



**CURRITUCK COUNTY
NORTH CAROLINA**

August 11, 2022
Minutes – Regular Meeting of the Board of Adjustment

CALL TO ORDER - 7:00 PM

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

Note: These minutes are a synopsis of the meeting - a verbatim video recording is available at <https://currituckcountync.iqm2.com/Citizens/Default.aspx>

| Attendee Name | Title | Status | Arrived |
|-----------------------|-------------------------------|---------|---------|
| Troy Breathwaite | Chairman | Present | |
| Steven Craddock | Vice Chairman | Present | |
| Carol Bell | Board Member | Absent | |
| Cathy Bontemps | Board Member | Present | |
| Robin Kane | Board Member | Present | |
| Sam Miller | Board Member | Present | |
| Lauren Arizaga-Womble | Board of Adjustment Attorney | Present | |
| Ike McRee | County Manager | Present | |
| Megan Morgan | County Attorney | Present | |
| Kevin Kemp | Development Services Director | Present | |
| Savannah Newbern | Planner I | Present | |
| Cheri Elliott | Clerk to the Board | Present | |

Chairman Breathwaite called the meeting to order at 7:00 PM and asked the clerk to call the roll.

A Announce Quorum Being Met

Chairman Breathwaite announced a quorum being met with four regular members and one alternate member present. Robin Kane served as a voting member in place of Carol Bell.

B. Approval of Agenda

Chairman Breathwaite asked if there were any changes needed to the agenda. Vice Chairman Craddock moved to approve the agenda as presented. Mr. Miller seconded the motion and the motion passed unanimously.

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| RESULT: | APPROVED [UNANIMOUS] |
| MOVER: | Steven Craddock, Vice Chairman |
| SECONDER: | Sam Miller, Board Member |
| AYES: | Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Cathy Bontemps, Board Member, Robin Kane, Board Member, Sam Miller, Board Member |
| ABSENT: | Carol Bell, Board Member |

C Approval of Minutes for July 14, 2022

Chairman Breathwaite asked if there were any changes needed to the July 14, 2022 meeting minutes. Ms. Arizaga-Womble added exhibits which were excluded from the original minutes on page seven: Applicant Exhibits 19-21 and County Exhibits A-D. Vice Chairman Craddock moved to approve the minutes with the additional exhibits included. Mr. Miller seconded the motion and the motion passed unanimously.

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| RESULT: | APPROVED [UNANIMOUS] |
| MOVER: | Steven Craddock, Vice Chairman |
| SECONDER: | Sam Miller, Board Member |
| AYES: | Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Cathy Bontemps, Board Member, Robin Kane, Board Member, Sam Miller, Board Member |
| ABSENT: | Carol Bell, Board Member |

A. BOA Meeting Minutes - July 14, 2022

D Ask for Disqualifications

Chairman Breathwaite asked if anyone had a conflict of interest concerning the matter before the board tonight. Ms. Arizaga-Womble said Mr. Brumsey had brought it to her attention tonight that Twifford Law Firm had handled the closing in the past for the Ansell-Barham property. Ms. Arizaga-Womble confirmed she did not have any part in that matter and asked if anyone one had an objection to her sitting with the board. There were no objections to this disclosure.

OLD BUSINESS

No old business was discussed.

NEW BUSINESS

A. BOA 22-04 Vicki Ansell & David Barham - Appeal: Appeal requested for the Letter of Determination from Currituck County, dated June 3, 2022, which concluded property address 185 Bay Orchard Lane, Knotts Island, Tax Map 77, Parcel 2, Fruitville Township, is not a lot of record on which development may occur.

Chairman Breathwaite swore in witnesses: Bill Brumsey, Vicki Ansell, David Barham, John Raymond, and Kevin Kemp.

Chairman Breathwaite said Mr. Miller would like to make a statement before we begin. Mr. Miller questioned whether the appeal process is appropriate for Mr. Brumsey's case tonight

and if he or his clients had considered filing a variance since it would have more flexibility than an appeal. Mr. Brumsey said he would like to discuss this option with his clients and asked for a recess.

Chairman Breathwaite called a recess at 7:08 PM.

Chairman Breathwaite called the meeting back to order at 7:12 PM.

Mr. Brumsey requested his client's appeal to be continued until the October 13, 2022 Board of Adjustment meeting so they could decide on whether to pursue a variance.

The board, nor the County objected and the continuance was granted.

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| RESULT: | CONTINUED WITH NO VOTE | Next: 10/13/2022 7:00 PM |
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ANNOUNCEMENTS

Kevin Kemp welcomed the new County Attorney, Megan Morgan. Ms. Morgan said she is a Currituck County native, she is very happy to fulfill her new position and looks forward to working with the board.

ADJOURNMENT

Mr. Kane motioned to adjourn the meeting. Vice Chairman Craddock seconded the motion and the meeting adjourned at 7:14 PM.



**CURRITUCK COUNTY
NORTH CAROLINA**

July 14, 2022

Minutes – Regular Meeting of the Board of Adjustment

CALL TO ORDER - 7:00 PM

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

Note: These minutes are a synopsis of the meeting - a verbatim video recording is available at <http://currituckcountync.iqm2.com/Citizens/Default.aspx>

| Attendee Name | Title | Status | Arrived |
|-----------------------|------------------------------|---------|---------|
| Troy Breathwaite | Chairman | Present | |
| Steven Craddock | Vice Chairman | Present | |
| Carol Bell | Board Member | Absent | |
| Cathy Bontemps | Board Member | Present | |
| Robin Kane | Board Member | Present | |
| Sam Miller | Board Member | Present | |
| Kevin Kemp | Development Service Director | Present | |
| Ike McRee | County Attorney | Present | |
| Tammy Glave | Senior Planner | Present | |
| Lauren Arizaga-Womble | Board of Adjustment Attorney | Present | |

A Announce Quorum Being Met

Chairman Breathwaite called the meeting to order and announced a quorum had been met. Alternate Robin Kane will be a voting member in Carol Bell's absence.

B. Approval of Agenda

BOA 22-02 Frog Island Seafood requested to be removed from the agenda and be heard in September, per Board Attorney Arizaga-Womble.

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| RESULT: | APPROVED [UNANIMOUS] |
| MOVER: | Steven Craddock, Vice Chairman |
| SECONDER: | Robin Kane, Board Member |
| AYES: | Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Cathy Bontemps, Board Member, Robin Kane, Board Member, Sam Miller, Board Member |
| ABSENT: | Carol Bell, Board Member |

C Approval of Minutes for June 16, 2022

Vice Chairman Craddock pointed out that spelling errors had been corrected.

Communication: BOA Meeting Minutes - July 14, 2022 (Approval of Minutes for July 14, 2022)

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| RESULT: | APPROVED [UNANIMOUS] |
| MOVER: | Sam Miller, Board Member |
| SECONDER: | Cathy Bontemps, Board Member |
| AYES: | Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Cathy Bontemps, Board Member, Robin Kane, Board Member, Sam Miller, Board Member |
| ABSENT: | Carol Bell, Board Member |

BOA Meeting Minutes Revised - June 16, 2022

D. Ask for Disqualifications

No members disqualified themselves from voting on any of the items on the agenda.

OLD BUSINESS

- A. BOA 22-02 Frog Island Seafood - Variance Request: Robert D. White is requesting a variance to add a roof to an existing concrete slab that is within the side setback along Simpson Road on property located at 3997 Caratoke Highway, Barco, Tax Map 69, Parcel 5A, Crawford Township.**

This item was removed from the agenda.

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| RESULT: | CONTINUED WITH NO VOTE | Next: 9/8/2022 7:00 PM |
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NEW BUSINESS

Chairman Breathwaite swore in all witnesses.

- A. BOA 22-03 Edward Delaney & Tara Murphy: Request for an appeal of the Letter of Determination from Currituck County, dated May 12, 2022, which concluded Tax Map 101C, Parcel E, Seagull Subdivision, Fruitville (Beach) Township, is not a lot of record on which development may occur.**

Mr. McRee qualified Mr. Kemp as an expert witness and had him explain how the case came to the Board.

Mr. Kemp summarized the staff analysis and the determination that this lot is not a legal lot of record because it did not meet the subdivision regulations at the time it was created: it was not created prior to April 2, 1969, was not recorded with meets and bounds, and a valid building permit had not been granted.

Mr. Kemp reviewed the Seagull Subdivision preliminary plat and final plat with the Board. He summarized that in 1974 the lot had to have minimum 20,000 sf in area, be 100' wide, and 200' deep. This lot's depth is shorter than 200' as defined by the ordinance. It is less than 167' deep. It does not meet lot depth by current UDO standards either. Given this data, the determination was made that this was not a legal lot of record and could not be built upon.

Mr. McRee said that the applicant states that two similar lots have been built upon.

Communication: BOA Meeting Minutes - July 14, 2022 (Approval of Minutes for July 14, 2022)

Mr. Kemp said that the Chief Planner wrote a letter in 1994 that Lot A was not a legal lot because it did not have proper access. In July 1995, an amended final plat was recorded that included access, making it a buildable lot. It met all applicable zoning requirements, including lot depth.

Mr. Kemp said in February 2000, Lot D was recombined to increase the lot area to make it a legal lot of record and a building permit was issued. Parcel D met the minimal requirements from 1974.

Crouse Gray, applicant's attorney, asked Mr. Kemp to explain the plat review process.

Mr. Kemp explained the plat review process.

Mr. Gray argued that the Board of Commissioners approved the Seagull Subdivision plat with the lots shown, not meeting minimum requirements. He also argued that several of the numbered lots within the subdivision did not meet the minimum depth requirements but were determined to be legal lots of record and received building permits for homes. He had Mr. Kemp read the definition of lot depth and argued that Mr. Kemp's letter of determination was wrong and that in fact, the lot depth exceeds 200'. He argued that the Board of Commissioners approved the Seagull Subdivision plat with the 'Letter' lots and did not say they were not approving those lots or that those lots did not meet minimum standards.

Mr. Gray presented tax bills for the property indicating that the Tax Department considers Lot E a lot. He also presented several other tax bills for other lots in the subdivision.

Mr. McRee objected that it is not possible to know what the Tax Department considers.

Mr. McRee redirected Mr. Kemp to the 1971 Zoning Ordinance and the definition of Lot, Corner. He also referred Mr. Kemp to Exhibit 5, Lot E.

Chairman Breathwaite summarized that the parcel of land was included in the 1974 plat and the board must determine if it met the standards from 1974 or today's standards.

Mr. Kemp summarized that in 1974 the lot had to have minimum 20,000 sf in area, be 100' wide, and 200' deep. Currently the lot would have to have 120,000 sf in area, be 125' wide, and no specific depth.

Chairman Breathwaite said that technically this was a corner lot but was oddly shaped and asked how to measure lot depth without going across another lot to draw a straight line.

Mr. Kemp said that you find the midpoint of the front property line, the midpoint of the rear property line and draw a straight line between those two points to determine lot depth. It does not matter that you cross another property and agreed that this lot is oddly shaped.

Mr. Miller said the frontage on Seagull appears to be 48' and by definition that would be

where lot width would be measured from that setback (20'). It would not meet the minimum lot width of 100'.

Vice Chairman Craddock asked if there was a definition of building setback line in the 1971 subdivision ordinance.

Mr. Kemp read the definition and said the street property line setback was 20' at the time the subdivision was created.

Chairman Breathwaite read the definition of lot from the 1971 ordinance. He said it is inherently buildable. He pointed out that the Board of Commissioners approved 33 lots, which did not include the other lots ('lettered' lots).

Ms. Bontemps asked for options of purchasing adjoining property to make this a legal lot.

Attorney Arizaga-Womble explained that figuring out how to make this a legal lot of record is not relevant to the case being considered and the Board should only consider if it is going to uphold or overturn Mr. Kemp's Letter of Determination.

Mr. Kane asked for clarification on measuring lot width.

Mr. Kemp summarized.

Vice Chairman Craddock asked Mr. Kemp if his letter of determination should be changed.

Mr. Kemp said no, the letter stands. It does not specifically call out lot depth. He said his testimony from earlier stating that lot depth was an issue has changed to lot width being the issue, now realizing this is a corner lot.

Ms. Bontemps asked why the six lots were on the plat if they were not to be recorded.

Mr. Kemp did not know other than a Health Department letter indicating an area on the site (not specific) did not have suitable soils for septic.

Mr. Kane said that according to the aerial photo, Lot D had been built upon, so things can change.

Chairman Breathwaite said it did not appear this lot could change enough to be built upon.

Vice Chairman Craddock confirmed that the front lot line was on Seagull and did not meet the minimum 100' lot width and also does not meet today's subdivision standards for creating a lot.

Ms. Bontemps expressed a concern for a least 10 lots on Tulls Creek Road that were allowed to build on similar shaped lots. She understands flag lots are no longer allowed.

Mr. Miller explained that fire codes and subdivision codes have changed.

Attorney Arizaga-Womble said an odd-shaped lot may be a case for a variance.

Mr. Gray asked Mr. Kemp if the setback can be larger than 20'.

Mr. Kemp said it can be larger than 20', but lot width is measured at 20'.

Mr. Gray argued that if you move the setback back, you can measure width further back.

In closing, Mr. Gray argued that lot E is an approved, buildable lot. He said there is no evidence that lots A-F were not approved. The county switched from lot depth to lot width being an issue midstream. Lot width is measured from the building setback line and that line is a minimum of 20', not 20'. Some of the lots in the subdivision do not meet the 200' depth requirement and they are numbered lots. He said the Board must rule on evidence and not speculation. This lot meets all of the then ordinance requirements. Lots A and D were accepted by the county as lots in order to recombine them. Currituck County taxes Lot E as a lot and it has its own parcel identification number. He reiterated the fact that you can make greater setbacks.

Chairman Breathwaite clarified the difference between minimum setbacks and building placement. He said without knowing building plans, it would be impossible to know minimum setback as Mr. Gray is arguing.

Mr. Gray said to find where the lot is 100' wide and you would have to build behind it. There is room for a house at that location.

Mr. Miller questioned side setbacks and street access. He said considering Seagull as the front, you could not access from Sandpiper.

Mr. Gray disagreed and said you can access from a side street.

In closing, Mr. McRee argued that the preliminary plat approved in 1974 provided a table indicating 33 lots in the subdivision plus residual open area. The open area was lots A-F based upon calculations. Looking at the final plat, Lots 1-33 contain setback lines, utility easement lines, etc. These same lines are not on lots A-F, indicating these are residual lots, not platted buildable lots. The Tax Department places a tax value upon every area of land, but it does not make it a buildable lot. The owner should consult the Board of Equalization of Review to lower value of the property since it is not a buildable lot. The Zoning Administrator's determination is correct and should be affirmed.

Discussion

Mr. Kane said his opinion is that the initial plat approving the subdivision did not include Lots A-F. He is concerned about how two of the other lots got built upon.

Mr. Miller said what happened with other lots is not relevant to this case. He said this lot does not meet current standards. He said Mr. Gray had a good point that this is a corner lot. By definition, Seagull is the front of the lot, which does not meet the

minimum lot width. He said it is an interesting concept to measure lot width deeper into the lot where it does have 100' lot width, but he cannot make access work with such a narrow frontage.

Ms. Bontemps said she disagrees with the access comment because your driveway can be from either road.

Chairman Breathwaite said the preliminary and final plats clearly indicate that the Board of Commissioners intended to include 33 lots plus the residual open space (Lots A-F).

Ms. Bontemps said the lot needs to be modified to meet the 1974 ordinance.

Vice Chairman Craddock agreed that the lot was not a legal lot of record, so not a buildable lot.

Mr. Miller motioned: In the matter before the Board of Adjustment tonight, BOA 22-03 and the question relative to the lot of record and the letter that was written by Mr. Kemp, a Letter of Determination, I make a motion that the standards were correctly applied and affirm the decision in the letter that was presented by Mr. Kemp and Currituck County to Mr. Edward Delaney and Tara Murphy relative to this appeal, BOA 22-03.

Vice Chairman Craddock seconded the motion, and the motion was unanimously approved to affirm the staff's decision.

Exhibits

Mr. Gray submitted into evidence everything contained within his notebook, as well as the tax information he presented:

Applicant Exhibit 1 - Letter dated March 3, 2022, from Crouse Gray to Ike McRee

Applicant Exhibit 2 - Letter of Determination dated May 12, 2022, from Kevin Kemp to Crouse Gray

Applicant Exhibit 3 - Seagull Subdivision Approved Site Plan, lots 1-33, dated June 1974

Applicant Exhibit 4 - Currituck County BOA Minutes dated June 17, 1974

Applicant Exhibit 5 - Seagull Subdivision Approved Site Plan, lots 1-33, dated September 1974

Applicant Exhibit 6 - Currituck County BOA Minutes dated September 2, 1974

Applicant Exhibit 7 - UDO, 1971, page 7 - Article XI Definitions

Applicant Exhibit 8 - UDO, 1971, page 8 - Article XI Definitions

Applicant Exhibit 9 - UDO, 1971, page 14

Applicant Exhibit 10 - UDO, 1971, pages 17 through 19

Applicant Exhibit 11 - UDO, 1971, page 2 and page 4

Applicant Exhibit 12 - Currituck County Official Zoning Map, updated February 11, 2022

Applicant Exhibit 13 - UDO, 1992, page 2.1, Article 2 Density and Dimensional Regulations

Applicant Exhibit 14 - Seagull Subdivision, Amended Final Plat, lots 32 and 33, dated July 1995

Applicant Exhibit 15 - Seagull Subdivision, Recombination Plat for Lot 33 and Parcel D, dated February 2000 and Currituck County GIS Data Viewer picture

Applicant Exhibit 16 - Ocean Sands Resubdivisions for Sections D, G, and E

- Applicant Exhibit 17 - Records Request from Crouse Gray to Kevin Kemp, dated May 31, 2022
- Applicant Exhibit 18 - Tax Records for lot E and lots 21 through 24, dated July 7, 2022
- Applicant Exhibit 19 - Subdivision UDO, 1971, in its entirety
- Applicant Exhibit 20 - Zoning UDO, 1971, in its entirety
- Applicant Exhibit 21 - County UDO, 1992, in its entirety

Ike McRee submitted the following County Exhibits:

- County Attachment A - Letter of Determination dated May 12, 2022
- County Attachment B - Map Book 5, Pages 33-34
- County Attachment C - Map Book 5, Pages 49-50
- County Attachment D - Preliminary Plat
- County Attachment E - UDO, 1971, page 4, 61.19 Lot Depth definition and page 5, 61.33 Yard Front definition
- County Attachment F - UDO, 2022, Section 10.3: Rules of Measurement (Lot Depth and Font Lot Line)

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| RESULT: | APPROVED [UNANIMOUS] |
| MOVER: | Sam Miller, Board Member |
| SECONDER: | Steven Craddock, Vice Chairman |
| AYES: | Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Cathy Bontemps, Board Member, Robin Kane, Board Member, Sam Miller, Board Member |
| ABSENT: | Carol Bell, Board Member |

ANNOUNCEMENTS

There were no announcements.

ADJOURNMENT

Ms. Bontemps motioned for adjournment. Mr. Kane seconded the motion and the motion passed unanimously with the meeting adjourning at 9:48 PM.

Communication: BOA Meeting Minutes - July 14, 2022 (Approval of Minutes for July 14, 2022)



Currituck County Agenda Item Summary Sheet

Agenda ID Number – 3535

Agenda Item Title: BOA 22-04 Vicki Ansell & David Barham - Appeal:

Submitted By: Cheri Elliott – Planning & Community Development

Item Type: Quasi-Judicial

Presenter of Item: Kevin Kemp

Board Action: Action

Brief Description of Agenda Item:

Appeal requested for the Letter of Determination from Currituck County, dated June 3, 2022, which concluded property address 185 Bay Orchard Lane, Knotts Island, Tax Map 77, Parcel 2, Fruitville Township, is not a lot of record on which development may occur.

Planning Board Recommendation:

Staff Recommendation:

TRC Recommendation:



**STAFF REPORT
BOA 22-04
VICKI ANSELL & DAVID BARHAM
APPEAL REQUEST
BOARD OF ADJUSTMENT
AUGUST 11, 2022**

APPLICATION SUMMARY

| | |
|--|---|
| Property Owner: Vicki Ansell and David Barham PO Box 133 Knotts Island, NC 27950 | Applicant: Same as Property Owner |
| Property Location: 185 Bay Orchard Lane | Application Type: Appeal |
| Parcel Identification Numbers: 0077-000-0002-0000 | Existing Use: Vacant |
| Parcel Size (Acres): 0.56 | Zoning: Single-Family Residential Isolated (SFI) |
| Appeal requested from Letter of Determination, dated June 3, 2022 | |

STAFF ANALYSIS

The property owners/applicants are appealing the Development Services Director's June 3, 2020 letter that determined the property located at 185 Bay Orchard Lane (the "subject property") is not a legal lot of record.

The applicants purchased the subject property on June 16, 2020 with the intention of constructing a single-family dwelling. The applicants initiated the process to obtain a CAMA Minor permit for construction and during this process, Development Services Department Staff received objections to the CAMA permit application.

In the routine operations of the Development Services Department, staff consistently evaluates and interprets the Unified Development Ordinance (the "UDO") as it relates to development proposals or existing lots. For each permit review, staff must determine if the property on which development is proposed is a legally established Existing Lot (Lot of Record).

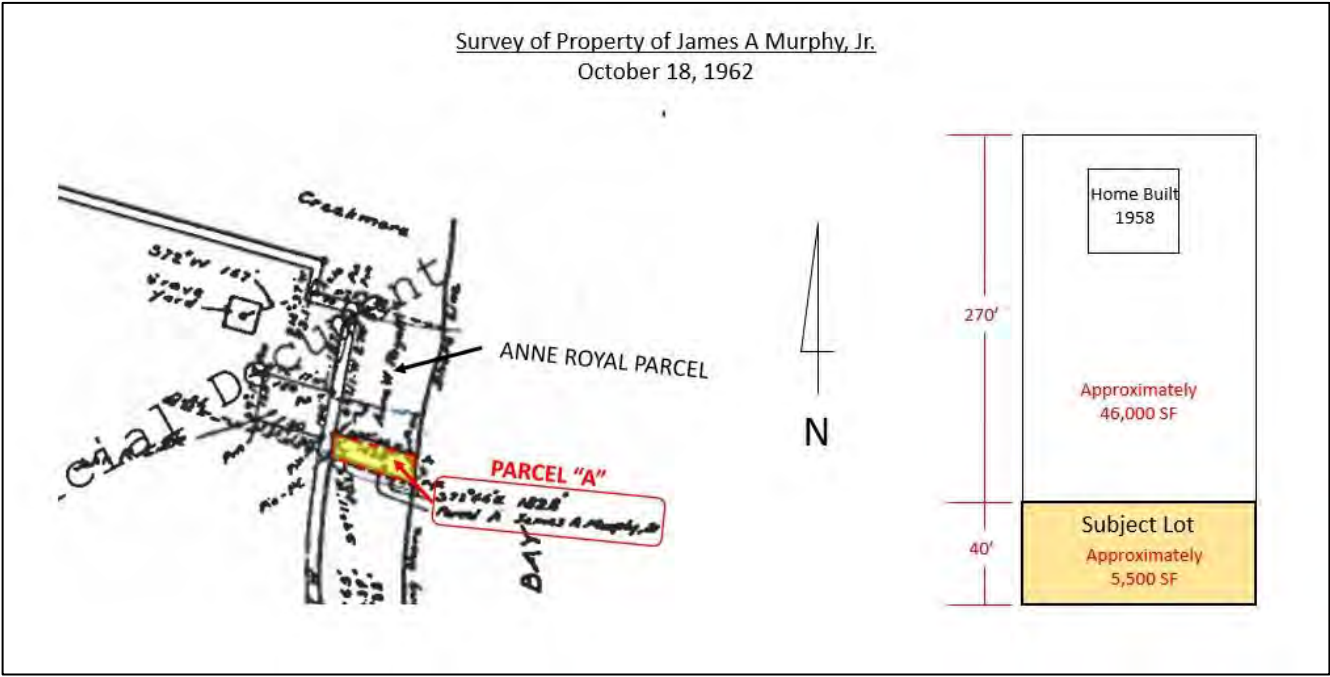
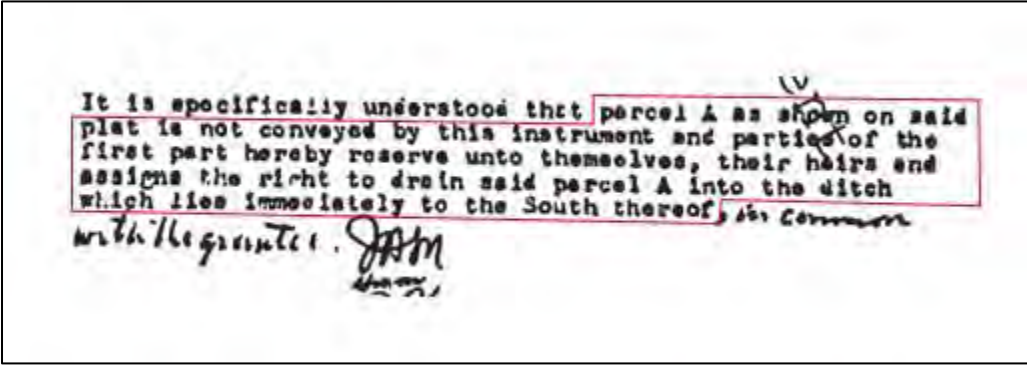
The UDO defines **Existing Lot (Lot of Record)** as:

A lot, which is a part of an approved subdivision, a plat of which has been recorded in the Office of the Registrar of Deeds of Currituck County, or a lot described by metes and bounds, the description of which has been so recorded and which at the time of recordation and the time it was originally subdivided met all applicable subdivision and zoning regulations then in effect. In addition, this definition shall include lots for which a plat and/or deed is recorded in the Office of the Registrar of Deeds and the lot was created prior to August 2, 1965; a lot upon which an existing structure is located provided a valid building permit was obtained for the construction; or, a lot which at the time of creation met all subdivision and zoning requirements provided a plat is approved by the administrator and recorded with the Registrar of Deeds containing certification as to having met the then existing regulations in effect.

A property that does not meet the above definition is not a legally established lot of record.

During the review process, staff performed a detailed review of the recordation of the subject property. The results of the review are shown below.

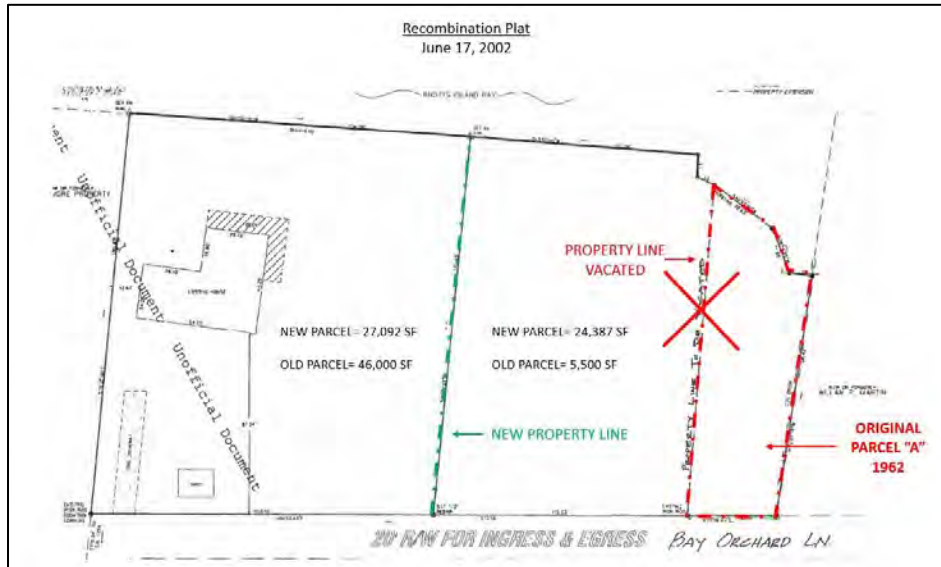
- October 18, 1962** – The subject property is shown on a plat titled, “SURVEY OF PROPERTY OF JAMES A MURPHY, JR, LOCATED ON KNOTTS ISLAND- CURRITUCK CO. NC.” The subject property is referenced in Deed Book 98 as “Parcel A” and it was not conveyed with this plat. This plat grants permission for Parcel A to drain into a ditch located to the south. The width of the subject property according to this plat is approximately forty (40) feet.



At the time of this October 18, 1962 plat, there were no subdivision or zoning ordinances. The “Anne Royal” parcel to the north was developed with a single-family home built in 1958.

- June 17, 2002** – The subject property was made larger by a recombination plat recorded on June 17, 2002 which shifted its northern property line. This recombination increased the size of the subject parcel from approximately 5,500 square feet to 24,387 square feet and decreased the size of the adjacent “Anne Royal” parcel to the north from 46,000 square feet to 27,092 square feet. The resultant lots (subject property and “Anne Royal” parcel) did not

meet the dimensional requirements of the Unified Development Ordinance in place in 2002 (40,000 square feet minimum lot size). Therefore, the recombination plat did not comply with the exemption for recombination in the Currituck County UDO effective at that time.



The recombination plat was signed by a Currituck County review officer; this signature **only** certifies the plat has the necessary requirements for recordation, such as the proper title block and correct margins. This signature **does not** certify the plat was reviewed under the subdivision ordinance. Recombination plats are exempt from the subdivision review process **only if** the recombination complies with the definition as emphasized below. The 2002 recombination plat does not meet the applicable state statute standard of the Currituck County Unified Development Ordinance then in effect:

1992 Currituck County UDO Section 901 – “A ‘subdivision’ is the division of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose, whether immediate or in the future, of sale or building development and shall include all divisions of land involving the dedication of a new street or a change in existing streets. The following types of subdivisions shall not be subject to the review process established within this Ordinance; provided, however, that any document or plat to be recorded pursuant to any such exclusion shall bear the notation “no approval required” and the signature of the Subdivision Administrator or their designated agent before being presented for certification by the Review Officer:

- (a) *The combination or recombination of portions of previously platted lots where the total number of lots is not increased and **the resultant lots are equal to or exceed the standards of the county** as shown by the regulations prescribed by this Ordinance...*

In this case, the recombination of the lots is subject to the subdivision review process. The 2002 plat was not exempt from review, because the resultant lots are not equal to nor exceed the standards of the UDO. Under the rules in effect at the time of the 2002 plat recordation, the minimum lot size in the zoning district where the parcels are located carried the dimensional standard of 40,000 square feet minimum lot size. Neither resultant lot met the standard then in effect.

As shown earlier in this report, the Unified Development Ordinance, Section 10.5: Definitions, defines an *Existing Lot (Lot of Record)*, as follows:

Attachment: 1 22-04 Staff Report - NCGS Struck - BOA 22-04 Vicki Ansell & David Barham)

Existing Lot (Lot of Record)- A lot which is part of an approved subdivision, a plat of which has been recorded in the Office of the Registrar of Deeds of Currituck County, or a lot described by metes and bounds, the description of which has been so recorded and which at the time of recordation and the time it was originally subdivided met all applicable subdivision and zoning regulations then in effect. In addition, this definition shall include lots for which a plat and/or deed is recorded in the Office of the Registrar of Deeds and the lot was created prior to August 2, 1965; a lot upon which an existing structure is located provided a valid building permit was obtained for the construction; or, a lot which at the time of creation met all subdivision and zoning regulations provided a plat is approved by the administrator and recorded with the Registrar of Deeds containing a certification as to having met the then existing regulations in effect.

In this case, the subject property met this definition from the time of its creation until 2002; however, in 2002 a plat was recorded which created the lot that is proposed for development. Although the original lot was only 40 feet in width, and 5,500 square feet, it was a lot of record because it was recorded with the Office of the Registrar of Deeds prior to August 2, 1965. When the subject property was subsequently recombined in 2002, it was required to meet all the subdivision regulations of the time, which the lot does not meet the 40,000 square foot minimum lot size. Additionally, the lot is void of any structure.

Staff has determined that based on the recordation of the subject property in 2002, the property is not a "Lot of Record," and therefore the county cannot issue a building permit. This determination was shared in a letter to the property owner, dated June 3, 2022, which led to this appeal request.

Appeal Review Standards

An appeal shall be decided by the Board of Adjustment following an evidentiary hearing. The decision shall be solely on the record of the of the appeal, as supplemented by arguments presented at the public hearing. The decision shall be one of the following:

- (i) Affirmation of the decision of the interpretation (in whole or in part);
- (ii) Modification of the decision or interpretation in (whole or in part); or
- (iii) Reversal of the decision of interpretation (in whole or in part).

1. 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:
 - a. The decision-maker did not make an error or correctly applied the standards of this Ordinance 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:

- A. Determination Letter from Currituck County, June 3, 2022
- B. Plat- Survey of Property of James A Murphy, Jr., October 18, 1962 (Deed Book 98, Page 164)
- C. Deed Book 98, Page 159 & 161
- D. Recombination Survey for Christian & Lynda Behnke, June 17, 2002



185 Bay Orchard – Aerial Image



185 Bay Orchard – Zoning Map

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

Attachment: 1 22-04 Staff Report - NCGS Struck (BOA 22-04 Vicki Ansell & David Barham)

ATTACHMENT A: Letter of Determination



COUNTY OF CURRITUCK

Development Services Department
 Planning Division
 153 Courthouse Road, Suite 110
 Currituck, North Carolina 27929
 Telephone (252) 232-3055 / Fax (252) 232-3026

June 3, 2022

Mr. David Barham and Ms. Vicki Ansell
 PO Box 133
 Knotts Island, NC 27950

RE: Determination of Buildability for 185 Bay Orchard Lane [Parcel ID- 007700000020000]

Dear property owners,

This written determination on the status of the above listed lot's status as a lot of record. The Currituck County staff understands that you purchased the lot on July 16, 2020. Since that time, you have initiated the process of obtaining CAMA and site plan approvals for the development. Research conducted by the staff as part of the evaluation of your request has uncovered some problems regarding the recording of the lot, and therefore I have determined that the lot is not a legal lot of record and cannot be issued building permit approval. Please see below a detailed description of my findings, based on the county records available to me.

- The earliest record of the lot is shown on a plat titled "SURVEY OF PROPERTY OF JAMES A MUPHY, JR, LOCATED ON KNOTTS ISLAND- CURRITUCK CO. NC," dated October 18, 1962. The lot is referenced in Deed Book 98 as "Parcel A." It is clear in the deed that the lot was not conveyed with that plat, but only permission granted for the adjacent lot to the north to drain to a ditch located south of the lot. The width of the subject lot on the plat is approximately forty (40) feet.
 - There were no subdivision or zoning requirements when these lots were created; therefore, the subject lot was nonconforming when regulations were adopted. The parcel to the north met all dimensional standards for every development ordinance from the first subdivision and zoning regulations until the present. A home exists on the property that was constructed in 1958.

The subject lot lost its status as a nonconforming lot of record in 2002 when a recombination plat was recorded to shift the northern property line of the subject parcel.

- The 2002 recombination plat identified two parcels, the reconfigured subject parcel, "Parcel B" and the reduced size of the parcel to the north, "Parcel A." The plat was signed by a Currituck County review officer, Cheryl Eggar. This signature certifies only that the plat met all statutory requirements for recordation, such as the correct margins, title block, etc....

185 Bay Orchard Lane
 Lot of Record Determination
 June 3, 2022

- o "Parcel A" is decreased in size from approximately 46,000 square feet to 27,092 square feet.
- o "Parcel B" (subject parcel) increased in size from approximately 5,500 square feet to 24,387 square feet.

The recombination plat in 2002, though signed by a review officer, does not meet the standards of the UDO or State Code Section 160D-802(a) which regulate the recombination of lots that are nonconforming and still do not meet the applicable dimensional standards. The referenced code sections are below.

UDO Section 8.4.5: *"The boundaries, shape, or size of a nonconforming lot may be modified through a lot line adjustment, provided that the lot line adjustment results in the lot becoming more conforming."* [in this case, the recombination made the Anna Royal parcel less conforming]

State Code Section 160D-802(a): *"For the purpose of this Article, subdivision regulations shall be applicable to all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development, whether immediate or future, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this article:*

- (1) *The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the local government as show in its subdivision regulations."*

The signature of the Currituck County review officer only certifies that the necessary information was included on the plat for recordation, it does not certify that the lots meet all dimensional requirements in place at the time. Additionally, if the plat was presented to staff as an exempt plat, it would not have been reviewed for dimensional compliance. The resulting lots, "Parcel A" and "Parcel B," do not meet the dimensional requirements in place at the time the recombination plat was recorded or of the current UDO. Therefore, I determine that the lots are not legal lots of record, and that "Parcel B" cannot be issued building permit approval. Permits may only be approved on lots of record.

You may appeal this determination that 185 Bay Orchard Lane is not a lot of record to the Board of Adjustment. An appeal must be filed to the Development Services Department within thirty (30) days of receipt of this determination. The Board of Adjustment may reverse or affirm this decision. I am happy to assist you with the appeal process should you wish to move forward.

If I can be of further assistance or you wish to discuss this more, please contact me at (252) 232-6075 or by email, kevin.kemp@currituckcountync.gov.

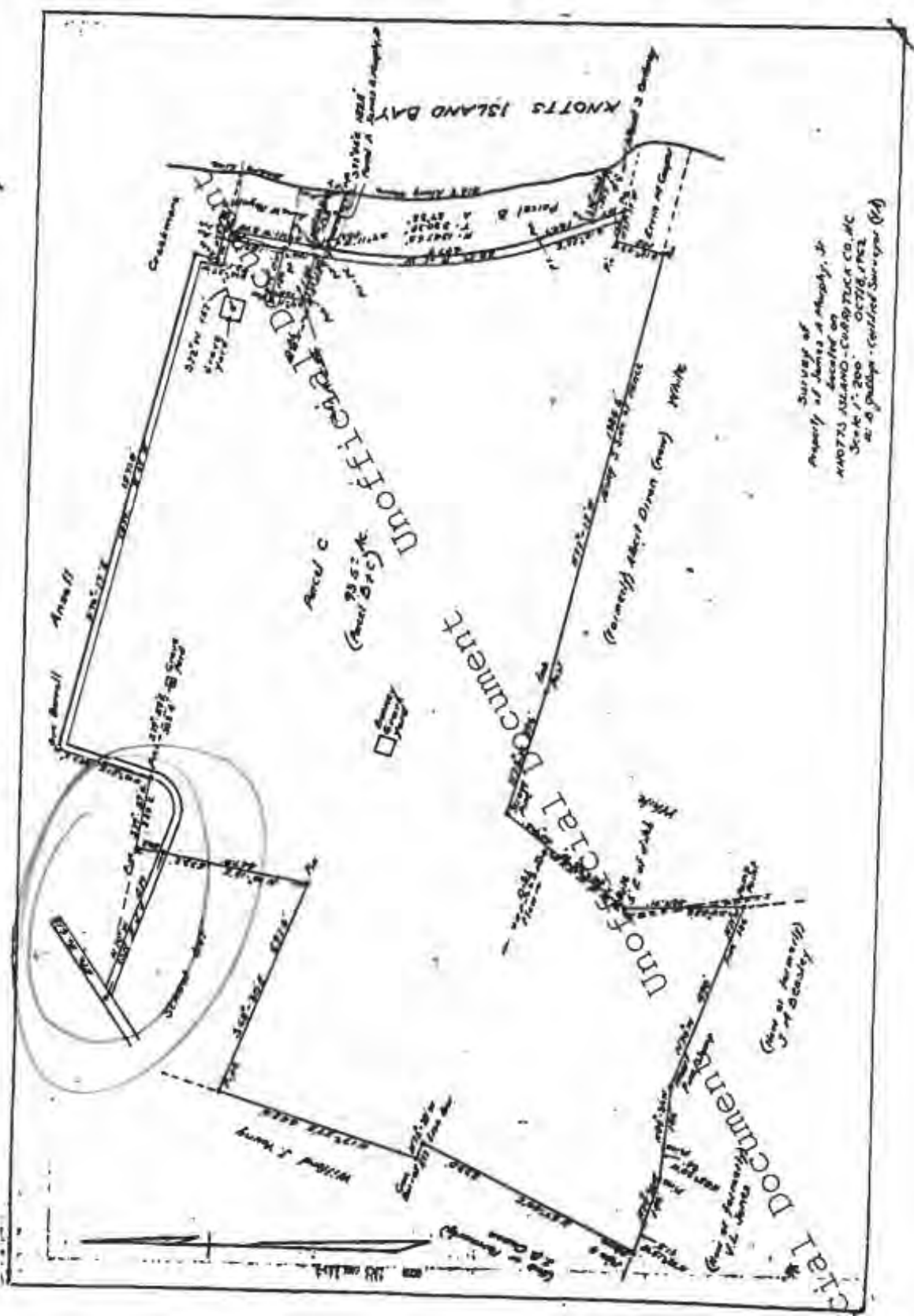
Respectfully,


 Kevin Kemp
 Development Services Director

Cc: Ike McRee, County Manager/County Attorney

Attachment: 1 22-04 Staff Report - NCGS Struck (BOA 22-04 Vicki Ansell & David Barham)

ATTACHMENT B: Survey of Property of James A Murphy, Jr. 1962



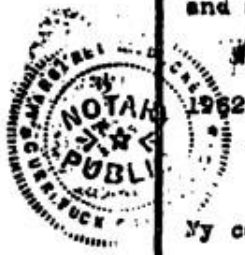
Attachment: 1 22-04 Staff Report - NCGS Struck (BOA 22-04 Vicki Ansell & David Barnham)

SOUTH CAROLINA
CURRITUCK COUNTY

BOOK 98 PAGE 159

I, Margaret M. Eochey, a notary public in and for the aforesaid County and State do hereby certify that S. C. Chandler personally appeared before me this day and acknowledged that he is secretary to the Board of Education of Currituck County, that the foregoing instrument was executed in the name of said Board of Education by Dr. C. H. Wright, its chairman, by authority duly given and as the act of said Board of Education as reflected by its minutes of October 17, 1962, said execution by said chairman being in his presence, that said instrument was sealed with the corporate seal of said Board of Education and attested by himself as its secretary.

Witness my hand and notarial seal this 12 day of December, 1962.



Margaret M. Eochey
Notary Public

My commission expires: Jan. 23, 1964

STATE OF VIRGINIA
CITY OF NORFOLK

I, Joyce J. Lyons, a notary public in and for the aforesaid State and City do hereby certify that James A. Murphy, Jr. and wife, Gwendolyn M. Murphy, both personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal this 2nd day of December, 1962.

WALTER E. WALSH, JR.
ATTORNEY AT LAW
NORFOLK, NORTH CAROLINA

Joyce J. Lyons
Notary Public

My commission expires: September 26, 1962



Attachment: 1 22-04 Staff Report - NCGS Struck - BOA 22-04 Vicki Ansell & David Barham

NORTH CAROLINA
CURRITUCK COUNTY BOOK 98 PAGE 101

THIS DEED, made and entered into this 30th day of December, 1932, by and between James A. Murphy, Jr. and wife, Gwendolyn M. Murphy, parties of the first part; and Ruth Farley, party of the second part.

WITNESSETH:

That said parties of the first part for and in consideration of the sum of ten dollars and other valuable consideration, the receipt of which is hereby acknowledged, have bargained and sold and by these presents do bargain, sell and convey unto said party of the second part and her heirs and assigns in fee simple, a certain tract or parcel of land situate in Fruitville Township, Currituck County, State of North Carolina, more particularly described as follows:

Being all those certain lands more particularly shown and delineated on the plat attached hereto and by reference made a part hereof as parcels E and C, containing in the aggregate 93.5 acres, more or less, said plat being entitled "SURVEY OF PROPERTY OF JAMES A. MURPHY, JR., LOCATED ON KNOTTS ISLAND, CURRITUCK COUNTY, N. C., SCALED ONE INCH EQUALS 200 FT., OCTOBER 18, 1932" said plat having been made by W. B. Gallup, certified surveyor (Va.). Together with an easement in common with grantors and others, which is hereby specifically reserved to be in common with grantors, grantees, and the owners of the other properties abutting same all as shown on said map, said easement or right of way being 20 ft. in width and extending from N. C. Public Road on Knotts Island, (Route #115), across the school lot shown on said plat and to and along the Northernly edge of the property shown on said plat and thence extending Eastwardly approximately parallel with the waters of Knotts Island Bay to the Erving M. Cooper property as shown on said plat.

And it is specifically understood that this conveyance is made subject to such easements as may now be held by Virginia Electric & Power Company and the Telephone Company and also subject to any rights which may be held by others in and to any of the graveyards shown on said plat.

It is specifically understood that parcel A as shown on said plat is not conveyed by this instrument and parties of the first part hereby reserve unto themselves, their heirs and assigns the right to drain said parcel A into the ditch which lies immediately to the South thereof, in common

with the grantor. *JAM*
[Signature]

30.00

2.00

1.00

[Handwritten initials]

WALTER F. BRADLEY, JR.
ATTORNEY AT LAW
CURRITUCK COUNTY, NORTH CAROLINA

Attachment: 1 22-04 Staff Report - NCGS Struck - Vicki Ansell & David Barnham

ATTACHMENT D: Recombination Survey for Christian & Lynda Behnke, June 17, 2002



Attachment: 1 22-04 Staff Report - NCGS Struck - BOA 22-04 Vicki Ansell & David Barham

STATEMENT OF FACTS

VICKI ANSELL AND DAVID BARHAM

The subject lot was created by deed recorded on 1/2/1963 in Book 98, Page 101 of the Currituck Registry (See Ex. A). The lot was a lot of record when Currituck first adopted subdivision regulations on 8/2/1965. A recombination plat was recorded on 6/17/2002 in Plat Cab. C2, Slide 347 which resulted in an increase in the dimensions of the lot (See Ex. B). The plat was approved by Cheryl Eggar, a Currituck Review Officer.

EXHIBIT

A

NORTH CAROLINA

CURRITUCK COUNTY BOOK 98 PAGE 104

THIS DEED, made and entered into this 20th day of December, 1932, by and between James A. Murphy, Jr. and wife, Gwendolyn K. Murphy, parties of the first part; and Ruth Farley, party of the second part:

WITNESSETH:

That said parties of the first part for and in consideration of the sum of ten dollars and other valuable consideration, the receipt of which is hereby acknowledged, have bargained and sold and by these presents do bargain, sell and convey unto said party of the second part and her heirs and assigns in fee simple, a certain tract or parcel of land situate in Fruitville Township, Currituck County, State of North Carolina, more particularly described as follows:

Being all those certain lands more particularly shown and delineated on the plat attached hereto and by reference made a part hereof as parcels E and G, containing in the aggregate 93.5 acres, more or less, said plat being entitled "SURVEY OF PROPERTY OF JAMES A. MURPHY, JR., LOCATED ON KNOTTS ISLAND, CURRITUCK COUNTY, N. C., SCALED ONE INCH EQUALS 200 FT., OCTOBER 18, 1932" said plat having been made by W. B. Gallup, certified surveyor (Va.). Together with an easement in common with grantors and others, which is hereby specifically reserved to be in common with grantors, grantees, and the owners of the other properties abutting same all as shown on said map, said easement or right of way being 20 ft. in width and extending from N. C. Public Road on Knotts Island, (Route #315), across the school lot shown on said plat and to end along the Northernly edge of the property shown on said plat and thence extending Eastwardly approximately parallel with the waters of Knotts Island Bay to the Erving N. Cooper property as shown on said plat.

And it is specifically understood that this conveyance is made subject to such easements as may now be held by Virginia Electric & Power Company and the Telephone Company and also subject to any rights which may be held by others in and to any of the graveyards shown on said plat.

It is specifically understood that parcel A as shown on said plat is not conveyed by this instrument and parties of the first part hereby reserve unto themselves, their heirs and assigns the right to drain said parcel A into the ditch which lies immediately to the South thereof, in common

with the grantee. JAM

30.00

2.00

1.00

WALTER S. BRADSHAW, JR.
RECORDS DEPARTMENT, STATE OF NORTH CAROLINA

Attachment: 2 Ansell-Barham Appeal - Submitted Files (BOA 22-04 Vicki Ansell & David Barham)

BOOK 238 PAGE 106

TO HAVE AND TO HOLD the aforesaid lot or parcel of land together with all privileges and appurtenances thereunto belonging unto said party of the second part and her heirs and assigns in fee simple absolute forever.

And said parties of the first part do hereby covenant that they are seized of said premises in fee and have the right to convey the same in fee simple; that the same are free and clear from all encumbrances; and that they will warrant and defend the title to the same against the lawful claims of all persons whomsoever.

IN TESTIMONY WHEREOF, said parties of the first part have hereunto set their hands and seals this the day and year first above written.

James A. Murphy, Jr. (SEAL)
Gwendolyn M. Murphy (SEAL)

STATE OF VIRGINIA
CITY OF NORFOLK

I, Joyce D. Leonard, a notary public in and for the aforesaid State and City do hereby certify that James A. Murphy, Jr. and wife, Gwendolyn M. Murphy, both personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal this 20th day of December, 1952.

Joyce D. Leonard
Notary Public

My commission expires: 9/26/66



WALTER F. WHEELER, JR.
ATTORNEY AT LAW
NORFOLK, VIRGINIA

Attachment: 2 Ansell-Barham Appeal - Submitted Files (BOA 22-04 Vicki Ansell & David Barham)

- 3 -

NORTH CAROLINA
CURRITUCK COUNTY BOOK 98 PAGE 105

The foregoing certificate, of Joyce I. Lyons,
a notary public in and for the aforesaid State and City, is
heretby adjudged to be correct. Let the instrument and the
certificates be registered.

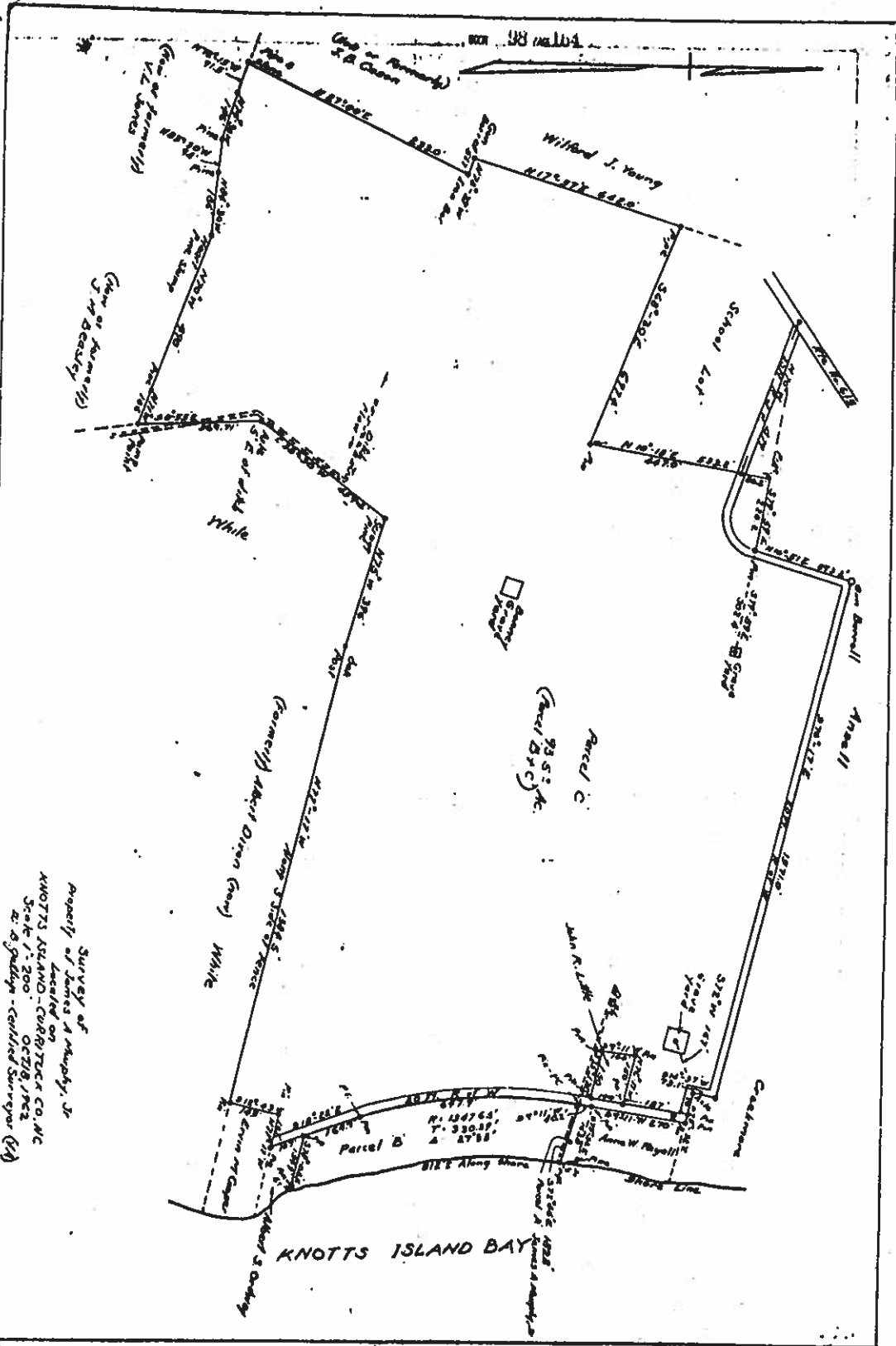
Witness my hand and official seal this 2 day of January,
1963.

Delvin F. Saunders
Clerk of Superior Court
Currituck County, N. C.

FILED FOR REGISTRATION ON THE 2 DAY OF Jan, 1963 AT 2 O'CLOCK P. M. *Wm. Brumby* REGISTER OF DEEDS

WILSON F. BRUMBY, JR.
ATTORNEY AT LAW
CURRITUCK, NORTH CAROLINA

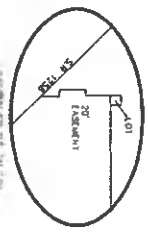
Attachment: 2 Ansell-Barham Appeal - Submitted Files (BOA 22-04 Vicki Ansell & David Barham)



Attachment: 2 Ansell-Barham Appeal - Submitted Files (BOA 22-04 Vicki Ansell & David Barham)

First Class Registration on the Day of Issue
 11:58 AM
 By: [Signature]
 [Signature]
 [Signature]

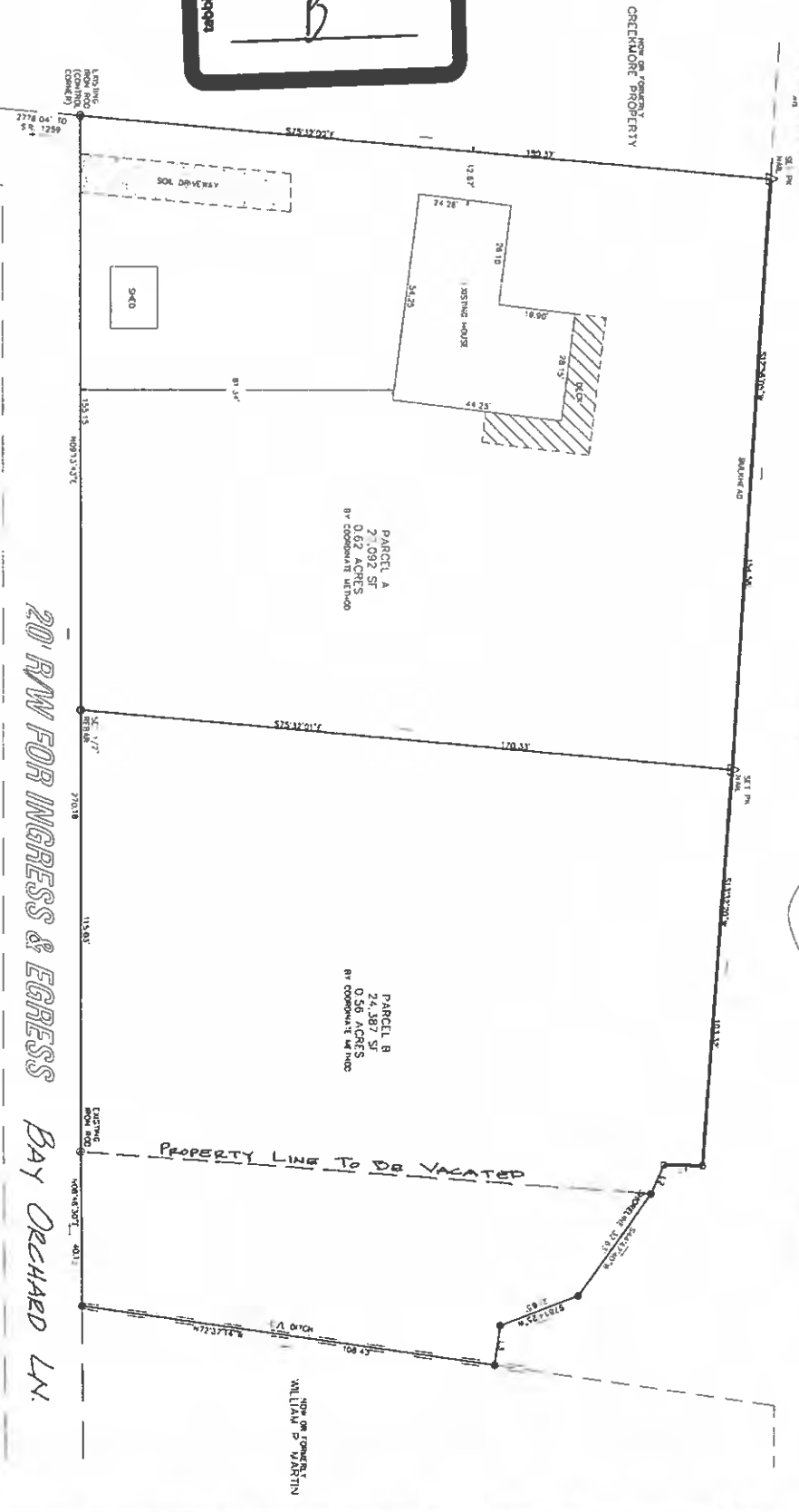
EXHIBIT
B
 Tables



THIS PROPERTY IS LOCATED IN PLOT 2006, 'A-107', ACCORDING TO PARCEL 310703, 0003 D. DATED NOVEMBER 4, 1992.

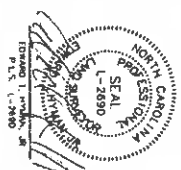
| DATE | LENGTH | Bearing |
|------|--------|-------------|
| 11 | 10.13 | N49°23'27"W |
| 12 | 8.51 | S43°22'01"E |
| 13 | 10.20 | S11°24'49"E |

LEGEND
 SET 1/2" SQUARE
 (TYPE NOTED) AND OR 3"
 SET 1/2" DIA
 TIE IN OR BOUNDARY LINE
 BOUNDARY LINE
 PROPERTY EXTENSION



NORTH CAROLINA, CURRITUCK COUNTY
 I, Cheryl E. Groat, Surveyor of Currituck County, certify that the map of Parcel A and Parcel B, as shown, was prepared in accordance with all statutory requirements for recording.

I, EDWARD T. HAYMAN, JR., REGISTERED SURVEYOR, do hereby certify that this map was prepared in accordance with all statutory requirements for recording. I, EDWARD T. HAYMAN, JR., do hereby certify that this map was prepared in accordance with all statutory requirements for recording.



| | | | |
|----------|---|-----------------|----------------|
| 1 | RECOMBINATION SURVEY FOR CHRISTIAN & LYNDY BEHNKE | DATE: 5-13-02 | DRAWN BY: JPA |
| | FRUITVILLE TOWNSHIP CURRITUCK COUNTY NORTH CAROLINA | FIELD: EPH | PROJECT: 02375 |
| | | SCALE: 1" = 20' | NO: 02375-MO |
| | | SHEET: 1 OF 1 | |

Hyman & Robey
 Land Surveyors & Consulting Engineers
 529 South Hughes Boulevard
 Elizabeth City, North Carolina 27909
 (252) 338-2911