Board of Adjustment March 9, 2017 minutes

OLD BUSINESS

There was no old business discussed.

NEW BUSINESS

A. BOA 17-04 Stuart Innes: Variance to Section 3.3.3 of the Unified Development Ordinance (UDO) to allow a decrease in minimum lot size and an increase in maximum density on property located on the north side of South Mills Road, adjoining Quail Pointe to the west, PIN 0006-000-001V-0000, Moyock Township.

Chairman Palmer swore in Senior Planner, Tammy Glave, and applicant, Stuart Innes at 7:28 PM.

Ms. Glave presented the staff report. Mr. Innes purchased the land in 2015 which was zoned agricultural. He could get seven lots through conservation reservation with no minimum lot size and density allowed was .5 units per acre. This was outside of water main and did not have to connect, but did need performance guarantee of \$700,000 at the time. In January 2016, the Board of Commissioners added a lot size and density change in Agricultural district. This lowered lots from seven to about five. In June 2016, the Board of Commissioners amended the Unified Development Ordinance (UDO) to increase minimum size, lower density and remove performance guarantee. The option to run water line would get about four lots. Mr. Innes's request for a variance is to lower minimum lot size and

increase density to allow seven lots (as at original purchase time). To receive a variance, six standards must be met:

1. The alleged hardship is suffered by the applicant as a result of the application of this ordinance. (Staff Comment - applies to all land)
2. The hardship relates to the applicant's land, such as location size, or topography rather than personal circumstances. (Staff Comment - relates to timing, not land)
3. The hardship is unique, or nearly so, rather than one shared by many surrounding properties. (Staff Comment - not unique, applies to all lots. Remedy would be a text amendment to change standards.)
4. Hardship is not the result of the applicant's own actions. (Staff Comment - relates to timing. Land is developable without a variance.)
5. The variance will not authorize the initiation of a nonconforming use of land. (Staff Comment - this requirement is met)
6. 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. (Staff Comment - BOC January 2016 addressed the county water supply and extension)

Staff recommends denial of variance. Land can be used more profitably if variance granted.

Chairman Palmer asked if the board members had any questions for Ms. Glave.

Ms. Montesi asked how the text amendment was advertised and Ms. Glave said in the Coastland Times newspaper and also on the County Website.

Ms. Montesi asked if there is a public response for text amendments and Ms. Glave said yes.

Ms. Montesi said that Mr. Innes had the opportunity to challenge text amendment in January 2016.

Chairman Palmer questioned the first requirement of hardship suffered by the applicant to apply to all lands and Ms. Glave said it applied to all Agricultural zoning.

Discussion was held on the reasoning behind the Board of Commissioners text amendment in January 2016 and Ms. Glave clarified that it was to put the density of houses where improvements are already available and two subdivisions received approval before the amendment.

Ms. Montesi clarified that owner wanted to sit on vacant property until ready to develop and asked if he had presented an application to date. Ms. Glave said no application has been made.

Discussion was held on proper notification for text amendments. Ms. Glave said they are published in the newspaper circulated in our county. Also, General Statute requires us to publish to the website, planning board agenda phase, BOC agenda phase. We advertise in the Coastland Times because this meets legal requirements and is cheaper than the Daily Advance (\$100 vs \$500). The text amendment is advertised in the newspaper twice, two weeks in advance of the meeting. Mr. Gallop said the Board of Commissioners did everything legally.

Chairman Palmer opened the testimony for Stuart Innes.

Stuart Innes clarified that Brian Innes is not involved in the project and is only a spectator.

Mr. Innes gave the following testimony: I've been doing business since 1989 with no problems until now. In 2014 I worked with Mrs. Garrett and bought 15 acres from her. We

closed on the property in 2015. I went to Eddie Hyman to survey property and assured him we could do 7 lots with 60 percent open space. I would have to run the water line, but could pay water deposit fee. Mr. Hyman said I would owe \$55,200 to County immediately at \$8,000 per lot and then have to pay water tap fee of \$6,000 for services that didn't yet exist. I would also have to pay an extra \$6,000 to drill the well. Mr. Innes said his hardship relates to county advertising in less expensive newspaper and that the County decided to be in the business of selling water. The County dictates who the customer base is and destroys property values of everyone they decide not to sell water to. It was \$737,000 for 7 lots. I could drop down to 5 lots to pay less. I contacted the New York City to see the impact fee of a 50 story tower and it's around \$150,000. Gibbs Woods and Knotts Island are exempt. Financial hardship is hardship and the water line won't be built to project by County because it's not in the 25 year plan. I did not file the application because I didn't want to pay an excessive fee. Three commissioners told me to drop the issue since it was an election year and no one wants to make changes that would impact the election.

Mr. Innes showed diagrams of two subdivisions nearby that did community wells, another lot that was subdivided with well water and several other subdivisions that were allowed with wells. Mr. Innes showed the diagram of the Moyock Mega-Site which puts his property in the master plan zoned as high-density development.

Mr. Innes said he would like to do the 7 lots as originally intended and based on water analysis, could have 16 wells if needed.

Chairman Palmer asked for questions from the board.

Discussion was held on impact fee figures and formula/background performance guarantee.

Mr. Painter said the current issue is density.

Chairman Palmer asked if Mr. Innes was fully vested on this project and Mr. Innes said he has spent thousands of dollars on the project preparation, but could not write a check for \$700,000

Mr. Gallop asked if he had ever received project approval and Mr. Innes said he never had approval from the County, but that no other developments had to bring money to get their approval.

Ms. Montesi said she understands the situation and agrees there is a hardship when a tap fee is required but the water is not available yet.

Chairman Palmer closed questioning.

Mr. Gallop reviewed the standards which have to be met in order to grant variance. He explained each of the six standards to the board members and explained things which are not grounds for a variance. Mr. Gallop suggested the board go through each standard one at a time. This needs an unanimous vote on each for variance to be granted.

Chairman Palmer asked about the Moyock Mega-Site and if it's different than before and if it calls for high density residential. Mr. Innes said yes. Chairman Palmer then asked about other subdivisions that were developed with wells. Ms. Glave said at the time, minor subdivisions were exempt from the water tap fees, but it was required for major subdivisions. Two subdivisions were vested prior to the text amendment and started their projects when the fees did not apply.

Mr. Gallop asked if Mr. Innes could have developed 5 lots without the tap fees and Ms. Glave said no because the parent parcel was already developed and kicked into the major subdivision.

Standard 1: The board did not make a motion on Standard 1 and moved on to Standard 2.

Standard 2: Mr. Painter motioned to confirm hardship and Mr. Tabor seconded the motion and motion carried unanimously.

Standard 3: Mr. Painter motioned to confirm and Chairman Palmer seconded the motion and motion carried unanimously.

Standard 4: Mr. Painter motioned the hardship was not a result of Mr. Innes's actions and Ms. Montesi seconded the motion and motion carried unanimously.

Standard 5: Chairman Palmer motioned to confirm and Mr. Painter seconded the motion and motion carried unanimously.

Standard 6: Mr. Tabor motioned to confirm and Mr. Painter seconded the motion and the motion carried unanimously.

Back to Standard 1: Mr. Tabor motioned a hardship has been suffered and Mr. Painter seconded the motion and the motion carried unanimously.

Chairman Palmer confirmed the six standards were met unanimously.

Mr. Gallop explained since the six standards were met, the board could vote to grant the variance.

Mr. Tabor motioned to approve the variance and Ms. Montesi seconded the motion and the motion carried unanimously.

Staff will prepare the order.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Zia Montesi, Board Member, David Palmer, Chairman, Michael Painter, Vice Chairman, Cameron Tabor, Board Member
ABSENT:	Donna McCloud, Board Member, Vivian Simpson, Board Member

ANNOUNCEMENTS

There were no announcements.

ADJOURNMENT

Mr. Tabor closed the meeting at 8:28 PM.



**CURRITUCK COUNTY
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CALL TO ORDER

Chairman Palmer called the meeting to order at 7:00 PM.

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David Palmer	Chairman	Present	
Donna McCloud	Board Member	Present	
Michael Painter	Vice Chairman	Absent	
Vivian Simpson	Board Member	Absent	
Cameron Tabor	Board Member	Present	
Nick Aisthorpe	Staff Support to Board of Adjustment	Present	
Tammy Glave	Senior Planner	Present	
Ben Woody	Planning and Community Development Director	Present	
Stacey Smith	Development Code Enforcement Officer	Present	

Ms. Glave made the roll call at the request of Chairman Palmer.

Chairman Palmer announced the quorum was met with four members present.

A. Approval of Agenda

Chairman Palmer asked if there were any changes to the agenda tonight. Mr. Tabor motioned to approve the agenda with no changes. Ms. McCloud seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Zia Montesi, Board Member, David Palmer, Chairman, Donna McCloud, Board Member, Cameron Tabor, Board Member
ABSENT:	Michael Painter, Vice Chairman, Vivian Simpson, Board Member

B. Election of Officers

Chairman Palmer asked for a motion to suspend the rules for election of officers due to the absence of members and also due to members not being appointed yet.

Mr. Tabor motioned to suspend the election of officers until a future date to be determined. Ms. McCloud seconded the motion and the motion carried unanimously.

Communication: Board of Adjustment March 9, 2017 minutes (Approval of March 9, 2017 Minutes)

C. Ask for Disqualifications

Chairman Palmer asked if any member of the Board of Adjustment had reasons to be disqualified from hearing the item before the board tonight.

D. Announce Quorum Being Met

Chairman Palmer previously announced a quorum being met after roll was called.

E. APPROVAL OF MINUTES

Chairman Palmer asked for approval of the Board of Adjustment Minutes for September 8, 2016. Mr. Tabor motioned to approve. Ms. McCloud seconded the motion and motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Zia Montesi, Board Member, David Palmer, Chairman, Donna McCloud, Board Member, Cameron Tabor, Board Member
ABSENT:	Michael Painter, Vice Chairman, Vivian Simpson, Board Member

OLD BUSINESS

Chairman Palmer asked Ms. Glave and Mr. Woody if there were any old business for discussion. Ms. Glave said she did not have any old business.

Mr. Woody introduced Nick Aisthorpe to the Board of Adjustment as the Development Technician for the Planning Department and said he is currently based at the Corolla office. He will be helping to staff the meetings for the Board of Adjustment.

NEW BUSINESS

A. BOA 16-03 Wayne J. Burch Appeal: Wayne J. Burch is appealing the administrator's decision and notice of violation that the commercial crabbing operation is in violation of the home occupation standards, located at 115 Alex Lane, Tax Map 039A, Parcel 14, Section A Crawford Township.

Applicants Wayne Burch and Lauren Berry appeared before the board and were sworn in.

Stacey Smith, Code Enforcement Officer, Ben Woody, Planning Director, and all other wishing to speak regarding the case were sworn in.

Ms. Smith presented the staff report.

Mr. Tabor asked about traffic.

Ms. Smith said the employees come and go daily as well as crabbers dropping off their catch and buying bait.

Ike McRee, County Attorney, asked Ms. Smith about current violations including retail sales, street classification, vehicles on the property, traffic, and outdoor display.

Communication: Board of Adjustment March 9, 2017 minutes (Approval of March 9, 2017 Minutes)

Ms. Smith said there is retail sale of bait and occasional crab sales from the property, the street is not a major arterial, there are at least four vehicles on the property related to the business, described the traffic again, and said there is outdoor display of equipment such as crab pots, shedder tanks, etc.

Mr. McRee asked Ms. Smith is she was aware of the appeal of the violation.

She said she was and that there was no agricultural exemption for commercial fishermen.

Mr. McRee asked Ms. Smith about General Statutes regarding aquaculture exemption.

Ms. Smith read the definition of aquaculture as “the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching.”

Mr. McRee asked Ms. Smith if propagation or rearing of aquatic species was involved in the commercial fishing operation.

Mrs. Smith said no.

Mr. McRee confirmed with Ms. Smith that one of the farming exemption requirements is that the property is part of a conservation agreement. He asked Ms. Smith if the property was under a conservation agreement with the county.

Ms. Smith said no.

Ms. McCloud asked if this meant that you couldn't keep crab pots in your yard.

Mr. Woody explained that you can keep crab pots for personal use, but a home occupation does not allow outdoor storage (crab pots).

Ms. Berry asked Ms. Smith the definition of retail sales.

Ms. Smith said the UDO definition of retail sales is a “Commercial enterprises that provide goods and/or services directly to the consumer, where such goods are available for immediate purchase and removal from the premises by the purchaser.”

Ms. Berry asked Ms. Smith where she got the information from that Mr. Burch received his crab shedding license in 2014 and commercial fishing license in 2001.

Ms. Smith said the Department of Marine Fisheries.

Ms. Berry said the information was wrong.

Ms. Berry asked Ms. Smith for a quantitative basis for defining traffic as heavy.

Ms. Smith said any traffic not customary to a single-family dwelling.

It was clarified that the definition of home occupation regarding traffic does not use the word heavy.

Mr. Berry asked Ms. Smith if they requested a permit once they received the violation.

Ms. Smith said yes, but the permit was denied because the business they are running is not allowed in the Single-family Mainland zoning district.

Mr. McRee asked Ms. Smith if the applicant had appealed the denial of the permit.

Ms. Smith said no.

Ms. Berry described the commercial fishing operation at 115 Alex Lane. Employees come and go from the site, crabbers visit the site to drop off their catch, and crabbers visit the site to purchase bait. They have an occasional visitor who purchases crabs. She said all the vehicles in the photo were not associated with the business.

David Summerral said he Photo-Shopped the company name on one of the vehicles in the photo when making the webpage.

Ms. Berry gave out numerous handouts during her presentation. All have been incorporated as attachments to these minutes. She said neighbors had expressed a concern for the amount of traffic using the road for the business and the safety of children and animals.

Mike LaBounty said he uses the road and has no concern for the safety of children in the neighborhood.

Ms. Berry said there are no retail sales on site as the business wholesales an agricultural product. She said only one vehicle was related to the commercial fishing business and that there are three businesses operating from the site, so each business got a vehicle. She explained that crab shedding is a 24 hour/7 days per week in season. She said they do not display crabs outside because they are perishable and would spoil. She said the equipment stored outside is necessary for the operation of the business. She said Mr. Burch had violation issues, but no other commercial fishermen had received a violation. She said the "Goodness Grows" program exempts commercial fisherman from regulations. She said the BOC and state officials support commercial fishermen.

Ms. Montessi asked Ms. Berry if she and Mr. Burch were business partners.

Ms. Berry said yes, for all three businesses.

Ms. Montessi asked if there was outdoor storage on all three parcels that are being used jointly.

Ms. Berry said yes.

Ms. Montessi asked the hours of operation.

Ms. Berry said crab shedding is around the clock, but normal operations include crabbers dropping of their crabs from approximately 2:00-6:00 p.m. Most purchase bait at that time too, but some come in the mornings to purchase bait.

Ms. McCloud said she has been around crabbing and docks all her life and that bait trucks are seasonal and she has never seen heavy traffic related to commercial fishing.

Mr. Woody clarified that the UDO does not say heavy traffic, but rather regular/ongoing traffic.

Ms. Berry said some of the employees live in the neighborhood, so they'd be coming home anyway during the peak time.

Mr. Palmer asked Ms. Berry to explain the three separate businesses.

Ms. Berry said they run a seafood boat, seafood distribution, and a marine construction business.

Mr. Palmer asked if all of the businesses operated on the lot in question.

Ms. Berry said the three lots are used interchangeably.

The board took a 10 minute recess.

Donnie Burch, the applicant's brother, appeared before the board. Mr. Burch said his brother has been crabbing since he was a kid and that their mom lived on one side of the subject property. He said most crabbers pick up their bait the night before when they drop off their crabs so it has time to thaw. He said when they moved into the neighborhood in 1984, it was just vacation homes. Now there are 9 or 10 houses and that people move in and then complain about what is around them.

Mr. Twifford said he had concern for his family's commercial fishing operation. He said there are a lot of commercial fishermen in the county and this ruling would set precedence. He also thought the Goodness Grows campaign exempted commercial fishermen from the UDO.

Rebecca Hearing said Mr. Burch is encroaching on her property with trash and crab pots and there is a lot of debris in his front yard. She said she had put up with the nuances and odor for years and didn't want to do that anymore.

Ms. Berry asked Ms. Hearing if she had to drive by the lot in question to get to her property and if they had cleaned up the lot once she had complained. She asked if Ms. Hearing had filed any noise or odor complaints with the county.

Ms. Hearing said she did not have to drive by the property to get to her own, but it was a nuisance. She had not filed a complaint with the county.

Watson Stuart said he has been a commercial fisherman in the county for the past 50 years. He said the traffic and noise from jet skis, campground, and airport flight path were more than came from a fishing operation. He said the traffic is no different than a normal house. He said it was hard work being a commercial fisherman and it goes to the heritage of the county. We are just trying to feed people.

Ayden Berry read a letter from a property owner in the neighborhood.

Mr. McRee objected to the author not being present to be cross-examined.

Mr. Palmer upheld the objection.

Pete McClintock said nobody wants to stop Mr. Burch from crabbing. He said this is a residential neighborhood and large trucks come into to pick up crabs and deliver bait along with the other aspects of the business. He sees the trucks on the highway. He said you should not be able to run a commercial business in a residential neighborhood.

Ms. Berry asked Mr. McClintock if he could tell if the trucks were coming from her business or Frog Island.

He could not.

Ms. McCloud asked where Mr. Burch purchased bait and how.

Ms. Berry explained that they buy from a distributor who delivers about twice per week.

Ms. Montessie said those moving in are aware of a crabbing operation in the neighborhood when they purchase their property and she thought the applicant was compliant in selling the product on site.

Chris Marshall said he had crabbed as a teenager each summer. He has lived in the county for 45 years. In 2003, he purchased a home in Woodard Acres and when he brought in the equipment and supplies for his crabbing operations, a neighbor filed a complaint, the county sent a violation notice, and he could not run his business there. He said neighbors should not be able to tell you that you can't have crab pots in your yard.

Dan Visser said he lives directly across the street from the business and had raised his family there since 2004. There was a house with a business on the subject property when he purchased his home, but the business has grown too big for a residential neighborhood. He said there are 8-10 vehicles in the yard each day and maybe only 6 if you do not count the trailers. He said the refrigerator units run 24/7 in the summer. He said the traffic was too much and that he'd tried to work it out, but he couldn't. He used to be friends with the applicant. He is woken up six days per week at 6:00 a.m. He had a petition from the neighbors and asked the board to please protect the residential neighborhood.

The petition could not be submitted as evidence since those who signed it were not there to be cross-examined.

Ms. Berry said a deputy came out and took noise meter readings with the refrigerator units running and there were no noise violations on the property. She asked Mr. Visser to confirm that a noisy truck muffler on their tenant's truck that lives at the subject property started this entire complaint.

Mr. Visser said he had asked the employee/renter to fix the muffler, but that was not what this complaint was about.

Ms. Berry asked why Mr. Visser complained in March and not during their heavy period.

Mr. Visser said that even in the off-season for crabbing, there is still a lot of activity with the bulkheading business.

Mr. McRee asked who lived at 115 Alex Lane.

Mr. Burch confirmed that Terry Overton, employee/renter, lives at 115 Alex Lane and that he lives with Ms. Berry.

Mike LaBounty said he lives across the street from the business and is a commercial fisherman. When he lived in Tulls Bay Colony, he had a bad neighbor who filed a complaint about his crabbing business. The county inspected the property and found no violations. He said he buys his bait from Mr. Burch in the mornings and he has heard Mr. Burch tell another crabber to be quiet as he loads his bait so he doesn't disturb the neighbors. He said there is often no one on site when he picks up his bait.

Ms. Berry asked Mr. LaBounty if the traffic was excessive and ongoing at the subject property.

Mr. LaBounty said it is no more traffic than a daily UPS truck at a single-family dwelling.

Cleveland Robinson said he is never woken up early because of the business activity. He knew what he was moving next door to when he moved into the neighborhood. He said his property value has gone up and that Mr. Burch keeps his stuff neat and there is no odor.

Mr. Palmer closed the public hearing.

Ms. Berry offered a closing statement.

Mr. McRee offered a closing statement. He said the county does not want to shut down commercial fishing. The UDO allows certain uses in certain zoning districts and allows an exception to a business operating in a residential district through the home occupation standards. The applicant is in violation of 6 of the 11 home occupation standards. First, to have a home occupation, you must live in the single-family dwelling. The applicant has testified that he does not live at the subject property, 115 Alex Lane. Alex Lane is not a major arterial. Witnesses have repeated traffic concerns of the comings and goings of different types of vehicles. There is outdoor display of crab pots and equipment and multiple vehicles related to the business parked at the site. The allowance for a home occupation requires that no one in the neighborhood should be able to tell there is a business operating at the location. A home occupation is allowed on the subject property, but it has to meet the standards in the UDO. The notion that the business is exempt from zoning because of the Goodness Grows program is not correct. The products sold by the business are not produced on the property.

The board deliberated on each of the violations separately before taking a vote:

- The home occupation employs no more than one person on the premises who do not reside on the premises.
 - Ms. Berry said that she is an employee and referred to herself as the "dock mom" and the tenant at 115 Alex Lane is an employee. Mr. Palmer mentioned Mr. Burch and the other employees.
- Retail sales of products produced on site shall be limited to lots with street frontage on a major arterial street.
 - Mr. Tabor said Alex Lane is not a major arterial street. Ms. McCloud said there are no retail sales, but rather wholesale sales and that they are selling a

- product produced on site. Mr. Palmer mentioned the sale of bait as an example of retail sales.
- Mr. Gallop read the common definitions of produced.
 - All vehicles used in connection with the home occupation are of a size, and located on the premises in such a manner, so as to not disrupt the quiet nature and visual quality of the neighborhood, and there is no more than one vehicle per home occupation. In no instance shall any vehicle be larger than eight feet by 32 feet be parked, stored, or otherwise maintained at the site of a home occupation.
 - The board agreed that there is more than one vehicle related to the home occupation parked on the property.
 - Home occupations shall not result in regular and on-going vehicular traffic to the home where located.
 - Mr. Tabor said there has been testimony by neighbors of the regular and on-going traffic to the business. Ms. Montessi said more neighbors said traffic was not an issue than said there was an issue. Ms. McCloud said the traffic is not regular and on-going because commercial fishing is seasonal and not a year round operation.
 - The property contains no outdoor display or storage of goods, equipment, or services that are associated with the home occupation.
 - The board agreed that the crab pots constituted outdoor display.
 - The home occupation does not create traffic or parking congestion, noise, vibration, odor, glare, fumes, or electrical or communications interference which can be detected by the normal senses off the premises, including visual or audible interference with radio or television reception.
 - Mr. Palmer said the board had heard testimony of noise and odor being detected by normal senses off the premises. Ms. McCloud said it had not interfered with reception.

Motion

Mr. Palmer motioned to reverse the following administrator's decisions based on the findings of fact in the staff report:

- The home occupation employs more than one person on the premises who do not reside on the premises.
- Retail sales of products not produced on site are occurring on a lot without street frontage on a major arterial street.
- The home occupation results in regular and on-going vehicular traffic to the home where located.
- The home occupation creates traffic or parking congestion, noise, vibration, odor, glare, fumes, or electrical or communications interference which can be detected by the normal senses off the premises, including visual or audible interference with radio or television reception.

And to affirm the following administrator's decisions:

- There is more than one vehicle per home occupation.
- The property contains outdoor display or storage of goods, equipment, or services that are associated with the home occupation.

Ms. Montessi seconded the motion and the motion passed unanimously.

The board directed Mr. McRee to draft the order regarding the hearing.

RESULT:	MODIFY STAFF'S DECISION [UNANIMOUS]
AYES:	Zia Montesi, Board Member, David Palmer, Chairman, Donna McCloud, Board Member, Cameron Tabor, Board Member
ABSENT:	Michael Painter, Vice Chairman, Vivian Simpson, Board Member

ANNOUNCEMENTS

No announcements

ADJOURNMENT

The meeting adjourned at 10:10 PM.

Communication: Board of Adjustment March 9, 2017 minutes (Approval of March 9, 2017 Minutes)



**STAFF REPORT
BOA 17-04
BOARD OF ADJUSTMENT
APRIL 13, 2017**

APPLICATION SUMMARY

Property Owner: Davis Street Holdings LLC PO Box 116 Barco NC 27917	Applicant: Stuart Innes, Manager PO Box 116 Barco NC 27917
Case Number: BOA 17-04	Application Type: Variance
Parcel Identification Number: 0006-000-001V-0000	Existing Use: Vacant
Parcel Size (Acres): 14.86	Zoning: Agricultural (AG)
Variance Requested from the Unified Development Ordinance: Section 3.3.3 Maximum Gross Density and Minimum Lot Size	

STAFF ANALYSIS

This parcel was a part of the former Moyock Garden Nursery and is located on the north side of South Mills Road and adjoins Quail Pointe subdivision to the west. Davis Street Holdings LLC purchased the property on May 22, 2015. To date, the applicant has not submitted a subdivision request for the property, but if he had on the purchase date, he could have yielded approximately 7 lots from the parcel assuming 60% open space and a maximum density of .5 units per acre. The water supply standards at that time required new subdivisions to connect to county water if within a certain formulated distance from an existing water main or provide a performance guarantee at 115% of the cost of materials and labor to install the required infrastructure if outside of the formulated distance. For the 7 lots, the applicant would have been required to pay approximately \$737,600 in performance guarantee and tap fee costs since the subdivision was located beyond the required water connection distance.

On January 20, 2016 the Board of Commissioners amended the UDO by adding a minimum lot size of 30,000 sf and lowering maximum density to .4 units per acre for newly subdivided lots in the AG zoning district. The establishment of a minimum lot size and the reduction in density by .1 units/acre lowered the number of lots this parcel could yield to approximately 5 lots. The applicant would have had to pay approximately \$725,600 in performance guarantee and tap fee costs.

On June 20, 2016 the Board of Commissioners amended the UDO by increasing the minimum lot size to 2 acres and lowering density to .15 units per acre for new major subdivisions outside of the formulated distance for required water system connection in the AG zoning district. The board also removed the performance guarantee requirement and tap fee requirement. This change reduced the number of lots this parcel could yield under the AG zoning district without connecting to county water to approximately 2 lots. It should be noted that the applicant can choose to run a water line at approximately \$696,000 and yield approximately 4 lots under the current regulations without a performance guarantee.

The applicant is requesting a variance to lower minimum lot size from 2 acres to 30,000 sf and to increase maximum density from .15 to .5 units per acre so he can yield approximately 7 lots from this parcel as was the case when he purchased the property in 2015. On the variance application, the applicant states "The property was purchased at a time which required a water deposit fee for county water which did not exist, nor plans for the next 20 years to exist. I hired and paid a surveyor to begin the development process. The then current UDO provided the ability to develop 7 lots with 60% open space. During the process of determining the impact of the water deposit fee the county changed the ordinance to not require fees but greatly reduce the ability to develop. The maximum development potential of the property under current UDO modification is now two lots. The purpose of the delay was at the suggestion of a commissioner who was helping and said commissioner suggested trading the 8 acres of open space to be excused from the water deposit. During same time a local developer created a total of 45 lots, 1 mile away and was granted right to do a community well. I asked if I could same well and was informed the ordinance was changed the next day to not allow further community wells." Staff is concerned the applicant's variance request is asking the Board of Adjustment to legislate zoning district density and lot size requirements that are clearly under the authority of the Board of Commissioners.

It should be noted that the two subdivisions discussed in the applicant's request are Saddlebrook (28 lots; .49 units/acre) and Backwoods Reserve (20 lots; .49 units/acre). Saddlebrook received preliminary plat/use permit approval from the Board of Commissioners on October 6, 2014 and Backwoods Reserve received preliminary plat approval from the Technical Review Committee on August 16, 2014. Both of these vesting plans received approval prior to the 2016 text amendments and both subdivisions installed a community water system and waterlines that met county requirements for the private system.

VARIANCE REVIEW STANDARDS

A variance shall be approved on a finding that the applicant demonstrates the proposed use will meet all of the below requirements. It is staff's opinion that the evidence in the record, prepared in absence of testimony presented at a public hearing, does not meet all of the requirements for a variance based on the below preliminary staff findings:

The alleged hardship is suffered by the applicant as a result of the application of this ordinance.

Preliminary Staff Findings:

1. The hardship **is not** suffered by the applicant because the application of this ordinance establishes a development density and lot size in the AG zoning district that is uniformly applied to the subject property and all AG zoned property in the county.

Applicant Findings:

1. The ordinance was arbitrarily changed without notice or warning to landowners. (*Staff comment: Both text amendments were legally advertised as required by the UDO and General Statute*)
2. The county was insisting on water deposits for water which did not exist nor plans to exist in the 20 year development plan.

The hardship relates to the applicant's land, such as location, size, or topography rather than personal circumstances.

Preliminary Staff Findings:

1. The hardship **does not** relate to the applicant's land, but rather to the timing of the applicant's application submittal.

Applicant Findings:

1. The hardship has been created by staff changing the development procedures while said project was underway. *(Staff comment: The staff did not, nor has the authority to make legislative changes to the UDO.)*

The hardship is unique, or nearly so, rather than one shared by many surrounding properties.

Preliminary Staff Findings:

1. The hardship is **not unique** because all surrounding properties and all properties in the county have to meet current UDO requirements, including lot size and density, regardless of the purchase date of the property unless a vesting plan was approved prior to ordinance changes.
2. Hardships suffered by the applicant in common with neighbors do not justify a variance. The proper remedy is not a variance, but rather an amendment of the ordinance. Courts have held that a board's granting a variance based on such factors amounts to an attempt to usurpation of legislative power.

Applicant Findings:

1. Said property is the only property on the entirety of South Mills Road under planning to be developed.

The hardship is not the result of the applicant's own actions.

Preliminary Staff Findings:

1. The hardship **is** a result of the applicant own actions because he could have submitted a subdivision application and received approval prior to each UDO text amendment.
2. The property is developable without a variance.

Applicant Findings:

1. It is a county ordinance rule for which I had no input or knowledge of.

The variance will not authorize the initiation of a nonconforming use of land; and

Preliminary Staff Findings:

1. The variance **will not** authorize the initiation of a nonconforming use of land.

Applicant Findings:

1. The property shares its westerly boundary with a 30+ lot subdivision, same lot sizes and site built homes.

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

Preliminary Staff Findings:

1. The requested variance **is not** consistent with the spirit, purpose, and intent of this ordinance because:
 - a. At the 2016 BOC Retreat in January, the board directed planning staff to prepare a text amendment that would address the county's water supply and extension standards in areas that are not currently served by the county water supply system and in a way that would preserve the full service development concept.

- b. The amendment had to address areas not currently served by the county water supply system by allowing development in the Agricultural zoning district at a lower density and increased lot size. This would provide a development alternative without connecting to the county water supply system when properties are located beyond the formulated connection distance.
- c. The text amendment would ensure water main extensions occurred in a manner that supported sound fiscal management and economic growth.
- d. The text amendment maintained the connection formula for properties in the AG zoning district and provided an exemption for lots in the AG zoning district located beyond the formulated distance connection requirement. This occurred with a reduction in density allocation and an increase in lots size in order to protect the county's rural character in an effort to promote the installation of utilities in targeted growth areas.

STAFF RECOMMENDATION

Staff recommends **denial** of the variance subject to the following factors:

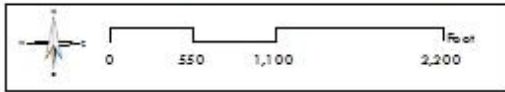
1. According to the Section 2.4.14.E of the UDO, the following factors are not sufficient grounds for approval of a variance:
 - a. The fact that the land or a structure may be utilized more profitably or be more marketable with a variance.
 - b. Financial hardship.
2. The following review standards are not met for a variance based upon the findings of fact above:
 - a. The alleged hardship is suffered by the applicant as a result of the application of this ordinance.
 - b. The hardship relates to the applicant's land, such as location, size, or topography rather than personal circumstances.
 - c. The hardship is unique, or nearly so, rather than one shared by many surrounding properties.
 - d. The hardship is not the result of the applicant's own actions.
 - e. The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that public safety is secured, and substantial justice is achieved.

THE APPLICATION AND RELATED MATERIALS ARE AVAILABLE ON THE COUNTY'S WEBSITE
Board of Adjustment: www.co.currituck.nc.us/board-of-adjustment-minutes-current.cfm

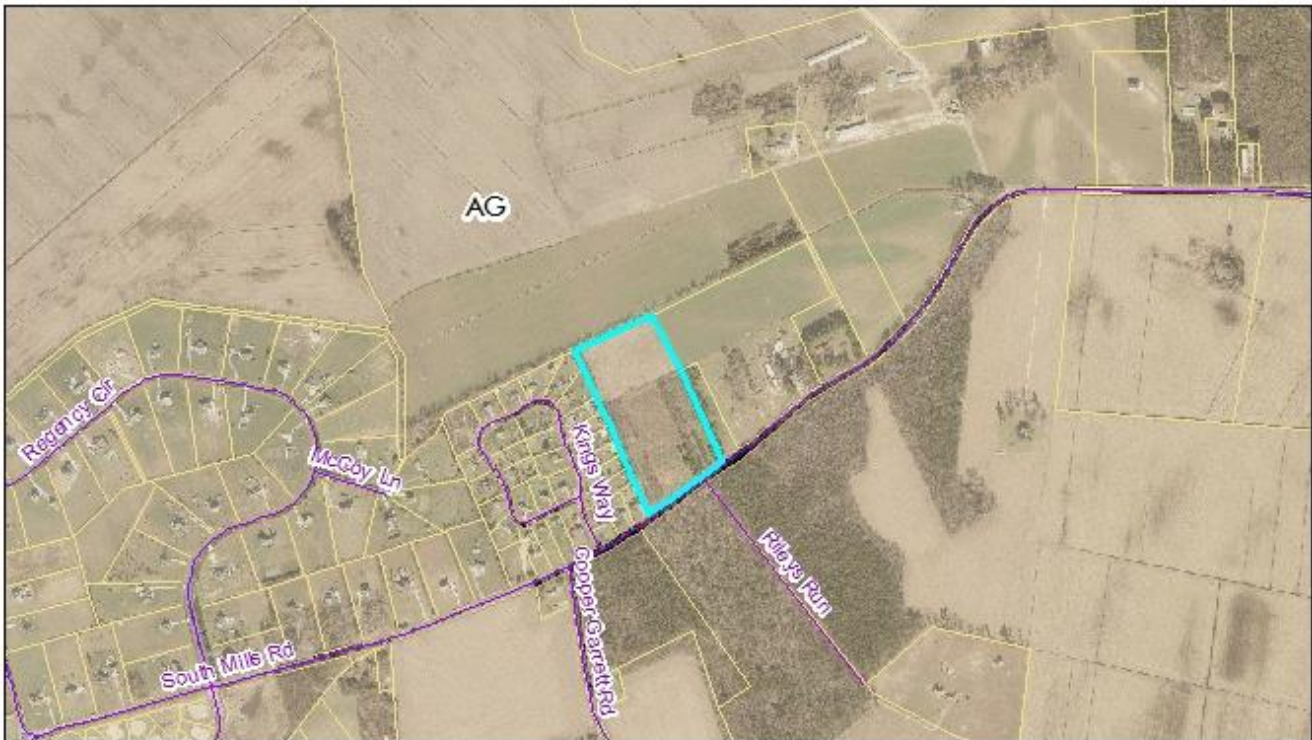
Attachment: BOA 17-04 Stuart Innes Var Staff Report (BOA 17-04 Stuart Innes)



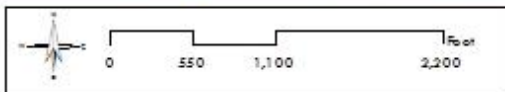
BOA 17-04 Stuart Innes
Variance
2016 Aerial Photography



Currituck County
Planning and
Community Development



BOA 17-04 Stuart Innes
Variance
2016 Aerial Photography



Currituck County
Planning and
Community Development

Attachment: BOA 17-04 Stuart Innes Var Staff Report (BOA 17-04 Stuart Innes)



Variance Application

OFFICIAL USE ONLY:	
Case Number:	_____
Date Filed:	_____
Gate Keeper:	_____
Amount Paid:	_____

Contact Information

APPLICANT:		PROPERTY OWNER:	
Name:	<u>Stuart Innes, Manager</u>	Name:	<u>Davis Street Holdings, LLC</u>
Address:	<u>P.O. Box 116</u> <u>Barco, NC 27917</u>	Address:	<u>P.O. Box 116</u> <u>Barco, NC 27917</u>
Telephone:	<u>252-619-6919</u>	Telephone:	<u>252-619-6919</u>
Fax Number:	_____	Fax Number:	_____
E-Mail Address:	<u>stuartinnes1@gmail.com</u>	E-Mail Address:	<u>stuartinnes1@gmail.com</u>

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Agent

Property Information

Physical Street Address: Lot 2 South Mills Road

Location: Moyock Garden Nursery

Parcel Identification Number(s): 0006000001v0000

Request

I, Stuart Innes, hereby request a variance from Section(s) current of the Unified Development Ordinance.

Provide a narrative of why the variance is needed and what circumstances have lead to the need for a variance:

The property was purchased at a time which required a water deposit fee for county water which did not exist, nor plans for the next 20 years to exist.

I hired and paid a surveyor to begin the development process. The then current UDO provided the ability to develop 7 lots with 60% open space.

During the process of determining the impact of the water deposit fee the county changed the ordinance to not require fees but greatly reduced ability to develop.

The maximum development potential of the property under current UDO modification is now two lots.

The purpose of the delay was at the suggestion of a commissioner who was helping and said commissioner suggested trading the 8 acres of open space to be excused from water deposit.

During same time a local developer created a total of 45 lots, 1 mile away and was granted right to do a community well.

I asked if I could same well and was informed the ordinance was chngaed the next day to not allow further community wells.

Attachment: BOA 17-04 Stuart Innes Var Staff Report (BOA 17-04 Stuart Innes)

Relevant Factors for Issuance of a Variance

A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it makes detailed written findings that:

A. The alleged hardship is suffered by the applicant as a result of the application of the Ordinance. *(Variances can not be granted if the hardship is the result of restrictions other than those of the ordinance; restrictive covenants are an example).*

The ordinance was arbitrarily changed without notice or warning to landowners.
The county was insisting on water deposits for water which did not exist nor plans to exist in the 20 year development plan.

B. The hardship relates to the applicant's land, such as location, size, or topography, rather than personal circumstances. *(Hardships suffered by the applicant should be the result of factors directly related the applicant's land and not ordinance requirements).*

The hardship has been created by staff changing the development procedures while said project was underway.

C. The hardship is unique, or nearly so, rather than one shared by many surrounding properties. *(Hardships suffered by the applicant in common with neighbors does not justify a variance, the proper remedy is not a variance, but rather an amendment of the ordinance. Courts have held that a board's granting a variance based on such factors amounts to an attempted usurpation of legislative power).*

Said property is the only property on the entirety of South Mills Road under planning to be developed.

D. The hardship is not the result of the applicant's own actions. *(Where a property owner has either knowingly or unknowingly violated the ordinance by erecting a forbidden structure, he/she cannot cite expenses as a hardship, otherwise no one would ever comply with the ordinance. Similarly, when a person buys property and certain restrictions exist, he/she cannot be said to suffer hardship if those restrictions are enforced; such hardship would be self imposed).*

It is a county ordinance rule for which i had no input or knowledge of.

E. The variance will not authorize the initiation of a nonconforming use of land. *(State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted will not create a new nonconformity).*

The property shares it's westerly boundary with a 30+ lot subdivision, same lot sizes and site built homes.

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

Further, I hereby authorize county officials to enter my property for purposes of determining zoning compliance. All information submitted and required as part of this application process shall become public record.

BY: [Signature] _____ 3/6/17
Property Owner(s)/Applicant* Date

***NOTE: Form must be signed by the owner(s) of record, contract purchaser(s), or other person(s) having a recognized property interest. If there are multiple property owners/applicants a signature is required for each.**

Owner Verification

If the person who is requesting the Board of Adjustment to take action on a particular piece of property is not the owner of the property, or under contract to purchase, then the actual owner of the land must complete this section. If the owner is the appellant/application please do not complete this section.

Dear Sir or Madame:

I am the owner of the property located at _____

I hereby authorize _____ to appear with my consent before the Board of Adjustment in order to request a variance at the above location. I understand that a variance, if granted, is permanent and runs with the land. I authorize you to advertise and present this matter in my name as the owner of the property.

If you have any questions, you may contact me at the following at the address, phone number, or email address listed on this application.

Respectfully yours,

Owner Date

Sworn to and subscribed before me, this the _ day of _____, 20__.

Notary Public

My commission expires: _____

TRANSFER TAX AMOUNT 1650.0000
DATE/COLLECTOR 5-28-2015 TRF

Doc No: 315315
Recorded: 05/28/2015 01:18:14 PM
Fee Amt: \$26.00 Page 1 of 2
Excise Tax: \$330.00
Currituck County North Carolina
Denise A. Hall, Register of Deeds
BK 1328 PG 106 - 107 (2)

Tax Collector Certification That No Delinquent Taxes
Are Due. Date 7/28/15 By TRF: Certification
expires Jan 6th of the year following certification date.

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax:

Parcel Identifier No: 000600001V0000 Verified by _____ County on the ____ day of _____, 20____
By: _____

Mail/Box to: PENDER & COWARD, P.C., 222 CENTRAL PARK AVE., 4TH FLOOR, VIRGINIA BEACH, VA 23462

This instrument was prepared by: R. MARK WARREN, TWIFORD LAW FIRM, PO BOX 669, MOYOCK, NC 27958 FILE# 9404.07

Brief description for the Index: SOUTH MILLS ROAD

THIS DEED made this 22nd day of May, 2015, by and between

GRANTOR	GRANTEE
MARGARET M. GARRETT, TRUSTEE OF THE MARGARET M. GARRETT REVOCABLE LIVING TRUST DATED 4/23/03	DAVIS STREET HOLDINGS, LLC A North Carolina Limited Liability Co.
672 SOUTH MILLS ROAD MOYOCK, NC 27958	P.O. BOX 116 BARCO, NC 27917

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in MOYOCK Township, CURRITUCK County, North Carolina and more particularly described as follows:

Lot 2 as shown and delineated on that certain plat entitled "Exempt Subdivision Amendment of P.C. H, Slide 122 for Margaret Garrett, Moyock Township, Currituck County, North Carolina" prepared by Hyman & Robey, Land Surveyors, dated September 4, 2002 and revised April 1, 2003 and April 10, 2003 and recorded in Plat Cabinet H, Slide 131, Currituck County Registry.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 705, Page 221.

A map showing the above described property is recorded in Plat Cabinet H, Slide 131.

NC Bar Association Form No. 3 © 1976, Revised © 1/1/2010
Printed by Agreement with the NC Bar Association

Attachment: BOA 17-04 Stuart Innes Var Staff Report (BOA 17-04 Stuart Innes)

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

Noncompliance with any local, county, state or federal government laws, ordinances, or regulations relative to zoning, subdivision, occupancy, use, construction or the development of the subject property.

Easements and Restrictions of Record and 2015 Ad Valorem Taxes.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

(Entity Name) *Margaret M. Garrett* (SEAL)
Print/Type Name: MARGARET M. GARRETT,
TRUSTEE OF THE MARGARET M. GARRETT
REVOCABLE LIVING TRUST DATED 4/23/03

By: _____ (SEAL)
Print/Type Name & Title: _____ Print/Type Name: _____

By: _____ (SEAL)
Print/Type Name & Title: _____ Print/Type Name: _____

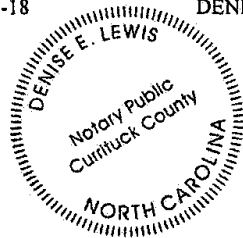
By: _____ (SEAL)
Print/Type Name & Title: _____ Print/Type Name: _____

State of NORTH CAROLINA
County of CURRITUCK

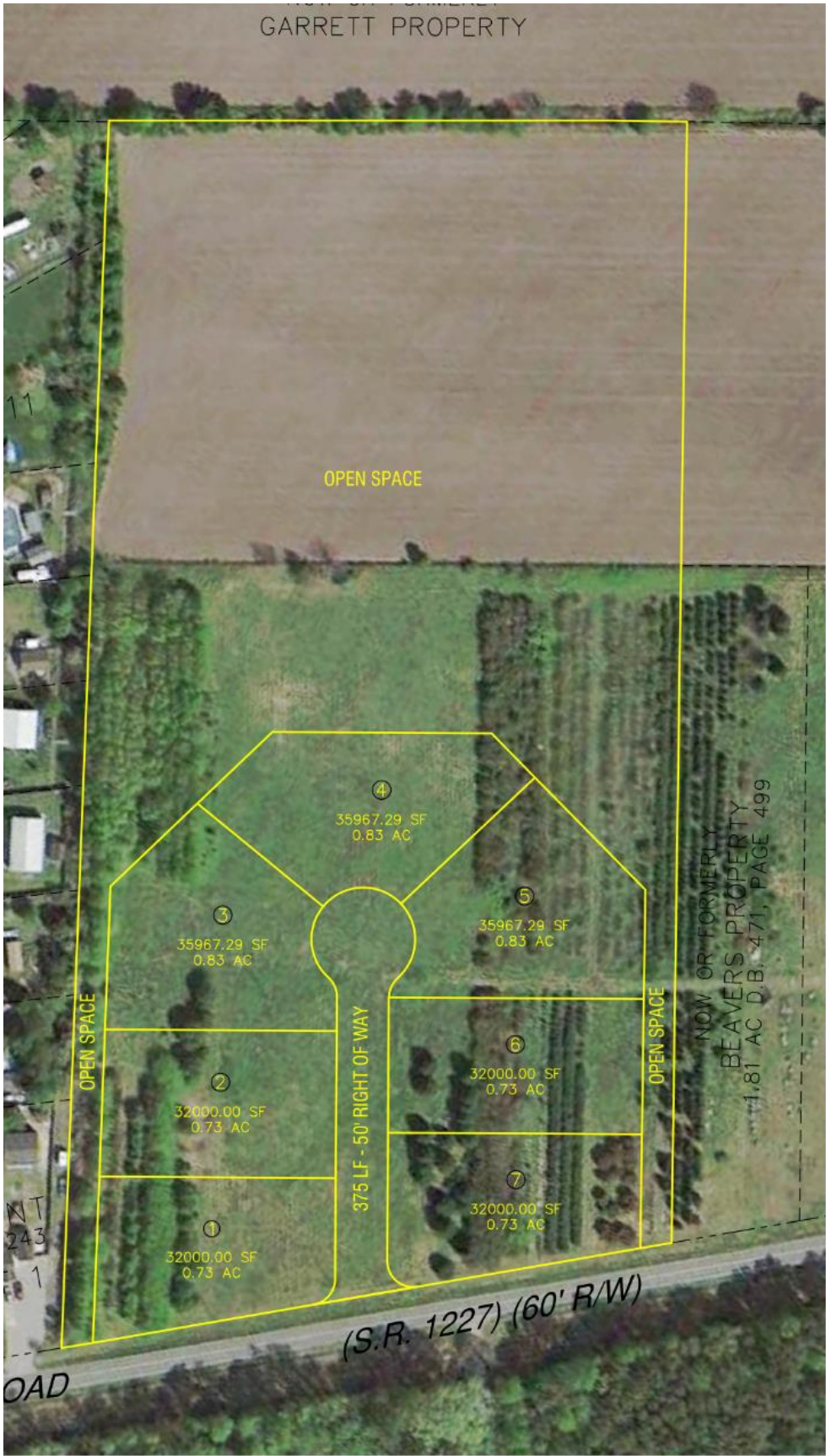
I, DENISE E. LEWIS, the undersigned Notary Public of the County of CURRITUCK and State aforesaid, certify that MARGARET M. GARRETT, TRUSTEE OF THE MARGARET M. GARRETT REVOCABLE LIVING TRUST DATED 4/23/03, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 2nd day of May, 2015.

My Commission Expires: 9-15-18
(Affix Seal)

Denise E Lewis
DENISE E. LEWIS, Notary Public



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