



**CURRITUCK COUNTY  
NORTH CAROLINA**

December 10, 2020

Minutes – Regular Meeting of the Board of Adjustment

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

The Board of Adjustment met for their regular 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
Troy Breathwaite	Chairman	Present	
Steven Craddock	Vice Chairman	Present	
Carol Bell	Board Member	Present	
Cathy Bontemps	Board Member	Absent	
Lynn L. Hicks	Board Member	Present	
Ike McRee	County Attorney	Present	
Lauren Arizaga-Womble	Attorney	Present	
Laurie LoCicero	Planning Director	Present	
Rachael Anderson	Code Enforcement Officer	Present	
Cheri Elliott	Clerk to the Board	Present	
Jerry D. Merritt	Applicant	Present	

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

**A Announce Quorum Being Met**

Chairman Breathwaite announced a quorum with four board members present.

**B. Approval of Agenda**

Chairman Breathwaite asked if there were any changes needed to the agenda for tonight's meeting. Vice Chairman Craddock motioned to approve as presented. Mr. Hicks seconded the motion and the motion carried unanimously.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Steven Craddock, Vice Chairman
<b>SECONDER:</b>	Lynn L. Hicks, Board Member
<b>AYES:</b>	Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Carol Bell, Board Member, Lynn L. Hicks, Board Member
<b>ABSENT:</b>	Cathy Bontemps, Board Member

### **C Approval of Minutes**

Chairman Breathwaite asked if there were any changes needed for the October 15th, 2020 meeting minutes. Vice Chairman Craddock motioned to approve as presented. Mr. Hicks seconded the motion and the motion carried unanimously.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Steven Craddock, Vice Chairman
<b>SECONDER:</b>	Lynn L. Hicks, Board Member
<b>AYES:</b>	Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Carol Bell, Board Member, Lynn L. Hicks, Board Member
<b>ABSENT:</b>	Cathy Bontemps, Board Member

#### **1. BOA Meeting Minutes - October 15, 2020**

### **D 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 before the board tonight. There were no known conflicts noted.

### **OLD BUSINESS**

No old business was discussed.

### **NEW BUSINESS**

- A. BOA 20-05 Jerry D. Merritt - Appeal: Jerry D. Merritt is requesting an Appeal for Notice of Violation 20-1383 issued on September 10, 2020, for a concrete driveway constructed within the side setback of his property. The subject property is located at 117 Nautical Lane, Currituck, Tax Map 59C, Parcel 35, Crawford Township.**

Chairman Breathwaite reviewed the four Appeal Determination Standards for the board to base their decision.

Chairman Breathwaite swore in the County witnesses Rachael Anderson, Code Enforcement Officer, and Laurie LoCicero, Planning Director.

Chairman Breathwaite asked the County to present their case.

Ike McRee, County Attorney, called Rachael Anderson to the stand. She stated her name and her position with the County as Code Enforcement Officer. She said she has

been employed in this position for 2 years and 1 month. Mr. McRee asked how she became familiar with this property and Ms. Anderson said she had received a complaint concerning the concrete driveway and flower bed being in the setback, also stormwater issues. Staff reached out to Dylan Lloyd with Currituck County Soil and Water Conservation Department. Ms. Anderson said she went to the site to talk with the property owner, Mr. Merritt. She explained the complaint received and the property owner said the concrete had been there a long time. Ms. Anderson said she took pictures on location and researched the driveway online. A PowerPoint presentation was presented showing the pictures of the driveway from the road view.

Mr. McRee asked photos taken by Ms. Anderson be entered into the record:

County Exhibit 1 - Photos

County Exhibit 2 - Photos

Ms. Anderson presented GIS photos of the Applicant's property: Left photo dated 2010 and right photo dated 2012. Ms. Anderson said sometime between these two GIS photos is when concrete was added to the original driveway.

Mr. McRee asked for the two GIS photos to be entered into the record:

County Exhibit 3 - GIS Photos (left dated 2010 and right dated 2012)

Mr. McRee asked Ms. Anderson about the Unified Development Ordinance(UDO) that was in place during the time of the two GIS photos and whether it had the same setback of 10 feet. Ms. Anderson said the 2007 UDO was in effect and the setback was the same, 10 feet.

Mr. McRee asked for 2007 UDO Section 8.10 Driveways to be entered into the record:

County Exhibit 4 - 2007 UDO, Section 8.10 Driveways

Ms. Anderson showed a Site Plan reviewed by Planning and Inspections in 2008 for the Applicant's property. She referenced the Approved As Noted: "Driveway cannot encroach into 10' setback. No fill of any type within the 10' setback; As-built survey required prior to final inspection with a second note "Please indicate driveway location on as-built with distance from property line."

Mr. McRee asked for the 2008 Site Plan to be entered into the record:

County Exhibit 5 - 2008 Site Plan reviewed by Planning and Inspections with added notes

Ms. Anderson showed an As-built survey for the Applicant's property dated August 10, 2009 and hand dated for acceptance on 8/11/09 with initials TBS. Mr. McRee asked Ms. Anderson if the additional concrete driveway was included on this as-built and she said no. Mr. McRee asked if the name on the as-built was consistent with the Applicant and Ms. Anderson said yes.

Mr McRee asked for the As-built dated August 9, 2009 be entered into the record:

County Exhibit 6 - Jerry and Delores Merritt As-Built Survey dated August 9, 2009

Ms. Anderson showed a Certificate of Compliance for 117 Nautical Lane with property

owner listed as Jerry D. Merritt, Trustee, dated August 14, 2009. Mr. McRee asked Ms. Anderson if they would have had to be in compliance to receive this and Ms. Anderson said yes.

Mr. McRee asked for the Certificate of Compliance be entered into the record:  
County Exhibit 7 - Certificate of Compliance for 117 Nautical Lane, dated August 14, 2009

Mr. McRee asked Ms. Anderson about the zoning of 117 Nautical Lane. Ms. Anderson referenced the GIS zoning Map (attachment 9, Agenda Packet) showing the property zoned Single Family Residential Mainland (SFM).

Ms. Anderson showed a page out of the current UDO for 3.4.2: Single Family Residential Mainland (SFM) Districts, F. Dimensional Standards. Mr. McRee asked if the Applicant's property is zoned SFM and Ms. Anderson said yes. Mr. McRee asked what is shown as the side setback on this page and Ms. Anderson said 10 feet.

Mr. McRee asked for this page of the current UDO 3.4.2 with dimensional standards showing a 10 feet side setback be entered into the record as:  
County Exhibit 8 - UDO 3.4.2: Single-Family Residential-Mainland (SFM) District (showing F. Dimensional Standards)

Mr. McRee asked for Attachment 10 of the agenda packet to be entered as County Exhibit #9.

Mr. McRee asked for the Notice of Violation letter dated October 2, 2020 with an attached corrective action plan to be submitted as County Exhibit #10.

Mr. McRee asked Ms. Anderson if Mr. Merritt had indicated the time frame he added the driveway and Ms. Anderson said 2010 or sometime after the Certification of Compliance.

Mr. McRee asked what is done to get a zoning permit and if Mr. Merritt had attempted to get one for the driveway. Ms. Anderson said she did a search of the County's records and there was not a zoning permit on file.

Ms. Anderson said Mr. Merritt filled out an extension since the contractor was back logged until April 2021 to be able to complete the Corrective Action Plan.

Mr. McRee asked for the Corrective Action Plan to be entered into the record as County Exhibit #11 and for Ms. Anderson's consent to the plan to be County Exhibit #12.

Mr. McRee asked if Ms. Anderson went back to the property and she said yes. The neighbor had said the survey was complete and she went to view the markers. She said Mr. Merritt agreed to the markers locations and she measured from the markers to the driveway with a tape.

Mr. McRee asked Ms. Anderson if the driveway encroachment was apparent using the survey markers and she said yes. Mr. McRee asked if there were no survey markers

would it be apparent and Ms. Anderson said no. Mr. McRee had no further questions for the witness.

The board had various questions for Ms. Anderson about the zoning, the additional size of the concrete Mr. Merritt added, and if the flowerbed was also encroaching into the setback. Ms. Anderson said the flowerbed was actually on the neighbors property and Mr. Merritt agreed to move it. Ms. Anderson said the only issue now is the concrete.

Chairman Breathwaite asked Ms. Anderson the time frame for when concrete driveway was added. Ms. Anderson said based on what the homeowner said, it was 2010. Based on GIS it was 2010 to 2012 and based on the picture it was spring time.

Mr. McRee called the Planning Director, Laurie LoCicero, to the stand. He asked her questions concerning the Unified Development Ordinance for 2005 and 2007. Also questions concerning the setbacks. Ms LoCicero said the setbacks were updated to 10 ft setbacks in 2007. Mr. McRee asked if the setbacks have changed since that date and Ms. LoCicero said no, they are the same.

Mr. McRee asked to enter into record the staff report and remaining documents as County Exhibit #13.

The applicant, Mr. Merritt, was sworn in and came before the board.

Mr. Merritt said he had been a fighter pilot and a commercial pilot so he is used to following rules. He said it took them 6 years to build their house. He said this home was built as their second home and in May 2008 the Home Owner's Association (HOA) accepted their building plans. He said their site plan was submitted on July 18, 2008 and on July 19, 2008 it was initialed approved by the HOA.

Mr Merritt said on July 30, 2009, the builder told him he could not build the driveway as in the plans. On August 11, 2009 the driveway was completed and on August 14, 2009, the Certificate of Occupancy was issued.

Mr. Merritt said the addition to the driveway was poured on June 23, 2010 and no one ever questioned it being in the setback. He said he had a refinance and it was granted with the additional driveway portion. He said they used the home for seven years as a second home. Mr. Merritt said the HOA members knew about the driveway when they approved the plans. He said he has lived there for eleven years and no one complained. Mr. Merritt also stated the statute of limitations had ran out.

Mr. Merritt asked how the County received the complaint concerning his driveway.

Ms. Womble told Mr. Merritt the board will now ask you some questions.

Chairman Breathwaite asked Mr. Merritt if it was the same contractor that did both parts of the driveway and he said yes.

Chairman Breathwaite said you had discussions with the contractor to get the Certificate of Occupancy and then come back later to get the permits and Mr. Merritt said yes. Mr.

Merritt stated the concrete was poured on June 23, 2010 when they were not living in the house.

Ms. Bell said you stated the HOA had approved your plans and Mr. Merritt said yes. Ms. Bell said the HOA does not enforce the County's rules; they have their own rules.

Mr. Hicks said it still has to go through the County after the HOA.

Ms. Bell said it seems Mr. Merritt thought all he needed to do was get the HOA to approve the plans. Mr. Merritt said the contractor was supposed to get the permit.

Chairman Breathwaite and Mr. Craddock both questioned Mr. Merritt on whether he had conversations with his contractor that he would do the driveway and then come back later to add the additional part. Mr. Merritt said yes, he would come back and do the turnaround portion.

There was no public comment and no person had signed up to speak.

Mr. Merritt asked to make an additional statement. He said because of Covid his neighbors could not be here to speak on his behalf so they sent a letter.

Mr. McRee objected saying this was hearsay since the witness is not present.

Ms. Womble explained to Mr. Merritt why the letter could not be submitted to the board. She said this is a quasi-judicial hearing and someone would have to be under oath in order to give their statement. Mr. Craddock asked if a notarized statement could be permissible. Ms. Womble said no, the County has to have the opportunity to cross examine the witness.

There were no more questions for Mr. Merritt.

Chairman Breathwaite closed the public hearing.

The board had discussion. Chairman Breathwaite reminded the board to read the review standards for an appeal.

Chairman Breathwaite addressed the applicant. He said he certainly understands the situation and believes Mr. Merritt does not believe it's his fault, but the fact is the additional concrete is in the setback. The issue is the statute of limitation for seven years and if the violation 1383 is governed by this statute. Ms. Womble said Mr. McRee needs to be able to make his closing statement and he may wants to address this within his statement. Mr. McRee said there was a 2017 amendment concerning a statute of limitations for zoning, but the seven years starts after the following:

- The violation of the ordinance is apparent from a public right of way.
- The violation of the ordinance is in plain view from a place to which the public is invited.

The time began when the violation became apparent to the County and Notice of Violation was issued.

If the violation is apparent or in plain view, enforcement must be taken and that does not preclude the administrative process. The burden is on someone raising the issue. It's still a violation and the County can still issue civil citations and withhold requested permits for this property. It's precluded if the defendant is able to show that it is not applicable.

Chairman Breathwaite asked if there were any statute of limitations listed within the UDO. Mr. McRee there is not any within the current UDO.

Mr. Merritt asked to make a closing statement. He said he was not an attorney, but just reading the statute. He said everyone knew where the property line was and could see the driveway. He said he would apply for a Variance.

Ms. Womble said an accurate reading of the law for the statute of limitations list a number of items and within it has this situation for referencing and enforcement. This statute is not applicable to administrative and this is where you are right now. If Mr. Merritt would like to file an appeal then it might be there.

Mr. McRee said Mr. Merritt still has the ability to rectify through compliance. Also, he would not be barred from bringing a variance at a later time.

Chairman Breathwaite and Mr. Craddock asked questions concerning Mr. Merritt filing a Variance and not having to take out the concrete and then put the concrete back in. Ms. Womble said the options are a Variance, Corrective Action Plan, or if the board says this appeal is granted.

Discussion was held on where the complaint for Mr. Merritt's violation came from. Ms. Womble said most violations are complaint driven. Chairman Breathwaite said it does not matter where the complaint came from, the County had to investigate once the complaint was received.

Mr. Craddock said the builder did know about the setback issue since he set the concrete back 10 ft which was different from the original building plans. The builder was trying to skirt the rules. The intent by the contractor was to wait until after the Certificate of Occupancy to put the additional concrete. Chairman Breathwaite said he heard Mr. Merritt say he thought the builder had received the permits. Mr. Hicks agreed with Chairman Breathwaite.

Chairman Breathwaite said there is no question the concrete is in the setback and there was a violation.

Mr. Craddock said he did state he knew it was in the setback. He said Mr. Merritt does have other options beyond this motion tonight.

Mr. Craddock motioned to affirm the Notice of Violation for Mr. Merritt's case, BOA 20-05, that the decision maker did not make an error and that they correctly applied the ordinance in making this decision.

Mr. Hicks seconded the motion and the motion carried unanimously 4-0.

<b>RESULT:</b>	<b>AFFIRM STAFF'S DECISION [UNANIMOUS]</b>
<b>MOVER:</b>	Steven Craddock, Vice Chairman
<b>SECONDER:</b>	Lynn L. Hicks, Board Member
<b>AYES:</b>	Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Carol Bell, Board Member, Lynn L. Hicks, Board Member
<b>ABSENT:</b>	Cathy Bontemps, Board Member

**ANNOUNCEMENTS**

There were no announcements.

**ADJOURNMENT**

Mr. Craddock motioned to adjourn the meeting. Mr. Hicks seconded the motion and the meeting adjourned at 8:28 PM.



**CURRITUCK COUNTY  
NORTH CAROLINA**

October 15, 2020  
Minutes – Special Meeting of the Board of Adjustment

**CALL TO ORDER**

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
Troy Breathwaite	Chairman	Present	
Steven Craddock	Vice Chairman	Present	
Carol Bell	Board Member	Absent	
Cathy Bontemps	Board Member	Present	
Lynn L. Hicks	Board Member	Present	
Ike McRee	County Attorney	Present	
Lauren Arizaga-Womble	Board of Adjustment Attorney	Present	
Laurie LoCicero	Planning Director	Present	
Rachael Anderson	Code Enforcement Officer	Present	
Jennie Turner	Planner II - Acting Clerk to the Board	Present	
Justin Old	Applicant/Appellant	Present	
Steven D. Weber	Applicant's Attorney	Present	
Ben Stikeleather	County Manager	Present	

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

**A Announce Quorum Being Met**

Chairman Breathwaite announced a quorum with four board members present.

**B. Approval of Agenda**

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

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Steven Craddock, Vice Chairman  
**SECONDER:** Lynn L. Hicks, Board Member  
**AYES:** Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Cathy Bontemps, Board Member, Lynn L. Hicks, Board Member  
**ABSENT:** Carol Bell, Board Member

**C Approval of Minutes for August 13, 2020**

Chairman Breathwaite asked if there were any changes needed for the August 13, 2020 meeting minutes. Vice Chairman Craddock motioned to approve as presented. Ms. Bontemps seconded the motion and the motion carried unanimously.

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Steven Craddock, Vice Chairman  
**SECONDER:** Cathy Bontemps, Board Member  
**AYES:** Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Cathy Bontemps, Board Member, Lynn L. Hicks, Board Member  
**ABSENT:** Carol Bell, Board Member

**1. BOA Minutes - August 13, 2020**

**D 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 before the board tonight. There were no known conflicts noted.

**OLD BUSINESS**

There was no old business discussed.

**NEW BUSINESS**

**A. PB 19-08 Justin Old - Glenmoor Ridge Dewatering Violations: Appeal of violation #1197 and violation #1198 for improperly pumping excess water not in accordance with the rules of the Unified Development Ordinance for property located on Campus Drive, Tax Map 22, Parcels 78A & 78B, Moyock Township.**

Ben Stikeleather, Mark Bissell, Clay Cartwright, Justin Old, Laurie LoCicero, Rachael Anderson, Mike Hall, Denise Hall, Jamie Coolman, and Karen Coolman were sworn in.

The County Attorney, Ike McRee, gave his opening statement and began his direct examination of Ms. LoCicero. It was noted that Attachment 2B was inadvertently left out of the agenda packet.

Mr. McRee asked about the original complaint received concerning the flooding of the properties. Ms. LoCicero gave the following account leading up to the violation: Commissioner Etheridge came to the Historic Courthouse with a map and discussion was held with the County Manager, Ben Stikeleather. Mr. Stikeleather then directed Ms.

Communication: BOA Meeting Minutes - October 15, 2020 (Approval of Minutes)

LoCicero to have her staff do an investigation. Ms. LoCicero briefed the Code Enforcement Officer, Rachael Anderson, with the construction drawings and files concerning Glenmoor Ridge dewatering. Ms. Anderson went to the location of the alleged violation to investigate and take pictures.

Mr. McRee asked if there were any unusual weather events and Ms. LoCicero said there was significant rainfall the previous weekend from Hurricane Dorian. Ms. LoCicero said she directed Ms. Anderson to investigate on information received September 9, 2019.

Steven Weber, attorney to Justin Old, began his cross examination of Ms. LoCicero.

Mr. Weber asked if Ms. LoCicero had visited Glenmoor Ridge. Ms. LoCicero said she visited the first Tuesday after the violation and then again the following week with the Code Enforcement Officer and the County Engineer.

Mr. Weber asked Ms. LoCicero how often she visited the site and Ms. LoCicero said about a dozen times.

Mr. McRee objected to Mr. Weber presenting a video of the Board of Commissioners speaking about the Glenmoor Ridge dewatering violations. Ms. Womble, Board of Adjustment Attorney, assessed the objection before the video could be played.

Chairman Breathwaite asked Mr. Weber to explain the clips.

Ms. Womble said in terms of a County statement by a party opponent - it is not a formal action by the Board or the County itself. County position is by action a cohesive board and we are here on staff's determination. The Commissioner's statements are not relevant. The Board of Adjustment is an independent body which is a sitting judicial board and the Board of Commissioners does not instruct the Board of Adjustment. The violation was done on staff's determination and not on an individual Commissioner's statement.

Chairman Breathwaite said the statements of the Commissioner were not relevant and we need to stick with facts.

Mr. Weber wanted to call Mr. Stikeleather to the stand in order to show the video. Mr. Weber asked to enter the video clips into the hearing as an exhibit but not asking for them to be shown.

The following exhibits were entered as evidence:

County 1 - Agenda Packet  
 Appellant 1 - Binder/Notebook  
 Appellant 3 - Copy of Agenda  
 Appellant 4 - Copy of Unified Development Ordinance  
 Coolman 1 - Set of Photographs

The following was entered as record, but not as evidence:

### Appellant 2 - 4 Video Clips

Mr. McRee clarified with Ms. Womble the videos are not being entered as evidence and she concurred.

Chairman Breathwaite asked if the board had any questions for staff.

Vice Chairman Craddock asked for a clarification concerning removing substantial damage part of the sentence.

Ms. LoCicero stated it could be removed.

Chairman Breathwaite said regulations can be tricky to make sure you have clear intent and it appears substantial damage portion is an integral part of it. Location could play a roll or volume could play a roll in causing substantial damage. It is Hard to see how the substantial damage part of the sentence could be removed and maintain the same meaning.

Ms. Bontemps agreed that it references the damages.

Chairman Breathwaite asked if the relationship between the approved site plan and the stormwater activities was reference in section 2.8 and Ms. LoCicero said it was a reference in that section.

Chairman Breathwaite asked if under SW regulations the activity of pumping the pond in and of itself with no flooding to an interior farm ditch is permitted and Ms. LoCicero said it is an allowable activity during construction. She said, typically, it adheres to the approved construction plan.

Chairman Breathwaite asked if Ms. LoCicero found flooding in the adjacent corn field when she visited on September 9th. Ms. LoCicero said she visited the back of the property and did not go to the cornfield; there was an elevation difference between the corn field and the pump locations.

Chairman Breathwaite asked if the pump was directed to one of the ditches and Ms. LoCicero said no. She said this would be answered better with Ms. Anderson's pictures and video on where it was pumping to.

Chairman Breathwaite said the LIDAR graphic prior to construction has a good chance for the corn field being lower.

Vice Chairman Craddock asked, in your opinion, do you believe that LIDAR is more accurate than on site measurements done by a surveyor.

Ms. LoCicero said the LIDAR can give a general overview and a general lay of the land. A surveyor would be more accurate.

Mr. McRee called Rachael Anderson, Currituck County Code Enforcement Officer, to the stand. She introduced herself and said she has been with the County for two years tomorrow.

Ms. Anderson said Laurie LoCicero asked her to go to the property and Deputy Sheriff Corbell was there, as well.

Mr. McRee asked what she was told to inspect. Ms. Anderson said a pump pumping water. She was given a general direction and given a hand drawn map. She said she found the pump and walked to where the pump was located.

Mr. McRee asked what time she left the Courthouse and Ms. Anderson said around 11:00 AM. She said her time is backed up by time stamped/dated pictures.

Mr. McRee asked what Ms. Anderson did upon arriving at the site.

Mr. Weber objected to the question - 8:57 PM.

Chairman Breathwaite conferred with Ms. Womble. Ms. Womble said it can be admissible for the purpose of why she was going back to the site.

Ms. Anderson said she went to a meeting at Karen Coolman's house, a homeowner on Old Jury Road, with Justin Old, Kim Old, Mike Hall, Ron Schaecher, and Laurie LoCicero. There were others present, but she did not know their names.

Ms. Anderson said she was only briefly at the meeting. She spoke to Mr. Old about the breach ditch and silt fence. We did not speak about the pumping violation.

Mr. McRee asked if at some point did you determine that the pumping had stopped and or had been removed from the SW pond. Ms. Anderson said yes, the pump was removed from pond 7 and relocated.

Mr. McRee asked if she determined the Notice of Violation was complied with and Ms. Anderson said yes.

Mr. McRee asked when compliant what did you do and Ms. Anderson said she went back to Glenmoor Ridge for the purpose to recheck the silt fence was fixed on September 17, 2019.

Mr. Weber objected and moved to strike compliance with breach ditch.

Ms. Womble concurred that the objection should be allowed for the silt fence.

Chairman Breathwaite allowed the objection.

Mr. McRee asked Ms. Anderson if she went back again and Ms. Anderson said yes, on September 18th, 2019.

Ms. Anderson said she was asked to go back; she took pictures and made notes concerning the farm field where the water was originally going.

Mr. McRee asked if there were any further reports or complaints received or acted upon at the location contrary to construction plans and Ms. Anderson said no.

Ms. Anderson said she deemed the matter compliant.

Mr. Weber began his cross examination of Ms. Anderson at 9:06 PM.

She said the pump operated a total of two hours.

Mr. Weber asked if Ms. Anderson visited the property at any time earlier than 11 and she said no.

Mr. Hicks asked what time the County Commissioner came to the office with the paper.

Discussion was held on how long the pump was running. The board asked Ms. Anderson various questions concerning the video, the pump, how long the pump was running and where the water was discharging to.

Vice Chairman Craddock asked if Ms. Anderson helped prepare the staff report packet and she said yes.

Vice Chairman Craddock asked about the exact amount of rainfall received from Hurricane Dorian. Ms. Anderson said she received it from Steven Pyle and it was on Page 49 of the packet..

9:23 PM - Rachael Anderson's testimony completed.

Mr. Weber gave his opening and started calling his witness's to the stand.

Justin Old took the stand to give his testimony and provided information on three photos:

1st photo - Sept. 10, 2019

2nd photo - Sept 10, 2019

3rd - Oct 13, 2020

9:38 PM - Clay Cartwright took the stand to provide his testimony.

9:56 - Mark Bissell took the stand to provide his testimony.

Mr. McRee started his cross examination.

10:10 PM - He asked Mr. Bissell when elevation points were measured and he said prior to September 9, 2019

Vice Chairman Craddock asked questions concerning the ditch capacity.

Chairman Breathwaite called for a break.

Mr. Weber confirmed his evidence into record for Appellate 1 - the notebook, A - Copy of Agenda Packet, and Appellant 4 - Copy of Unified Development Ordinance.

Mr. Weber rested his case, but reserved the right to call rebuttal witnesses.

Chairman Breathwaite opened the Public Comment portion at 10:28 PM.

Jamie Coolman and Karen Coolman of 172 Old Jury Road came before the board. They talked about the flooding that occurred on Sept. 6th through Sept. 7th of 2019. The Coolman's provided a set of photographs and the photographs were entered as evidence.

Coolman 1 - Set of Photographs

Mike Hall came before the board to make his public comments concerning the flooding.

Mr. Weber asked Mr. Hall about his statements.

Deborah Coble of 201 Green View Road, Eagle Creek Subdivision came before the board and asked the board to table this issue.

Justin Old made additional comments.

Clay Cartwright made additional comments.

Chairman Breathwaite closed the public hearing

The board had discussion.

Mr. Weber made his closing argument.

The board had additional discussion.

Vice Chairman Craddock made a motion to reverse the County's decision on the two Notice of Violations that were issued to the Appellant. He said the County made errors in determining whether a standard was met, also the County made an error in applying a measuring standard; The County has made errors in ways of notification to the Appellant on the fact that they did have Notice of Violations and the County did not provide enough evidence to support all of their Findings of Fact.

Vice Chairman Craddock said he was referencing the original Notice of Violations and the Amendment to them.

Ms. Bontemps seconded the motion and the motion carried unanimously with a 4-0 vote.

<b>RESULT:</b>	<b>REVERSED STAFF'S DECISION [UNANIMOUS]</b>
<b>MOVER:</b>	Steven Craddock, Vice Chairman
<b>SECONDER:</b>	Cathy Bontemps, Board Member
<b>AYES:</b>	Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Cathy Bontemps, Board Member, Lynn L. Hicks, Board Member
<b>ABSENT:</b>	Carol Bell, Board Member

### ANNOUNCEMENTS

There were no announcement made.

### ADJOURNMENT

Mr. Hicks motioned to adjourn the meeting. Ms. Bontemps seconded the motion and the meeting adjourned at approximately 11:30 PM.



## Currituck County Agenda Item Summary Sheet

**Agenda ID Number** – (ID # 2989)

**Agenda Item Title:** BOA 20-05 Jerry D. Merritt - Appeal:

**Submitted By:** Cheri Elliott – Planning & Community Development

**Presenter of Item:** Laurie LoCicero

**Board Action:** Action

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**Brief Description of Agenda Item:**

Jerry D. Merritt is requesting an Appeal for Notice of Violation 20-1383 issued on September 10, 2020, for a concrete driveway constructed within the side setback of his property. The subject property is located at 117 Nautical Lane, Currituck, Tax Map 59C, Parcel 35, Crawford Township.

**Is this item regulated by plan, regulation or statute?**

**Manager Recommendation:**



## Currituck County

Planning and Community Development Department  
*Planning and Zoning Division*  
 153 Courthouse Road, Suite 110  
 Currituck, North Carolina 27929  
 252-232-3055 FAX 252-232-3026

### MEMORANDUM

**To:** Board of Adjustment  
**From:** Planning Staff  
**Date:** December 10, 2020  
**Re:** BOA 20-05 Jerry D. Merritt/ Concrete Driveway in Setback

Jerry D Merritt and Delores J Merritt, Trustee, and owners, of 117 Nautical Lane, Currituck, NC 27929 have filed an appeal of notice of violation 20-1383 issued on September 10, 2020.

The notice of violation was issued to the owners of 117 Nautical Lane, Currituck, NC (PIN 059C00000350000) because the concrete driveway was constructed within the 10' side setback which is a violation of the county's Unified Development Ordinance.

The owners of the adjacent property at 115 Nautical Lane, Currituck, NC 27929 obtained a survey of their lot in preparation for construction of a new house. After the survey was completed, the owners of 115 Nautical Lane and 117 Nautical Lane agreed the survey markers were correct. With the property line remarked, staff received a complaint about the potential side setback violation. After receipt of the complaint, staff investigated the property. Staff determined that the driveway installed at 117 Nautical Lane is in violation of the Unified Development Ordinance Chapter 3, Subsection 3.4.2.F. Dimensional Standards.

#### Unified Development Ordinance

The following sections of the UDO are applicable to this case

- Chapter 3, Subsection 3.4.2.F. Dimensional Standards
  - Min. Driveway/Parking Setback (ft) 10
- Chapter 2, Subsection 2.4.9. Zoning Compliance Permit
  - A. Purpose  
The purpose of a zoning compliance permit is to ensure no development occurs until there is assurance the development complies with the requirements of this Ordinance
  - B. Applicability  
A zoning compliance permit is required before issuance of a building permit, any change in use, or commencement of activity that does not require issuance of a building permit.

#### Background

- July 14, 2008- The construction of the home on 117 Nautical Lane, Currituck, NC 27929 site plan was approved as noted

- At the time the permit number 200800780 was submitted for 117 Nautical Lane, Currituck, NC 27929 the 2007 Unified Development Ordinance was in affect
- August 11, 2009- As built approved for 117 Nautical Lane, Currituck, NC 27929
- August 14, 2009- Certificate of Compliance issued for 117 Nautical Lane
- Between 2010 and 2012 the driveway appears on the Currituck County GIS Online Mapping Program
- January 1, 2013 New Unified Development Ordinance in effect.

### Violation

- On Wednesday August 26, 2020 staff received a complaint regarding a flowerbed, driveway in the side setback, and stormwater issue. It was told to staff at the time of the complaint that a recent survey had been conducted and the survey markers were still in place.
- On August 28, 2020, the Code Enforcement Officer, Rachael Anderson and Stormwater Manager, Dylan Llyod coordinated to do an onsite inspection of 117 Nautical Lane, Currituck, NC 27929. Upon arrival staff was greeted by the property owner/trustee Jerry Merritt. Staff informed Mr. Merritt that a complaint was received on his property. Staff inquired if Mr. Merritt agreed with the survey conducted on the adjacent lot 115 Nautical Lane, Currituck, NC 27929. Mr. Merritt had no objections to the survey that had been recently done on 115 Nautical Lane, Currituck, NC 27929. With the cooperation and permission of Mr. Merritt, staff was able to measure the concrete that was added to the driveway. Before departure, the owner expressed how long it had been on the site. Staff informed him that the concrete appears to be a violation, but that staff would look at several things before a final determination was made.
- Staff reviewed the GIS online mapping determine the zoning of the property and to determine when the driveway extension was installed
- Staff reviewed the Unified Development Ordinance in effect at the time the driveway extension was installed. The 2007 UDO as amended required a minimum side setback of 10' for driveways.
- Staff searched the county's permitting software to determine if a permit was submitted for the driveway extension.
- Staff determined that the driveway encroachment was an unpermitted violation of the Unified Development Ordinance. The current UDO as amended requires a minimum side setback of 10' for driveways.
- On September 10, 2020, the official Notice of Violation #1383 was issued and mailed by staff.
- On September 16, 2020, staff received a Corrective Action Plan for an extension of the time limit for correction of the violation
- Staff approved the Corrective Action Plan (extension of time request) on September 24, 2020
- On September 29, 2020 an appeal of Notice of Violation #1383 was received by staff.

### Appeal Review Standards

1. The standard of review to be applied by the Board of Adjustment is limited to the following determinations in considering the appeal, which shall be based on clear and substantial evidence in the record is whether:
  - a. The decision-maker did not make an error or correctly applied the standards of the UDO in making the decision or interpretation;
  - b. The decision-maker made an error in determining whether a standard was met. The record must indicate that an error in judgment occurred or facts, plans, or regulations were misread in determining whether the particular standard was or was not met;
  - c. The decision-maker made the decision based on a standard not contained in this Ordinance or other appropriate county ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in this Ordinance was applied; or
  - d. The decision-maker made an error in applying a standard or measuring a standard.
2. Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility in terms of documentation and qualifications of those making the determination.
3. The Board of Adjustment shall not hear any evidence or make any decision based on hardships or special conditions. (Such matters may only be considered in the context of an application for a variance or use permit.)

### Attachments

The county submits the following attachments for the Board's consideration:

- o Attachment 1: Notice of violation #1383 dated September 10, 2020
- o Attachment 2: Picture 1
- o Attachment 3: Picture 2
- o Attachment 4: 2007 Unified Development Ordinance, Chapter 8 , Section 8.10 Driveways
- o Attachment 5: July 14, 2008 Site plan approved with conditions
- o Attachment 6: August 11, 2009 As-built survey approved
- o Attachment 7: August 14, 2009- Certificate of Compliance
- o Attachment 8: 2010 Online GIS Aerial Photography Map showing no driveway expansion
- 2012 Online GIS Aerial Photography Map showing driveway expansion
- o Attachment 9: Map showing Zoning
- o Attachment 10: Chapter 3, Subsection 3.4.2.F. Dimensional Standards
- o Attachment 11: Corrective Action Plan/ Approval
- o Attachment 12: Appeal



**COUNTY OF CURRITUCK**  
 Code Enforcement Program  
 153 Courthouse Road, Suite 108  
 Currituck, NC 27929  
 (252) 232-6056

**NOTICE OF VIOLATION** 3.A.b  
 1383

Jerry D Merritt Trustee  
 Delores J Merritt Trustee  
 117 Nautical Ln  
 Currituck, NC 27929

<b>Violation Date:</b> September 10, 2020	<b>Inspection Date:</b> August 28, 2020
<b>Property Address:</b> 117 Nautical Ln	<b>PIN #:</b> 059C-000-0035-0000
<b>Violation Description:</b> It has been brought to our attention that your driveway extension has been placed to close to the lot lines. The standard in Single-Family Residential-Mainland District is, "Min. Driveway/Parking Setback (ft) 10"(3.4.2.F.). Also, no permit was obtained for the driveway extension.	
<b>Compliance Request:</b> Please contact staff for more information on gaining compliance.  For more information contact Rachael Anderson at Rachael.Anderson@CurrituckCountyNC.gov (252) 232-6056	<b>UDO Code Reference:</b> Chapter 3, Subsection 3.4.2.F. Dimensional Standards  <b>Required Compliance Date:</b> October 14, 2020



**Please be advised that failure to comply with the above may result in civil penalties assessed by the County of up to \$500.00 per day for each day that the violation exists.**

**For more information on bringing the property into compliance contact**  
[Rachael.Anderson@CurrituckCountyNC.gov](mailto:Rachael.Anderson@CurrituckCountyNC.gov) – (252) 232-6056

**If you wish to appeal this decision, you have thirty (30) days from receipt of this notice in which to submit an appeal application to the Board of Adjustment or this decision shall be considered final. Applications can be obtained and submitted in the Planning & Community Development Department.**

Attachment: Attachment 1 NOV (BOA 20-05 Jerry D. Merritt - Appeal:)



Attachment: Attachment 2 pic 1 x2 (BOA 20-05 Jerry D. Merritt - Appeal:)



Attachment: Attachment 3 pic 2x2 (BOA 20-05 Jerry D. Merritt - Appeal:)

## CHAPTER 8: PARKING & DRIVEWAYS

- D. No area allocated to loading and unloading facilities may be used to satisfy the area requirements for off-street parking, nor shall any portion of any off-street parking area be used to satisfy the area requirements for loading and unloading facilities.

### Section 8.10 Driveways

#### 8.10.1 General Provisions (10-28, 11/15/10)

- A. Specifications for driveway entrances shall be in accordance with all applicable state regulations unless otherwise provided.
- B. All driveway entrances and other openings onto streets shall be constructed so that:
1. vehicles can enter and exit from the lot in question without posing any substantial danger to themselves, pedestrians, or vehicles traveling in abutting streets; and,
  2. Interference with the free and convenient flow of traffic in abutting or surrounding streets is minimized.
- C. A sight-distance triangle of 10 feet by 35 feet is required where vehicular areas intersect with street right-of-ways. Nothing over 24" or less than 7' in height shall be located within this area.
- D. Driveways shall maintain a ten foot setback from any side and rear property line, except for residential lots within planned unit developments, residential lots with centralized water and sewer service in an oceanfront LBH zoning district, required shared driveways, cul-de-sac lots, and camper lots where it is determined by the administrator that the setbacks cannot reasonably be met. Residential driveways shall extend ten feet into the property before establishing drive aisles and parking spaces. Commercial and manufacturing driveways shall extend 20 feet into the property before establishing drive aisles and parking spaces.
- E. Driveways, drive aisles, and parking spaces for residential lots with centralized water and sewer service in an oceanfront LBH zoning district shall maintain a five foot setback front all side property lines.

#### 8.10.2 Driveway Widths

- A. Driveways shall not be less than 10 feet in width for one-way traffic and 18 feet in width for two-way traffic. However, ten foot wide driveways are permissible for two-way traffic when:

**CHAPTER 8: PARKING & DRIVEWAYS**

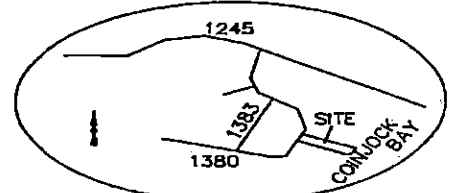
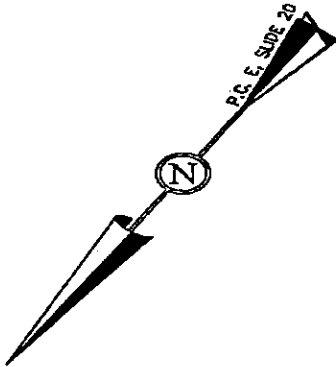
1. the driveway is not longer than 75 feet;
  2. it provides access to not more than six spaces; and,
  3. Sufficient turning space is provided so that vehicles need not back into a public street;
  4. Or, if the administrator determines that not more than ten trips per day will be generated to and from the vehicular area being served by that driveway and such vehicular area is not used by the general public.
- B. Residential driveways shall not exceed 24 feet in width measured at the front (street) property line. Commercial and manufacturing driveways shall not exceed 36 feet in width measured at the front (street) property line. The maximum driveway width shall not apply to fire stations.



AS-BUILT SURVEY  
FOR  
**JERRY AND DELORES MERRITT**  
CRAWFORD TOWNSHIP  
CURRITUCK COUNTY, NORTH CAROLINA  
BEING LOT 35 OF CURRITUCK LANDING SUBDIVISION AS RECORDED IN P.C. E, SLIDES 19-22  
AUGUST 10, 2009  
GRAPHIC SCALE

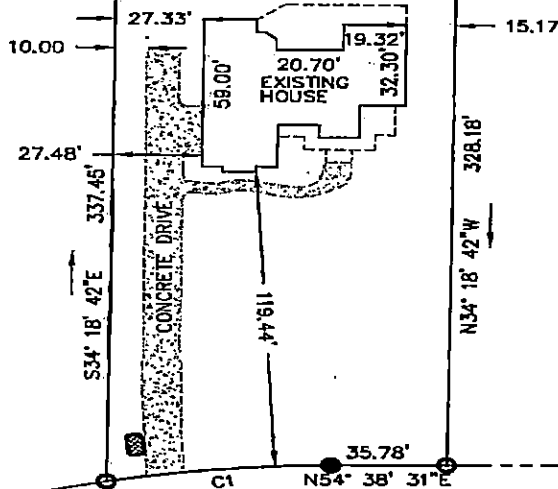


( IN FEET )  
1 inch = 60 ft.



VICINITY MAP  
NTS

(35)  
78167 SQ. FT.  
1.79 ACRES  
BY COORDINATE METHOD



AS-BUILT  
OK  
TBS  
8/11/09

NAUTICAL LANE (S.R. 1380) (45' R/W)

CURVE TABLE						
CURVE	ARC LENGTH	RADIUS	TANGENT	DELTA	CHORD BEARING	CHORD LENGTH
C1	69.77'	372.50'	34.99	10°43'55"	N49° 16' 33"E	69.67'

LEGEND

- CALCULATED POINT
- EXISTING CORNER
- ◻ WATER METER
- PROPERTY LINE
- - - ADJOINING LINE
- - - - RIGHT-OF-WAY LINE

NORTH CAROLINA, CURRITUCK COUNTY

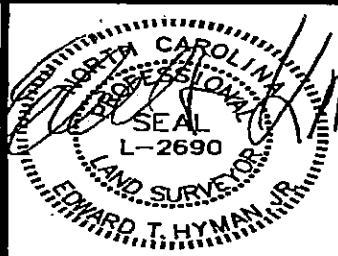
I, \_\_\_\_\_ REVIEW OFFICER OF CURRITUCK COUNTY  
CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL  
STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER

I, EDWARD T. HYMAN JR.  
PLS-2690, CERTIFY,  
THAT THIS PLAT IS OF  
AN EXISTING PARCEL(S) OF LAND.

NOTE: THIS PROPERTY IS LOCATED  
IN FLOOD HAZARD ZONE "AE (5)"  
MAP PANEL #372089800 J  
DATED DECEMBER 16, 2005  
FINISHED FLOOR ELEV. = 8.98

I, EDWARD T. HYMAN JR., CERTIFY THAT  
THIS PLAT WAS DRAWN FROM AN ACTUAL  
FIELD LAND SURVEY MADE UNDER MY  
SUPERVISION; THAT THE DEED  
DESCRIPTION FOR SAID  
PROPERTY IS D.B. 912 PG 288 THAT THE  
ERROR OF CLOSURE IS 1:10,000+; THAT  
THIS MAP WAS PREPARED IN  
ACCORDANCE WITH BOARD RULES,  
WITNESS MY ORIGINAL SIGNATURE,  
REGISTRATION NUMBER AND SEAL THIS 22  
DAY OF JULY, 2009



**HYMAN ROBEY**

SOLUTIONS FROM THE GROUND UP  
150 US Hwy 158 E. - PO Box 339  
Camden, NC 27921 License C-0598  
(252) 338-2913 - (252) 338-5552 fax

FIELD BOOK # EBA3

Attachment: Attachment 6 Asbuilt survey (BOA 20-05 Jerry D. Merritt - Appeal:)

# County of Currituck CERTIFICATE OF COMPLIANCE

This certificate is issued pursuant to the requirements of the North Carolina State Building Code and G.S. 153A-363.  
For the following:

**Application Number:** 200800780  
**Location:** 117 NAUTICAL LANE  
**Parcel ID:** 059C00000350000  
**Property Owner:** MERRITT, JERRY D TRUSTEE

**Building Use Description:** SFD (SINGLE FAMILY MAINLAND)

**Occupancy Max:** 8  
Occupancy Max required for non residential structures only.

*There was no door on second floor master which makes smoke detector compliant*

*Stephen P. [Signature]*  
\_\_\_\_\_  
Building Official Signature

*8/14/09*  
\_\_\_\_\_  
Date Signed

Attachment: Attachment 7 COC (BOA 20-05 Jerry D. Merritt - Appeal:)

2010- GIS Aerial  
117 Nautical Lane Currituck, NC27929



Attachment: Attachment 8 GIS Aerial 2010 (BOA 20-05 Jerry D. Merritt - Appeal!)

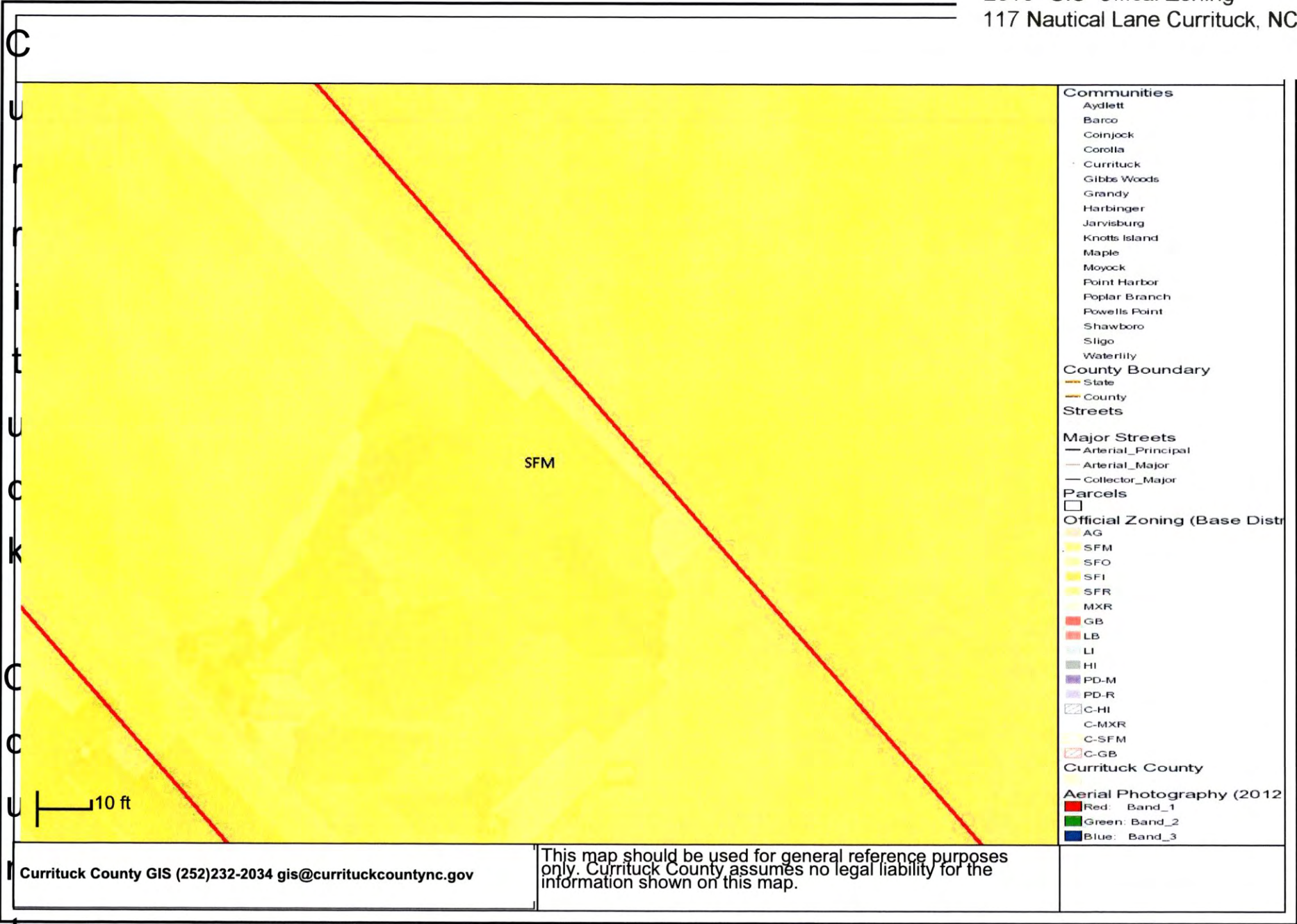
2012- GIS Aerial  
117 Nautical Lane Currituck, NC27929



Currituck County GIS (252)232-2034 [gis@currituckcountync.gov](mailto:gis@currituckcountync.gov)

This map should be used for general reference purposes only. Currituck County assumes no legal liability for the information shown on this map.

<b>Communities</b>
Aydlett
Barco
Cornjock
Corolla
Currituck
Gilbs Woods
Grandy
Harbinger
Jarvisburg
Knotts Island
Maple
Moyock
Point Harbor
Poplar Branch
Powell's Point
Shawboro
Siligo
Waterlily
<b>County Boundary</b>
State
County
<b>Streets</b>
<b>Major Streets</b>
Arterial_Principal
Arterial_Major
Collector_Major
Parcels
Currituck County
<b>Aerial Photography (2012)</b>
Red: Band_1
Green: Band_2
Blue: Band_3



Attachment: Attachment 9 map showing zoning (BOA 20-05 Jerry D. Merritt - Appeal:)

Chapter 3: Zoning Districts

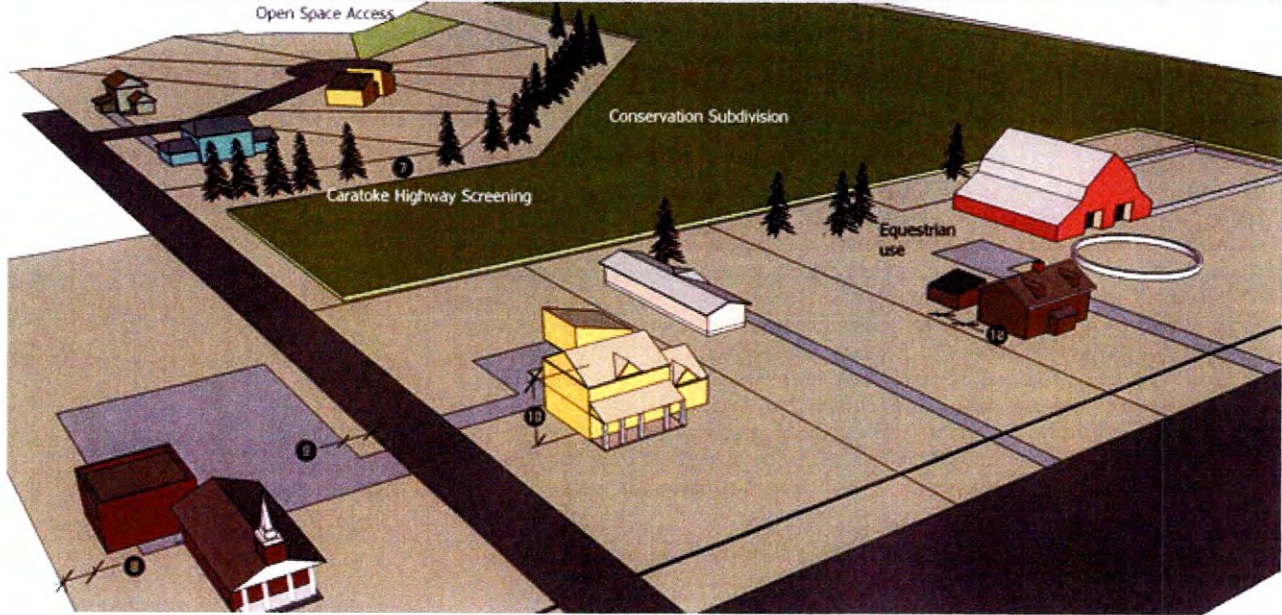
**SECTION 3.4: RESIDENTIAL BASE ZONING DISTRICTS**

Subsection 3.4.2: Single-Family Residential-Mainland (SFM) District

**D. TYPICAL BUILDING FORMS**



**E. BUILDING CONFIGURATION**



**F. DIMENSIONAL STANDARDS**

TD = Traditional Development      CS = Conservation Subdivision Development

	TD	CS		TD	CS
Max. Gross Density – Traditional Dev. (du/ac)	N/A	-	Min. Front Setback (ft)	20	N/A
Max. Gross Density – Conservation Sub.			Min. Corner Side Setback (ft) [4]	20	N/A <b>3</b>
In Rural/Conservation Areas (du/ac)	-	0.33	Min. Major Arterial Street Setback (ft)	50	50 <b>4</b>
In Limited Service Areas (du/ac)	-	0.75	Min. Side Setback (ft)	10	10 <b>5</b>
In Full Service Areas (du/ac)	-	1.0	Min. Rear Setback (ft)	25	N/A <b>6</b>
Max. Nonresidential FAR (%)	0.40	N/A	Min. Agriculture Setback (ft) [5]	50	50 <b>7</b>
Min. Lot Area (sf ft)	40,000	25,000	Min. Accessory Use Setback (ft)	10	10 <b>8</b>
Max. Lot Area (acres)	N/A	N/A	Min. Driveway/Parking Setback (ft)	10	N/A <b>9</b>
Min. Lot Width, Interior Lot (ft) [1]	125	N/A <b>1</b>	Min. Fill Setback from all Lot Lines (ft)	10	10
Min. Lot Width, Corner Lot (ft)	135	N/A <b>2</b>	Max. Building Height (ft)	35	35 <b>10</b>
Max. Lot Depth	[2]	N/A	Min. Wetland/Riparian Buffer (ft) [5]	30	30 <b>11</b>
Max. Lot Coverage (%)	30 [3]	30	Min. Spacing Between Principal Buildings (ft)	10	10 <b>12</b>

[1] All lots shall maintain a minimum street frontage of 35 feet  
 [2] Lot depth shall not exceed four times the lot width  
 [3] 35% for platted lots of 19,000 sf in area or less  
 [4] Front setbacks shall be measured from ultimate ROW line

[5] Applied to major subdivisions platted after January 1, 2013 and site plans on lots 10 acres in area and greater

Attachment: Attachment 10 UDO Ch 3 (BOA 20-05 Jerry D. Merritt - Appeal!)



## Currituck Count

Planning and Community Development Departme  
 Code Enforcement Progra  
 153 Courthouse Ro  
 Currituck, North Carolina 279  
 252-232-60

October 2, 2020

Jerry D Merrit Trustee  
 Delores J Merrit Trustee  
 117 Nautical Ln  
 Currituck, NC 27929

RE:117 Nautical Ln, Parcel # 059C-000-0035-0000, Violation # 1383

Dear Mr. Merrit,

The county received your request for an extension for the notice of violation #1383. The Planning Director reviewed the request and has granted an extension until April 1, 2021 which I have attached a copy of such approval for your records.

The Planning and Community Development Department would like to solicit your cooperation and communit spirit in correcting the violation by the extended deadline of April 1, 2021.

Thanking you in advance for your cooperation. If you have any questions regarding this matter please contact me at (252) 232-6056.

Sincerely,

A handwritten signature in cursive script that reads "Rachael Anderson".

Rachael Anderson  
 Code Enforcement Officer

Enclosure

Attachment: Attachment 11 Corrective Action Plan approval (BOA 20-05 Jerry D. Merritt - Appeal:)

Corrective Action Plan

Request for extension of time limit for correction of violation.

Name: Delores J. and Jerry D. Merritt Trustee
Address: 117 Nautical Lane, Currituck, NC 27929
Phone #: 571-213-4968 Email: jerrym3@aol.com
Property Address: 117 Nautical Lane, Currituck, NC 27929
Notice of Violation # 1383
Violation Description: Violation of Minimum Driveway/Parking Setback (ft) 10' (3.4.2.F)

Describe the plan and timeline to bring the property into compliance with the UDO:

We have contacted a local contractor who installs pervious paver stones. He will remove the concrete in question and install an area wide enough, 5 to 7 feet wide, to allow turn access into garage.

Due to COVID -19, the contractor is backlogged with work until at least March of 2021. The driveway has no impact on other property and is not a safety hazard.

We respectfully request an extension on the Corrective Action Plan until approximately April 1, 2021. When we have a contract, we will provide a more accurate date of compliance.
Delores J. and Jerry D. Merritt Trustee
September 16, 2020

Handwritten signatures of Delores J. Merritt and Jerry D. Merritt

Please note that this form must be approved by the Planning Director or Chief Building Inspector; submitting this form does not ensure that your request for extension of time will be granted.

Planning Staff Use Only

Date Received: 9/16/20 Michael Andersen

Extended Compliance Date: April 1, 2021

Approved by: Lamin B. Giaro Date: 9/24/2020

Attachment: Attachment 11 Corrective Action Plan (BOA 20-05 Jerry D. Merritt - Appeal:)



# Appeal Application

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

### Contact Information

**APPLICANT:**

Name: JERRY D. MERRITT  
 Address: 117 NAUTICAL LANE  
CURRITUCK, NC 27929  
 Telephone: 571-213-4968  
 E-Mail Address: JERRY M3@AOL.COM

**PROPERTY OWNER:**

Name: Deborah J. + JERRY D. MERRITT  
 Address: 117 NAUTICAL LANE  
CURRITUCK, NC 27929  
 Telephone: 571-213-4968  
 E-Mail Address: JERRY M3@AOL.COM

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: SAME

### Property Information

Physical Street Address: 117 NAUTICAL LANE, CURRITUCK, NC 27929  
 Location: CURRITUCK LANDING  
 Parcel Identification Number(s): 059C000-0035-0000

### Statement of Error, or Improper Decision or Interpretation

I wish to appeal a:     Decision or Interpretation     Notice of Violation

The determination being dated 09/10/2020.

Grounds for appeal

State the facts you are prepared to prove to the Board of Adjustment that should lead the board to conclude that the decision of the administrator was made in error.

SEE ATTACHED ENCLOSURES (1), (2) + (3) + (4).

Please include all related support materials with the application.

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. All information submitted and required as part of this application process shall become public record.

Jerry D. Merritt  
Appellant/Applicant

9/29/2020  
Date

Attachment: Attachment 12 Appeal Application (BOA 20-05 Jerry D. Merritt - Appeal:)

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 an appeal or interpretation at the above location. I authorize you to advertise and present this matter in my name as the owner of the property.

Further, I hereby authorize county officials to enter my property for purposes of determining zoning compliance.

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: \_\_\_\_\_

Appeal Submittal Checklist

Staff will use the following checklist to determine the completeness of your application. Only complete applications will be accepted.

# Appeal Submittal Checklist

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

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

Project Name: \_\_\_\_\_

Applicant/Property Owner: \_\_\_\_\_

Appeal Submittal Checklist	
1	Complete Appeal application
2	Application fee (\$500)
3	All related support materials/evidence.
4	2 hard copies of ALL documents
5	1 PDF digital copy of all plans AND documents (ex. Compact Disk – e-mail not acceptable)

For Staff Only

**Pre-application Conference (optional)**

Pre-application Conference was held on \_\_\_\_\_ and the following people were present:

\_\_\_\_\_  
\_\_\_\_\_

**Comments**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attachment: Attachment 12 Appeal Application (BOA 20-05 Jerry D. Merritt - Appeal:)

Enclosure #1

Grounds for appeal:

Upon receiving the Notice of Violation #1383, we sought counsel from a Currituck County lawyer. He advised us that under North Carolina Session Law 2017-10, Section 1-49, the Statute of Limitations has expired on the Notice of Violation #1383. (Enclosure 2)

The driveway addition was installed June of 2010 by our contractor. It is visible from the roadway and is in plain view of the public. It is entirely located on our property and does not represent a safety hazard to the public.

The construction date of the addition is June 2010. (Enclosure 3)

Current view of driveway addition from public roadway. (Enclosure 4)



COUNTY OF CURRITUCK  
 Code Enforcement Program  
 153 Courthouse Road, Suite 108  
 Currituck, NC 27929  
 (252) 232-6056

**NOTICE OF VIOLATION #**  
 1383

Jerry D Merritt Trustee  
 Delores J Merritt Trustee  
 117 Nautical Ln  
 Currituck, NC 27929

<b>Violation Date:</b> September 10, 2020	<b>Inspection Date:</b> August 28, 2020
<b>Property Address:</b> 117 Nautical Ln	<b>PIN #:</b> 059C-000-0035-0000
<b>Violation Description:</b> It has been brought to our attention that your driveway extension has been placed to close to the lot lines. The standard in Single-Family Residential-Mainland District is, "Min. Driveway/Parking Setback (ft) 10"(3.4.2.F.). Also, no permit was obtained for the driveway extension.	
<b>Compliance Request:</b> Please contact staff for more information on gaining compliance.  For more information contact Rachael Anderson at Rachael.Anderson@CurrituckCountyNC.gov (252) 232-6056	<b>UDO Code Reference:</b> Chapter 3, Subsection 3.4.2.F. Dimensional Standards
	<b>Required Compliance Date:</b> October 14, 2020



Please be advised that failure to comply with the above may result in civil penalties assessed by the County of up to \$500.00 per day for each day that the violation exists.

For more information on bringing the property into compliance contact  
[Rachael.Anderson@CurrituckCountyNC.gov](mailto:Rachael.Anderson@CurrituckCountyNC.gov) – (252) 232-6056

If you wish to appeal this decision, you have thirty (30) days from receipt of this notice in which to submit an appeal application to the Board of Adjustment or this decision shall be considered final. Applications can be obtained and submitted in the Planning & Community Development Department.

Attachment: Attachment 12 Appeal Application (BOA 20-05 Jerry D. Merritt - Appeal:)



007.JPG

ENCLOSURE #3, 4 PAGES

PAGE 1

2.5 M

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Attachment: Attachment 12 Appeal Application (BOA 20-05 Jerry D. Merritt - Appeal:)



Attachment: Attachment 12 Appeal Application (BOA 20-05 Jerry D. Merritt - Appeal:)



008.JPG

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