



**CURRITUCK COUNTY  
NORTH CAROLINA**

June 16, 2022

Minutes – Special Meeting of the Board of Adjustment

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

The Currituck County Board of Adjustment held a special 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 Services Director	Present	
Anna Cherry	Code Enforcement Officer	Present	
Savannah Newbern	Planner I	Present	
Ike McRee	County Attorney	Present	
Lauren Arizaga-Womble	Board of Adjustment Attorney	Present	
Cheri Elliott	Clerk to the Board	Present	
Jennie Turner	Senior Planner	Present	

**B Announce Quorum Being Met**

Chairman Breathwaite announced a quorum being met with four regular board members present and one alternate board member present. Due to the absence of regular board member, Carol Bell, the alternate board member, Robin Jane, served in her place.

Chairman Breathwaite asked the Board of Adjustment Attorney, Lauren Arizaga-Womble, to give a review of the voting standards required for an Appeal and a Variance. Ms. Arizaga-Womble said the Appeal requires a simple majority and the Variance requires a 4/5 vote of the board members present.

**C. Approval of Agenda**

Chairman Breathwaite asked if there were any changes necessary to the agenda. Vice Chairman Craddock motioned to approve as presented. Ms. Bontemps 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>	Cathy Bontemps, Board Member
<b>AYES:</b>	Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Cathy Bontemps, Board Member, Robin Kane, Board Member, Sam Miller, Board Member
<b>ABSENT:</b>	Carol Bell, Board Member

#### **D Approval of Minutes for March 10, 2022**

Chairman Breathwaite asked if there were any changes needed to the minutes for March 10, 2022. Mr. Miller motioned to approve as presented. Mr. Kane seconded the motion and the motion carried unanimously.

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

#### **A. BOA Meeting Minutes - March 10, 2022**

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

Chairman Breathwaite asked if there were any conflicts or disqualifications for any item on the agenda tonight. Vice Chairman Craddock said he does not have a conflict, but disclosed he has eaten at Frog Island Seafood, although it would not affect his ability to make a just decision of their variance request.

#### **OLD BUSINESS**

There was no old business discussed.

#### **NEW BUSINESS**

Chairman Ballance asked all witnesses to approach for their swearing in.

Mr. Brumsey, the attorney representing Frog Island Seafood, asked for their variance request to be continued to the next Board of Adjustment hearing on July 14, 2022. Ms. Arizaga-Womble asked if the County had an objection to the request. Mr. McRee asked for their reason for the continuance request. Mr. Brumsey said they are waiting on some additional documents. Mr. McRee said the County does not object and Chairman Breathwaite granted the continuance. Ms. Arizaga-Womble announced for the record, the continuance to be on July 14, 2022 at 7:00 PM.

Chairman Breathwaite swore in all witnesses.

**A. BOA 22-01 Misty Young - Appeal: Appeal for Notice of Violation dated 3/2/2022 for operating an automobile rentals business on residential property located at 1086 Hampton Street, Corolla, Tax Map 115B, Parcel 563, Poplar Branch (Beach) Township.**

Chairman Breathwaite announced the requested appeal and asked the County to call their first witness.

Mr. McRee called Jennie Turner to the stand. Ms. Arizaga-Womble asked the appellants to come forward and be seated at the front table.

Ms. Turner stated her name and position with Currituck County. She said she is currently a Senior Planner and has been employed with the County for thirteen years to enforce the Unified Development Ordinance, assist community, process zoning applications, assist with code enforcement, and all other Planning aspects. She said she is familiar with this case tonight since she assisted the Code Enforcement Officer, Anna Cherry, in regards to the violation. Ms. Turner gave the zoning for 1086 Hampton Street, Corolla, as Single Family with a PUD overlay, saying this area is designated as residential. She gave information on the Chapter 4, Summary Use Table, showing Vehicle Rentals are not allowed in this zoning.

Mr. McRee said the applicant alleges they are car sharing. Ms. Turner said staff researched this according to the UDO and did not have this term (car sharing) in the UDO, but found it to be closely related to the Auto Rentals and Sales Use. Ms. Turner explained how UDO Section 10.1.12 says the Director will interpret when a term is not defined in the UDO. Also, staff uses the Webster's Dictionary for research when terms are not found within Chapter 10 of the UDO. Ms. Turner said a Special Use Permit is also required to run a Vehicle Rental and Sales business and the applicant had not attempted to submit that application.

Chairman Breathwaite asked Ms. Young if she had any questions for Ms. Turner. Ms. Arizaga-Womble informed the appellant this was her time to ask questions concerning Ms. Turners testimony. Ms. Young asked Ms. Turner to read the UDO section for auto rentals and use requirements aloud. Ms. Young asked if the County had any peer to peer car sharing in their ordinance and Ms. Turner said no. Ms. Young asked several questions concerning the regulation of taxi drivers.

Mr. McRee called Anna Cherry to the stand. Ms. Cherry stated her name and position with Currituck County. She said she is currently a Code Enforcement Officer and gave her duties and how she is familiar with 1086 Hampton Street. She said she had received an email from a staff member at the beach office so she investigated and compiled information for the Notice of Violation.

Mr. McRee approached the witness, Anna Cherry, and the Appellant, Misty Young, to give them a copy of County Exhibit 1A - an email from Matthew Kirkendall dated February 17, 2022. Ms. Cherry read the email and said it was a true and accurate copy of the email she had received.

Mr. McRee presented the following pictures:

Picture 1 - Picture of applicant's property taken by Matthew Kirkendall on March 1, 2022

Picture 2 - Picture of applicant's vehicles for rent advertised on Turo website  
Picture 3 - Picture of applicant's website listed vehicles for rent  
Ms. Cherry said her site visit had the same vehicles on the applicant's property.

Mr. McRee approached the witness and applicant to give them a copy of County Exhibit 1B - Affidavit of Service for NOV 1708, dated March 10, 2022, signed by Anna Cherry.

Mr. McRee asked Ms. Cherry what she did after sending NOV 1708. Ms. Cherry said she monitored the property to see if it would come into compliance and also monitored the advertising websites for the applicants' rental vehicles. Mr. McRee had Ms. Cherry review several pictures within the agenda packet to verify they were true and accurate.

Mr. McRee provided a copy of County Exhibit 1C - Letter to Mr. & Ms. Young from the County, dated June 7, 2022. Ms. Cherry said they had emailed this letter and also sent it by regular mail. Staff had made a site visit that day and the Jeeps were not on the property. Ms. Cherry said the Board of Adjustment sign posted on their property concerning the meeting tonight was also removed.

Mr. McRee provided a copy of County Exhibit 1D - Letter to Mr. & Ms. Young from Association Consultants for Monterey Shores PUD HOA, dated June 7, 2022, informing the applicants to remove all of their vehicles from the Monterey Shores parking area since the vehicles were being used for a non-residential purpose. Ms. Cherry confirmed with pictures, Mr. & Ms. Young were storing their rental vehicles on the Monterey Shores parking area.

Misty Young made several objections stating hearsay to the documents that were handed out. Ms. Arizaga-Womble explained the hearsay statute and reasons why the County is able to submit this information. Conversation was held on whether Exhibit 1D is submissible. Ms. Arizaga-Womble said a report of a violation would not qualify as hearsay. Chairman Breathwaite accepted the document as submissible and instructed the board to view the document as such.

Mr. McRee asked Ms. Cherry if there were any other violations given to Mr. & Ms. Young. Ms. Cherry said there was another violation given to them dated April 21, 2022.

Mr. McRee provided a copy of County Exhibit 1E - Notice of Violation to Misty and William Young, 1086 Hampton Street, dated April 21, 2022  
Ms. Cherry answered several questions concerning this violation for home occupation standards.

Mr. McRee provided a copy of County Exhibit 1F - Affidavit of Service for NOV 1726, dated April 21, 2022, signed by Anna Cherry.

Mr. McRee also presented the entire Board of Adjustment Agenda Packet as County Exhibit 1.

Board members asked questions on how staff verified the vehicles were the same between the two locations they were stored. Ms. Cherry said they verified with the license plate numbers. Discussion was also held on the civil penalties the applicants

would have to pay if the board rules against them. Ms. Cherry said the civil penalties are up to \$500 per day, per violation. Ms. Cherry confirmed the penalties could be up to \$1,000 per day for two Notice of Violations.

Ms. Turner returned to the stand to answer some additional questions from the board and Ms. Young.

Conversation was held on the penalties/citations being stayed to allow time for compliance for violations.

Chairman Breathwaite called a recess at 8:43 PM - back to order at 8:48 PM.

Chairman Breathwaite asked Ms. Young to make her case. Ms. Young said she has an attorney but he could not be here tonight.

Ms. Young presented Appellant Exhibit 1 - Peer to Peer Vehicle Sharing paper - NC General Statute Chapter 20, Article 10B - 20-280.15. Definitions

Ms. Young read her appeal letter on page 37 of the agenda packet. She said Kill Devil Hills Jeep Rental sends customers to her when they do not have Jeeps available. She said OBX Jeep Rentals and Beach 4X4 Rentals also has their vehicles listed on Toro.

Ms. Young said Bob White and his wife were the reason she received the violations. Mr. McRee objected to the relevancy and said this is argumentative and not testimony. Ms. Young said the County violated her 14th amendment rights. Ms. Young said she owns a house in Monteray Shores so she is allowed to park her vehicles in that parking area.

Mr. Kane asked Ms. Young if customers came to her house to pick up the rental vehicles. Ms. Young said, yes, but to get the eyes off of them, they changed the way they did it.

Vice Chairman Craddock asked Ms. Young if she owned the vehicles in the pictures. She said, yes, they own nine vehicles.

Chairman Breathwaite asked Ms. Young if they had vacated the property at 1086 Hampton Street. Ms. Young said they had moved out on May 26, 2022, but said they still own the property.

Chairman Breathwaite said the paper Ms. Young handed out is just definitions and ask her to provide more information. She said that is all she had.

Mr. Miller asked if the profile on Toro was prepared by Ms. Young and she confirmed she had created it.

Mr. Kane asked if the Duck Road address listed on their violation notice from Monteray Shores was a business. Ms. Young refused to answer his question.

Vice Chairman Craddock asked various questions concerning how Toro operates, how

insurance is provided, and if there is a contract.

Mr. Young came to the stand as a witness. Vice Chairman Craddock asked Mr. Young if he agrees with every statement his wife has made tonight and he said yes.

Chairman Breathwaite asked if any members of the public would like to speak and limited them to three minutes each.

David Heubeck, 1062 Hampton Street, Corolla, came before the board. He said they are tired of seeing the Jeeps going up and down the road in or neighborhood. He said they are receiving money for this and operating this business out of their home.

With no other speakers, Chairman Breathwaite closed the Public Hearing.

Ms. Arizaga-Womble asked Ms. Young to give her closing. Ms. Young said this is an overreach of the County and car sharing is not regulated. Ms. Young said their Jeeps are always brought back by 10:00 PM and there is no noise. She said they have taken steps to not disrupt the community by relocating and offering delivery. She also said they have a storage area.

Mr. McRee giving his closing saying the evidence is clear that this is an auto/rental business in a residential area where it is not allowed. Mr. Heubeck testified how it has affected them in his community. Mr. McRee said an Airbnb is not the same and asked that the board affirm the staff's decision.

Board discussion was held. Vice Chairman Craddock said it appears the County followed correct procedure and Appellant Exhibit 1 says it is a business and people get money from providing that service. Also, both the wife and husband admit it is a business and they admitted people were picking up the vehicles from their home. Vice Chairman Craddock said they mentioned they moved, but why move if you are doing nothing wrong. Mr. Miller said the June 7th letter from the County shows the County tried to work to resolve this. Ms. Bontemps agreed, this is a business, and it needs to be in conformity. Mr. Kane agreed that the County correctly dealt with this. Chairman Breathwaite said this was a bit gray for me until Ms. Young said her number of vehicles has increased and testified, she will keep buying until she gets to twenty vehicles. Chairman Breathwaite said the County made the correct determination and met their burden.

Vice Chairman Craddock motioned in regards to BOA 22-01 Misty Young, and in regards to Notice of Violation 1708, I believe the decision maker did not make an error incorrectly applying the standards of this ordinance and making the decision of the notice of violation or this interpretation. Mr. Kane seconded the motion and the motion carried unanimously, 5-0.

<b>RESULT:</b>	<b>MOTION PASSED-ITEM DENIED [UNANIMOUS]</b>
<b>MOVER:</b>	Steven Craddock, Vice Chairman
<b>SECONDER:</b>	Robin Kane, Board Member
<b>AYES:</b>	Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Cathy Bontemps, Board Member, Robin Kane, Board Member, Sam Miller, Board Member
<b>ABSENT:</b>	Carol Bell, Board Member

**B. 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.**

Mr. Brumsey, the attorney representing Frog Island Seafood, was present and requested a continuance. The County did not object to the continuance and Chairman Breathwaite granted the request. This item will be heard at the Board of Adjustment meeting scheduled for July 14, 2022, at 7:00 PM.

<b>RESULT:</b>	<b>CONTINUED WITH NO VOTE</b>	<b>Next: 7/14/2022 7:00 PM</b>
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#### **ANNOUNCEMENTS**

There were no announcements.

#### **ADJOURNMENT**

Mr. Miller motioned to adjourn the meeting. Mr. Kane seconded the motion and the meeting adjourned at 10:48 PM.



**CURRITUCK COUNTY  
NORTH CAROLINA**

March 10, 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	
Lauren Arizaga-Womble	Board of Adjustment Attorney	Present	
Kevin Kemp	Development Services Director	Present	
Ike McRee	County Attorney	Present	
Laurie LoCicero	Planning Director	Present	
Donna Voliva	Assistant Planning Director	Present	
Bill News	Chief Building Inspector/Fire Official	Present	
Cheri Elliott	Clerk to the Board	Present	

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

**A Announce Quorum Being Met**

Chairman Breathwaite announced a quorum being met with four regular board members present and one alternate board member present. Due to the absence of regular board member, Carol Bell, the alternate board member, Robin Kane, will serve in her place tonight.

**B Election of Chairman & Vice Chairman**

Chairman Breathwaite asked the Clerk to the Board to proceed with the nominations for Chairman. Vice Chairman Craddock nominated Troy Breathwaite. Ms. Bontemps seconded the nomination and Troy Breathwaite was unanimously approved to continue as Chairman.

Communication: BOA Meeting Minutes - March 10, 2022 (Approval of Minutes for March 10, 2022)

Chairman Breathwaite asked the Clerk to the Board to proceed with nominations for Vice Chairman. Chairman Breathwaite nominated Steven Craddock. Ms. Bontemps seconded the nomination and Steven Craddock was unanimously approved to continue as Vice Chairman.

**C. Approval of Agenda**

Chairman Breathwaite asked if there were any changes necessary to the agenda for tonight's meeting. Ms. Arizaga-Womble said the County would like to withdraw item BOA 20-04. Mr. McRee said the County will reissue the Notice of Violation for this item at another time. Mr. McRee also asked to consolidate BOA 20-03 and BOA 21-02 to be heard together. The Applicant's attorney, Mr. Webber, agreed to the requested changes. Vice Chairman Craddock motioned to approve the agenda with the requested changes. Mr. Miller seconded the motion and the amended agenda was unanimously approved.

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

**D Approval of Minutes**

Chairman Breathwaite asked if there were any changes needed for the February 11th, 2021 meeting minutes. Vice Chairman Craddock motioned to approve as presented. Ms. Bontemps seconded the motion and the minutes were approved as presented unanimously.

<b>RESULT:</b>	<b>APPROVED [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, Robin Kane, Board Member, Sam Miller, Board Member
<b>ABSENT:</b>	Carol Bell, Board Member

**A. BOA Meeting Minutes - 2/11/2021**

**E Ask for Disqualifications**

Chairman Breathwaite referenced the State Government Ethics Act and asked if there were any board members having a known conflict of interest with respect to the matter coming before the board tonight. Vice Chairman Craddock stated he had previously worked for the applicant's attorney, Steven Weber, as an expert witness for the Ballance Sand Mine project in Moyock, but he felt he could still be impartial in his decisions concerning tonight's matter. Mr. McRee, County Attorney, stated the County had no objection in this matter.

**NEW BUSINESS**

Communication: BOA Meeting Minutes - March 10, 2022 (Approval of Minutes for March 10, 2022)

**A. BOA 20-03 85' and Sunny, LLC: Appeal of two Notice of Violations dated 6/10/2020 and 7/24/2020 for placing on-frame modular dwelling units within a non-conforming campground located at 1631 Waterlily Road, Tax Map 79, Parcel 1, Poplar Branch Township.**

Chairman Breathwaite swore in all witnesses: Bill Newns, Donna Voliva, Laurie LoCicero, Warren Eadus, Stephanie Richards, Frank Gray, Joseph Sadler, Greg Linsmeyer, and Michael Clumpner.

The Appellant, Steven D. Weber, Partner with Parker Poe, gave his opening statement representing petitioner, 85' and Sunny, LLC. He presented the following display boards along with commentary:

- 1) Email for the fountain denial from the County. Mr. Weber said the site contains violations not consistent with the Letter of Determination issued by Laurie LoCicero dated January 7, 2019.
- 2) Picture of park model RV
- 3) Campground map

Mr. Weber said they will be presenting an expert witness, Joe Sadler, retired from the NC Department of Insurance, to testify he developed a memo to determine what is a mobile home and what is a recreational vehicle (RV). Mr. Weber also said the dealer who sold the 21 modular units to 85' and Sunny, LLC, will testify they are park RVs. Mr. Weber said another expert witness, Dr. Richards, an Entomologist at East Carolina University, will testify the fountain will reduce the amount of mosquito larvae keeping diseases from the campers.

- 4) Picture of mosquitoes and midges on a park model RV

Mr. Weber said Dr. Clumpner, a Fire Battalion Chief, will testify the fountain will destroy algae to keep the pond water flowing for fire water use and that the fountain application was submitted for health and safety issues.

County Attorney, Ike McRee, gave his opening statement saying Blue Water has done a good job with the appearance of the campground, but the fact is, it is a nonconforming use as a campground. This gives it limitations of no enlargement or intensification allowed as of January 1, 2013 when campgrounds became nonconforming. Mr. McRee said although different names are given to these structures, the importance is how they are defined for the different types of camping units which are allowed within nonconforming campgrounds by the County's rules within the Unified Development Ordinance (UDO), not State rules, etc. Concerning the fountain, Bill Newns, County Fire Official, will give his opinion of the necessity of the fountain for the fire suppression pond.

Chairman Breathwaite reminded the board this is an appeal hearing which requires a majority vote and read the review standards for an appeal:

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.)

The County called Laurie LoCicero to the witness stand. She stated her name and said she was employed as the Planning Director with the County since 2017. Mr. McRee asked if she was familiar with the Notice of Violations (NOVs) dated June 10, 2020 and July 24, 2020. She said yes and briefly described the violations. Mr. McRee asked if there was communication before the June 2020 NOV was issued. Ms. LoCicero said yes, but she had the opinion not enough information was provided and the campground moved them in the week of June 10, 2020 without any notification to the County. Mr. McRee asked if they had moved any to the campground in 2019 and Ms. LoCicero said, yes, in late 2019 they stored some of the units onsite, the County requested they remove them within two weeks and they complied (she referenced the emails in the agenda packet). Staff did research trying to figure out what the units were with DMV, staff, back and forth with the applicant's consultants, etc. Ms. LoCicero said they moved the units back into the campground on June 8th or 9th. Ms. LoCicero showed a picture of the units being brought to the campground on tractor-trailers and another picture of several units in the campground after a staff site visit. Mr. McRee asked about any further investigation. Ms. LoCicero said she looked into the definitions of camper, travel trailer, recreational vehicle and went onsite to view the units set-up at the campground with cinder blocks, wood sides, and skirting. Ms. LoCicero said the UDO states no tent or camper is allowed in the campground for more than 90 days. She said with the June 10, 2020 violation there were 9 units on site, with the second violation on June 24, 2020 there were 16 units on site, and now there are 21 units at the campground. Mr. McRee asked what surrounds the property of the campground and Ms. LoCicero said the sound on the east side and wetlands/marsh on the west side; The campsites are on the east side. Mr. McRee asked if any of these modular units were at the old Hampton Lodge

Campground and Ms. LoCicero said no. Mr. McRee asked if they were there in January of 2013 and Ms. LoCicero said no.

Mr. Weber began his cross examination of Ms. LoCicero. Mr. Weber said he drove his truck on the campground which has a Vehicle Identification Number (VIN). Mr. Weber asked if the park models have a VIN and Ms. LoCicero said they do, but they do not meet the definition in the UDO. Ms. LoCicero asked if Mr. Weber's truck was going to stay more than 90 days at the campground. Mr. Weber passed out a binder containing the following exhibits:

#### EXHIBIT LIST

1. OBX West KOA Campground Overview Maps
2. November 16, 2021 County Denial of Minor Site Plan Application
3. December 14, 2021 Appeal of Minor Site Plan Application
4. June 10, 2020 Park Model Notice of Violation ("NOV")
5. June 30, 2020 Appeal of June 10, 2020 NOV
6. July 24, 2020 Park Model NOV
7. August 14, 2020 Appeal of July 24, 2020 Park Model NOV
8. September 15, 2020 Stop Work NOV
9. September 18, 2020 Appeal of Stop Work NOV
10. Excerpts of Currituck County Unified Development Ordinance
11. January 7, 2019 Currituck County Letter of Determination (LOD)
12. Greg Linsmeyer, Applicant Representative Affidavit  
Exhibit A - Photographs
13. Warren Eadus, P.G., Quible & Associates, P.C. Affidavit  
Exhibit A - Curriculum Vitae  
Exhibit B - Major Site Plan - Approved by County on September 27, 2020  
Exhibit C - October 19, 2021 Aerator Fountain Minor Site Plan Application  
Exhibit D - Photograph of Dry Hydrant  
Exhibit E - DFIRM Map
14. Frank Gray, Governmental Affairs Affidavit  
Exhibit A - Curriculum Vitae  
Exhibit B - North Carolina General Statutes  
Exhibit C - Currituck County Unified Development Ordinance Provisions  
Exhibit D - Nicholas Rudowich RVIA Statement  
Exhibit A - Park Model RV Paper  
Exhibit B -- HUD Exemption for Park Model RVs  
Exhibit C - RV Brochure  
Exhibit E - Dick Grymonprez, Skyline Champion Statement  
Exhibit A - Park Model RV Photos, Invoices and Data Plates
15. Joe Sadler Department of Insurance Affidavit  
Exhibit A - Resume  
Exhibit B - NC Department of Insurance January 15, 2019 Memorandum
16. Dr. Mike Clumpner, Fire Safety Affidavit  
Exhibit A - Curriculum Vitae  
Exhibit B - Pond photographs
17. Dr. Stephanie Richards, Entomologist Affidavit  
Exhibit A - Curriculum Vitae

- Exhibit B - NC State Mosquito Control for Stormwater Facilities Publication
- Exhibit C - Purdue Water Quality Publication
- Exhibit D - Photographs
- Exhibit E - Post Regarding Midges
- 18. Fire Pond Photographs
- 19. Insect Photographs
- 20. Park Model RV Photographs
- 21. Illustrative Exhibits
- 22. Recreation Park Trailer Measuring - Bulletins & Letters

Mr. Weber referenced Exhibit 4 - NOV dated 6/10/2020, Exhibit 6 - NOV dated 7/24/2020, and Exhibit 11 - Letter of Determination (LOD) dated 1/7/2019 and asked Ms. LoCicero various questions. Ms. LoCicero confirmed she had written the letters, what they were for, the 90 days maximum stay was not in the letters, and she was directed by the County Manager (at that time) to issue the original NOV. Mr. Weber referenced various Exhibits in tab 12 of the binder: Pictures of pond, pictures of park models showing hitch, electric/water hookups, picture of RV, picture of RV Industry Association sticker on park model, picture of data plate showing VIN, picture of a park model with matching shed and wood deck. Ms. LoCicero said the park models need a special permit to move it on roads. Mr. Weber showed a picture of the hitch on the park model and a picture of the wheels under the park model. Mr. Weber referenced Exhibits in tab 14: Certificate of title listing the body style as PM, an invoice, and a manufacture's certificate of origin. Mr. Weber handed out Applicant Exhibit 22 - Recreation Park Trailer Measuring Bulletins and letters. Mr. Weber asked Ms. LoCicero if she knew of other park models in the County and if so, has the County done anything about them. Ms. LoCicero said yes, and no, we have not done anything. Mr. Weber referenced tab 10 of the Exhibits binder and asked the board to turn to 10.53 and 10.54 of the UDO and reviewed the definitions. Ms. LoCicero said four of the park models are in Flood Zone AE and the other seventeen are not. Mr. Weber said seventeen of the park models comply with code and four do not.

Chairman Breathwaite asked for questions from the board and asked if Mr. Kemp would put Chapter 8 of the UDO concerning nonconforming campgrounds on the overhead screen for review. Chairman Breathwaite asked if the park models have both registrations and license plates. Ms. LoCicero said they do not have license plates. Chairman Breathwaite asked if a truck could immediately hook up to the park model and pull it off. Ms. LoCicero said no, it would require a special permit to be on the road. Chairman Breathwaite asked for an explanation of the intensification caused by the added items. Ms. LoCicero said you cannot expand or enlarge existing uses; you can only maintain them. Mr. Miller asked to see a picture of the fountain and Mr. Weber referenced tab 13 in the exhibit binder - equinox aerating fountain. Ms. Bontemps talked about the benefits of a fountain and her personal experience with algae in her pond. Ms. Bontemps also said she is aware of several fountains along the highway. Mr. Miller asked how the light kit on the fountain fits in with health and safety and Mr. Weber said it came with the fountain, but it doesn't have to be installed. Mr. Kane asked if the park models have registrations and Laurie said no. Mr. Weber said they have them and they have previously provided them to Ms. LoCicero. Ms. Bontemps asked about vehicles being stored at the campground and Ms. LoCicero said it is not allowed since it is considered outdoor storage. Vice Chairman Craddock clarified the NOV's in tab 4 and

tab 6 do not reference the nonconforming use and Ms. LoCicero said, correct. Vice Chairman Craddock clarified that the NOV is not the UDO and Ms. LoCicero said, correct. Vice Chairman Craddock asked if the other fountains Ms. Bontemps referenced along the highway are located on conforming land and Ms. LoCicero said yes. Vice Chairman Craddock asked where the four park models located in the AE Flood Zone were located and Ms. LoCicero referenced tab 13, site plan on page 2 and said they were located in the bottom right corner.

Chairman Breathwaite called for a recess at 9:12 PM.

Chairman Breathwaite called the meeting back to order at 9:23 PM.

Chairman Breathwaite asked Mr. McRee if he would like to call another witness. Mr. McRee called Donna Voliva, Assistant Planning Director, to the stand. Ms. Voliva gave her current title and said she has been employed with the County for over 35 years. Mr. McRee asked if she was familiar with the aerator fountain minor site plan application and Ms. Voliva said yes and referenced pages 119 and 120 of the agenda packet. Ms. Voliva said she reviewed the NOVs, and they had not been corrected, also looked at Chapter 8 - Nonconformities, met with the Chief Building Inspector/Fire Official to see if this fountain and lights were necessary. Ms. Voliva said we took all this information and decided we could not approve the minor site plan for the fountain. Ms. Voliva said permits can be held back when there is an active NOV. Mr. McRee asked if the applicant would rectify the NOVs, would you approve the fountain and Ms. Voliva said yes, we would try. Mr. McRee asked if there was electrical that needs to be done for the fountain and Ms. Voliva said, yes, and part of the electrical had already been done when we made a site visit.

Mr. Weber began his cross examination of Ms. Voliva. Mr. Weber asked if Laurie LoCicero or she was the boss and Ms. Voliva said Kevin Kemp is the boss. Mr. Weber asked how many ways in and out of the campground and Ms. Voliva said one. Mr. Weber asked if Ms. Voliva had signed an affidavit and Ms. Voliva said yes. Mr. Weber asked if she had signed an affidavit for this case and Ms. Voliva said no. Mr. Weber asked why she had not signed an affidavit since the UDO requires it. Mr. McRee asked Chairman Breathwaite to interject. Mr. McRee gave clarification, saying the UDO was amended in 2021 and the affidavit was not required before that time. Ms. LoCicero said NC State Statute 160D amended the UDO in 2021 adding the affidavit requirement, but the NOVs were issued in 2020 before that requirement was added. Vice Chairman Craddock asked Ms. Voliva if the applicant had received a permit for the electrical work they completed, and Ms. Voliva said no. Mr. Weber asked Ms. Voliva why she did not state this in her review, and she said she did not know about it at that time.

Mr. McRee called Bill Newns, Chief Building Inspector/Fire Official, to the stand. Mr. Newns said he was an Inspector for 14 years, Chief Building Inspector for 7 years, and the Fire Official for 3 years. Mr. Newns said the applicant wanted to install the fountain for mosquitoes and fire safety. He said the pond was there before as a regular pond, but the applicant built more buildings, so they needed another fire pond. Mr. McRee asked how many fire ponds are in the County and Mr. Newns said approximately 20-25. Mr. McRee asked how they are maintained, and Mr. Newns said the fire department inspects them annually; this one was tested, and it passed. Mr. Weber asked if Mr.

Newns went out there and Mr. Newns said he went out to look at the park models. Vice Chairman Craddock asked if he was correct in saying the electrical permit was not done for the fountain and Mr. Newns said, correct, the permit was not issued and if the work was done without the permit, then it is a violation of the National Electrical Code. Mr. Newns said they passed NFPA 11-42 for the fire pond, the standard which identifies a method of determining the minimum water supply necessary for structural fire-fighting purposes in areas where it has been determined that there is no water or inadequate water for firefighting.

Mr. Weber addressed the County and Board offering an agreement if they would find seventeen of the park models in compliance and the other four park models noncompliant which are in the flood zone. He then offered to move the four park models out of the flood zone and relocate them within the campground. Mr. McRee said the County would like to have complete compliance. Ms. Arizaga-Womble directed the board to continue the hearing since an agreement was not met.

Mr. Weber called Dr. Clumpner as an expert witness. Mr. Clumpner said he is currently a Fire Battalion Chief with the Charlotte Fire Department, and he received his Doctor of Philosophy degree in Homeland Security Leadership and Policy from Northcentral University. Mr. Webber directed the Board to tab 16 of his exhibit binder for Mr. Clumpner's resume. Mr. Clumpner gave his opinion of the necessity for the fountain in the fire suppression pond.

Mr. McRee cross examined Dr. Clumpner and asked if they campground should be shut down until an aerator fountain is approved since you are saying it is an unsafe situation without this in place and Dr. Clumpner said no. Mr. McRee asked if shuttling water would be another option when fighting fires and Dr. Clumpner said, yes, but it gets complicated. Dr. Clumpner described the complications when shuttling water.

Mr. Weber called Dr. Stephanie Richards as an expert witness. Dr. Richards is a Professor at East Carolina University. She received her Doctor of Philosophy degree in Entomology from North Carolina State University. Dr. Richards said there are 64-65 different species of mosquitoes in North Carolina. Mr. Weber directed the Board to tab 17 of his exhibit binder to show vegetation on top of the pond. Dr. Richards described her work with the biological hazards of mosquitoes and Mr. Weber tendered her as an expert witness in Entomology. Mr. Weber directed the Board to tab 19 of his exhibit binder showing pictures of non-biting midges. Dr. Richards gave her opinion that the aerator fountain would reduce the bugs in the pond.

Mr. McRee cross examined Dr. Richards saying it sounds like this campground is unsafe. Mr. McRee asked Dr. Richards about the marsh lands around the campground and the second pond in relation to the number of bugs this produces. Dr. Richards said she did not see the second pond. Mr. McRee asked questions about the midges/fuzzy bills referenced in the pictures and said they are very prevalent in our area. Vice Chairman Craddock asked Dr. Richards if the pond was covered in algae, and she said no.

Mr. Weber called Joseph H. Sadler, Jr, P.E., as an expert witness to tell the difference between an RV and a park model. Mr. Weber directed the Board to tab 15 of his exhibit

binder to review Exhibit B. Mr. Weber gave his opinion that twenty-one units at the campground are park model recreational vehicles and are not manufactured or modular homes.

Mr. McRee cross examined Mr. Sadler and asked if he had noticed any license plates and Mr. Sadler said no, he was not looking for that.

Board members asked Mr. Sadler various questions concerning whether he witnessed the park models being moved, what classification of hitch was on them, and how much the units weighed.

Mr. Weber called R. Frank Gray, legal counsel, as an expert witness to give his opinion that the park models are not manufactured home and referenced tab 14 of his Exhibit Binder. Board members asked various questions concerning the Nonconforming Uses section of the UDO and Mr. Gray gave his opinion that the park models were considered campers according to the UDO he read on the screen. Board members asked questions concerning RVA and HUD.

Chairman Breathwaite recessed for a break at 11:27 PM.

Chairman Breathwaite called the meeting back to order at 11:32 PM

Mr. Weber made his closing statement saying he believes they made their case that the park models are recreational vehicles and not manufactured homes and that the fountain is needed for fire and safety issues, he asked the Board to deny the County's Notice of Violations and to approve the aerator fountain request.

Mr. McRee made his closing statement saying the authority to interpret the UDO is given to the Director of Planning or to this Board and according to Chapter 8, Nonconforming Uses, these structures do not meet our definitions of an RV in a nonconforming campground. Mr. McRee read aloud the Court of Appeals Decision for a previous Letter of Determination affirming the County's views for no intensification within a nonconforming campground. Mr. McRee said it is unfortunate the applicants acquired a nonconforming campground, but they knew this when they purchased it. The County is asking for the Board to affirm the Notice of Violations and to affirm the denial of the fountain.

Mr. Weber gave a brief rebuttal saying the Court of Appeals Decision for the previous Letter of Determination was not applicable in this case tonight.

Chairman Breathwaite said the fountain can be seen as an amenity and could be seen for health and safety reasons, but we cannot say that the Court of Appeals Decision for the previous Letter of Determination is not applicable; although the Letter of Determination could have been written better, Chapter 8 of the UDO is still the governing factor for nonconforming uses.

Chairman Breathwaite said he believed denying the fountain was within the County's rights with the outstanding Notice of Violations in place.

Mr. Miller agreed with Chairman Breathwaite concerning the fountain since he has had instances where something needed correction before moving forward with a permit. Mr. Miller said, concerning the park models, the UDO specifies pulling a camper with a lightweight truck and this is not possible with the park models. The UDO also says, fully licensed and ready for highway use.

Chairman Breathwaite said the purpose and intent of the UDO is clear to him, but he was not clear on the purpose and intent of the units.

Mr. Kane said he has a background in vehicle use and he has not seen proof the units have a registration and a license. Mr. Kane also said they do not meet the 90-day requirement within the UDO. Ms. Arizaga-Womble advised the Board to not get off task with the 90-day requirement.

Ms. Bontemps said she is convinced these units are vehicles and said Ms. LoCicero stated seventeen of the park models were conforming. Chairman Breathwaite said he did not hear Ms. LoCicero say that. Ms. Bontemps read some of the requirements for a recreational vehicle on page 70 of the agenda packet:

- a. Built on a single chassis
- b. 400 square feet or less
- c. Designed to be pulled by a light duty truck

Board discussion was held saying the park models do not meet the requirement of being pulled by a light duty truck and a special permit is required to transport them on the roads. Some board members also said the park models do not meet the requirement of fully licensed and ready for highway use.

Vice Chairman Craddock said the fountain would not stop the mosquitoes and midges in a swampy area and if the fountain was necessary for the fire pond, then it should have been installed at that time. Also, why wasn't the second pond a concern? Vice Chairman Craddock said in his opinion, nonconforming is the bottom line.

Discussion was held on separating the motions for the fountain. Ms. Arizaga-Womble advised the board to split the motions.

Chairman Breathwaite asked for a motion for Item A. BOA 20-03 85' and Sunny, LLC and read the limitations for decisions of Appeals a. through d. under the Appeal Review Standards on page 14 of the agenda packet to guide the board for their motions.

Mr. Miller motioned, relative to BOA 20-03 85' and Sunny, LLC, to affirm the decisions with no error made for the two Notice of Violations dated 6/10/2020 and 7/24/2020. Mr. Kane seconded the motion and the motion passed with the required majority vote, 4-1. Ms. Bontemps voted nay.

Chairman Breathwaite asked for a motion for Item C. BOA 21-02 85' and Sunny, LLC.

Mr. Miller motioned, relative to BOA 21-02 85' and Sunny, LLC, dated 11/16/2021, to affirm the decision of the interpretation that was made by the Planning Director for that application both on the grounds of the existing Notice of Violations as well as a nonconforming campground.

Mr. Kane seconded the motion and the motion carried unanimously 5-0.

<b>RESULT:</b>	<b>APPROVED [4 TO 1]</b>
<b>MOVER:</b>	Sam Miller, Board Member
<b>SECONDER:</b>	Robin Kane, Board Member
<b>AYES:</b>	Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Robin Kane, Board Member, Sam Miller, Board Member
<b>NAYS:</b>	Cathy Bontemps, Board Member
<b>ABSENT:</b>	Carol Bell, Board Member

**B. BOA 20-04 85' and Sunny, LLC: Appeal of Notice of Violation #1389 dated 9/15/2020 for performing construction without a zoning compliance permit on property located at 1631 Waterlily Road, Tax Map 79, Parcel 1, Poplar Branch Township.**

This item was withdrawn at the request of the County; The Notice of Violation will be reissued at another time.

<b>RESULT:</b>	<b>WITHDRAWN</b>
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**C. BOA 21-02 85' and Sunny, LLC: Appeal of the denial for an aerator fountain minor site plan application dated 11/16/2021. The property is located at 1631 Waterlily Road, Tax Map 79, Parcels 1 through 4, Poplar Branch Township.**

Minutes for this item are within Section II. New Business, Item A. BOA 20-03; This item was consolidated with BOA 20-03 by an amendment to tonight's agenda.

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

**ANNOUNCEMENTS**

There were no announcements.

**ADJOURNMENT**

Vice Chairman Craddock motioned to adjourn the meeting. Mr. Miller seconded the motion and the meeting adjourned at 12:30 AM on March 11, 2022.

Communication: BOA Meeting Minutes - March 10, 2022 (Approval of Minutes for March 10, 2022)



## Currituck County Agenda Item Summary Sheet

**Agenda ID Number** – 3464

**Agenda Item Title:** BOA 22-01 Misty Young - Appeal:

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

**Item Type:** Quasi-Judicial

**Presenter of Item:** Kevin Kemp

**Board Action:** Action

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**Brief Description of Agenda Item:**

Appeal for Notice of Violation dated 3/2/2022 for operating an automobile rentals business on residential property located at 1086 Hampton Street, Corolla, Tax Map 115B, Parcel 563, Poplar Branch (Beach) Township.

**Planning Board Recommendation:**

**Staff Recommendation:**

**TRC 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:** Anna Cherry, Code Enforcement Officer  
**Date:** March 31, 2022  
**Re:** BOA 22-01 Misty Young

Misty Young is appealing notice of violation 1708 issued on March 2, 2022. The property was inspected on March 1, 2022 and the notice of violation was issued for unpermitted operation of automobile rentals at 1086 Hampton St., Corolla, NC 27927 (PIN: 115B00005630000).

#### Unified Development Ordinance

The subject property is zoned Single-Family Residential-Outer Banks (SFO) with PUD overlay. The property is located within Corolla Light Planned Unit Development and is subject to the approved sketch plan that designates the property as residential.

Based on the following sections of the UDO, automobile rentals are not permitted from the subject property:

- Chapter 1, Subsection 1.8.6 Approved Planned Unit Development District Overlay and Sketch Plan
  - (2) Allowable Uses
    - The range of principal uses allowed on a site subject to a modified sketch plan shall be limited to the following:
      - (a) Land designated for residential development shall be limited to the allowable uses for the SFO district listed in Table 4.1.1.A, Summary Use Table

**TABLE 4.1.1.A: SUMMARY USE TABLE**

Z = Zoning Compliance Permit; U = Special Use Permit; MP = Allowed with Master Plan;  
 CZ= Allowed in a Conditional Zoning District blank cell = Prohibited

USE CATEGORY	USE TYPE	ZONING DISTRICT [NOTE: OVERLAY OR SUB-DISTRICT REQUIREMENTS MAY FURTHER LIMIT USES]											ADDITIONAL REQ. (4.2.____)		
		RC	AG	SFM	SFO	SFR	SFI	MXR	GB	LB	CC	VC		U	HI
Vehicle Sales and Services, Light	Automotive parts and installation								Z		Z	Z	Z		4.1.1
	Automobile repair and servicing (including painting/bodywork)								Z		Z	Z	Z		4.1.2
	Automobile sales or rentals								U		Z	Z	Z		4.1.3
	Car wash or auto detailing								Z		Z	Z	Z		4.1.4
	Taxicab service								Z	Z	Z	Z			4.1.5

A blank cell indicates that Automobile sales or rentals from the property is not permitted on properties designated for residential development.

**Violation**

The property located at 1086 Hampton Street has been cited for operating automobile rentals. Property owner, Misty Young, has a profile on Turo website listing Jeeps/4x4 vehicles for rent. Vehicles are stored and kept at 1086 Hampton Street. The subject property is zoned Single-Family Residential Outer Banks with Planned Unit Development (PUD) overlay and designated for residential development in the most recent approved sketch plan for the PUD. Automotive rentals are not permitted to be operated from this property within the Corolla Light Planned Unit Development.

On Thursday, February 17, 2022, a compliant was received about the operation of jeep rentals by Misty Young from her property in Corolla Light.

- February 17, 2022, between 11:30am-4:00pm planning staff reviewed information and Unified Development Ordinance standards.
- March 1, 2022, between 11:30am-1:00pm staff investigated the Turo website, recorded photos and information noted on the website for the listed vehicles on the property at 1086 Hampton St. Staff visited the property, photographed storage of the vehicles listed on the Turo profile.
  - Picture #1 shows the listed vehicles on the property.
- March 2, 2022, staff and mailed complied the Notice of Violation.
  - Attachment #1 is the Notice of Violation
  - Picture #2 shows the Turo website Profile for Misty Young and the location being Corolla
  - Picture #3 shows the Turo website Listing of the Vehicles
- March 8, 2022, Misty Young called staff to request an appeal form. Staff emailed the appeal form and notice of violation to: donnie761@msn.com.
- March 18, 2022, The Turo website was reviewed, and additional rental transactions were recorded. Reviews by recent rental customers were noted; one from March 8, 2022, for two trips that had been taken since the NOV was sent March 2, 2022.
  - Pictures #4 and 5 shows the reviews as of March 18, 2022
  - Picture #6 shows the updated trip count as of March 18, 2022, along with the approximate location

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)

- March 24, 2022, The Turo website was reviewed and the files for the reviews were documented. These reviews included one from March 24, 2022
  - Picture #7 shows the updated trip count as of March 24, 2022
  - Picture #8 shows the new review as of March 24, 2022
- March 31, 2022, The Turo website was reviewed and the files for the reviews were documented.
  - Picture #9 shows the updated trip count as of March 31, 2022
- April 1, 2022, The Turo website was reviewed, and the GIS map was created for the subject address.
  - Picture #10 shows the location and the most recent review left on the Turo website.
  - Picture #11 shows the GIS map of the subject property for comparison to the approximate location shown on the Turo website.
- April 20, 2022 Staff visited the property, photographed storage of one of the listed Jeep/4x4 vehicles and an additional Jeep/4x4 vehicle that was not previously listed. Staff then reviewed the Turo profile for the additional vehicle.
  - Picture #12 shows the listed vehicle and the additional vehicle on the property.
  - Picture #13 shows the updated trip count, and the new listed vehicle.
- April 28, 2022 The Turo website was reviewed, and additional rental transactions were recorded.
  - Picture #14 shows the updated trip count for each vehicle.
- June 6, 2022 The Turo website was reviewed, and additional rental transactions and jeeps were recorded.
  - Picture #15 shows the updated trip count for each vehicle as well as the new jeeps listed for rent.
  - Picture #16 shows the updated approximate location of the jeep rental business.

### Appeal Review Standards

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 evidenced 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.



Picture 1

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)



## Misty Y.

Corolla, NC

26 trips • Joined Aug 2021

All-Star Hosts like Misty are the top-rated and most experienced hosts on Turo.

[Learn more](#)

Misty has completed training on enhanced cleaning and disinfection practices.

[Learn more](#)

### VERIFIED INFO

Email address

Phone number

Facebook



### LANGUAGES

### ABOUT MISTY

Hi all! I'm a full time Corolla resident and a lover of the horses and 4x4 beach. It's my goal to make sure you have a great time while you are here on vacation and enjoy an epic Jeep for your rental needs.

### MISTY'S VEHICLES



#### Jeep Gladiator 2021

5.0★ (23 trips)

Picture 2

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)

MISTY'S VEHICLES



**Jeep Gladiator 2021**

5.0 ★ (23 trips)

**\$219/day**



**Jeep Wrangler Unl...**

5.0 ★ (2 trips)

**\$225/day**



**Jeep Wrangler Unl...**

**\$225/day**

Picture 3

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)

REVIEWS



Molly Mar 8, 2022

Super easy reservation and pick up process. We had a brand new, well appointed vehicle. Received a lot of great advice and recommendations from the hosts.



Lily Feb 24, 2022

Had a great time in the jeep, would recommend and do again! Thank you Misty



Jackson Feb 20, 2022

Misty and Aaron were incredible to work with. They were extremely responsive, kind, and went out of their way to make our experience seamless- from ensuring we could most effectively navigate the beaches to teaching us where the horses like to hide in the winter. The jeep itself is in impeccable condition, well maintained, and beautiful. We felt proud to drive it, and we had the best time exploring the beaches in it. We hope to rent with Misty and Aaron again next time we visit! Thank you all for the best day!

Picture 4

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)

REVIEWS



★★★★★

Hali Mar 8, 2022

This was our second time renting Misty’s jeep for the day and it was still a great experience! Any time we want to get down to the 4x4 area we will be reaching out to Misty and her family 😊



★★★★★

Jennifer Feb 20, 2022

Fun car for beach driving and seeing the wild horses!



★★★★★

Hali Feb 12, 2022

We had so much fun! We had 2 rear facing car seats in the back with room to spare. The jeep drove so smoothly through the sand, and it was so clean when we got it! We will definitely rent from Misty and her family again in the future – who are all super nice people! 😊



★★★★★

Tracy Jan 3, 2022

Great keep, professional experience



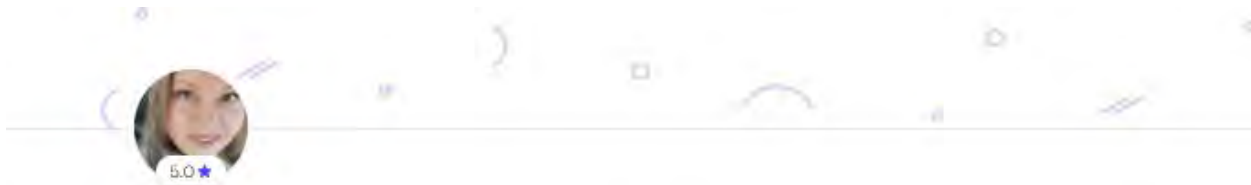
★★★★★

Bradford Dec 25, 2021

Great hosts, great vehicle, and super fun to boot! If you’re looking for a way to get out and off road, give them a shout.

Picture 5

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)



# Misty Y.

Corolla, NC

28 trips • Joined Aug 2021

All-Star Hosts like Misty are the top-rated and most experienced hosts on Turo.

[Learn more](#)

Misty has completed training on enhanced cleaning and disinfection practices.

[Learn more](#)

### VERIFIED INFO

- Email address
- Phone number
- Facebook

### LANGUAGES

English

### HOST STATS

Response rate 100%

Response time 6 minutes

### SHARE THIS TURO PROFILE.



### ABOUT MISTY

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### MISTY'S VEHICLES



#### Jeep Gladiator 2021

5.0 ★ (24 trips)

\$219/day



#### Jeep Wrangler Unl...

5.0 ★ (3 trips)

\$225/day



#### Jeep Wrangler Unl...

\$225/day

### LOCATION



Picture 6

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)



# Misty Y.

Corolla, NC  
30 trips • Joined Aug 2021

All-Star Hosts like Misty are the top-rated and most experienced hosts on Turo.  
[Learn more](#)

Misty has completed training on enhanced cleaning and disinfection practices.  
[Learn more](#)

### VERIFIED INFO

- Email address
- Phone number
- Facebook

### LANGUAGES

English

### HOST STATS

Picture 7

(20 ratings)

### REVIEWS



Adam Mar 24, 2022

Misty and her husband were very helpful and informative! Told us exactly how to drive on the beach properly and where to look for the horses! Jeep was spotless when we picked it up! Even gave us tips on good local restaurants to eat at! Definitely recommend!

Picture 8

### ABOUT MISTY

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### MISTY'S VEHICLES



#### Jeep Gladiator 2021

5.0 ★ (26 trips)

\$219/day

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)



## Misty Y.

Corolla, NC

32 trips • Joined Aug 2021



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Hi all! I'm a full time Corolla resident and a lover of the horses and 4x4 beach. It's my goal to make sure you have a great time while you are here on vacation and enjoy an epic Jeep for your rental needs.

### MISTY'S VEHICLES

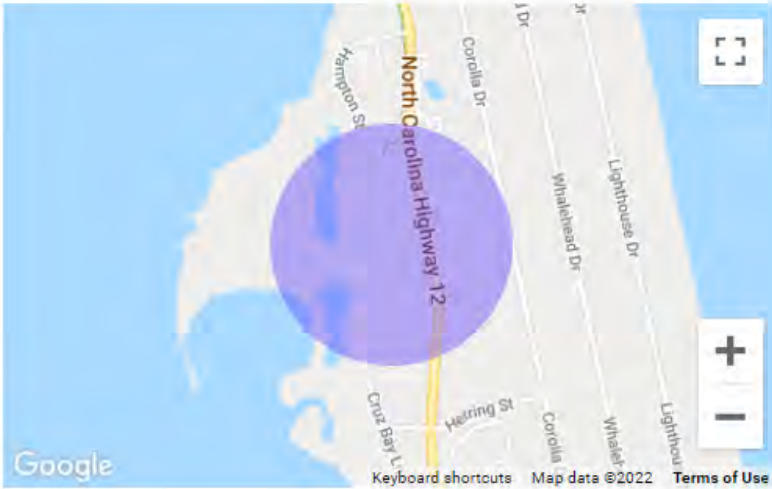


Jeep Gladiator 2021

Picture 9

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)

LOCATION



REVIEWS FROM GUESTS - 33 TRIPS

5.0 ★ (25 reviews)



★★★★★

Tammie C. March 31, 2022

Great people and an awesome Jeep. Perfect for beach driving. Had a wonderful time with it.

Picture 10



Picture 11

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)



Picture 12

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)



# Misty Y.

Corolla, NC

50 trips • Joined Aug 2021

All-Star Hosts like Misty are the top-rated and most experienced hosts on Turo.

[Learn more](#)

Misty has completed training on enhanced cleaning and disinfection practices.

[Learn more](#)

### VERIFIED INFO

Email address

Phone number

### LANGUAGES

English

### HOST STATS

Response rate 100%

Response time 3 minutes

### SHARE THIS TURO PROFILE



### ABOUT MISTY

Hi all! I'm a full time Corolla resident and a lover of the horses and 4x4 beach. It's my goal to make sure you have a great time while you are here on vacation and enjoy an epic Jeep for your rental needs.

### MISTY'S VEHICLES



#### Jeep Gladiator 2021

5.0 ★ (31 trips)

\$225/day



#### Jeep Wrangler Unl...

5.0 ★ (11 trips)

\$250/day



#### Jeep Wrangler Unl...

5.0 ★ (7 trips)

\$250/day



#### Jeep Wrangler Unl...

\$225/day

### LOCATION



1 Misty Young  
Appeal  
Page 14 of 18

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)

*Picture 13*

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)

**Misty Y.**  
 Corolla, NC  
 59 trips • Joined Aug 2021

All-Star Hosts like Misty are the top-rated and most experienced hosts on Turo.  
[Learn more](#)

Misty has completed training on enhanced cleaning and disinfection practices.  
[Learn more](#)

**VERIFIED INFO**  
 Email address ✓  
 Phone number ✓

**LANGUAGES**  
 English

**HOST STATS**  
 Response rate 100%  
 Response time 3 minutes

**SHARE THIS TURO PROFILE**  
 [Social media icons]

**ABOUT MISTY**  
 Hi all! I'm a full time Corolla resident and a lover of the horses and 4x4 beach. It's my goal to make sure you have a great time while you are here on vacation and enjoy an epic Jeep for your rental needs.

**MISTY'S VEHICLES**

**Jeep Gladiator 2021**  
 5.0★ (33 trips)  
 \$225/day

**Jeep Wrangler Unl...**  
 5.0★ (14 trips)  
 \$250/day

**Jeep Wrangler Unl...**  
 5.0★ (8 trips)  
 \$250/day

**Jeep Wrangler Unl...**  
 5.0★ (3 trips)  
 \$225/day

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)

Picture 14

**Misty Y.**  
 Corolla, NC  
 80 trips • Joined Aug 2021

All-Star Hosts like Misty are the top-rated and most experienced hosts on Turo.  
[Learn more](#)

Misty has completed training on enhanced cleaning and disinfection practices.  
[Learn more](#)

**VERIFIED INFO**

Email address   
 Phone number

**LANGUAGES**

English

**HOST STATS**

Response rate 100%  
 Response time 3 minutes

**SHARE THIS TURO PROFILE**

[f](#) [t](#) [e](#) [i](#)

**ABOUT MISTY**

Hi all! I'm a full time Corolla resident and a lover of the horses and 4x4 beach. It's my goal to make sure you have a great time while you are here on vacation and enjoy an epic Jeep for your rental needs.

**MISTY'S VEHICLES**

**Jeep Gladiator 2021**  
 5.0 ★ (39 trips)  
 \$250/day

**Jeep Wrangler Unl...**  
 5.0 ★ (21 trips)  
 \$250/day

**Jeep Wrangler Unl...**  
 5.0 ★ (12 trips)  
 \$250/day

**Jeep Wrangler Unl...**  
 5.0 ★ (7 trips)  
 \$225/day

**Jeep Wrangler 20...**  
 \$250/day

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)

Picture 15

LOCATION



Picture 16

Attachment: StaffReport\_BOA\_22\_01\_Misty\_Young (BOA 22-01 Misty Young)

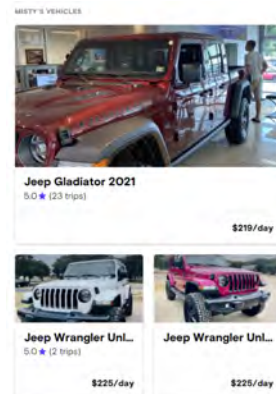


**COUNTY OF CURRITUCK**  
 Code Enforcement Program  
 153 Courthouse Road, Suite 108  
 Currituck, NC 27929  
 (252) 232-6076

**NOTICE OF VIOLATION #**  
**1708**

Misty and William Young  
 1177 Duck Rd. Suite 41  
 Duck, NC  
 27949

<b>Violation Date:</b> March 2, 2022	<b>Inspection Date:</b> March 1, 2022
<b>Property Address:</b> 1086 Hampton St.	<b>PIN #:</b> 115B00005630000
<b>Violation Description:</b>	
Automotive Rentals are being conducted without a Special Use Permit at 1086 Hampton St. in Corolla Light Planned Unit Development. The subject property is zoned SFO with PUD overlay and designated for residential development in the most recent approved sketch plan for the PUD. Automotive rentals are not permitted to be operated from this property.	
<b>Compliance Request:</b> Terminate automotive rentals from 1086 Hampton St.  For more information contact Anna Cherry Anna.Cherry@CurrituckCountyNC.gov (252) 232-6076	<b>UDO Code Reference:</b> Chapter 1.8.6 (2) Allowable Uses (a) Summary Use Table 4.1.1.A : Automobile sales or rentals
	<b>Required Compliance Date:</b>  April 6, 2022



**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**  
[anna.cherry@currituckcountync.gov](mailto:anna.cherry@currituckcountync.gov) (252) 232-6076

**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 D**

Attachment: NOV - 1086 Hampton St - Jeep Rentals (BOA 22-01 Misty Young)



# Appeal Application

OFFICIAL USE ONLY:  
 Case Number: 22-01  
 Date Filed: 3/3-22  
 Gate Keeper: C. Abbott  
 Amount Paid: \$ 500.00

### Contact Information

**APPLICANT:**

Name: Misty C Young  
 Address: 1086 Hampton St  
Corolla NC 27927  
 Telephone: 757-572-8221  
 E-Mail Address: mistybearclaw@  
yahoo.com

**PROPERTY OWNER:**

Name: Misty Young  
 Address: 1086 Hampton St  
Corolla NC 27927  
 Telephone: 757-572-8221  
 E-Mail Address: misty and aaron young  
@yahoo.com

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Self

### Property Information

Physical Street Address: 1086 Hampton St. Corolla NC 27927  
 Location: Corolla NC  
 Parcel Identification Number(s): 115B-000-0563-0000

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

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

The determination being dated 3/2/2022

**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.

Please see attached

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.

Misty C Young 3-30-2022  
 Appellant/Applicant Date

Attachment: BOA 22-01 Misty Young - App (BOA 22-01 Misty Young)

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: 3/30/2022 BOA Date: 5/12/2022
Project Name: 1086 Hampton St. Corolla
Applicant/Property Owner: Misty Young

Table with 5 rows and 3 columns: Checklist items (1-5) and their completion status (checked/unchecked).

For Staff Only

Pre-application Conference (optional)

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

Blank lines for recording conference details.

Comments

Blank lines for providing comments.

---

**Currituck County North Carolina**  
**Board of Zoning Adjustment**

---

**Statement of Appeal**

In Re: Notice of Violation No.: 1708

Subject Property:

**1086 Hampton Street**

**PIN #: 115B00005630000**

Dated: March 30, 2022

BZA Appeal No.: \_\_\_\_\_

Attachment: BOA 22-01 Misty Young - App (BOA 22-01 Misty Young)

### STATEMENT OF APPEAL

Appellant is the owner of the home located at 1086 Hampton Street. The home is owner-occupied and utilized only as a single-family dwelling in compliance with the permitted uses for the zone. Appellant is the matriarch of a large family of adult children, five in total. All of the vehicles located on the property are registered to Appellant.

### TIMELINESS OF APPEAL

Notice of Violation #1708 reflects a Violation Date of March 2, 2022. Appellant must affect this Appeal within 30 days of receipt. The Notice of Violation was received March 3, 2022, and this Appeal is filed on March 30, 2022.

### BURDEN OF PROOF

Pursuant to Section 2.4.17(D)(1) The Board of Adjustment determinations shall be based on clear and substantial evidence. This standard of proof requires Appellant to demonstrate her argument is more likely to true than false.

### ARGUMENT OF APPELLANT

The County of Currituck Code Enforcement Program has requested Appellant terminate automotive rentals and alleged an illegal automotive sales and rental use. Appellant is not operating a car sale or rental business. Appellant is simply offering her personal vehicles in a car-sharing program, which is not a use defined, nor regulated by the county or state. The Zoning Administrator's decision was based on a standard not contained in the Currituck County Zoning Ordinance, nor other County ordinances. The County's comparison of car-sharing to an automobile sales and rental use is an extreme misrepresentation.

An automotive sale and rental use is required by state and local ordinances to be licensed by the Department of Motor Vehicles, with an approved site plan. The site plan requires a commercial location and a store front with off-street parking. In contrast, car-sharing does not require a license from the Department of Motor Vehicles, nor does it require a commercial location per County code. The Board may equate the County's misrepresentation to the likeness of citing an Uber driver for operation of an unlicensed taxicab service from his home. Another like misrepresentation would be citing an Airbnb rental as an illegal hotel use.

The nature of the car-sharing is such that a person will register for a time to share the personal vehicle online. There is a fee for sharing the vehicle. Appellant will then drive the vehicle to the sharer's location and deliver the keys. Once the agreed upon time expires, Appellant retrieves her vehicle from a predetermined location. Sharers are not permitted to inspect the vehicle prior to sharing and are not permitted to come to Appellant's home. Appellant bears all of the cost associated with maintenance and care of these personal vehicles.

The Department of Motor Vehicles will not license car-sharing, and the County will not permit Appellant to rent or sell her personal vehicles from a commercial location. State law prohibits dealers from utilizing dealership inventory vehicles for personal use. To this, a North Carolina business license is not required for car-sharing.

Car-sharing does not constitute a “use” as defined by the zoning ordinance, nor does it impact the existing residential use of the subject property. Chapter 10 defines “use” as the purpose for which land or a structure is “designed or intended”. The subject property is intended as a residential use and Appellant’s car-sharing initiative has zero impact on the intended use. Profitable hobbies and initiatives not requiring license or regulation by the state have never been within the purview of the zoning ordinance. The Administrator’s decision was based on a standard not contained in the Currituck County Zoning Ordinance, nor other County ordinances.

Appellant firmly believes offering her personal vehicles in the car-sharing program reduces the carbon footprint of sharers and herself. Car-sharing offers visitors and residents alike a way to enjoy an off-road experience without needing to purchase an off-road vehicle. Car-sharing is in harmony with the zoning ordinance and creates a great sense of community. The car-sharing is completely undetectable by the surrounding neighbors. Appellant’s personal vehicles do not display placards nor signs. Appellant does not own an excessive number of vehicles, nor do her vehicles occupy space other than her driveway. The Board may take notice of the absence of a picture reflecting Appellant’s disturbance of the surrounding property. The pictures proffered in the Notice of Violation showing vehicles displayed by the car-sharing website, and then another photograph of Appellant’s personal vehicles parked in her driveway.

#### COMPLAINTS REGARDING VIOLATIONS

Chapter 9 does not contemplate the motive of a complaining witness; however, the Board should be aware the complaining witness of this allegation is District 1 Commissioner Bob White. Commissioner White operates an off-road beach tour business and is utilizing governmental enforcement to quell competition. Councilman White’s business operations are impacted by citizen’s participating in off-road car-sharing programs. Commissioner White parks commercial vehicles at his home, also a single-family residence (See Exhibit 1), and is clearly not legitimately concerned about the integrity of the zoning districts. Should the Board find Commissioner White’s frivolous allegation to be factual, this matter will be appealed to a court of competent jurisdiction, and this will expose a “good ol boy” system that decent people find repugnant.

#### CONCLUSION

The Notice of Violation is an overreach by the Code Enforcement Program. Car-sharing is not a new concept and has never been regulated by the county or state. The Zoning Administrator’s decision via the Code Enforcement Program was based on a standard not contained in the Currituck County Zoning Ordinance, nor other County ordinances. Car-sharing is in compliance with the zoning ordinance and fosters a healthy sense of community. In its essential function, car-sharing is one person offering personal property for share and charging a fee for the share. Car-sharing does not constitute a “use” as defined by Chapter 10 of the zoning ordinance. The subject property is intended residential use and Appellant’s car-sharing initiative has zero impact on the intended use. Car-sharing does not impact the design or intent of the single-family dwelling. Appellant would ask this honorable Board to reverse the determination





Attachment: BOA 22-01 Misty Young - App (BOA 22-01 Misty Young)



Attachment: BOA 22-01 Misty Young - App (BOA 22-01 Misty Young)



## Currituck County Agenda Item Summary Sheet

**Agenda ID Number** – 3465

**Agenda Item Title:** BOA 22-02 Frog Island Seafood - Variance Request:

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

**Item Type:** Quasi-Judicial

**Presenter of Item:** Kevin Kemp

**Board Action:** Action

---

**Brief Description of Agenda Item:**

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.

**Planning Board Recommendation:**

**Staff Recommendation:**

**TRC Recommendation:**



**STAFF REPORT  
BOA 22-02 ROBERT WHITE  
VARIANCE REQUEST  
BOARD OF ADJUSTMENT  
JUNE 16<sup>TH</sup>, 2022**

Attachment: 1 22-02 White Variance Staff Report (BOA 22-02 Frog Island Seafood)

### APPLICATION SUMMARY

<b>Property Owner:</b> Robert D. White PO BOX 2017, Elizabeth City, NC	<b>Applicant:</b> Robert White PO BOX 2017, Elizabeth City, NC
<b>Case Number:</b> BOA 22-02	<b>Application Type:</b> Variance
<b>Parcel Identification Number:</b> 0069000005A0000 <b>Subject Property:</b> 3997 Caratoke Highway	<b>Existing Use:</b> Restaurant
<b>Parcel Size (Acres):</b> 3.38 Acres	<b>Zoning:</b> General Business (GB)
<b>Variance Requested from the Unified Development Ordinance:</b> Section 3.5.2.E., Dimensional Standards, requires structures located in the GB district to maintain a minimum 20' corner side setback from the street right-of-way edge.	

### STAFF ANALYSIS

#### Unified Development Ordinance

The Unified Development Ordinance (UDO), Section 3.5.2.E, General Business (GB) Dimensional Standards requires a structure to maintain a 20' corner side setback from the street right-of-way.

#### Background

On or before March 4, 2022, County Building Inspector Jason Corbell became aware of an unpermitted structure connected to the existing Frog Island Seafood restaurant building. The unpermitted structure is a permanent metal canopy, measuring 36 feet long and 27 feet wide, which encroaches into the corner side setback. The existing Frog Island Seafood restaurant encroaches into the corner side setback as it was constructed in 1970. The existing restaurant building is regulated by UDO Section 8.3 Nonconforming Structures which allows for expansion and alterations which comply with dimensional standards or decrease the degree of nonconformity.

The applicant claims the unpermitted structure is within the existing building footprint. The permanent metal canopy is not located within the existing building footprint, per the site plan dated April 20, 2020. The applicant indicates they are pursuing the abandonment of the Simpson Road right-of-way. The area of Simpson Road is not in use due to the reconfiguration of the intersection of Highway 158 and Highway 168 in 2003.

The applicant is requesting a variance to allow the permanent metal canopy to encroach approximately 13 feet into the minimum required 20' corner side setback, effectively reducing corner side setback to 7 feet from the property line and street right-of-way edge. Refer to the attached site plan for location detail.

### VARIANCE REVIEW STANDARDS

**A variance shall be approved on a finding that the applicant demonstrates the proposed use will meet all of the below requirements. It is staff's opinion that the evidence in the record,**

**does not meet all of the requirements for a variance based on the below preliminary staff findings:**

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

Preliminary Staff Findings:

1. The alleged hardship **is not** suffered by the applicant as a result of the application of the UDO because:
  - a. The location of the permanent metal canopy was not dictated by the UDO.
  - b. The applicant is not prohibited from constructing a permanent metal canopy elsewhere on his property.
  - c. The applicant could meet the required setbacks on the rear or opposite side of the existing building. There is approximately 100' from the northeast side of the existing building to the rear lot line and approximately 260' to the northwest lot line.

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

Preliminary Staff Findings:

1. The hardship **does not** relate to the applicant's land as there is adequate space for the addition of a permanent metal canopy outside of the corner side setback. The existing building location is not an inherent quality of the applicant's land, size or topography but rather personal circumstance.

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

Preliminary Staff Findings:

1. The hardship **is not unique** as corner side setbacks apply to surrounding properties abutting street rights-of-way. The discontinued use of the segment of Simpson Road adjacent to 3997 Caratoke Highway is potentially unique, however the right-of-way has not been abandoned to date.

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

Preliminary Staff Findings:

1. The hardship **is** a result of the applicant's own actions because the permanent metal canopy was constructed without receiving proper permits which would have noted that structures may not encroach into the 20' corner side setback, which in this case is the expansion of an existing nonconforming structure.

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

Preliminary Staff Findings:

1. The variance **will not** authorize the initiation of a nonconforming use of land. Restaurants are an allowable use in the General Business (GB) Zoning District.

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

Preliminary Staff Findings:

1. The requested variance **is not** consistent with the spirit, purpose, and intent of this ordinance because:
  - a. The request only meets 1 of the 5 review standards above.

- b. The applicant could meet the required setback for the permanent metal canopy elsewhere on the property.
- c. The hardship is a result of the applicant's own actions.
- d. The UDO Section 8.3.4 Alteration or Expansion allows for expansion of a structure which complies with dimensional standards or decreases the degree of nonconformity.

### STAFF RECOMMENDATION

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

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

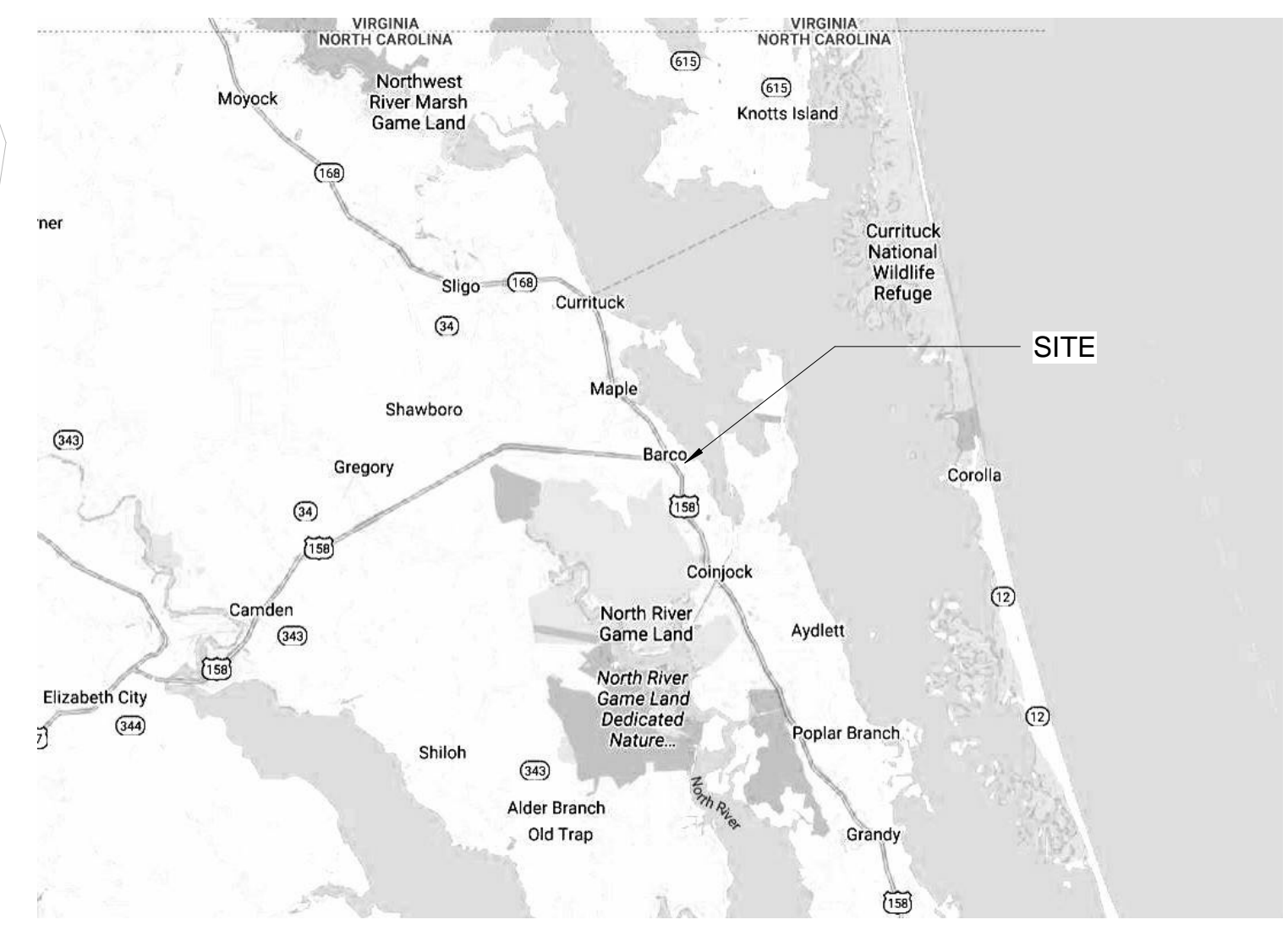
THE APPLICATION AND RELATED MATERIALS ARE AVAILABLE ON THE COUNTY'S WEBSITE  
Board of Adjustment: [www.co.currituck.nc.us/board-of-adjustment-minutes-current.cfm](http://www.co.currituck.nc.us/board-of-adjustment-minutes-current.cfm)



Attachment: 1 22-02 White Variance Staff Report (BOA 22-02 Frog Island Seafood)



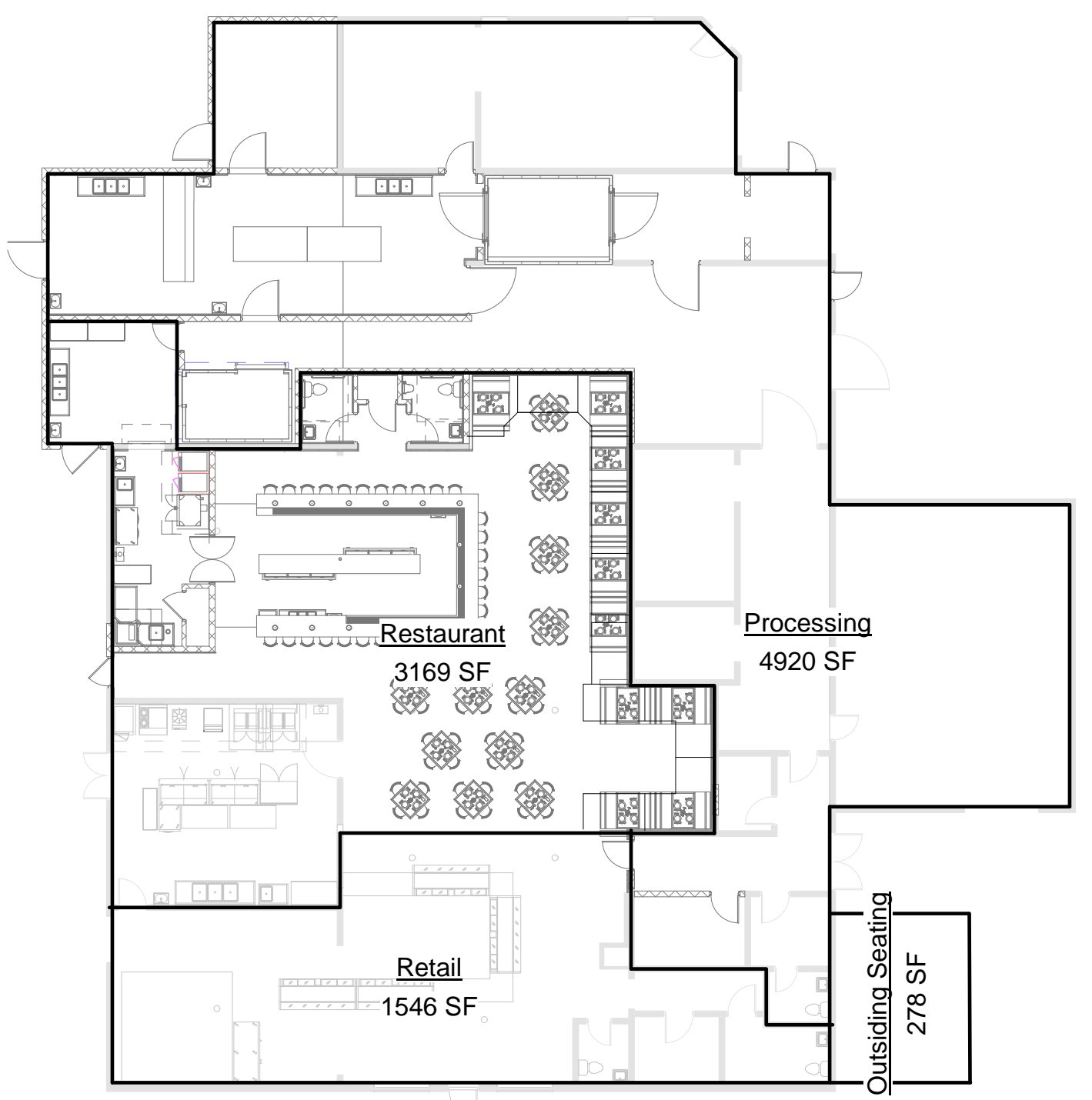
Attachment: 1 22-02 White Variance Staff Report (BOA 22-02 Frog Island Seafood)



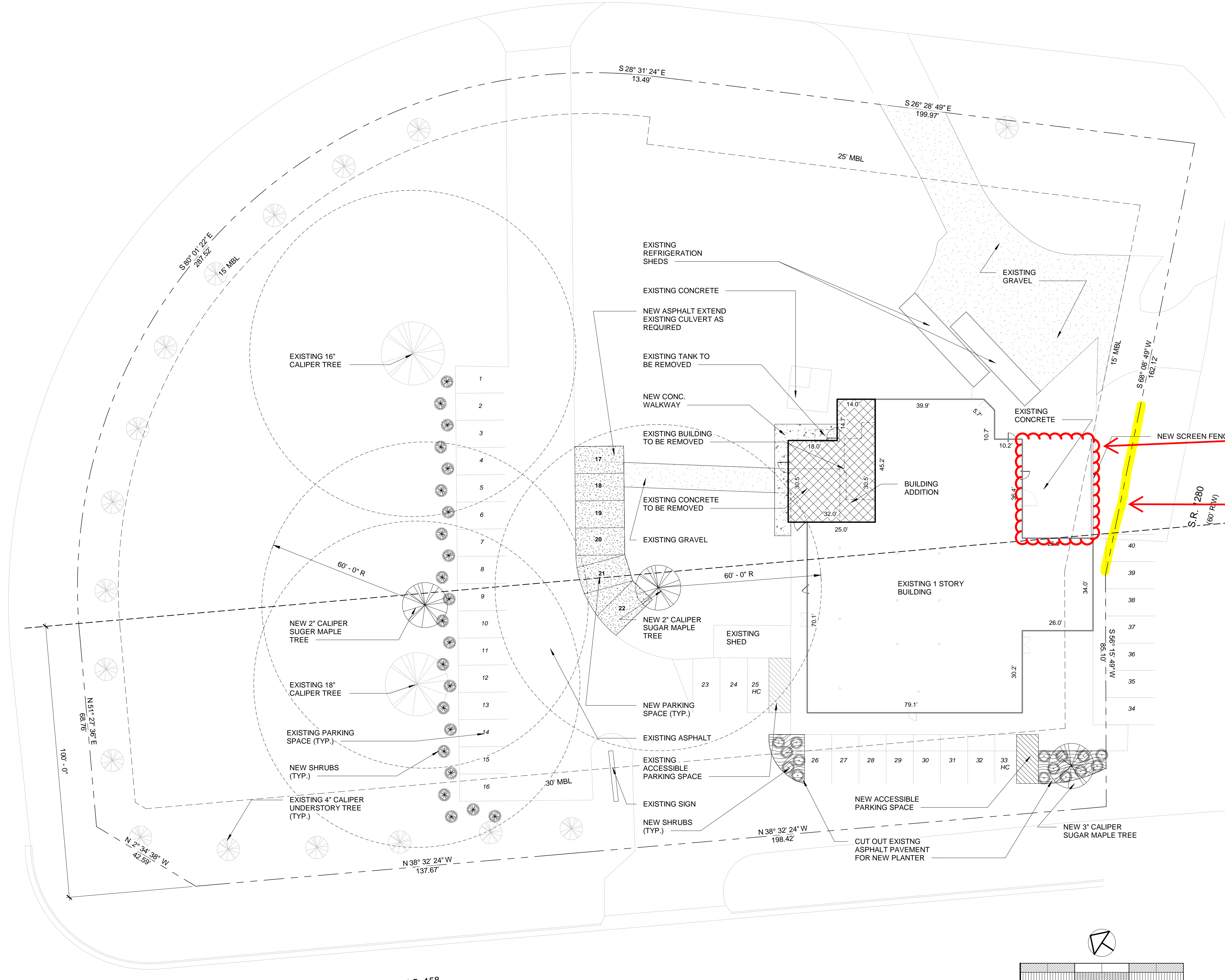
Key Plan

**Metal Canopy Location**

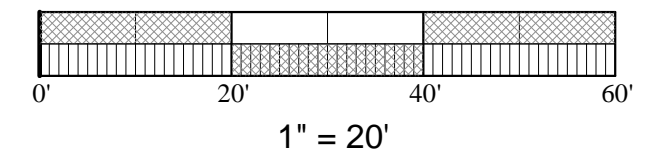
**Property Line**



1 Building Area Plan  
1/16" = 1'-0"



U.S. 158  
(VARIABLE WITH RAW)



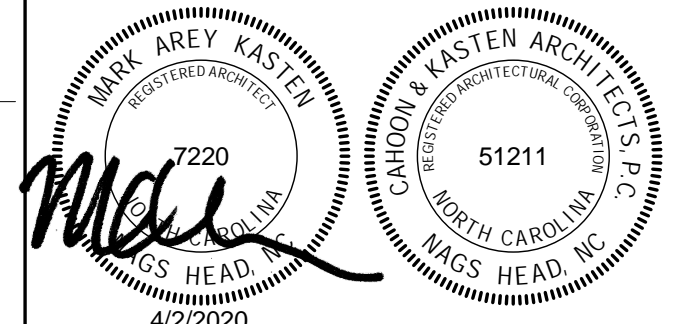
2 Site Plan  
1" = 20'-0"

LANDSCAPING		75% COMPLIANCE	
SITE	2.305 ACRES X 2 ACI	4 ACI	3 ACI
CANOPY TREES	105.1 LF BUILDING FACADE X 1 SHRUB/5FT	21 SHRUBS	15 SHRUBS
SHRUBS			
VEHICULAR USE			
75% OF THE REQUIRED COMPLIANT PARKING SPACES HAVE BEEN SCREENED WITH SHRUBS.			
75% OF THE REQUIRED COMPLIANT PARKING SPACES ARE WITHIN 60 FT. OF NEW OR EXISTING CANOPY TREES			
PERIMETER BUFFERS			
NOT REQUIRED			
SCREENING			
DUMPSTER -	TRASH IS PUT INTO THE BACK OF A TRUCK AND DAILY TAKEN TO THE LANDFILL		
HVAC EQUIPMENT -	HVAC EQUIPMENT IF ON THE ROOF		
LOADING -	A FENCE HAS BEEN PROPOSED ON THE SOUTH SIDE OF THE BUILDING TO CONCEAL EQUIPMENT AND LOADING AREAS		
STREETSCAPE			
75% COMPLIANCE		75% COMPLIANCE	
CANOPY TREES	336.09 LF X 8.0 ACI/100 LF	27 ACI	21 ACI
UNDERSTORY TREES	336.09 LF X 4.5 ACI/100 LF	15 ACI	8 ACI
SHRUBS	336.09 LF X 10 SHRUBS/100 LF	34 SHRUBS	26 SHRUBS

LOT COVERAGE	
PROPERTY	100,425.64 SF
EXISTING COVERAGE	
BUILDING	8,994.15 SF
SHEDS & MISC.	1,251.47 SF
PAVING	23,339.03 SF
GRAVEL	4,537.07 SF
	<b>38,121.72 SF (37.96%)</b>
REMOVED COVERAGE	
BUILDING	277.86 SF
SHEDS & MISC.	38.70 SF
PAVING	842.74 SF
	<b>1,159.30 SF</b>
ADDITIONAL COVERAGE	
BUILDING	1,125.73 SF
PAVING	1,535.71 SF
	<b>2,661.44 SF</b>
PROPOSED COVERAGE	39,623.86 SF (39.46%)

PARKING			
REQUIRED			
RESTAURANT (INCLUDING OUTSIDE SEATING)	3447 SF / 150 SF/SP	23 SP	
RETAIL	1454 SF / 300 SF/SP	5 SP	
SEAFOOD PROCESSING	4920 SF / 1000 SF/SP	5 SP	
	<b>TOTAL REQUIRED</b>	<b>33 SP</b>	
75% REQUIRED COMPLIANT SPACE = 0.75 X 33 SP			
PROVIDED			
EXISTING		34 SP	
NEW		6 SP	
	<b>TOTAL PROVIDED</b>	<b>40 SP</b>	
	<b>TOTAL PROVIDED COMPLIANT</b>	<b>25 SP</b>	

The designer shall not be responsible for any error, omission, defect or deficiency in the contract documents ("error") prepared by the designer or its consultants which in any way impacts the schedule of the project, results in a lack of coordination among the contract documents, delays the completion of the project or which in any other way causes any damage or loss to the owner, contractor, subcontractors, or other entity involved in the project, unless: (i) designer is promptly notified of such error, in any event within 14 days of the date such error was discovered or could reasonably have been discovered; and (ii) designer is given opportunity at the time of discovery to address such error, and, if appropriate, take such steps as are necessary to correct and resolve it. Failure to comply with the provisions of this paragraph shall constitute a waiver of any claim for damages, or a right to offset against designer by owner, contractor or others and shall in no event cause or allow a reduction in the fees otherwise due designer for services provided on the project.



Revisions:

No.	Description	Date

Designed: MAK  
Drawn: MAK  
Reviewed: MAK  
Cad File: **A100**





Attachment: 3 - Submitted Site Plan (BOA 22-02 Frog Island Seafood)



# Variance Review Process



### Contact Information

Currituck County  
 Planning and Community Development  
 153 Courthouse Road, Suite 110  
 Currituck, NC 27929

Phone: 252.232.3055  
 Fax: 252.232.3026

Website: [www.co.currituck.nc.us/departments/planning-community-development](http://www.co.currituck.nc.us/departments/planning-community-development)

### Step 1: Application Submittal and Acceptance

The applicant must submit a complete application packet on or before the application submittal date. A complete application packet consists of the following:

- Completed Currituck County Variance Application.
- Application Fee (\$500).
- Site plan drawn to scale. The plan shall include the items listed in the variance design standards checklist.
- Any other documentation deemed necessary by the administrator to determine compliance with variance review standards.
- Number of Copies Submitted:
  - 2 Copy of the site plan.
  - 2 Copy of ALL documents.
  - 1 PDF digital copy (ex. Compact Disk – e-mail not acceptable) of all plans AND documents.

On receiving an application, staff shall, within ten business days, determine whether the application is complete or incomplete. A complete application contains all the information and materials listed above, and is in sufficient detail to evaluate and determine whether it complies with appropriate review standards. If an application is determined to be incomplete, the applicant may correct the deficiencies and resubmit the application for completeness determination. Failure to resubmit a complete application within 45 calendar days after being determined incomplete will result in the application being considered withdrawn.

### Step 2: Staff Review and Action

After accepting the variance application, staff shall review it, relevant support material, and any comments or recommendations from other staff and review agencies to which the application was referred. After review, staff will prepare a written report including a recommendation on the application. A copy of the staff report and recommendation will be provided to the applicant in advance of the Board of Adjustment meeting. At the discretion of the administrator, non-residential requests for a variance may be reviewed by the Technical Review Committee one month prior to the Board of Adjustment meeting.

### Step 3: Public Hearing Scheduling and Public Notification

Staff shall ensure that the public hearing on it is scheduled for a regularly scheduled Board of Adjustment meeting or a meeting specially called for by the Board of Adjustment. The required public hearing with the Board of Adjustment shall be scheduled so there is sufficient time for a staff report to be prepared and for the public notification requirements to be satisfied under state law.

Attachment: 4 - Frog Island Seafood - Variance Application (BOA 22-02 Frog Island Seafood)

The application shall meet the following public notification requirements:

- **Mailed Notice**  
Staff shall be responsible for preparing and mailing a written notice between 10 and 25 days before the public hearing. Notice shall be mailed to:
  - All owners of the land subject to the application;
  - The applicant, if different from the land owner;
  - All owners of land within 500 feet of the property lines of land subject to the application (including owners of land located outside the county) whose address is known by reference to the latest ad valorem tax records; and
  - Commanders of military bases located within five miles of the subject application when the development proposal affects the type of uses allowed.
- **Posted Notice**  
At least 10 days before the public hearing, posted notice shall be made by staff. A sign shall be placed in a conspicuous location as to be clearly visible to the traveled portion of the respective street. Where the land subject to the notice does not have frontage on a public street, the sign shall be erected on the nearest street right-of-way with an attached notation generally indicating the direction and distance to the land subject to the application.

#### Step 4: Public Hearing Procedures, and Decision-Making Body Review and Decision

Staff will present the application and staff report to the Board of Adjustment. The applicant must attend the public hearing to present evidence and answer any questions the board or public may have about the application. The Board of Adjustment shall conduct a quasi-judicial hearing that is subject to procedural rules set forth by the courts including having all persons who intend to present evidence to the board be sworn. Quasi-judicial public hearings are subject to the following:

- **Opportunity to Present Testimony and Evidence**  
Any affected party shall be afforded a reasonable opportunity to present testimony and evidence in support of or in opposition to the application, and to ask questions of the applicant and the applicant's representatives and county staff and county staff's representatives. At the discretion of the person chairing the body conducting the public hearing, an affected party may be granted an opportunity to ask questions of any other member of the public who has testified at the hearing.
- **Not Bound by Rules of Evidence**  
Except as otherwise provided in the North Carolina General Statutes, the board is not bound by the rules of evidence, or limited to consideration of evidence that is admissible in a court of law. The board may consider all testimony and evidence it deems competent and material to the application under consideration.
- **Cross Examination**  
Any inquiry under cross-examination shall be limited to matters raised in the direct examination of the witness. No re-direct or re-cross shall be allowed unless requested by the applicant, and affected party, or the county – who shall state the desired area of inquiry – and the request is approved by the person chairing the body conducting the hearing. If re-direct or re-cross is allowed, it shall be limited to questions of the witness on issues raised in the cross-examination.
- **Ex Parte Communication**  
Ex parte communication between an applicant or an affected party and a member of the board reviewing or making a decision on the application is prohibited, and must be disclosed during the public hearing, if it concurs.

The Board of Adjustment shall approve the variance application, with a four-fifths (4/5) vote, on a finding the applicant demonstrates all of the following standards are met:

- The alleged hardship is suffered by the applicant as a result of the application of the Ordinance, and the same hardship is not shared by neighbors or the general public;
- The hardship relates to the applicant's land, such as location, size, or topography, rather than personal circumstances;
- The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
- The hardship is not the result of the applicant's own actions; and
- The variance will not authorize the initiation of a nonconforming use of land.



# Variance Application

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

### Contact Information

**APPLICANT:**

Name: ROBERT D. WHITE  
 Address: PO BOX 2107  
ELIZABETH CITY, NC 27906  
 Telephone: 252-330-4787  
 Fax Number: \_\_\_\_\_  
 E-Mail Address: frogisland\_23@hotmail.com

**PROPERTY OWNER:**

Name: ROBERT D. WHITE  
 Address: PO BOX 2107  
ELIZABETH CITY, NC 27906  
 Telephone: 252-330-4787  
 Fax Number: \_\_\_\_\_  
 E-Mail Address: \_\_\_\_\_

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: \_\_\_\_\_

### Property Information

Physical Street Address: 3997 CARATOKE HWY., BARCO, NC 27917  
 Location: 3997 CARATOKE HWY., BARCO, NC 27917  
 Parcel Identification Number(s): 0069-000-005A-0000

### Request

I, ROBERT D. WHITE, hereby request a variance from Section(s) 3.5.2(e) of the Unified Development Ordinance.

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

I intend to add a roof to an existing concrete slab that is within the side setback on the property along Simpson Road.  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Attachment: 4 - Frog Island Seafood - Variance Application (BOA 22-02 Frog Island Seafood)

Relevant Factors for Issuance of a Variance

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

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

The proposed location of the roof is within the setback on Simpson Road as the setback is defined in the Ordinance.

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

The roof is located within the existing building footprint on the land.

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

The portion of Simpson Road where this setback violation occurs is not in use by the public due to the termination of Simpson Road before US Highway 158 so that there is no exit on Highway 158 at this location.

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

The proposed roof is located within the existing building footprint of the property and the setback violation occurs over a portion of Simpson Road that is not in use by the public.

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

The proposed location of the roof is over a concrete patio so that the area or impervious material is not being increased. The proposed location of the roof does not extend past the existing wall structure of the existing building on this section of Simpson Road. This area of Simpson Road is not in use by the public.

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

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

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

5/16/2022  
Date

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

**Owner Verification**

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

Dear Sir or Madame:

I am the owner of the property located at \_\_\_\_\_

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

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

Respectfully yours,

\_\_\_\_\_  
Owner  
5/16/2022  
Date

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

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Variance Design Standards Checklist

The table below depicts the design standards of the site plan for a variance application. Please make sure to include all applicable listed items to ensure all appropriate standards are reviewed.

## Variance Site Plan Design Standards Checklist

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

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

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

Site Plan Design Standards Checklist		
<b>General</b>		
1	Property owner name, address, phone number, and e-mail address.	
2	Site address and parcel identification number.	
3	North arrow and scale to be 1" = 100' or larger.	
4	Existing zoning classification of the property.	
5	Scaled drawing showing property lines, setbacks, existing and proposed development, and proposed dimensional modification. Additional site features (i.e. vehicular use areas, utilities, infrastructure, surface water) may be required by the administrator if applicable.	
6	Approximate Flood Zone line and Base Flood Elevation as delineated on the "Flood Insurance Rate Maps/Study Currituck County."	
7	Approximate location of all designated Areas of Environmental Concern or other such areas which are environmentally sensitive on the property, such as Maritime Forest, CAMA, 404, or 401 wetlands as defined by the appropriate agency.	
<b>OR Architectural Elevations (Height Modification)</b>		
8	Architectural drawings and/or sketches illustrating the design, character, and height of the proposed building(s).	
<b>Other</b>		
9	Any other documentation deemed necessary by the administrator to determine compliance with variance review standards.	

Variance Submittal Checklist

Staff will use the following checklist to determine the completeness of your application within ten business days of submittal. Please make sure all of the listed items are included. Staff shall not process an application for further review until it is determined to be complete.

Variance Submittal Checklist

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

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

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

Variance Submittal Checklist		
1	Complete Variance application	
2	Application fee (\$500)	
3	Site Plan	
4	Other documentation deemed necessary	
6	2 copies of plans	
7	2 hard copies of ALL documents	
8	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

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



March 16, 2022

Mr. Jason Corbel  
Currituck County Inspections  
153 Courthouse Road, Suite 110  
Currituck, North Carolina 27929

**RE: Frog Island Canopy – Structural Certification  
3997 Caratoke Highway, Barco NC**

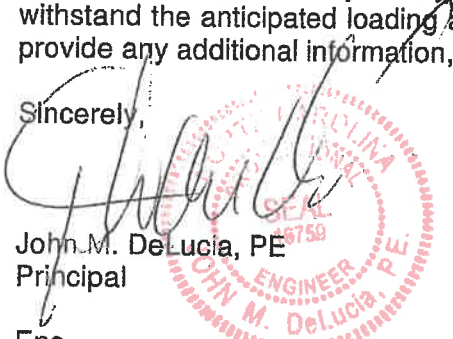
Dear Mr. Corbel:

Thank you for retuning my call yesterday regarding the above. Attached is a hand sketch from Kirk Nixon illustrating the members that are currently or proposed to be installed. I have made a site inspection and performed an analysis of the member sizes and their suitability. Based upon that analysis I find that the steel framing and z channel purlins are of sufficient size and strength to support this canopy. I have also reviewed photos of the footers before they were poured, and it appears that they were properly reinforced and of proper size to support the structure. I have also analyzed the uplift that would be experienced and find that the six footers will resist uplift with a factor of safety of about 1.8.

They will still need to install the remaining purlins, cable cross braces under the two roof bays, install two portal frames as shown on the attachment, and complete the roofing installation. Once this structure is completed, I intend to reinspect the structure and to provide you with another final certification letter.

By this letter I do hereby certify that this proposed canopy structure is sufficient to withstand the anticipated loading as stipulated in the current NC Building Code. If I can provide any additional information, please do not hesitate to contact me.

Sincerely,

  
John M. DeLucia, PE  
Principal

Enc  
cc: File

Planning – Surveying – Engineering – Environmental – Construction Management  
P.O. Box 3989, 115 W. Saint Clair St., Kill Devil Hills, North Carolina 27948  
North Carolina License No. C-1027  
Phone: 252-441-2113 www.AlbemarleAssociates.com Fax: 252-441-0965

Attachment: 4 - Frog Island Seafood - Variance Application (BOA 22-02 Frog Island Seafood)

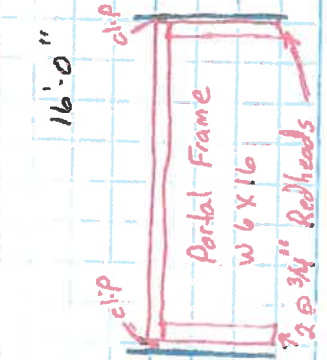
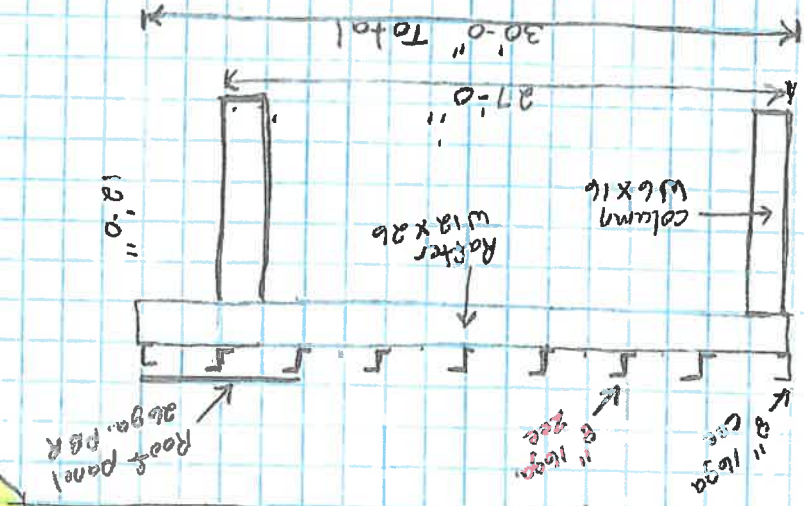
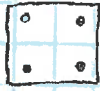
Frog Island Seafood

Existing Black Bldg

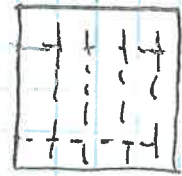
See letter dated 3/16/22 for  
Contract

(TYP)  
columns  
are recessed  
6" BFF

Column  
Base Plate  
12' x 18' x 3/4"  
Bolts  
5/8" @ 24"



(TYP)  
pier x 48" deep  
48" set back  
48" w/ 5/8" Redheads  
logs



*[Handwritten signature]*  
3/16/22