



**CURRITUCK COUNTY  
NORTH CAROLINA**

August 15, 2019

Minutes – Special Meeting of the Board of Adjustment

**CALL TO ORDER - 7:00 PM**

The Board of Adjustment met for a special meeting at 7:00 PM in the Board Meeting Room of the Historic Courthouse, 153 Courthouse Road, Currituck, North Carolina.

Attendee Name	Title	Status	Arrived
Cathy Bontemps	Board Member	Present	
Troy Breathwaite	Board Member	Present	
Steven Craddock	Board Member	Present	
Gregory Hammer	Board Member	Present	
Lynn L. Hicks	Board Member	Present	
Thom Roddy	Board Member	Present	
Laurie LoCicero	Planning Director	Present	
Ike McRee	County Attorney	Present	
Cheri Elliott	Clerk to the Board	Present	
Debbie LaShomb	County Employee Witness	Present	
Lauren Arizaga-Womble	Attorney	Present	
Jerry Lindsey	Applicant	Present	

Chairman Breathwaite called the meeting to order at 7:00 PM and asked the Clerk to the Board, Cheri Elliott, to call roll.

**B Announce Quorum Being Met**

Chairman Breathwaite announced a quorum being met with six board members present: Five regular members and one alternate member. Alternate member, Mr. Hicks, sat in the audience.

**C. Approval of Agenda**

Chairman Breathwaite asked if there were any changes to the agenda. Mr. Craddock motioned to approve as presented. Mr. Hammer seconded the motion and the motion carried unanimously.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>AYES:</b>	Cathy Bontemps, Board Member, Troy Breathwaite, Board Member, Steven Craddock, Board Member, Gregory Hammer, Board Member, Thom Roddy, Board Member

#### **D Approval of Minutes for April 11, 2019**

Chairman Breathwaite asked if there were any changes needed for the April 11th, 2019 meeting minutes. Mr. Craddock motioned to approve as presented. Mr. Hammer seconded the motion and the motion was approved unanimously.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>AYES:</b>	Cathy Bontemps, Board Member, Troy Breathwaite, Board Member, Steven Craddock, Board Member, Gregory Hammer, Board Member, Thom Roddy, Board Member

### **BOA Meeting Minutes - April 11, 2019**

#### **E Ask for Disqualifications**

Chairman Breathwaite reference the State Government Ethics Act and asked if there were any board members having a known conflict of interest with respect to the matter coming to the board tonight. There were no conflicts noted.

#### **OLD BUSINESS**

There was no old business discussed.

#### **NEW BUSINESS**

- A. BOA 19-04 AAPCO & Family Co. - Jerry Lindsey: Jerry Lindsey with AAPCO & Family Co. is requesting a variance on behalf of the property owner, Donald Pitts, for a 2 foot encroachment on the required 20 foot setback for a sun room addition built by SolarTyme, a division of AAPCO. The subject property is located at 135 First View Way, Tax Map 9E, Parcel 22, Moyock Township.**

Chairman Breathwaite swore in all the participants in the public hearing.

Ms. LoCicero presented the case. The Unified Development Ordinance (UDO) requires lots created in the Single Family Residential-Mainland district (SFM) to maintain a 25 foot setback from the rear property line. However, the UDO also states lots in a conservation subdivision shall not be subject to minimum yard setback standards, except as required from major arterial streets, agricultural uses, or wetlands/surface waters. Section 6.4.4.I UDO states the agreed upon setbacks for conservation subdivisions shall be shown on the final subdivision plat in order to assist with the issuance of building permits. The final plat for Moyock Crossing, Phase 1, Lot 22 shows a required rear yard of **20 feet**.

On September 26, 2018 a permit was issued to Solar Tyme, on behalf of the property owner Mr. Donald Pitts, to construct a 12' by 16' sun room addition to the existing dwelling at 135 First View Way, also known as Lot 22, Phase 1, Moyock Crossing. The site plan originally submitted with the permit application was denied because the proposed sun room was

encroaching into the required 20 foot rear setback. A subsequent site plan was submitted which was approved with the following conditions:

1. *Proposed sunroom and curved patio slab shall maintain required minimum setbacks from all property lines, including the required 20' setback from the rear property line.*
2. *As-Built Survey Required*

On March 20, 2019 the required as built survey was submitted showing a 2 foot encroachment into the required 20' foot rear setback.

The applicant is requesting a variance from setback shown on the recorded final plat, effectively reducing the setback to 18 feet.

Chairman Breathwaite had questions concerning the asbuilt and the actual size of the sunroom. Ms. LoCicero said the sunroom is 12' x 16' on the final asbuilt.

Chairman Breathwaite asked what is the purpose of the 20' setback. Ms. LoCicero said it is part of a 15' drainage and utility easement.

Ms. Bontemps asked what the normal setback is in the County. Ms. LoCicero said 25' is the normal setback, but there is flexibility for conservation subdivisions trying to conserve wetlands. Ms. LoCicero said the developer established the 20' setback.

Ms. Bontemps questioned whether a developer could have a 10' setback. Ms. LoCicero said that is not allowed. She said 20' is usually for the main structure and 10' would be for a pool.

Mr. Craddock said the higher the density the shorter the setback. Ms. LoCicero said she would agree with that statement.

Ms. Bontemps questioned why asbuilts are done after the building is complete. Ms. LoCicero said we must do this to make sure they adhered to the rules. The asbuilt shows as it is built.

Mr. Roddy asked is Shingle Landing was on a major arterial street. Ms. LoCicero said it is not.

Board discussion was held on why the applicant shifted the sunroom to the left side.

Ms. Arizaga-Womble suggested it was time to call a witness.

Mr. McRee called his first witness, Debbie Lashomb to the stand. He asked her to explain her job duties with Currituck County and how she was involved with this case. Ms. LaShomb said she denied the first permit request due to the sunroom being on the setback. Ms. LaShomb placed the permit on hold and called Charity with the applicant's company to asked them to show a site plan that complies with the setbacks. Ms. LaShomb said they resubmitted, shifting the sunroom to the right with the building still being 12' x 16', but the setback showed 20' and when there is 1' or less to the setback, we require an asbuilt. Ms. LaShomb said the Planner, Jason Litteral, talked to the applicant after the encroachment was found.

Mr. Hammer asked about the consequences to the land owner. Ms. LoCicero said they have to come into compliance and will have to eliminate the corner of the building to meet the setback requirement. Mr. Hammer asked if this is something that has happened before. Ms. LoCicero said this has happened before.

Ms. LaShomb clarified that she had noted on the site plan for the setback to be met and an asbuilt would be required.

Mr. Craddock asked if they have to change the roof. Ms. LoCicero said a 3' encroachment is allowed for eaves of a building.

Mr. McRee said the County rests it's case.

The Applicant, Jerry Lindsey with AAPCO & Family Co., came before the board. He said there was an error on their part and I also said this in an email. He admitted to the wrong doing, but thought they had the proper setbacks. He said they moved the building to the left to try to meet the requirements, but he could not cover up the window because it is an egress and also the door. He said if they have to cut the corner of the sunroom off that would be a hardship since it is a prefab sunroom. He said the encroachment is very minor and was a miscalculation on our part.

The board asked the applicant questions and the applicant showed pictures of the finished sunroom.

Ms. Arizaga-Womble asked the Clerk to the Board to not the following exhibits: County 1, pages 20-31 and Applicant 1, 4 photos and 1 asbuilt.

Ms. Bontemps asked if the County measures the setbacks and the applicant said they did not.

Mr. McRee had no questions for the applicant.

Chairman Breathwaite asked if the board had questions for the County.

Mr. Roddy asked what does the County want to do. Ms. LoCicero said we need compliance. Mr. Roddy asked if they have to tear down the structure and Ms. LoCicero said they only have to fix the part that is encroaching.

Mr. Roddy said he believe the County should have an employee measure and check before and during the construction for setbacks. Mr. Craddock said if an applicant knows they are that close to the setback, they should have the responsibility to hire a surveyor to check the setbacks to make sure they are in compliance. Mr. Craddock asked Ms. LaShomb if this is something other applicants do and she said yes.

Chairman Breathwaite said he is bothered by having to make this decision and wishes there was another option, but there is not. He reminded the board members that there are approval standards that have to be met in order to approve a variance. Number 4 review standard says the hardship cannot be the result of the applicant's own actions and they do not meet this requirement.

Mr. Craddock said if we approved this tonight, it would set a precedent for the contractors to accidentally make this same mistake and know that they could get a variance.

Ms. Bontemps said she has a problem with being able to have a shed closer to the property line than a house. Chairman Breathwaite said that would have to be changed through the Unified Development Ordinance (UDO), but we have to enforce the rules as they are now.

Ms. Arizaga-Womble explained legislature and enforcing it and said we are not here tonight to change the existing rules.

Mr. Roddy said the hardship is going to be suffered by the property owner and not the applicant. Ms. Arizaga-Womble said the land owner is responsible for making sure the rules are followed even if they hire a contractor to work on their property.

Mr. Craddock motioned to deny the variance request since it does not meet all six of the variance rules. Mr. Breathwaite amended the motion by saying rule #1 was suffered, but beyond that the hardship has not been met. Mr. Craddock accepted the amended motion. Mr. Hammer seconded the motion and the motion carried unanimously.

<b>RESULT:</b>	<b>DENIED [UNANIMOUS]</b>
<b>AYES:</b>	Cathy Bontemps, Board Member, Troy Breathwaite, Board Member, Steven Craddock, Board Member, Gregory Hammer, Board Member, Thom Roddy, Board Member

## **ANNOUNCEMENTS**

There were no announcements.

## **ADJOURNMENT**

Mr. Roddy motioned to adjourn the meeting. Mr. Craddock seconded the motion and the meeting adjourned at 8:10 PM.



**CURRITUCK COUNTY  
NORTH CAROLINA**

April 11, 2019  
Minutes – Regular Meeting of the Board of Adjustment

**CALL TO ORDER**

The Board of Adjustment met in a regular session at 7:00 PM in the Board Meeting Room of the Historic Courthouse, 153 Courthouse Road, Currituck, North Carolina.

**A Oath of Office - Steven Craddock & Lynn Hicks**

The agenda was amended to exclude this item since the Oath of Office for Steven Craddock and Lynn Hicks was performed by the Clerk to the Board, Cheri Elliott (Notary), before the meeting.

Attendee Name	Title	Status	Arrived
Cathy Bontemps	Board Member	Present	
Troy Breathwaite	Board Member	Present	
Steven Craddock	Board Member	Present	
Gregory Hammer	Board Member	Absent	
Lynn L. Hicks	Board Member	Present	
Thom Roddy	Board Member	Present	
Lauren Arizaga-Womble	Board of Adjustment Attorney	Present	
Ike McRee	County Attorney	Present	
Laurie LoCicero	Planning Director	Present	
Cheri Elliott	Clerk to the Board	Present	
Thomas H. Johnson, Jr.	Attorney for Applicant, 85' and Sunny, LLC	Present	
Lauren E. Fussell	Attorney for Applicant, 85' and Sunny, LLC	Present	
Thomas P. Nash, IV	Attorney for Waterlily Protection Association	Absent	

Chairman Breathwaite called the meeting to order at 7:01 PM and asked the Clerk to the Board, Cheri Elliott, to call roll.

**B Announce Quorum Being Met**

Chairman Breathwaite announced a quorum being met with four regular members present and one alternate member present.

**C. Approval of Agenda**

Chairman Breathwaite asked if there were any necessary changes to the agenda tonight.

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Mr. Craddock motioned to amend the agenda by removing Section I. Call to Order, Item A. Oath of Office since it was already performed before the meeting. Ms. Bontemps seconded the motion and the motion carried unanimously.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>AYES:</b>	Cathy Bontemps, Board Member, Troy Breathwaite, Board Member, Steven Craddock, Board Member, Lynn L. Hicks, Board Member, Thom Roddy, Board Member
<b>ABSENT:</b>	Gregory Hammer, Board Member

**D Approval of Minutes for January 10, 2019**

Chairman Breathwaite asked if all board members have reviewed the minutes of January 10, 2019 and the board members in attendance nodded yes.

Chairman Breathwaite asked if there were any changes necessary to the meeting minutes. Mr. Roddy motioned to approve the meeting minutes as presented. Mr. Craddock seconded the motion and the motion carried unanimously.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>AYES:</b>	Cathy Bontemps, Board Member, Troy Breathwaite, Board Member, Steven Craddock, Board Member, Lynn L. Hicks, Board Member, Thom Roddy, Board Member
<b>ABSENT:</b>	Gregory Hammer, Board Member

**A. BOA Meeting Minutes January 10, 2019**

**E Ask for Disqualifications**

Chairman Breathwaite referenced the State Government Ethics Act and asked if there were any board members having a known conflict of interest with respect to the matter coming to the board tonight. Mr. Craddock said he and his wife had stayed at the Hampton Lodge Campground on April 29, 2016 for one night, but this would not have an influence on his decision.

Lauren Arizaga-Womble also disclosed the law firm she works for, Twiford Law Firm, had previously represented Mr. Pappas. She gave this disclosure to Mr. Pappas and all representing attorney's prior to the meeting without any objections from them. Ms. Arizaga-Womble also consulted with the State Bar to confirm this was not a conflict of interest.

**OLD BUSINESS**

There was no old business discussed.

**NEW BUSINESS**

Lauren Arizaga-Womble addressed the Waterlily Association's Motion to Intervene with Thomas P. Nash, IV, Trimpi & Nash LLP, representing them. According to the Currituck County Unified Development Ordinance (UDO), Mr. Nash may make this representation, but the

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applicant reserves their right to objection relating to formal legal standing. Both Mr. Johnson and Mr. Nash agreed to these terms.

Chairman Breathwaite swore in all participants for public hearing case BOA 19-02 Hampton Lodge Campground.

**A. BOA 19-02 Hampton Lodge Campground: Williams Mullen is appealing a Letter of Interpretation dated January 7, 2019 on behalf of property owner 85' and Sunny, LLC for a non-conforming campground located at 1631 Waterlily Road, Coinjock.**

Chairman Breathwaite introduced the public hearing case.

Lauren Arizaga-Womble, the Board of Adjustment Attorney, presented a summary to the board members. She reviewed the training board members received by the prior Board of Adjustment Attorney, Ben Gallop, and reminded the board members that quasi-judicial cases must be decided on the facts as they are represented by law which is the Currituck County Unified Development Ordinance (UDO) and their decisions should not be made according to opinions or feelings. Also, the evidence considered must be under oath and must be relevant.

Ike McRee, Attorney for Currituck County, called his first witness. Laurie LoCicero, Currituck County Planning and Community Development Director, took the stand and Mr. McRee began his direct examination. Ms. LoCicero said an Interpretation Application was received from 85' and Sunny, LLC dated August 30, 2018 asking for the number of campsites that existed at Hampton Lodge Campground on January 1, 2013 and if modification to Hampton Lodge Campground shown on the applicant's site plan submitted in the summer of 2018 are permitted.

Mr. McRee asked Ms. LoCicero how she researched to find the history of Hampton Lodge Campground from the beginning to present time in relation to all amended UDOs. Ms. LoCicero said the first interactions between the County and Hampton Lodge Campground was a septic permit issued May 1967 for a bath house, a septic permit issued June 1967 for a trailer and a septic permit issued August 1969 for six camper spaces. On October 7, 1971, county-wide zoning was adopted that included the Hampton Lodge property. Under this zoning ordinance and Official Zoning Map campgrounds were permitted in the Recreational Residential (RR) Zoning District with the following requirements:

- A preliminary plat submitted to the Planning Board with each camp application for tent sites and camping trailers
- Minimum 6 acres of land
- 3,000 square feet for each tent and camping trailer space
- 200' setback for buildings, tent spaces or trailer spaces from any property line maintained as a natural buffer
- Maximum 400' distance for drinking water, toilet facilities
- Maximum 1500' distance to wash-houses; does not apply where community water and sewer connections are provided
- Campgrounds allowed in Flood Plain district with a conditional use permit with the same regulations as above

Mr. McRee asked Ms. LoCicero if she was able to find any documentation to show Hampton Lodge Campground complied or submitted any of the October 1971 zoning ordinance requirements and Ms. LoCicero responded she had not.

Mr. McRee asked Ms. LoCicero upon these findings was Hampton Roads Campground considered non-conforming in 1971 and Ms. LoCicero responded they were nonconforming at the time.

Mr. McRee asked Ms. LoCicero if she was able to find anything else in your research and Ms. LoCicero said she found Minutes from the March 20, 1973 meeting of the Currituck County Board of Commissioners showing the Board of Commissioners discussed a request by Action Development, Inc. for a sub-division plat for Hampton Lodge. The unrecorded draft plat found in the county's archive shows a camper subdivision that required installation of certain infrastructure. The board determined that the camper subdivision plat would not be approved until posting of a required bond and compliance with all other requirements and procedures of the Currituck County Subdivision and Zoning Ordinances. Action Development, Inc. did not complete the process required for approval of a camper subdivision and no further action was taken on the Action Development, Inc. camper subdivision application.

Mr. McRee asked Ms. LoCicero if that application or plat were ever approved and Ms. LoCicero said the application was not approved, nor was the plat approved.

Mr. McRee asked Ms. LoCicero if she recalled how many camper sites were shown on that plat and she said well over 700 campsites.

Mr. McRee asked for the next items found in her research. Ms. LoCicero said numerous septic permits were found for the time period governed by the 1971 Currituck County Zoning Ordinance which were issued in April 1972, July 1972, August 1972 for total of 124 camper spaces. Also, a septic permit was issued in May 1973. Ms. LoCicero said the next research item she found was when the Currituck County Board of Commissioners enacted the 1975 Zoning Ordinance and Official Zoning Map effective date of January 1, 1975. Under the 1975 Zoning Ordinance, camping was a permitted use of property only in recreation campgrounds located in the Recreational Residential (RR) Zoning District which Hampton Lodge Campground was located within.

Mr. McRee asked Ms. LoCicero if there were any additional requirements to become a conforming campground and Mr. LoCicero said there were the following conditions required:

- Minimum 10 acres under single ownership
- 3000 square feet per camper space
- 8% of total acreage be devoted to recreational area; 50% of that acreage be active recreation

Mr. McRee asked Ms. LoCicero if a conditional use permit was also required along with the conditions and she said yes.

Mr. McRee asked Ms. LoCicero if she had found anything in the records showing Hampton Lodge Campground had applied for this conditional use permit. She said on October 29, 1975 a conditional use permit was issued for Hampton Lodge in a Currituck County Board of Adjustment case. The Board of Adjustment case was started as an appeal of the Currituck County Code Enforcement Officer's determination prohibiting the upgrade of twelve camp

sites. The minutes from the October 29, 1975 Board of Adjustment meeting recorded the applicant wanted “to upgrade the twelve waterfront lots by addition of septic tank systems to provide sewage disposal for those sites” at Hampton Lodge.

Mr. McRee asked Ms. LoCicero if she was able to determine, if any, action was taken by the Board of Adjustment. She said they approved the twelve camp sites with a condition of a required submission of a plat for the twelve camp sites to the Currituck County Code Enforcement Officer and the twelve sites must be in conformity with the 1975 Zoning Ordinance. Ms. LoCicero referenced that site plan on the PowerPoint Presentation and showed the location of the campsites. She said they had determined at that time there were 101 campsites by using the site plan that was provided by Hampton Lodge.

Mr. McRee asked Ms. LoCicero if there were any other issuance of building and septic permits during this time frame of the 1975 Zoning Ordinance and Official Zoning Map. Ms. LoCicero said a septic permit for a modular home was issued in 1978 and a building permit for electrical service to fourteen campsites was issued in 1981.

Mr. McRee asked Ms. LoCicero if there was another updated Zoning Ordinance and Official Zoning Map enacted by the Currituck County Board of Commissions. Ms. LoCicero said the zoning ordinance was updated with an effective date of November 15, 1982. Under the 1982 Zoning Ordinance, the RR-30 Residential/Recreational Zoning District was created. The RR-30 Zoning District was described as containing some existing camp grounds and camper subdivisions and is retained for the purposes of regulating these existing uses and is not intended that this district be expanded. Recreation campgrounds were still permitted uses in the RR-30 district with a conditional use permit meeting the following conditions:

- Minimum 10 acres under single ownership
- 3000 square feet per camper space
- 8% of total acreage be devoted to recreational area; 50% of that acreage be active recreation

Ms. LoCicero said there is no evidence in county archives that Hampton Lodge applied for or received a conditional use permit under the 1982 Zoning Ordinance and for the time period governed by the 1982 Zoning Regulations, there are records of the following building and septic permits:

- September 1983: Building permit (#5625) rewire *existing* campsites
- March 1984: Building permit (#0122) new 200 amp service and rewire for 18 *existing* campsites
- June 1984: Building permit (#0362) new service at *existing* campsites rewire 26 *existing* campsites
- December 1986: Building permit (#1981) electrical upgrade to 200 amp waterfront

Mr. McRee said the next Unified Development Ordinance was effective April 2, 1989 and asked Ms. LoCicero if this is correct. Ms. LoCicero said that is correct. Mr. McRee asked what was required for the campgrounds in this ordinance and Ms. LoCicero said a special use permit was required and once again the Residential Recreation (RR) Zoning District was designated in the UDO and described as “designed to provide for some existing campgrounds and camper subdivisions and is retained for the purposes of regulating these existing uses and it is not intended to be expanded” except in certain cases. On May 18, 1992, the purpose for the RR Zoning District was amended to provide that the RR Zoning

District was “not intended to be expanded except in cases where: a) and existing property containing an RR designation is split by zoning lines; b) the expansion only occurs within lot boundaries as such boundaries existed as of April 2, 1989; and, c) the campground/camper subdivision shall meet all criteria established in Article 14 (Conditional and Special Uses) in addition to not exceeding an overall maximum density of 4.5 unit (included campers and motel room) and beds (included group sleeping quarters) per acre.” A use permit was required with the following conditions:

- Minimum 10 acres under single ownership
- 3000 square feet per camper space
- 8% of total acreage be devoted to recreational area; 50% of that acreage be active recreation

Ms. LoCicero said there is no evidence in county records that Hampton Lodge applied for or received a use permit under the 1989 UDO. There was one building permit issued in February 1990 for a 200 amp electrical service on A lots.

Mr. McRee asked about the next revision of the UDO in 1992 and Ms. LoCicero said it as effective on November 16, 1992. The Residential Recreation (RR) Zoning District was a designated zoning district created for the purpose of existing campgrounds and once again was not intended for expansion and a special use permit with the following conditions:

- Minimum 10 acres under single ownership
- 3000 square feet per camper space
- 8% of total acreage be devoted to recreational area; 50% of that acreage be active recreation

Mr. McRee asked Ms. LoCicero if she was able to find an issuance of the required special use permit. Ms. LoCicero said not for the required special use permit, but in April 1996 Hampton Lodge was issued a conditional use permit for an outdoor concert special event. The Board of Commissioners action on the outdoor concert special event use permit was the first consideration of a land development request, other than building and septic permits for this property, since 1975.

Mr. McRee asked if this permit was for a land development use or something else. Ms. LoCicero said it was for something else and it was a temporary use permit for the applicant to hold an outdoor concert.

Mr. McRee asked if there was a map submitted with this application for the temporary use permit for the concert and Ms. LoCicero said there was a site plan submitted that showed 234 campsites. She also said a zoning permit was also required for the special event and the plan associated with the zoning permit application illustrated 90 vehicular parking spaces for the event on a grassed area on the west side of the gravel road. Ms. LoCicero showed the tent camping area that was illustrated on the site plan and said it was the only area labeled as tent camping. Again in March 1997 another special event permit was issued for the same similar use and that site plan illustrated 234 camp sites as well.

Mr. McRee asked for the next instance of a record for Hampton Lodge and Ms. LoCicero said in January 1998 the Board of Adjustment issued a decision on an appeal of an administrative decision regarding the property due to the Code Enforcement Officer determining numerous additions were made to campers in violation of the UDO; the property owner appealed that decision. In the record of the case, staff found a list of 32 campsites

that obtained permits for screened in porches. For the time period governed by the 1992 UDO, numerous septic repair permits were issued.

Ms. LoCicero said the next UDO was effective December 2007 with the same Residential Recreation (RR) Zoning District not intended to be an expansion a designated zoning district that was described as "not intended to be expanded except in certain cases. Private campgrounds were permitted in the RR Zoning District with a special use permit and with the following conditions:

- Minimum 10 acres under single ownership
- 3000 square feet per camper space
- 8% of total acreage be devoted to recreational area; 50% of that acreage be active recreation
- Maximum camper size and platform requirements

The 2007 UDO also included language governing platted camper lots for existing camper subdivisions. During the time governed by the 2007 UDO, Hampton Lodge did not make application for any land development permits and there is no evidence that septic or building permits were issued.

Mr. McRee asked if the UDO changed after 2007. Ms. LoCicero said it did effective date of January 1, 2013. This UDO removed private campgrounds as a permitted use and the Residential Recreation (RR) Zoning District was eliminated. All existing private campgrounds became non-conforming uses and subject to a special section of the UDO. As a private campground, Hampton Lodge became a legal non-conforming use subject to the general and specific standards of Chapter 8 of the UDO.

Mr. McRee asked Ms. LoCicero if she was able to find at any time from 1971 until today that Hampton Lodge Campground's property has ever been a conforming use and Ms. LoCicero said no, since 1971 Hampton Lodge has never followed through with any action to make it conforming to either the zoning ordinance or the Unified Development Ordinance.

Mr. McRee asked if Ms. LoCicero was able to determine the total number of camp sites according to the electrical permits and/or septic system permits that were issued from 1967 to the present time from reviewing all the documentation. Ms. LoCicero said they determined 190 camp sites through the total electrical and septic permits, but they had increased the number to 234 campsites by using the site plans that were submitted for the 1996 and 1997 special event concert held on the property.

Mr. McRee asked if the tent site number could be determined and Ms. LoCicero said it could not be determined since specific sites were never listed on any documentation showing the 3,000 square feet delineation for each tent site.

Mr. McRee asked Ms. LoCicero if she was able to visit Hampton Lodge Campground and asked for her description of the campground. Ms. LoCicero said she visited the campground June 2018; the tent site area was designated with a single sign and the area had a few picnic tables and water spigots spaced throughout. She said the location of the area was the same as shown on the 1996 and 1997 site plan previously submitted by the campground.

Ms. LoCicero concluded her witness testimony for the first question requested by the Application for Interpretation made by 85' and Sunny, LLC, specifically the number of

campsites that existed at Hampton Lodge on January 1, 2013, per Section 8.2.6B of the Currituck County Unified Development Ordinance (the 2013 UDO), saying, after reviewing all documentation and making a site visit, she found the 1996 and 1997 site plans submitted by Hampton Lodge Campground to have the correct number of 234 campsites and an area permitted for tent campsites existed on January 1, 2013.

Mr. McRee asked Ms. LoCicero how she came to the conclusion of the second requested question, specifically, "Are the modifications shown on the Sight Plan permitted under Section 8.2.6.A(5) of the UDO?" on the Application for Interpretation made by 85' and Sunny, LLC. Ms. LoCicero said she determined a building already needed to exist on the property in order to be modified and additions could not be made such as swimming pools, snack bars, etc. She made this decision based on the 2013 UDO and also by defining the term "modification" by using Black's Law Dictionary and also Merriam-Webster's dictionary. She said non-conforming uses are allowed to maintain their existing buildings, according to the 2013 UDO, Section 8.2.1, to keep them in good working order provided the minor repair does not extend, expand, or enlarge the non-conforming aspect. Although, Ms. LoCicero said she did determine the existing facilities could be modified such as the restroom facilities, piers, docks, bulkheads, camp store, and other recreation facilities; the new facilities listed in the application, such as the new bathroom facilities, swimming pool, pool house, etc., are not permitted. Mr. McRee had no further questions.

Chairman Breathwaite asked for questions from the board. He asked why Pier 8 was shown as a non-conforming. Ms. LoCicero said it is a non-conforming structure because it didn't exist before 2013; it was built after 2016 and was not permitted by CAMA. Mr. Craddock asked if there has been an order to remove the pier and Ms. LoCicero said we had an order for them to remove it, but the applicant included it in this appeal so the order was stayed for any enforcement action, also, there was a violation made by CAMA and the property owner came into compliance.

Mr. Roddy asked about the campground advertising as KOA and Ms. LoCicero said this is the same campground.

Chairman Breathwaite asked for clarification on non-conforming uses and the purpose and intent of Section 8 of the UDO. Ms. LoCicero said non-conforming uses do not fit with their neighboring areas; they can exist, but limits modifications and expansions. Ms. Bontemps asked if it is the County's intent is to not have campgrounds. Ms. LoCicero said that is the intent as of the 2013 UDO.

Chairman Breathwaite asked questions concerning the maps and the square footage of the tent area. Ms. LoCicero said the hand drawn map has not been brought into scale, but they believe the tent area to be approximately 3/4 acre said she will delineate a number of tent sites bases on the 3,000 per square foot condition for each site in the designated tent area as shown on the 1996/1997 maps.

Board discussion was held over Code Enforcement and why the campground never came into compliance with the conditions of the UDO. Ms. LoCicero said she could not speak to the past, but code enforcement is enforced under her tenure. She said, as of recent, code enforcement is more proactive and not just complaint driven.

Mr. Hicks asked about violations in the water, such as piers and if the County had the authority to inspect those issues. Ms. LoCicero said the County works with CAMA and they give us the authority to inspect.

Ms. Arizaga-Womble instructed Chairman Breathwaite to give the applicant's attorneys time to cross examine and then Mr. McRee will follow up.

Tom Johnson with Williams Mullen began his cross examination of Ms. LoCicero.

Mr. Johnson asked Ms. LoCicero to confirm that a non-conforming use is a use that may have predated any zoning ordinance and still be allowed to remain in effect without issuance of a violation. Ms. LoCicero confirmed his statement was true as a general rule as long as no expansion occurred.

Mr. Johnson referenced the 2013 UDO, Section 8.1.1, and said this section says the purpose and intent of this chapter is to regulate and limit the continued existence of those uses, structures, lots of record, etc., but in 2013 the Board of Commissioners decided to enact 8.2.6 Nonconforming Campgrounds. He verified with Ms. LoCicero that most nonconforming uses do not have a special section within the UDO. He referenced A.(5) within this section and stated "Modifications to existing campgrounds are permitted provided the changes do not increase the nonconformity with respect to number of campsites that existed on January 1, 2013." Ms. LoCicero confirmed this is how the ordinance reads. He stated that Ms. LoCicero had used the term structure when referencing this section in her Letter of Interpretation instead of campground and Ms. LoCicero confirmed his statement. Mr. Johnson asked if Hampton Lodge had ever submitted any information to bring them into compliance with the current or previous UDO and Ms. LoCicero said they had not. Mr. Johnson also asked Ms. LoCicero about previous building permits, electrical permits and septic permits and she confirmed they were issued.

Thomas Nash with Trimpi & Nash LLP introduced himself as the attorney for the Waterlily Protection Association and began his cross examination of Ms. LoCicero.

Mr. Nash asked Ms. LoCicero if she had used the entire Chapter 8. Nonconformities of the UDO to make her interpretation and not just section 8.2.6 Nonconforming Campgrounds. Ms. LoCicero confirmed she had used the entire Chapter 8. Nonconformities for both the general and specific sections. Mr. Nash gave an example of how the interpretation would be incorrect if only using one section within the chapter and concluded his cross examination.

Mr. McRee began his redirect examination of Ms. LoCicero.

Ms. LoCicero confirmed the number of campsites started at six in 1971 and expanded to 101 campsites by 1975. She said they are now at 234 campsites and never were brought into conformity with the UDO.

Mr. Johnson began his recross examination of Ms. LoCicero.

Ms. LoCicero confirmed the 234 campsites were the campsites that use electric and septic, but does not include the tent sites.

Mr. McRee introduced Exhibit 1 (County) - Board of Adjustment Agenda Packet - April 11, 2019 and Exhibit 2 (County) - Extracted Sections from 1971 Zoning Ordinance through 2013 Unified Development Ordinance (certified as true copies by Leeann Walton, Clerk to the Board of Commissioners. Mr. Johnson allowed the introductions as evidence.

Mr. Johnson began his presentation and overview stating Williams Mullen was retained by the Applicant in 2018 shortly after their purchase of the property to help determine the number of campsites as of 2013 and help with the interpretation of UDO section 8.2.6. Nonconforming Campgrounds. Mr. Johnson referenced Pier 8 and how CAMA had found this and directed the County to look into it. He also said the Letter of Determination did not state a number of tent sites. Mr. Johnson said their interpretation of UDO section 8.2.6.A.5 allows modification to existing campgrounds provided it does not increase the number of campsites and they believe this does not apply to structures - meaning additional structures built after 2013, not did not exist before are allowed. He said his clients are looking to modernize the campground to make it more consistent with current campgrounds and that would require building additional structures.

Mr. Johnson introduced three witnesses: James Baeurle, Operator for 85' and Sunny LLC, for knowledge of the intentions for the new campground; Warren Eadus, President of Quible & Associates, for his work on maps for the campground; and Lucky Pappas, former owner of Hampton Lodge Campground, owned the campground for over 40 years.

Mr. Johnson turned the presentation over to his associate, Lauren Fussell, for her examination. Ms. Fussell called the first witness, James Baeurle, to the stand.

Mr. Baeurle said he is the Director of Development for Bluewater Development and has been in the hospitality business for 30 years. He has developed six completed campgrounds from Maine to North Carolina with the estimated size usually 400 to 500 RV sites and 600 sites when including tent sites. Five campgrounds are currently under development range from 500 to 900 campsites. He said they want to modernize Hampton Lodge Campground. He explained the different options offered in their campgrounds including seasonal 90 day maximum camping and short term for 2 to 3 days. He said they have made a big clean-up to Hampton Lodge by removing campers that were staying there illegally and removing old structures. He said they take pride in their campgrounds, maintain a high standard for customer satisfaction and try to provide all the amenities that modern campers want. Ms. Fussell referenced a photo of a bathhouse and asked Mr. Baeurle for information on this. He said this is an example of one of our bathhouses we provide and we try to locate them within 400 feet of all campsites. Ms. Fussell asked if they have plans to increase the size of the current bathhouse on the property and Mr. Baeurle said yes, in order to meet our standards the bathhouse needs to be larger. Mr. Baeurle said they also want to install a pool that would only be accessible to campers only and research shows a pool existed on the property in the 1950's and early 1960's. Ms. Fussell showed pictures of two pools located at campgrounds owned by Bluewater Development. Mr. Baeurle described the holding tank to be put onsite that would create water pressure and would not deplete from the County Water. He also described a snack bar, care keeper's cabin, etc. for future plans. He said they expect the acreage of Hampton Lodge Campground to yield 600 campsites.

Chairman Breathwaite asked for questions from the board.

Chairman Breathwaite asked Mr. Baeurle if he knew the number of visitors to the campground in 2012 and he said he did not since there was limited financial information from Mr. Pappas but they had interviewed people from the stargazers group and employees of the campground that said there has been many times that 400 to 500 people were camping there per one event. Other various questions were asked by the board members concerning the expected number of campsites and the intent for the additional upgrades.

Mr. Roddy asked if Bluewater Development is KOA and Mr. Baeule said there is a partnership and they had fully intended to operate as a KOA this season, but due to extent of time between our request for a Letter of Determination in August and the receipt of the Letter of Determination in January, we will not operate as a KOA this year. The intention is to operate as a KOA next season. Mr. Roddy also asked if Mr. Baeule's interpretation of UDO section 8.2.6. says you can build any amenity as long as it doesn't expand the number of campsites and Mr. Baeule confirmed his statement.

Mr. Roddy asked Mr. Baeurle what number of campsites they would like determined. Mr. Baeurle said we are looking for a determination of 280 to 700 campsites.

Due to the public's ongoing disruptions, the Board of Adjustment Attorney, Lauren Arizaga-Womble requested the audience remain quiet during the meeting and she reminded the Chairman of his authority to keep order in the boardroom.

Mr. Craddock asked Mr. Baeurle if the County had issued violations for illegal work performed on the property and Mr. Baeurle said not to his knowledge. Mr. Craddock asked if it is normal practice for a company to purchase a campground without knowledge of the number of campsites. Mr. Baeurle said he looked at the 400 acres and with research, the evidence was overwhelming that there was 280 to 700 campsites. Mr. Craddock asked if it is normal business practice to purchase a campground that is nonconforming and Mr. Baeurle said it is hard to find a campground that is not nonconforming any more so we are used to dealing with this.

Mr. McRee began his cross-examination of Mr. Baeurle.

Mr. McRee asked Mr. Baeurle if he had spoken with the Planning Department and knew the campground was nonconforming. Mr. Baeurle said yes and also saw 284 site hook-ups with a site plan for 700 campsites.

Mr. McRee asked if the site plan was approved and Mr. Baeurle said no, but we believe there was a bond.

Mr. Nash began his cross-examination of Mr. Baeurle.

Mr. Nash asked Mr. Baeurle if he believed as long as the number of campsites was not increased that they could build anything on the property and if the additional bathrooms, pools, etc. would not be an expansion. Mr. Baeurle did not directly answer the question. Mr. Nash made several attempts to ask the question in different ways. Mr. Johnson objected to the repetition and Chairman Breathwaite agreed the point has been made.

Chairman Breathwaite asked the board if there were any further questions.

Mr. Roddy noted a section of the UDO that states expanding acreage of a campground is not allowed. Mr. Baeurle said they are not expanding the acreage.

Chairman Breathwaite said the UDO Section 8, has to be taken as a whole and you cannot carve out a certain section. He noted section 8.2.3. Expansion and Enlargement and asked Mr. Baeurle the difference between intensification of a campground and enlargement of a campground. Mr. Baeurle said intensified is exceeding the number of campsites allowed as of 2013.

Ms. Fussell began her re-direct examination of Mr. Baeule. She had Mr. Baeurle explain the different types of camping included in rough tent camping. Mr. Baeurle said RV boondock (camping without hook-ups) camping is included in their campgrounds. Mr. Baeurle also said camping groups, such as the Stargazers, should be able to camp in whatever area provides the best view.

Chairman Breathwaite reminded all in attendance to be cordial with each other during the hearing.

Ms. Fussell called her next witness, Warren Eadus, and began the direct examination.

Mr. Eadus said he is the President of Quible & Associates, a local engineering and surveying firm in Currituck County. He is a Professional Geologist but has worked in current job for 16 years since 2003 and has a four year degree with five years apprenticeship then passing exams. His work duties include President of Quible & Associates, securing CAMA permits, delineating wetlands, creating site plans, staff Geologist, etc. The company averages 120 projects per year with 70 percent of the projects requiring site plans.

Ms. Fussell asked to tender Mr. Eadus as an expert witness in site plans. There were no objections.

Mr. Eadus said the Hampton Lodge Campground property is 450 acres by the current survey. He showed historical aerial photos from 1952, 1961, 1973 and 1977 that were found as part of the environmental site assessment he conducted. Wetlands were confirmed as part of the process. In the 1973 photo four roads were cut in the wooded subdivision for the Woodall Subdivision Plat. If dividing all of the area by the 3,000 square ft requirement, there are 766 campsites, but after taking out the wetlands, his conclusion is 408 RV sites and 50 tent sites. Mr. Eadus briefly described all maps and sketches in the applicant's presentation Tabs 2 through 10 and how he came to his conclusion of 458 campsites.

Ms. Fussell requested Tabs 2 through 10 of their presentation to be submitted as Exhibit 1 (Applicant).

The board asked Mr. Eadus questions concerning the actual sites being used in 2012 and various questions concerning the sites with utilities. Mr. Eadus said 250 sites have some variation of water, sewer and electric. There is 25 existing septic systems with a also a pump and haul tank that were still functioning with some systems installed in the 1970's or before and should be replaced. He said the submittal made to Currituck County in June 2018 was for 314 RV sites and 78 tent sites.

Chairman Breathwaite asked Mr. Eadus if it is safe to say the range for the final number of campsites is between 234 and 314. Mr. Eadus agreed with the 234, but said the upper number should be 458 as he had concluded from previous studies.

Mr. Craddock pointed out that the maps were never submitted for approval by the Board of Commissioners and Mr. Eadus agreed. Mr. Craddock also pointed out the campground would not have adequate fire protection with the 3 inch waterline. Mr. Eadus said a dry hydrant using a pond or a tank could be used and hidden onsite.

Ms. Fussell called their third witness, John E. (Lucky) Pappas, the previous owner of Hampton Lodge Campground to the stand.

Mr. Pappas said he purchased the property in 1974 with two partners. He lived in Virginia and had Harvey Jamison managing the campground. Mr. Pappas said a site plan was never recorded, but there were 252 hook-ups, not sites. He referenced Map, Tab 6, and said it was not intended to be a site plan, but was a guide submitted for a special use permit. He said there was a Blue Grass festival held with close to 400 camping units in attendance. He referenced the illegal pier 8 and said the hunters repaired it without a permit and he knew nothing about it. He said Stargazers have been coming for 25 years and staying in the cedars.

Mr. Fussell referenced Tab 12, pictures of the tent camping area and Tab 11, receipts from the Stargazers

The board asked Mr. Pappas questions concerning a site plan. Mr. Pappas said he never submitted a site plan to the County and was never asked by the County to provide a plat. Also, Mr. Pappas testified he visited the campground and counted 252 hook-ups shortly before selling the campground.

Chairman Breathwaite called a 5 minute recess at 10:28 PM.

Chairman Breathwaite reopened the public hearing at 10:33 PM.

Ms. Fussell requested to enter Tab 11, Tab 12 and Tab 1 PowerPoint as Exhibit 2 (Applicant).

Thomas Nash, Attorney on behalf of the Waterlily Protection Association began his presentation and called witness, Jim Market from Piney Island Road to the stand.

Mr. Market said he is a lifelong resident of Currituck County and has a workshop located beside the gates to the campground. Throughout the years he visited the campground to purchase items from the store. He also was hired by Mr. Jamison in 1985 to install a bulkhead at the campground. He spent approximately one month working onsite. He said all campsites located along the water were full. He never observed tent campers, but did remember the sign.

The board members ask Mr. Market questions. Ms. Bontemps asked if he was aware of the Woodall's trying to sell the campground with 700 campsites and he said no.

Mr. Johnson began his cross-examination of Mr. Market. He asked if he had a house beside the campground and lived there full time. Mr. Market said he only had the workshop

at that location but was there seven days per week. Mr. Johnson also asked when he installed the bulkhead and Mr. Market said it was in the summer.

Mr. Nash called his second witness, Judy Jones from Waterlily Road. She said she has lived in Waterlily all her life and had used the store to purchase milk and bread through the years. She said she does not recall any specific campsites, nor a pool, or a volleyball court, etc. She said she has not observed any improvements made, but only deterioration of the campground.

Mr. Johnson cross-examined Ms. Jones and asked where her house is located in proximity of the campground. Ms. Jones said three miles south of the campground.

Mr. Nash called his third witness, Paul O'Neal from Waterlily Road. He asked him the proximity of his house to the campground and Mr. O'Neal said three miles south of the campground. Mr. O'Neal has lived in the area for 50 years. He would go to the campground store to buy ice cream. Mr. Harvey hired him in the fall of 1980 to spade the campsites. He said in his opinion, there were 175 to 200 camp sites in 1980. He said there was a store, restroom, recreation hall and a house at the gate. He remembers the sign for the tents camping area. Mr. O'Neal said he was a member of the Board of Commissioners from 1994 until 2006 and from 2008 until 2016; during these times he served as the Chairman many times. While serving on the Board of Commissioners, he visited the campground 1995-1996 due to zoning citing the campground for illegal structures attached to the campers. Mr. Nash asked Mr. O'Neal if the campground had changed from the 1980's and he said it had not. Mr. Nash asked about the process in 2013 when the Board of Commissions made campgrounds nonconforming. Mr. O'Neal said the Planning Board passed it unanimously without any objections from the public and that the Board of Commissions passed it unanimously without any objections from the public. The public hearing was advertised according to NC General Statutes. Mr. O'Neal said campgrounds along with mobile home parks, junkyards and billboards have all been made nonconforming with the purpose for the uses to go away. Mr. O'Neal said the entire UDO Chapter 8 applies to nonconforming campgrounds and not just section 8.2.6. He said in early 2017 a representative of Bluewater approached him to facilitate a community meeting. Bluewater acknowledged the 234 campsites, but said they needed more to make the business work. The public was against this and they took it to the Planning Board anyways asking for more than the acknowledged 234 sites and they were denied. Mr. Nash showed GIS Maps of the campground throughout the years and asked Mr. O'Neal to describe them. Mr. O'Neal said it was aerial maps of the campground showing it has not changed.

The board asked Mr. O'Neal questions. Mr. Roddy said the campers looked the same in all the aerial photos and Mr. O'Neal said because most of them were permanent campers with people staying year round. Ms. Bontemps asked why the County voted to do away with campgrounds and Mr. O'Neal said because the County was having trouble with zoning violations, people living there year round and the roads to the campground are in bad condition; there were health and safety issues. Ms. Bontemps voiced her concern over the County taking away a family area.

Mr. Johnson cross-examined Mr. O'Neal and referenced the UDO section 8.2.6 A.(5). Mr. O'Neal said this section is not exclusive, but inclusive and you must take the whole Chapter 8 in account. Mr. Johnson asked about the community meeting and asked if the number of campsites was actually 250 site hook-ups and not 234 campsites. Mr. O'Neal said he did not recall, but does recall the number requested was 450 which is what you are asking for

now. Mr. Johnson asked what time of year the aerials were taken and Mr. O'Neal said he did not know.

Mr. Nash asked to have the GIS aerial photos entered as evidence. Mr. Johnson objected and based his objection on not knowing the time of year the photos were taken. The Chairman agreed with Mr. Johnson, but asked for advice from the Board of Adjustment Attorney, Lauren Arizaga-Womble. Chairman Breathwaite decided to allow the evidence with a weight of caution since the seasonal dates of the photos were not known. Mr. Nash entered the Hampton Lodge Campground Aerial Photos Over Time as Exhibit 1 (Waterlily).

Chairman Breathwaite opened the hearing to public comment.

Jacklyn Myers from Waterlily Road came before the board. Ms. Myers said the campground was so packed that at times the No Vacancy sign was on the gate. She said there are 250 to 300 campsites including the tent area and it was very well run by Uncle Harvey.

Brian Rudo from Waterlily Road came before the board and said he had seen buses run off the road into the water. Mr. Johnson objected to this testimony and said it was not relevant. Ms. Arizaga-Womble said this is a public comment period and the citizens are not under oath. She asked the public comments to be on the two issues at hand which are the number of campsites and your opinion about the interpretation of modification. Chairman Breathwaite sustained the objection. Ms. Arizaga-Womble reminded the board to only consider the sworn competent testimony and the public comment should have no bearing on their decision. Two more citizens commented on intensification of the campground causing traffic issues.

Chairman Breathwaite closed the public hearing at 11:19 PM. Ms. Arizaga-Womble allowed Mr. Johnson, Mr. McRee and Mr. Nash to make their closing statements.

Discussion by the board was held over taking the UDO Chapter 8 as a whole and considering the facts. Ms. Arizaga-Womble reminded the board about applying the law to the facts and not just feelings.

Mr. Craddock motioned that the Board of Adjustment affirms the determination by Ms. Laurie LoCicero based on findings of facts that there have been no additional plats submitted to the County of Currituck that show any different than 234 lots and that according to the evidence applied by the applicant on tab 6, tab 7 and tab 8 that these are hypothesized lots that have never been actually recorded and approved by the Currituck County Board of Commissioners at any time in the past and that Ms. LoCicero did not make an error or incorrectly determine the number of lots that are existing on January 1, 2013.

Mr. Roddy seconded the motion and the motion concerning the number of campsites carried unanimously.

Ms. Arizaga-Womble asked Mr. Craddock to make a second motion to address the second item, modification.

Mr. Craddock motioned to affirm the determination of Laurie LoCicero in regards to modifications based on the findings of fact that Chapter 8 of the UDO in regards to nonconformity is general and specific and that any modifications other than basic repairs, routine maintenance in accordance with the requirements of that chapter as a means of preserving safety and appearance would be unlawful if they were different than what is in section 8.1.2.

Mr. Roddy seconded the motion.

Mr. Johnson asked for clarification on the second motion concerning modification and asks if Mr. Craddock is upholding Ms. LoCicero's decision that construction within the building footprint is okay.

Ms. Arizaga-Womble clarified with Mr. Craddock he is upholding the decision of Ms. LoCicero in her letter of determination.

Mr. Johnson said he was satisfied with this clarification.

Chairman Breathwaite continued with the vote and the motion passed unanimously.

<b>RESULT:</b>	<b>AFFIRM STAFF'S DECISION [UNANIMOUS]</b>
<b>AYES:</b>	Cathy Bontemps, Board Member, Troy Breathwaite, Board Member, Steven Craddock, Board Member, Lynn L. Hicks, Board Member, Thom Roddy, Board Member
<b>ABSENT:</b>	Gregory Hammer, Board Member

**County - Exhibit 1**

**County - Exhibit 2**

**Applicant - Exhibit 1**

**Applicant - Exhibit 2**

**Waterlily - Exhibit 1**

**ANNOUNCEMENTS**

There were no announcements.

**ADJOURNMENT**

Chairman Breathwaite asked for a motion to adjourn.

Mr. Hicks motioned to adjourn. Mr. Roddy seconded the motion and the meeting adjourned at 12:19 AM on April 12, 2019.

Communication: BOA Meeting Minutes - April 11, 2019 (Approval of Minutes for April 11, 2019)



## Currituck County Agenda Item Summary Sheet

**Agenda ID Number** – (ID # 2516)

**Agenda Item Title**

BOA 19-04 AAPCO & Family Co. - Jerry Lindsey:

**Brief Description of Agenda Item:**

Jerry Lindsey with AAPCO & Family Co. is requesting a variance on behalf of the property owner, Donald Pitts, for a 2 foot encroachment on the required 20 foot setback for a sun room addition built by SolarTyme, a division of AAPCO. The subject property is located at 135 First View Way, Tax Map 9E, Parcel 22, Moyock Township.

**Board Action Requested**

Action

**Person Submitting Agenda Item**

Cheri Elliott, Assistant

**Presenter of Agenda Item**

Laurie LoCicero



**STAFF REPORT**  
**BOA 19-04 AAPCO & FAMILY CO.**  
**VARIANCE REQUEST**  
**BOARD OF ADJUSTMENT**  
**JULY 11, 2019**

### APPLICATION SUMMARY

<b>Property Owner:</b> Donald Pitts 135 First View Way Moyock, NC 27958	<b>Applicant:</b> AAPCO & Family Co. Jerry Lindsey 6710 Jefferson Davis Hwy. Richmond, VA 23237
<b>Case Number:</b> BOA 17-04	<b>Application Type:</b> Variance
<b>Parcel Identification Number:</b> 009E00000220000	<b>Existing Use:</b> Residential
<b>Parcel Size (Acres):</b> 0.36	<b>Zoning:</b> Single Family Mainland (SFM)
<b>Variance Requested from the Unified Development Ordinance:</b> Section 6.4.4.F Conservation Subdivision Standards Setbacks. Reduced setback shown on final plat for Moyock Crossing, Phase 1, Lot 22 Recorded in Plat Cabinet O, Slide 171	

### STAFF ANALYSIS

The Unified Development Ordinance (UDO) requires lots created in the Single Family Residential-Mainland district (SFM) to maintain a 25 foot setback from the rear property line. However, the UDO also states lots in a conservation subdivision shall not be subject to minimum yard setback standards, except as required from major arterial streets, agricultural uses, or wetlands/surface waters. Section 6.4.4.I UDO states the agreed upon setbacks for conservation subdivisions shall be shown on the final subdivision plat in order to assist with the issuance of building permits. The final plat for Moyock Crossing, Phase 1, Lot 22 shows a required rear yard of **20 feet**.

On September 26, 2018 a permit was issued to Solar Tyme, on behalf of the property owner Mr. Donald Pitts, to construct a 12' by 16' sun room addition to the existing dwelling at 135 First View Way, also known as Lot 22, Phase 1, Moyock Crossing. The site plan originally submitted with the permit application was denied because the proposed sun room was encroaching into the required 20 foot rear setback. A subsequent site plan was submitted which was approved with the following conditions:

1. *Proposed sunroom and curved patio slab shall maintain required minimum setbacks from all property lines, including the required 20' setback from the rear property line.*
2. *As-Built Survey Required*

On March 20, 2019 the required as built survey was submitted showing a 2 foot encroachment into the required 20' foot rear setback.

The applicant is requesting a variance from setback shown on the recorded final plat, effectively reducing the setback to 18 feet.

## 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 alleged hardship **is not** suffered by the applicant as a result of the application of this ordinance because the reduced setback of 20 feet was clearly shown on the approved site plan and conditions were placed on the permit approval clearly indicating the potential for encroachment and requiring an as-built survey prior to issuance of the certificate of compliance.

Applicant Findings:

1. The applicant did not supply any findings for this review standard.

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 applicants land. There is nothing about the location size, or topography of the land that would warrant the encroachment. The lot is of a similar size to other lots in the subdivision and the required setbacks were clearly known at the time of permitting.

Applicant Findings:

1. Please see attached email from Jerry Lindsey.

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 most of the lots in the subdivision are similar in size and share the same 20 foot rear setback.

Applicant Findings:

1. The applicant did not submit any findings for this review standard.

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

Preliminary Staff Findings:

1. The hardship **is** a result of the applicant's own actions because setbacks were known before application for a building permit, the encroachment was shown and denied on the original site plan, and the applicant failed to take the necessary steps to ensure the sun room could meet the setbacks prior to construction.

Applicant Findings:

1. The applicant did not submit any findings for this review standard.

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 applicant did not submit any findings for this review standard.

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. The request does not meet any of the above review standards.
  - b. The applicant was warned of the potential dangers of proposing a structure directly on the setback line. Once when the original site plan was denied, and once when the revised site plan was approved.
  - c. The applicant was aware, prior to construction, that an as-built survey would be required to verify compliance with the required setback.
  - d. There is nothing unique about the property that would justify the need for a variance.

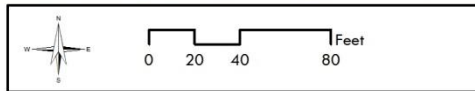
## STAFF RECOMMENDATION

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

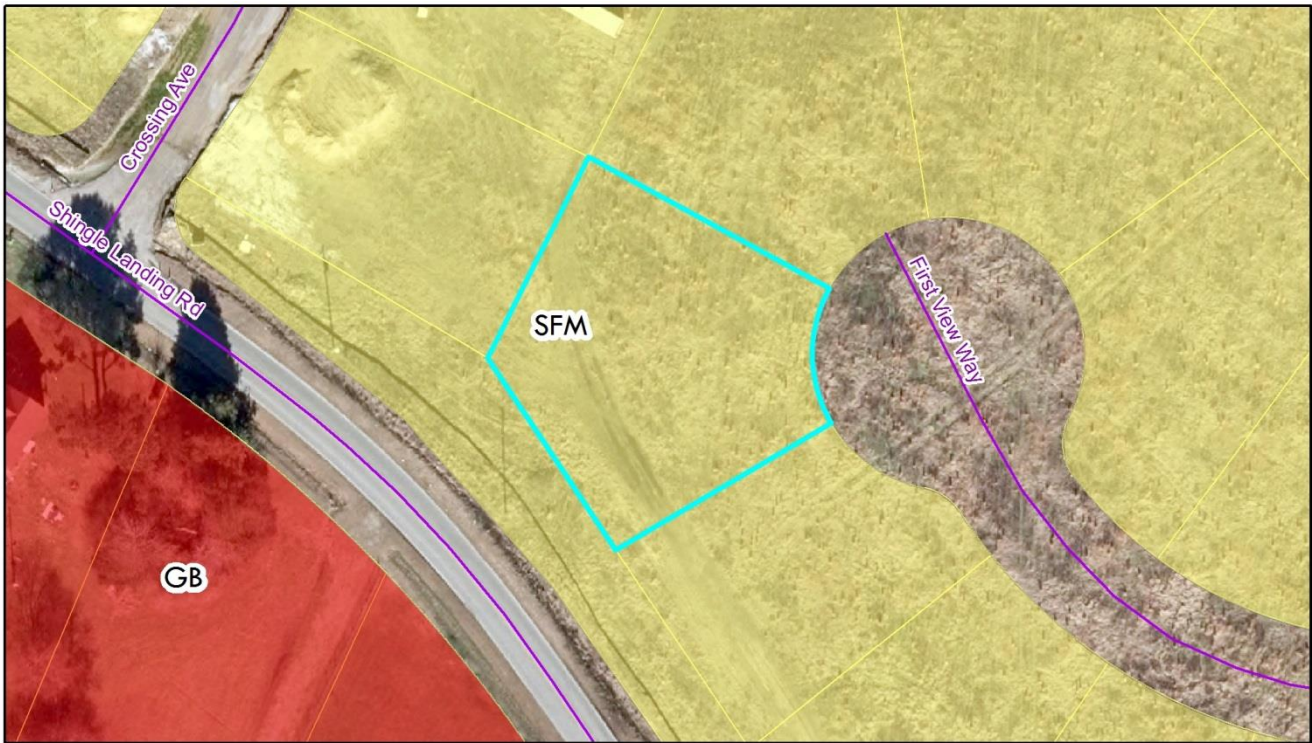
- a. The variance request does not meet the required review standards.



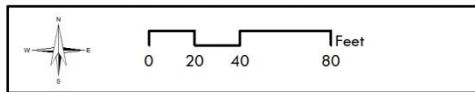
PB 19-04 Jerry Lindsey  
 Variance Request  
 Aerial



Currituck County  
 Planning and  
 Community Development

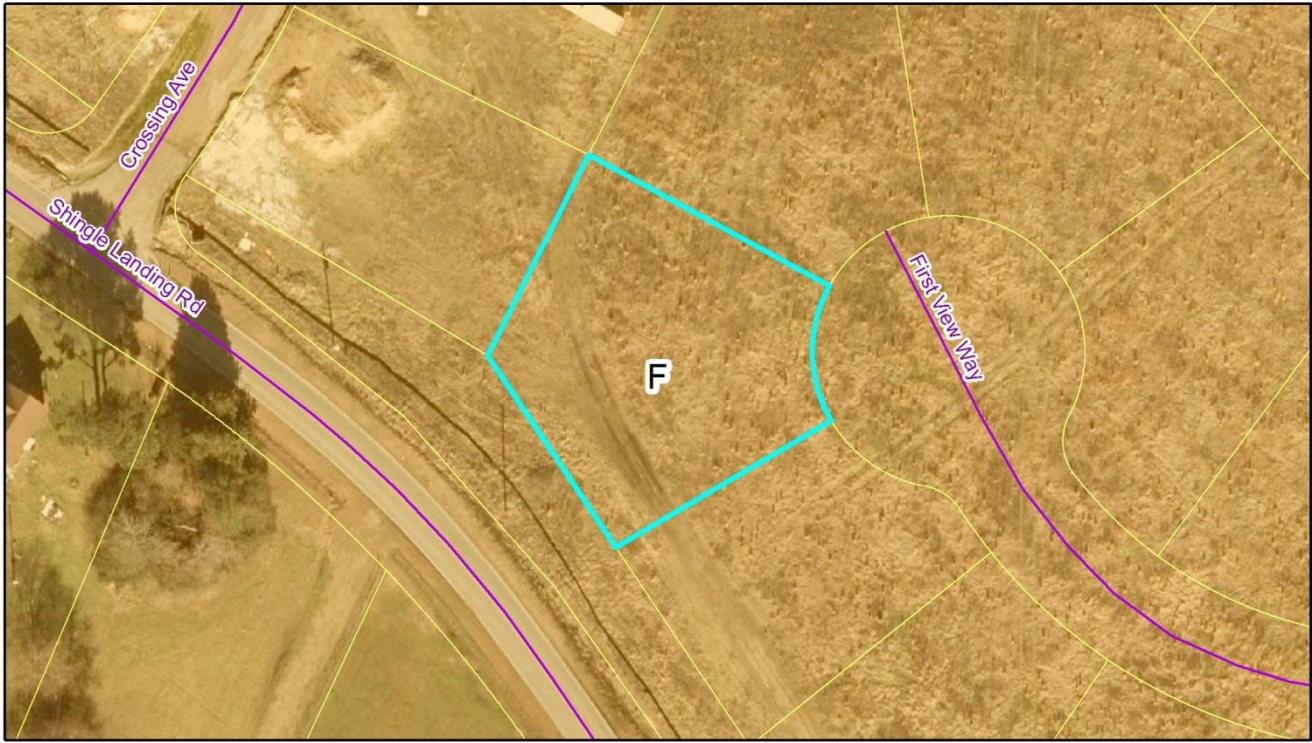


PB 19-04 Jerry Lindsey  
 Variance Request  
 Zoning

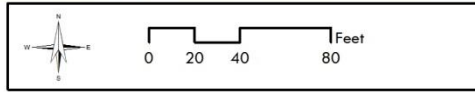



Currituck County  
 Planning and  
 Community Development

Attachment: 1. Jerry Lindsey staff report (BOA 19-04 AAPCO & Family Co. - Jerry Lindsey)



PB 19-04 Jerry Lindsey  
 Variance Request  
 LUP



 Currituck County  
 Planning and  
 Community Development

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](http://www.co.currituck.nc.us/board-of-adjustment-minutes-current.cfm)

Attachment: 1. Jerry Lindsey staff report (BOA 19-04 AAPCO & Family Co. - Jerry Lindsey)



# Variance Application

OFFICIAL USE ONLY:  
 Case Number: B-04-19-04  
 Date Filed: 4/10/19  
 Gate Keeper: \_\_\_\_\_  
 Amount Paid: \$500.00

### Contact Information

APPLICANT: <u>AAPCO &amp; Family Co.</u>	PROPERTY OWNER:
Name: <u>Jerry Lindsey</u>	Name: <u>Donald &amp; Kathleen Pitts</u>
Address: <u>6770 Jefferson Davis Hwy</u>	Address: <u>135 First View</u>
<u>Richmond Va - 23207</u>	<u>Moyock N.C. 27958</u>
Telephone: <u>804-271-2500</u>	Telephone: <u>757-373-0001</u>
Fax Number: <u>804-332-9362</u>	Fax Number: <u>NA</u>
E-Mail Address: <u>cell # 804-332-9362</u>	E-Mail Address: _____

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Contractor

### Property Information

Physical Street Address: 135 First View Moyock N.C. 27958  
 Location: Moyock Crossing Currituck County  
 Parcel Identification Number(s): LOT 22 (009E00000 220000)  
Parcel ID #

### Request

I, Donald + Kathleen Pitts, hereby request a variance from Section(s) 4, GS 153A-351 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:

PLEASE see separate sheet

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attachment: 2. 19-04 Jerry Lindsey - AAPCO & Family Co. - Variance - Application (BOA 6-13-19) (BOA 19-04 AAPCO & Family Co. - Jerry



Charity McPherson &lt;charitycme@gmail.com&gt;

**Pitts 205308**

1 message

**Jerry Lindsey** <jerrylindsey.aapco@gmail.com>

Tue, Apr 2, 2019 at 3:51 PM

To: Charity &lt;charitycme@gmail.com&gt;

Note, all references to locations on room are viewed from back yard facing home.

This room was issued a building permit ,and built.

It was noted on plan as built site survey was required.

We ( contractor ) did pull measurements before applying for permit and fully believed we were within the proper setback requirements.

Unfortunately at final inspection it was brought to our attention about

the as built survey. When complying with ths request we found that the measurement to the right outer corner did encroach approximately 2 feet in a triangular shape.

That brings us to this point where we need to apply for a varience for the 2 foot corner .

I would also like to note that we did change the location of sunroom where homeowner originally wanted and installed it as close to rear entry door to main home as possible.

Attachment: 2. 19-04 Jerry Lindsey - AAPCO &amp; Family Co. - Variance - Application (BOA 6-13-19) (BOA 19-04 AAPCO &amp; Family Co. - Jerry

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).

N/A

- 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).

See attached letter dated 4/2/2019 from Jerry Lindsey

- 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).

N/A

- 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).

N/A

- 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).

N/A

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.

[Signature]  
Property Owner(s)/Applicant\*

04/20/2019  
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 135 First View Way, Moyock, NC 27959

I hereby authorize Best Value Remodelers & Solartyme 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.

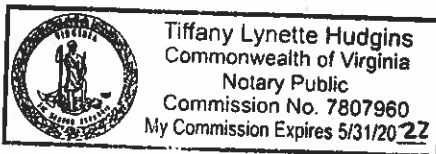
Respectfully yours,

[Signature] Kathleen Pitts 4/16/2019  
Owner Date

Sworn to and subscribed before me, this the 6 day of April, 2019.

Tiffany Lynette Hudgins  
Notary Public

My commission expires: 05/31/2022



**CERTIFICATE OF ACCURACY**

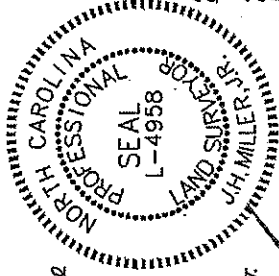
I, J.H. MILLER, JR., P.S., CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION FROM DE 1334 PG. 02. THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS DASHED LINES AND ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN (SEE ADDITIONAL REFERENCES IN NOTES); THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY AS CALCULATED IS 1:10,000+; THAT THE GLOBAL POSITIONING SYSTEM (GPS) SURVEY AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE GNSS (DUAL CONSTELLATIONS) SURVEY.

- 1.) CLASS OF SURVEY: CLASS A
- 2.) POSITIONAL ACCURACY: 2-CENTIMETERS
- 3.) TYPE OF GPS FIELD PROCEDURE: RTN
- 4.) DATE OF SURVEY: FEBRUARY 28, 2018
- 5.) DATUM / EPOCH: NC GRID - MAD 83(2011); EPOCH 2010
- 6.) PUBLISHED / FIXED CONTROL USE: N/A
- 7.) GEOID MODEL: GEOID\_12B
- 8.) COMBINED FACTOR: 1.000120846
- 9.) UNITS: US SURVEY FEET

THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.

I, J.H. MILLER, JR., ALSO CERTIFY THAT THE SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.

WITNESS MY ORIGINAL SIGNATURE, REG. NUMBER AND SEAL.



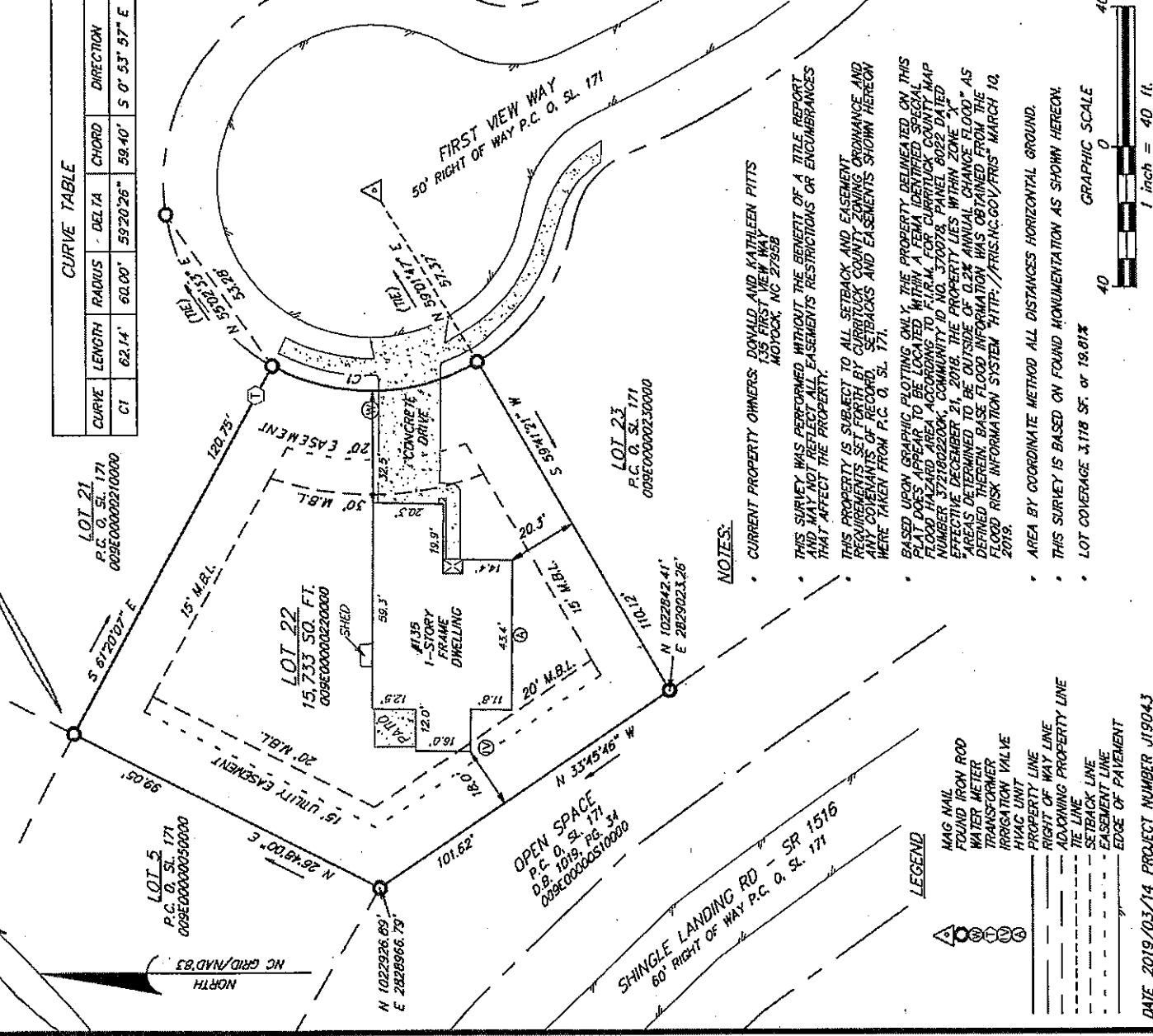
NORTH CAROLINA  
BOARD OF SURVEYING

VICINITY MAP  
NOT TO SCALE

REVIEW OFFICER OF  
CURRITUCK COUNTY CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

DATE \_\_\_\_\_ REVIEW OFFICER \_\_\_\_\_

CURVE	LENGTH	RADIUS	DELTA	CHORD	DIRECTION
CT	62.14'	60.00'	59°20'26"	59.40'	S 0° 53' 57" E



**NOTES:**

- CURRENT PROPERTY OWNERS: DONALD AND KATHLEEN PITTS, 135 FIRST VIEW WAY, MOYOCK, NC 27958
- THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND, HAD I DO NOT, I WILL NOT BE RESPONSIBLE FOR EASEMENTS, RESTRICTIONS OR ENCUMBRANCES THAT AFFECT THE PROPERTY.
- THIS PROPERTY IS SUBJECT TO ALL SETBACK AND EASEMENT REQUIREMENTS SET FORTH BY CURRITUCK COUNTY ZONING ORDINANCE AND ANY COLEMANISTS OF RECORD. SETBACKS AND EASEMENTS SHOWN HEREON WERE TAKEN FROM P.C. O. SL. 171.
- BASED UPON GEOPHIC PLOTTING ONLY, THE PROPERTY DELINEATED ON THIS PLAT DOES NOT APPEAR TO BE IDENTICAL WITH A REPAIRED ORIGINAL PLAT. THIS PLAT IS BEING DRAWN FROM THE CURRITUCK COUNTY MAP NUMBER 3718020200, COMMUNITY ID NO. 370078, PANEL 8022 DATED EFFECTIVE DECEMBER 21, 2018. THE PROPERTY LIES WITHIN ZONE "Y" AREAS DETERMINED TO BE OUTSIDE OF 0.2% ANNUAL CHANCE FLOOD AS DETERMINED THEREIN. BASE FLOOD INFORMATION WAS OBTAINED FROM THE FLOODED RISK INFORMATION SYSTEM HTTP://FRIS.NC.GOV/TRIS/ MARCH 10, 2018.
- AREA BY COORDINATE METHOD ALL DISTANCES HORIZONTAL GROUND.
- THIS SURVEY IS BASED ON FOUND MONUMENTATION AS SHOWN HEREON.
- LOT COVERAGE 3.118 SF. or 19.81%

**LEGEND**

- ▲ MAG MAIL
- FOUND IRON ROD
- WATER METER
- TRANSFORMER
- IRRIGATION VALVE
- HVAC UNIT
- PROPERTY LINE
- RIGHT OF WAY LINE
- ADJACENT PROPERTY LINE
- EASEMENT LINE
- SETBACK LINE
- EDGE OF PAVEMENT

DATE 2019/03/14 PROJECT NUMBER J19043



SCALE: 1" = 40'  
**AS-BUILT SURVEY FOR**  
**DONALD AND KATHLEEN PITTS**  
**LOT 22, MOYOCK CROSSING, PHASE I, P.C. O. SL. 171**  
**#135 FIRST VIEW WAY**  
 MOYOCK TOWNSHIP CURRITUCK COUNTY NORTH CAROLINA

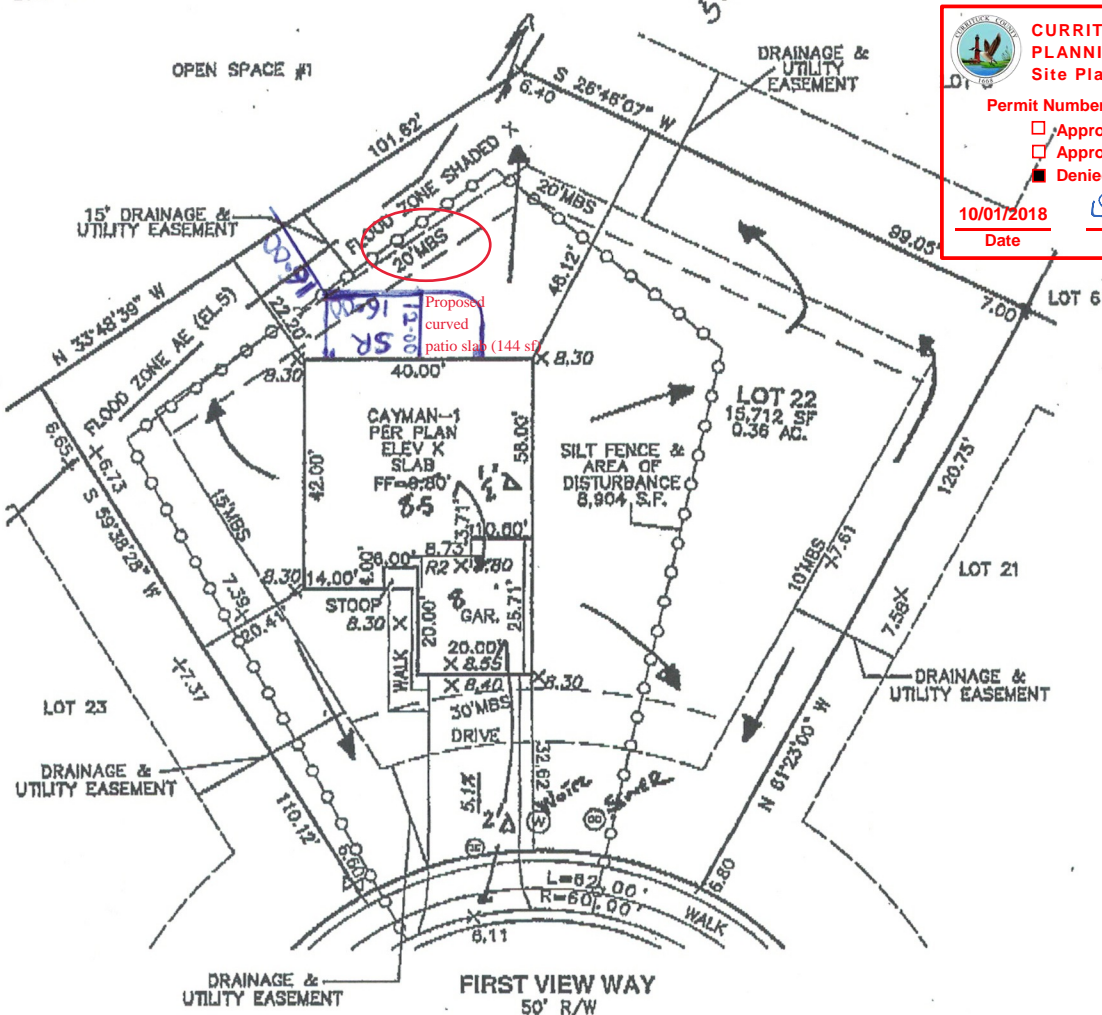
J.H. MILLER, JR.  
 LAND SURVEYING  
 109 MARKET STREET  
 HERTFORD, NC 27944  
 Phone: (252) 428-1000  
 E-Mail: jh@jhmllr.com  
 www.jhmllr.com

205208

;7574992447

# 6/ 9

RECORD NORTH  
BOOK "O", PG. 171



- ⊙ WATER METER
- ⊕ SAN. CLEANOUT
- ⊕ CONST. ENTRANCE
- ⊕ WATER VALVE
- x 12.34 EXISTING ELEV.
- x 12.34 PROPOSED ELEV.

NOTES:

1. NO TITLE REPORT FURNISHED.
2. THIS PROPERTY IS IN ZONE "X" (AREA OUTSIDE THE 0.2% CHANCE ANNUAL FLOOD), AS SHOWN ON THE FLOOD INSURANCE RATE MAP FOR CURRITUCK COUNTY, NORTH CAROLINA. COMMUNITY PANEL NO. 37218031, EFFECTIVE DATE DECEMBER 16, 2005.

**CURRITUCK COUNTY PLANNING AND INSPECTIONS**  
Site Plan Review

Permit Number **201802085**

Approved As Is  
 Approved As Noted  
 Denied/ Resubmit

Date **10/01/2018** *Dublin Lashomb*  
 Planning

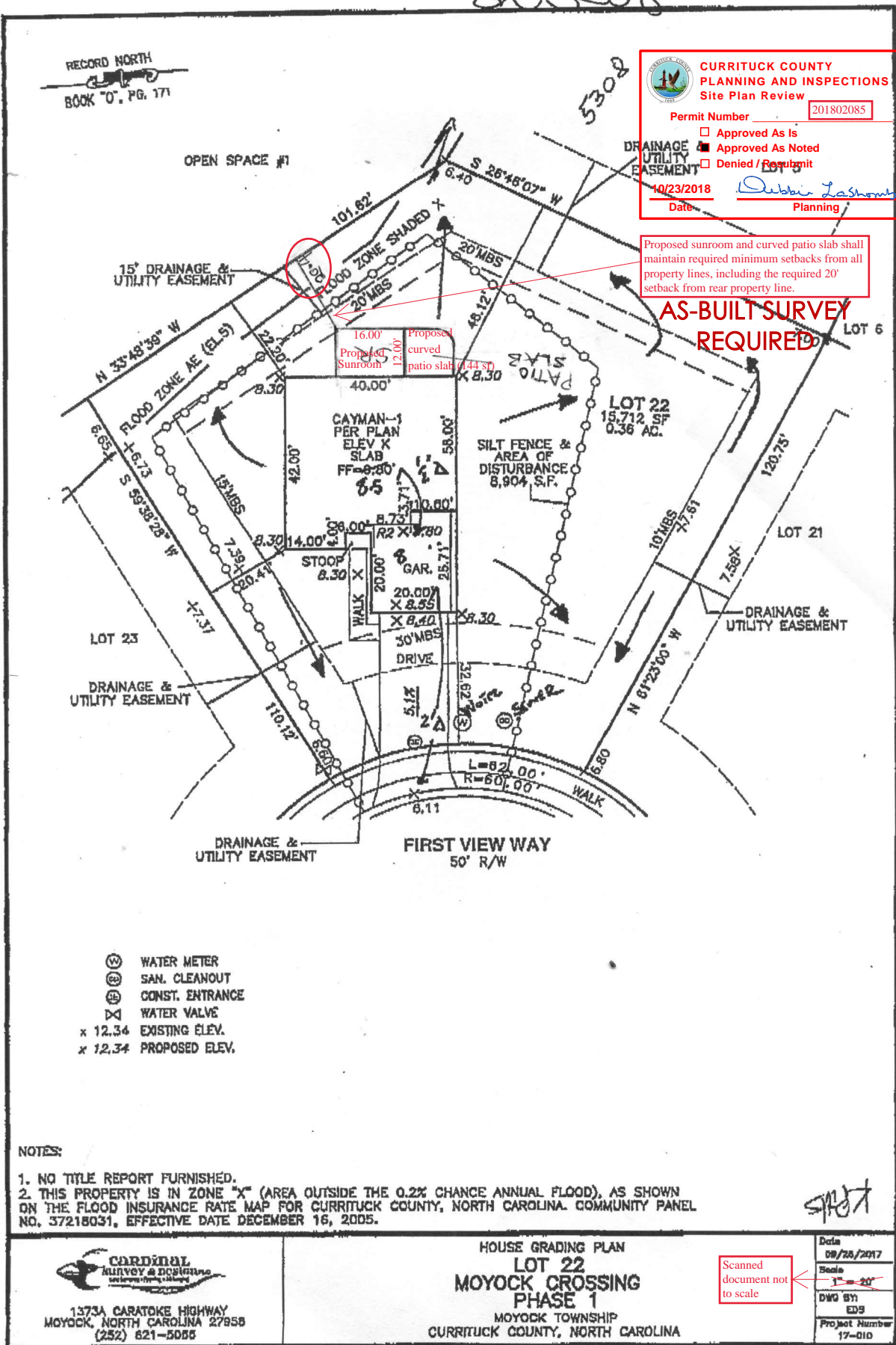
**CARDINAL**  
Survey & Mapping

1373A CARATOKE HIGHWAY  
MOYOCK, NORTH CAROLINA 27859  
(252) 821-5055

HOUSE GRADING PLAN  
**LOT 22**  
**MOYOCK CROSSING**  
**PHASE 1**  
 MOYOCK TOWNSHIP  
 CURRITUCK COUNTY, NORTH CAROLINA

Date	09/26/2017
Scale	1" = 20'
DWG BY	EDS
Project Number	17-010

Attachment: 4. 135 FIRST VIEW - INITIAL STIE PLAN (DENIED) (BOA 19-04 AAPCO & Family Co. - Jerry Lindsey)



Attachment: 5. 135 FIRST VIEW - NEW! UPDATED SITE PLAN TO MEET SETBACK (BOA 19-04 AAPCO & Family Co. - Jerry Lindsey)