



**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.

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.

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

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.

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

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.

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

RESULT:	WITHDRAWN
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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.

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

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.



**CURRITUCK COUNTY
NORTH CAROLINA**

February 11, 2021

Minutes – Regular Meeting of the Board of Adjustment

CALL TO ORDER - 7:00 PM

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

Attendee Name	Title	Status	Arrived
Troy Breathwaite	Chairman	Present	
Steven Craddock	Vice Chairman	Present	
Carol Bell	Board Member	Present	
Cathy Bontemps	Board Member	Present	
Lynn L. Hicks	Board Member	Absent	
Lauren Arizaga-Womble	Board of Adjustment Attorney	Present	
Ike McRee	County Attorney	Present	
Laurie LoCicero	Planning Director	Present	
Savannah Newbern	Development Technician	Present	
Cheri Elliott	Clerk to the Board	Present	
Harry F. Strez	Applicant	Present	

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

A Announce Quorum Being Met

Chairman Breathwaite announced a quorum with four board members present.

B Election of Chairman & Vice Chairman

Chairman Breathwaite asked the Clerk to the Board to proceed with the nominations for the Chairman and the Vice Chairman positions.

Ms. Elliott asked the board for Chairman nominations. Vice Chairman Craddock nominated Troy Breathwaite. Ms. Bontemps seconded the nomination and Troy Breathwaite was unanimously approved to continue as Chairman.

Ms. Elliott asked the board for Vice Chairman nominations. Chairman Breathwaite nominated Steven Craddock. Ms. Bontemps seconded the nomination and Steven Craddock was unanimously approved to continue as Vice Chairman.

Communication: BOA Meeting Minutes - 2/11/2021 (Approval of Minutes)

C. Approval of Agenda

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

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

D Approval of Minutes for December 10, 2020

Chairman Breathwaite asked if there were any changed needed for the December 10, 2020 meeting minutes. Vice Chairman Craddock motioned to approve the minutes as presented. Ms. Bell seconded the motion and the motion carried unanimously.

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

1. BOA Meeting Minutes - December 10, 2020

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. There were no known conflicts noted.

OLD BUSINESS

There was no old business discussed.

NEW BUSINESS

A. BOA 21-01 Harry F. Stretz: Variance requested for a concrete driveway currently located in the 10 ft. setback; additionally, the applicant is requesting to place an accessory structure in the side setback. The subject property is located at 188 Poyners Road, Tax Map 40, Parcel 52C, Crawford Township.

Chairman Breathwaite reviewed the five review standards which must be met in order for a requested variance to be approved by the Board of Adjustment.

Chairman Breathwaite swore in all witnesses: Harry F. Stretz, Daniel McGhee, Laurie LoCicero, and Savannah Newbern.

Communication: BOA Meeting Minutes - 2/11/2021 (Approval of Minutes)

Chairman Breathwaite asked the County to present their case.

Ike McRee, County Attorney, called Laurie LoCicero to the stand. She stated her name and current position with the County as the Planning and Community Development Director since July 2017. Prior to her current position, Ms. LoCicero was the Assistant Planning Director. Mr. McRee asked if she was familiar with 188 Poyners Road. Ms. LoCicero said yes, we had received a complaint from a building inspector in November 2020.

Mr. McRee directed Ms. LoCicero to page 31 of the agenda packet and asked if she recognized the document. Ms. LoCicero acknowledged it as an email she sent to Rachael Anderson, the Code Enforcement Officer at the time. Mr. McRee asked for the chain of events after the email was sent. Ms. LoCicero said Ms. Anderson began her investigation and noted the driveway had extra concrete which was encroaching into the setback. The Code Enforcement Officer sent a violation to the property owner for the expansion of the driveway without receiving a Zoning Permit. The property owner contacted the Code Enforcement Officer to receive an extension and filled out a Corrective Action Plan.

Mr. McRee asked if the property owner filed an appeal and Ms. LoCicero said no. Mr. McRee asked what variance the applicant is asking for. Ms. LoCicero said the setback is 10 ft and the applicant wants 6 ft of that setback for part of the driveway.

Mr. McRee directed Ms. LoCicero to page 15 of the agenda packet and asked about the top picture. Ms. LoCicero said it shows the applicant's property in the Agriculture zoning district which has a 10 ft set back on the side of property.

Mr. McRee asked Ms. LoCicero when the applicant's house was constructed, and she said 2013. Mr. McRee asked if a site plan was approved in 2013 for the property and she said yes, it is on page 17 of the agenda packet; it was approved, and the proposed driveway met the setback. Ms. LoCicero said the site plan did change probably due to the site conditions; the Albemarle Health Department approved a change to the south side for the septic. Mr. McRee directed to page 18 of the agenda packet. Ms. LoCicero said this was the approval and page 19 shows the changes in layout for the septic. Mr. McRee asked who approved the changes and Ms. LoCicero said the Albemarle Regional Health Services. Mr. McRee asked if they are part of Currituck County and she said no. Mr. McRee asked if the County would have required an updated site plan showing the relocation of the septic and Ms. LoCicero said no, not at that time. Mr. McRee asked if the owner, at that time, was the applicant and Ms. LoCicero said no, the owner was Quality Homes of Currituck; the house was constructed seven years prior to the applicant owning it.

Mr. McRee asked when the expansion of the driveway occurred, and Ms. LoCicero said we believe it happened in fall 2020 since aerial photos in early 2020 show the driveway was not expanded; we also used Google Earth and NOA maps. Mr. McRee asked if Ms. LoCicero had any discussions with the applicant. She said she personally spoke with the applicant and told him a variance was an option, but they may not meet the requirements for approval.

Mr. McRee directed the board to page 21 of the agenda packet. Ms. LoCicero said this is an email from Elite Concrete; they submitted a site plan to Albemarle Health Department. Mr. McRee asked if this email was before or after the Notice of Violation and she said after. Mr. McRee asked if, to your knowledge, did any party come to the County to receive their application and she said no, Debbie Lashomb sent two emails to them to get the Zoning Permit and there was no follow-up.

Mr. McRee asked if there were any other requests other than the requested driveway variance and Ms. LoCicero said the other request is to allow a shed in the 10 ft setback. Mr. McRee asked if there was anything in the Unified Development Ordinance not allowing this request and Ms. LoCicero said, yes, they can place a shed on their property, but not within the 10 ft setback. Mr. McRee asked if the applicant gave her a reason to retain the driveway in the setback and Ms. LoCicero said, yes, they want to park their RV there. Mr. McRee asked if there was anything in the UDO that prohibits an RV on the property, and she said no, just where it is located. It could be parked in the rear yard, but it cannot be parked on the setback. Mr. McRee directed to page 15 of the agenda packet and asked if they could park where they picture shows the RV parked and Ms. LoCicero said no.

Mr. McRee asked what permit or certifications were required to add a driveway and Ms. LoCicero said a Zoning Permit is required to ensure setbacks are met and if it impacts the septic then the Albemarle Health Department would also sign off. Mr. McRee asked if culvert certifications were required for the driveway and Ms. LoCicero said, yes, but they did not get their culvert certification from NCDOT.

Mr. McRee asked Ms. LoCicero, from her review, if there was a hardship and she said no, only possible hardship would be the septic.

Mr. McRee asked Ms. LoCicero if the property was used for a full seven years before this request for a variance and she said yes.

Chairman Breathwaite asked for questions from the board.

Vice Chairman Craddock asked what permit was not completed and Ms. LoCicero said the Zoning Compliance Permit.

Vice Chairman Craddock asked if the setback was 10 ft or 15 ft at the time the house was constructed, and Ms. LoCicero said the setback is 15 ft for the main principal structure; the accessory setback and driveway setback is 10ft.

Vice Chairman Craddock asked if the Agriculture zoning district is considered residential and Ms. LoCicero said yes, houses are allowed in this zoning.

Board members asked various questions concerning the septic system, the shed, and whether the complaint and Notice of Violation came before the applicant attempted to receive permits.

The applicant stated his contractor contacted NCDOT and the culvert permit was not required.

Mr. McRee called Savannah Newbern, Development Technician, to the stand. Ms. Newbern clarified Ms. LoCicero's testimony; Ms. Newbern said she spoke with Debbie Lashomb and the applicant did attempt to complete the application, but it was not permissible due to the driveway being in the setback.

Mr. McRee moved to submit **County Exhibit #1** - pages 12 through 37 of the Agenda Packet.

The applicant, Harry F. Stretz, came before the board. He said he was storing his RV in Virginia and after he bought his house in North Carolina his insurance company said he had to move his RV to his house, or the insurance would be canceled. He hired Elite Concrete to expand his driveway and parked his RV on the expanded driveway. While he was out of town getting married, the Notice of Violation came in. The applicant provided a picture of his house showing the right side of his property.

Applicant submitted **Applicant Exhibit #1** - Picture showing right side of house.

The applicant said he cannot drive on the right side of the property because of the pole and due to flooding; the RV weighs 22,000 pounds and it cannot be put in the backyard, or it would get stuck. He said his contractor is trying to help him with this violation since he works long hours.

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

Vice Chairman Craddock asked if water ever gets into the house on the right side and Mr. Stretz said no.

Vice Chairman Craddock said it appears the utility pole you said was an obstruction is 17 ft from the property line; the applicant agreed.

Chairman Breathwaite asked why the applicant wants the shed to be placed in the setback. Mr. Stretz said he does not want to walk to the back yard to drive his motorcycle and electric would be too expensive to run it back there. Chairman Breathwaite asked why Mr. Stretz could not move his RV 5 ft closer to the house and Mr. Stretz said other vehicles are parked there.

The board members asked other various questions concerning elevations and flooding.

Ms. Bontemps asked Ms. LoCicero if two strips of concrete would be an issue to be in the setback. Ms. LoCicero said yes, that would be an issue since it is a vehicular driveway/parking area and still not allowed in the setback.

Chairman Breathwaite asked if the County had any questions and Mr. McRee had no questions for the applicant.

Ms. Womble asked if the contractor needed to speak.

Chairman Breathwaite opened the public comment.

The applicant's concrete contractor, Daniel McGhee with Elite Concrete, came before the board. Mr. McGhee said Mr. Stretz hired him in October 2020 to put the driveway on his property. Mr. McGhee said he was unaware that concrete driveways needed a zoning permit since it was not an impermeable surface that sheds too much water. He said he had no idea it would be this big of a deal when he installed the driveway. Mr. McGhee said putting in a long driveway to the backyard would be expensive.

Discussion was held concerning the cost of concrete, the installation cost, and the cost to remove it.

Vice Chairman Craddock asked Mr. McGhee how long he had been in business and if he had worked here a lot. Mr. McGhee said he has done concrete for a long time; and 3 1/2 years in Moyock.

Chairman Breathwaite closed the public comment.

Mr. McRee gave his closing statement saying the evidence is not sufficient to meet the variance standards. The property was used for seven years before the current owners; it was a personal choice and preferences which guided the decision to expand the concrete drive. Mr. McRee said there are many people in the County that would like to store their RV on their property; there are also storage areas available in the County. The shed is not a hardship either; the shed could be placed in another area of the property.

Ms. Womble asked if the Applicant would like to make a rebuttal to Mr. McRee's closing statement.

Mr. Stretz said there is storage, but they would not let him store his 47 ft RV; even some campgrounds will not allow this size of RV. Mr. Stretz said he does have preferences and they are his own and not another person's preferences. He said he wants the shed closer to the house so he does not have to walk to the back of the property and so he can get his tools when he needs to work on his vehicles.

Chairman Breathwaite reminded the board this is a quasi-judicial hearing, and a variance requires 4/5 of the total vote and since one board member is not here, all four board members need to vote the same to grant the variance; also, all five of the review standards must be met to grant the variance.

Ms. Bontemps asked who makes the five review standard rules. Ms. Womble said the NC State Statute makes the laws.

Chairman Breathwaite read the five standards that must be met.

The board began their discussion. Vice Chairman Craddock said the applicant and the contractor both admitted they were in error so one of the review standards cannot be met since it was a result of their own actions. Mr. Craddock said there is room on the right side of the house; 20 ft left between the property line and the utility pole.

Ms. LoCicero reviewed the driveway standards according to the Unified Development Ordinance as 24 ft maximum width; this is for the front 10 ft and then the driveway can flare out if it meets the setback requirements.

Vice Chairman Craddock said he knows of a couple places to park this size RV, but you must travel a little further south in the County.

Chairman Breathwaite said he can understand the flooding issues, but the applicant

cannot meet the fourth standard that it was not part of his own doing.

Ms. Bontemps said the applicant could not put a driveway on the right side due to the flooding. She asked if rock could be put in the place of the concrete for the driveway. Ms. Womble reminded the board of Ms. LoCicero's earlier statement saying a vehicular access could not be in the setback. Ms. LoCicero also clarified pavers were not allowed in the setback either.

Vice Chairman Craddock motioned to deny BOA 21-01 Harry Stretz variance request; the applicant did not meet all five of the standards. It appears the applicant did meet the hardship for being unique, but unfortunately the hardship was a result of the applicant's or their agent's own actions by first not getting the required zoning permit and second by putting in the concrete; and to deny the request for the shed's location over the septic area within the 10 ft setback because there are other places to locate the shed on the property even though it may be inconvenient.

Ms. Bontemps seconded the motion, and the requested variance was denied 4-0.

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

ANNOUNCEMENTS

There were no announcements.

ADJOURNMENT

Ms. Bell motioned to adjourn the meeting. Vice Chairman Craddock seconded the motion and the meeting adjourned at 8:38 PM.

Communication: BOA Meeting Minutes - 2/11/2021 (Approval of Minutes)



Currituck County Agenda Item Summary Sheet

Agenda ID Number – 3363

Agenda Item Title: BOA 20-03 85' and Sunny, LLC:

Submitted By: Jennie Turner – Planning & Community Development

Item Type: Quasi-Judicial

Presenter of Item: Laurie LoCicero

Board Action: Action

Brief Description of Agenda Item:

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.

Planning Board Recommendation:

Staff Recommendation:

TRC Recommendation:



STAFF REPORT
BOA 20-03, BOA 20-04, BOA 21-02
85' AND SUNNY, LLC
APPEAL REQUEST
BOARD OF ADJUSTMENT
MARCH 10, 2022

APPLICATION SUMMARY

Property Owner: 85' and Sunny 9919 Stephen Decatur HWY Ocean City, MD 21842	Applicant: 85' and Sunny 9919 Stephen Decatur HWY Ocean City, MD 21842
Property Location: 1631 Waterlily Rd	Application Type: Appeal
Parcel Identification Numbers: 007900000010000 007900000020000 007900000030000 007900000040000	Existing Use: Non-conforming campground
Parcel Size (Acres): 457.66 total	Zoning: Single Family Mainland (SFM)
Appeal Requested from Notice of Violation: June 10, 2020, and July 2020, NOV 1389	

Attachment: Staff Report (BOA 20-03 85' and Sunny, LLC)

STAFF ANALYSIS

85' and Sunny, LLC (the "applicant") is appealing Notices of Violation (NOV) issued to their property located at 1631 Waterlily Road, dated June 10, 2020, July 24, 2020, and September 15, 2020. The applicant is also appealing the denial of a minor site plan, and zoning permit on November 16, 2021. The applicant's property is used as a nonconforming campground known as The Outer Banks West/Currituck Sound KOA Holiday Campground.

The Notices of Violation consist of the following:

- **June 10, 2020, and July 24, 2020** – (BOA 20-03) placement of on-frame modular units (the "units") that are not travel trailers, campers or recreational vehicles as defined by the Unified Development Ordinance (the "UDO") are not permitted in a nonconforming campground. The units do not meet the standards set forth in the Unified Development Ordinance (UDO) Chapter 8, Subsection 8.2.6 Nonconforming Campgrounds, Chapter 10, Subsection 10.5 Definitions.
- **September 15, 2020** – (BOA 20-04) placement of accessory structure without a zoning permit. Violation of UDO Chapter 2, Subsection 2.4.9 Applicability.

The applicant is also appealing the denial of minor site plan and subsequent withholding of a zoning permit:

- On **October 19, 2021**, the applicant submitted a minor site plan application for the placement of an aerator fountain in a fire suppression pond on the property. On **November 16, 2021**, a zoning permit was denied for the fountain aerator because:
 - The site contains violations that have not been corrected (on-frame modular units/cabins and work without zoning permits)

During the summer and fall of 2019, the applicant inquired about locating "cabins or cottages" in its non-conforming campground. County staff requested information about the units to determine if the cabin/cottages met UDO standards. A series of emails and conversations between the applicant's

consultants and county staff followed. On July 23, 2019, county staff received an email from Conor Nally with data plates for six of the units (Attachment A). During this time, county staff researched the park models, RVs and cabins/cottages. County staff did not receive specific information about the units' size, transportation methods, or functionality of the units for determination of unit compliance. Staff and the applicant's consultant held a conference call on August 21, 2019, to request more information about the units. An email was sent on August 27, 2019, with attachments (Attachment B).

In November of 2019, county staff learned the applicant transported the units along Waterlily Road (Attachment C). The units were then located on the non-conforming campground at 1631 Waterlily Road. The applicant did not contact county staff for a final determination about the units prior to moving the units to the nonconforming campground. Upon inspection, county staff determined that these units **did not** meet the standards of Chapter 10 Definitions of the UDO. The standards listed in Chapter 10 must be met to be allowed in a nonconforming campground.

Chapter 8 Nonconformities

8.2.6 Nonconforming Campgrounds

Private campgrounds are not allowed as a principle use in Currituck County. All existing campgrounds and campground subdivisions are nonconforming uses subject to the following standards:

A. General Standards

- (1) Camping is allowed use of land only in existing campgrounds and campground subdivisions.
- (2) Campers may not be modified in any manner that would render the unit non-transportable.
- (3) No tent or camper may be located on a campsite or campground subdivision for more than 90 days.
- (4) Additions to campers are not permitted.
- (5) Modifications to existing campgrounds are permitted provided the changes do not increase the nonconformity with respect to number of campsites that existing on January 1, 2013.

B. Existing Campgrounds

- (1) Existing campgrounds may not be expanded to cover additional land area or exceed the total number of campsites that existed on January 1, 2013.
- (2) Campers may not be placed on a permanent foundation.
- (3) Campsites may have a wooden platform not to exceed 100 square feet. Platforms must be 12 inches or less in height from existing grade. Handicap ramps are not subject to the maximum height requirement and square footage provided the ramp does not exceed five feet in width.
- (4) Campgrounds shall not include permanent residences, excluding one dwelling unit to be occupied by the park caretaker or manager.
- (5) Modifications to existing campgrounds are permitted provide the changes do not increase the nonconformity with respect to number of campsites that existing on January 1, 2013.

Chapter 10 Definitions:

Camper – a portable dwelling (as a special equipped trailer or automobile vehicle) for use during casual travel and camping

Recreational Vehicle – a vehicle, which is:

- a. Built on a single chassis
- b. 400 square feet or less when measure at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light duty truck;
- d. Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use;
- e. Is fully licensed and ready for highway use.

Travel Trailer – a structure that is:

- a. Intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle) and
- b. Is for temporary use as sleeping quarters, but that does not satisfy on or more of the definition criteria of a manufactured home.

Under the **Code of Federal Regulations**, a light duty truck is:

A motor vehicle rated at 8,500 pounds GVWR (gross vehicle weight rating) or less which has a curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or
2. Designed primarily for transportation of persons and has a capacity of more than 12 person; or
3. Available with special features enabling off-street or off-highway operation and use

Staff determined the units did not meet cited UDO definitions because the units:

- Were **not** able to be transported for casual travel due to the special highway movement permit.
- Were **not** permanently towable by a light duty truck – the units were transported in on a flatbed truck and, exceeded 102 inches wide. At 144 inches wide, the units **needed a special highway movement permit (NCGS 20-116)** to be transported over the state roads.
- Were **not** intended to be transported over the streets and highways due to the need for the special highway movement permit.

The applicant's consultant was notified by email on November 1, 2019 about the concerns over the units (Attachment D). Over the next two weeks, county staff was in contact with the applicant's consultant and lawyer about removing the units from the campground property (Attachment E). The units were removed from the campground property and the applicant proceeded with its appeal of the Letter of Determination.

In May 2020, county staff discussed placement of the units on the campground with the applicant's consultant (Attachment F). County staff was making frequent zoning inspections as 85' and Sunny, LLC renovated the campground and made preparations to open for business. During these zoning inspections, staff observed units stored on the property and then set up on blocks with stairs constructed as the business was finalizing opening the campground to guests (Attachment G).

After November 2019 and prior to May 2020, 85' and Sunny, LLC appealed the Board of Adjustment's affirmation of the staff's Letter of Determination to Superior Court. The Court ruled in favor of the 85' and Sunny, LLC. After the order was entered by the Superior Court, the applicant moved the units back into the campground. The applicant claimed this was allowed by the Superior Court's decision. County staff did not agree, nor make the determination the units conformed to the definitions in the UDO (Attachment H). On June 10, 2020 and July 24, 2020, letters were sent to the property owner regarding the violations on the nonconforming campground (Attachment I). The property owner appealed the Notice of Violations in August. During this period, Currituck County appealed the Superior Court's

decision to the Court of Appeals. With both parties pursuing appeals, the violations were stayed until the appellate court proceedings were completed.

In September 2020, county staff learned about placement of an accessory structure on the nonconforming campground without issuance of a zoning compliance permit. Upon investigation, staff verified that a small shed was placed on the property (Attachment J). The applicant filed an appeal. The violation was stayed pending resolution of the appellate court proceedings.

In April 2021, the Court of Appeals decision was issued. The appellate court overturned the lower court's order and affirmed the Board of Adjustment's decision. In October 2021, the applicant applied for a minor site plan and zoning permit approval for a fountain aerator. Because existing violations on the property have not been rectified, the minor site plan and zoning permit were denied.

Appeal Review Standards

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

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

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

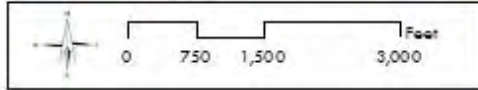
Attachments

- A. July 23, 2019, email from Conor Nally to county staff with six Skyline Park Trailer Data Plates
- B. August 20, 2019, email from Mike Nally with 2 attachments: a copy of North Carolina Highway Use Tax Article 5A and a chart from RVIA.
- C. Photo of unit in transport
- D. Email chain between county staff and the applicant's consultant about placement of units November 2019
- E. Email chain between county staff, the applicant's design consultant and the applicant's attorney
- F. Email chain between county staff and the applicant's consultant May 2020

- G. Three Photos of the units on the campground
- H. Email chain between the managing member and owner of OBX West KOA and county staff
- I. Two Notices of Violation, June 2020 and July 2020
- J. Photo of the accessory structure



BOA 21-02
85' and Sunny, LLC Appeal
Aerial

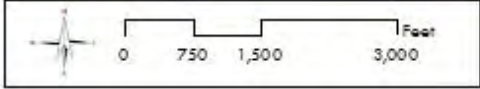


Currituck County
Planning and
Community Development

Attachment: Staff Report (BOA 20-03 85' and Sunny, LLC)



BOA 21-02
 85' and Sunny, LLC Appeal
 Zoning - Single Family Mainland



Currituck County
 Planning and
 Community Development

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

Attachment: Staff Report (BOA 20-03 85' and Sunny, LLC)

From: [Conor Nally](#)
To: [Laurie LoCicero](#); [Donna Voliva](#); [Bill News](#)
Cc: [Warren Eadus](#); [Mike Nally](#)
Subject: Hampton Lodge Park Models
Date: Tuesday, July 23, 2019 11:20:51 AM
Attachments: [Hampton Lodge Park Model RVIA NOs.pdf](#)

All,

I've attached the RVIA numbers for the Hampton Lodge park models. Our team is currently working to get the registrations from NC DMV. Once we send out the documents to the DMV (which we should be ready to do by the end of this week) we should expect to get the registrations in 4-8 weeks depending on the DMV's backlog.

Thank you,
Conor Nally
Business Development Manager
302.841.8331 | conor.nally@lywsusa.com

Attachment: Attachment A (BOA 20-03 85' and Sunny, LLC)

2011



PARK TRAILER DATA PLATE

Plant Number: 55	Manufacturer: HOMETTE CORPORATION P.O. BOX 220 99 HORSESHOE ROAD LEOLA, PA 17540	
Serial Number: 1U-11-0350-M-	Model Designation: SHORE PARK	Date of MFCTR: 05/10/2019
RVIA No: 1026938	V.I.N.: 1SV900R30LM000350	

Factory installed equipment includes:

Equipment	Manufacturer	Model Number	Serial Number
Air Conditioning	1 COMFORT AIRE	A-VFH18DB-1	917838190100058
Air Conditioner	2 COMFORT AIRE	B-VFH09MB-1A (BD)	917550181200223
Air Conditioner	3 COMFORT AIRE	B-VFH12MB-1A (LRM)	917223181000764
Comfort Heating	4 COMFORT AIR	A-VFH18DB-1	917838190100058
Converter	5		
Cooking Appliance	6 WHIRLPOOL	WFG320M0BW2	VE90112322
Television	7 LG	32LJ500B (BD)	805BOXJ0W349
Fire Extinguisher	8 FIRST ALERT	KFE2S5	
LPG Detector	9 SAFE-T-ALERT	40-411A	
Microwave Oven	10 WHIRLPOOL	WMH31017HW2	TR90722600
Refrigerator	11 WHIRLPOOL	WRT106TFDW01	VS80352114
Smoke Detector	12 BRK	FG-250-RV	
Stereo	13		
Television	14 LG	43LJ5000	805BOAS1B616
Water Heater	15 RHEEM	811P20S	Q161938277
Water Pump	16		
TIRES	17 LASTA	215/60D14.5	
CO Detector	18 BRK	CO250RVA-48B	
Tire I.D. No.(s)	19 LASTA	215/60D14.5	
	Qty: 6		
Spare Tire	20		

*Connection method of the field installed air conditioner subject to local inspection.

Acceptability of this park trailer to use as a residential occupancy is subject to requirements of the local inspection authority.

100 amp permanent connection subject to local inspection."(applicable to park trailers only)"

This unit is designed to comply with requirements of ANSI A119.5 Standard for Recreational Park Trailers.

This vehicle is TSCA Title VI compliant.

2012

SKYLINE PARK TRAILER DATA PLATE

Plant Number: 55	Manufacturer: HOMETTE CORPORATION P.O. BOX 220 99 HORSESHOE ROAD LEOLA, PA 17540	
Serial Number: 1U-11-0351-M-	Model Designation: SHORE PARK	Date of MFCTR: 05/14/2019
RVIA No: 1029115	V.I.N.: 1SV900R32LM000351	

Factory installed equipment includes:

Equipment	Manufacturer	Model Number	Serial Number
Air Conditioning	1 COMFORT AIRE	A-VFH18DB-1	917838190100076
Air Conditioner	2 COMFORT AIRE	B-VFH09MB-1A (BD)	917550181200232
Air Conditioner	3 COMFORT AIRE	B-VFH12MB-1A (LRM)	917223181000752
Comfort Heating	4 COMFORT AIR	A-VFH18DB-1	917838190100076
Converter	5		
Cooking Appliance	6 WHIRLPOOL	WFG320M0BW2	VE90112307
Television	7 SHARP	LC-32Q5230U	F1000005582316
Fire Extinguisher	8 FIRST ALERT	KFE2S5	
LPG Detector	9 SAFE-T-ALERT	40-411A	
Microwave Oven	10 WHIRLPOOL	WMH31017HW2	TR85196029
Refrigerator	11 WHIRLPOOL	WRT106TFDW01	VS91364629
Smoke Detector	12		
Stereo	13		
Television	14 LG	43LJ5000	809BOZP34693
Water Heater	15 RHEEM	811P20S	Q161938284
Water Pump	16		
TIRES	17 LASTA	215/60D14.5	
CO Detector	18 BRK	CO25ORVA-48B	
Tire I.D. No.(s)	19 LASTA	215/60D14.5	
	Qty: 6		
Spare Tire	20		

*Connection method of the field installed air conditioner subject to local inspection.
 Acceptability of this park trailer to use as a residential occupancy is subject to requirements of the local inspection authority.
 100 amp permanent connection subject to local inspection. "(applicable to park trailers only)"
 This unit is designed to comply with requirements of ANSI A119.5 Standard for Recreational Park Trailers.
 This vehicle is TSCA Title VI compliant.

Attachment: Attachment A (BOA 20-03 85' and Sunny, LLC)

SKYLINE

PARK TRAILER DATA PLATE

Plant Number: 55	Manufacturer: HOMETTE CORPORATION P.O. BOX 220 99 HORSESHOE ROAD LEOLA, PA 17540	
Serial Number: 1U-11-0352-M-	Model Designation: SHORE PARK	Date of MFCTR: 05/15/2019
RVIA No: 1029119	V.I.N.: 1SV900R34LM000352	

Factory installed equipment includes:

Equipment	Manufacturer	Model Number	Serial Number
Air Conditioning	1 COMFORT AIRE	A-VFH18DB-1	917838190100048
Air Conditioner	2 COMFORT AIRE	B-VFH09MB-1A (BD)	917550181200293
Air Conditioner	3 COMFORT AIRE	B-VFH12MB-1A (LRM)	917223181000747
Comfort Heating	4 COMFORT AIR	A-VFH18DB-1	917838190100048
Converter	5		
Cooking Appliance	6 WHIRLPOOL	WFG320M0BB2	VE90621231
Television	7 SHARP	LC-32Q5230U	F1000005393871
Fire Extinguisher	8 FIRST ALERT	KFE2S5	
LPG Detector	9 SAFE-T-ALERT	40-411A	
Microwave Oven	10 WHIRLPOOL	WMH31017HW2	TR90418315
Refrigerator	11 WHIRLPOOL	WRT106TFDW01	VS91234396
Smoke Detector	12 BRK	FG-250-RV	
Stereo	13		
Television	14 LG	43LJ5000	F1000005691452
Water Heater	15 RHEEM	811P20S	Q161938264
Water Pump	16		
TIRES	17 LASTA	215/60D14.5	
CO Detector	18 BRK	CO250RVA-48B	
Tire I.D. No.(s)	19 LASTA	215/60D14.5	
	Qty: 6		
Spare Tire	20		

*Connection method of the field installed air conditioner subject to local inspection.

Acceptability of this park trailer to use as a residential occupancy is subject to requirements of the local inspection authority.

100 amp permanent connection subject to local inspection."(applicable to park trailers only)"

This unit is designed to comply with requirements of ANSI A119.5 Standard for Recreational Park Trailers.

This vehicle is TSCA Title VI compliant.

SKYLINE PARK TRAILER DATA PLATE

Plant Number: 55	Manufacturer: HOMETTE CORPORATION P.O. BOX 220 99 HORSESHOE ROAD LEOLA, PA 17540	
Serial Number: 1U-11-0353-M-	Model Designation: SHORE PARK	Date of MFCTR: 05/16/2019
RVIA No: 1029123	V.I.N.: 1SV900R36LM000353	

Factory installed equipment includes:

Equipment	Manufacturer	Model Number	Serial Number
Air Conditioning	1 COMFORT AIRE	A-VFH18DB-1	917550181200061
Air Conditioner	2 COMFORT AIRE	B-VFH09MB-1A (BD)	917550181200253
Air Conditioner	3 COMFORT AIRE	B-VFH12MB-1A (LRM)	917223181000767
Comfort Heating	4 COMFORT AIR	A-VFH18DB-1	917550181200061
Converter	5		
Cooking Appliance	6 WHIRLPOOL	WFG320M0BW2	VE84835014
Television	7 SHARP	32Q5230U	F1000005582513
Fire Extinguisher	8 FIRST ALERT	KFE2S5	
LPG Detector	9 SAFE-T-ALERT	40-411A	
Microwave Oven	10 WHIRLPOOL	WMH31017HW2	TR90418197
Refrigerator	11 WHIRLPOOL	WRT106TFDW01	VS91364633
Smoke Detector	12 BRK	FG-250-RV	
Stereo	13		
Television	14 SHARP	4Q3000U	40M182D7H00281
Water Heater	15 RHEEM	811P20S	Q161938263
Water Pump	16		
TIRES	17 LASTA	215/60D14.5	
CO Detector	18 BRK	CO250RVA-48B	
Tire I.D. No.(s)	19 LASTA	215/60D14.5	
	Qty: 6		
Spare Tire	20		

*Connection method of the field installed air conditioner subject to local inspection.

Acceptability of this park trailer to use as a residential occupancy is subject to requirements of the local inspection authority.

100 amp permanent connection subject to local inspection."(applicable to park trailers only)"

This unit is designed to comply with requirements of ANSI A119.5 Standard for Recreational Park Trailers.

This vehicle is TSCA Title VI compliant.

Attachment: Attachment A (BOA 20-03 85' and Sunny, LLC)

SKYLINE PARK TRAILER DATA PLATE

Plant Number: 55	Manufacturer: HOMETTE CORPORATION P.O. BOX 220 99 HORSESHOE ROAD LEOLA, PA 17540	
Serial Number: 1U-11-0354-M-	Model Designation: SHORE PARK	Date of MFCTR: 05/17/2019
RVIA No: 1029127	V.I.N.: 1SV900R38LM000354	

Factory installed equipment includes:

Equipment	Manufacturer	Model Number	Serial Number
Air Conditioning	1 COMFORT AIRE	A-VFH18DB-1	917550181200007
Air Conditioner	2 COMFORT AIRE	B-VFH09MB-1A (BD)	917550181200228
Air Conditioner	3 COMFORT AIRE	B-VFH12MB-1A (LRM)	917223181000753
Comfort Heating	4 COMFORT AIR	A-VFH18DB-1	917550181200007
Converter	5		
Cooking Appliance	6 WHIRLPOOL	WFG320M0BW2	VE90480015
Television	7 SHARP	LC-32Q5230U	F1000005393871
Fire Extinguisher	8 FIRST ALERT	KFE2S5	
LPG Detector	9 SAFE-T-ALERT	40-411A	
Microwave Oven	10 WHIRLPOOL	WMH31017HW3	TR91025895
Refrigerator	11 WHIRLPOOL	WRT106TFDW01	VS91432630
Smoke Detector	12 BRK	FG-250-RV	
Stereo	13		
Television	14 SHARP	LC-40Q3000U	40M182D7H00855
Water Heater	15 RHEEM	811P20S	Q161938266
Water Pump	16		
TIRES	17 LASTA	215/60D14.5	
CO Detector	18 BRK	CO250RVA-48B	
Tire I.D. No.(s)	19 LASTA	215/60D14.5	
	Qty: 6		
Spare Tire	20		

*Connection method of the field installed air conditioner subject to local inspection.
 Acceptability of this park trailer to use as a residential occupancy is subject to requirements of the local inspection authority.
 100 amp permanent connection subject to local inspection. "(applicable to park trailers only)"
 This unit is designed to comply with requirements of ANSI A119.5 Standard for Recreational Park Trailers.
 This vehicle is TSCA Title VI compliant.

Attachment: Attachment A (BOA 20-03 85' and Sunny, LLC)

SKYLINE

PARK TRAILER DATA PLATE

Plant Number: 55	Manufacturer: HOMETTE CORPORATION P.O. BOX 220 99 HORSESHOE ROAD LEOLA, PA 17540	
Serial Number: 1U-11-0355-M-	Model Designation: SHORE PARK	Date of MFCTR: 05/20/2019
RVIA No: 1029131	V.I.N.: 1SV900R3XLM000355	

Factory installed equipment includes:

Equipment	Manufacturer	Model Number	Serial Number
Air Conditioning	1 COMFORT AIRE	A-VFH18DB-1	917550181200064
Air Conditioner	2 COMFORT AIRE	B-VFH09MB-1A (BD)	917550181200225
Air Conditioner	3 COMFORT AIRE	B-VFH12MB-1A (LRM)	917223181000758
Comfort Heating	4 COMFORT AIR	A-VFH18DB-1	917550181200064
Converter	5		
Cooking Appliance	6 WHIRLPOOL	WFG320M0BW2	VE84947126
Television	7 SHARP	LC-32Q5230U	F1000005393883
Fire Extinguisher	8 FIRST ALERT	KFE2S5	
LPG Detector	9 SAFE-T-ALERT	40-411A	
Microwave Oven	10 WHIRLPOOL	WMH31017HW2	TR90420958
Refrigerator	11 WHIRLPOOL	WRT106TFDW01	VS91234235
Smoke Detector	12 BRK	FG-250-RV	
Stereo	13		
Television	14 SHARP	LC-40Q3000U	40M182991H01593
Water Heater	15 RHEEM	811P20S	Q161938268
Water Pump	16		
TIRES	17 LASTA	215/60D14.5	
CO Detector	18 BRK	CO250RVA-48B	
Tire I.D. No.(s)	19 LASTA	215/60D14.5	
	Qty: 6		
Spare Tire	20		

*Connection method of the field installed air conditioner subject to local inspection.

Acceptability of this park trailer to use as a residential occupancy is subject to requirements of the local inspection authority.

100 amp permanent connection subject to local inspection. "(applicable to park trailers only)"

This unit is designed to comply with requirements of ANSI A119.5 Standard for Recreational Park Trailers.

This vehicle is TSCA Title VI compliant.

From: [Mike Nally](#)
To: [Laurie LoCicero](#)
Subject: Park Model Research with NC DMV
Date: Tuesday, August 27, 2019 12:49:18 PM
Attachments: [4768_001.pdf](#)

Good Afternoon Laurie - we spoke with the North Carolina Department of Motor Vehicles and they confirmed our Park Models Recreational Vehicles do not require any special permits. They provided us the attached information for your reference.

Respectfully,
Mike

Mike Nally
Founder/CEO



302.841.7770 | mike.nally@lywsusa.com

Visit us on the web at LeadYourWaySolutions.com



Article 5A.

North Carolina Highway Use Tax.

§ 105-187.1. Definitions.

The following definitions and the definitions in G.S. 105-164.3 apply to this Article:

- (1) Commissioner. – The Commissioner of Motor Vehicles.
- (2) Division. – The Division of Motor Vehicles, Department of Transportation.
- (3) Long-term lease or rental. – A lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days.
- (3a) Park model RV. – A vehicle that meets all of the following conditions:
 - a. Is designed and marketed as temporary living quarters for recreational, camping, travel, or seasonal use.
 - b. Is certified by the manufacturer as complying with ANSI A119.5.
 - c. Is built on a single chassis mounted on wheels with a gross trailer area not exceeding 400 square feet in the setup mode.
- (4) Recreational vehicle. – Defined in G.S. 20-4.01. The term also includes a park model RV.
- (5) Rescue squad. – An organization that provides rescue services, emergency medical services, or both.
- (6) Retailer. – A retailer as defined in G.S. 105-164.3 who is engaged in the business of selling, leasing, or renting motor vehicles.
- (7) Short-term lease or rental. – A lease or rental that is not a long-term lease or rental. (1989, c. 692, s. 4.1; 1991, c. 79, s. 4; 2000-173, s. 10(a); 2001-424, s. 34.24(e); 2001-497, s. 2(b); 2002-72, s. 19(a); 2016-5, s. 3.19(a).)

State Statute that we meet!

*Myra @ Nc DMV
919-715-7000*



Maximum Allowable RV Lengths

State Equipment and Road Use Law Summaries

(The identified term is that used by each state when applying length criteria to RVs.)

State/Cite	Motorhome	Travel Trailers	5 th Wheel RV	RV Comb. Length	Number in RV Comb.	Comments
North Carolina N.C.G.S.A. § 20-116	45' RV	45' RV	45' RV	60*	2	"Fifth wheel trailer" is not separately defined from "RV". * By Senate Bill 100 effective December 1, 2009 RV maximum allowable comb. length changed from 55' to 60' (20-116 (e)). Excludes front and rear bumpers and mirrors.
North Dakota NDCC, 39-12-04	50' Vehicle	50' Vehicle	50' Vehicle	75' 110**	2, 3, 4 2	"Fifth wheel trailer" is not separately defined under maximum length provisions. "Trailer" is not separately defined from "Vehicle". On all 4-lane divided highways. *On designated roads.
Ohio R.C. § 5577.05	45' RV	45' RV	45' RV	65'	NS	"Fifth wheel trailer" is not separately defined from "RV". Excludes front and rear bumpers, safety devices and energy conservation devices.
Oklahoma 47 Okl.St.Ann. § 14-103	NS	NS*	NS*	70' 65**	2 3	*Statutes contain a travel trailer definition limiting them to 40', including hitch or coupling. *Vans, suburbans, blazers or similar types of vehicles and self-propelled RVs with a 3/4 ton or more rated capacity may tow a fifth-wheel trailer and one additional trailer. Includes front and rear bumpers.

Chart is not intended as legal advice and does not provide all regulations on the subject. Direct specific questions to your legal counsel. RVIA assumes no responsibility for any inaccuracies or omissions.



From: [Laurie LoCicero](#)
To: mike.nally@lywsusa.com; conor.nally@lywsusa.com
Cc: [Donna Voliva](#); [Ike McRee](#)
Subject: RE: Park Model Research with NC DMV
Date: Friday, November 1, 2019 3:41:51 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[Park_Model.jpg](#)

Conor and Mike,

Hope you all are doing well. I wanted to touch base with you about the status of the park models at Hampton Lodge.

Have you received titles from NCDMV that these park models are indeed vehicles and do not require any special highway movement permit?

The information you sent about park models is from NCGS 105-187.1. NCGS 105-187.1 addresses Highway Use tax and defines a park model RV as below:

§ 105-187.1. Definitions.

The following definitions and the definitions in G.S. 105-164.3 apply to this Article:

- (1) Commissioner. - The Commissioner of Motor Vehicles.
- (2) Division. - The Division of Motor Vehicles, Department of Transportation.
- (3) Long-term lease or rental. - A lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days.
- (3a) **Park model RV.** - A **vehicle** that meets all of the following conditions:
 - a. **Is designed and marketed as temporary living quarters for recreational, camping, travel, or seasonal use.**
 - b. **Is certified by the manufacturer as complying with ANSI A119.5.**
 - c. **Is built on a single chassis mounted on wheels with a gross trailer area not exceeding 400 square feet in the setup mode.**
- (4) **Recreational vehicle.** - Defined in G.S. 20-4.01. The term also includes a **park model RV**.
- (5) Rescue squad. - An organization that provides rescue services, emergency medical services, or both.
- (6) Retailer. - A retailer as defined in G.S. 105-164.3 who is engaged in the business of selling, leasing, or renting motor vehicles.
- (7) Short-term lease or rental. - A lease or rental that is not a long-term lease or rental. (1989, c. 692, s. 4.1; 1991, c. 79, s. 4; 2000-173, s. 10(a); 2001-424, s. 34.24(e); 2001-497, s. 2(b); 2002-72, s. 19(a); 2016-5, s. 3.19(a).)

NC General Statute 20-4.01 regarding the definition of **Recreational Vehicle** is below:

- (32b) **Recreational Vehicle.** - A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motive power or is mounted on, or towed by, another vehicle. The basic entities are camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper. This term shall not include a manufactured home as defined in G.S. 143-143.9(6). The basic entities are defined as follows:
 - a. **Camping trailer.** - A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.
 - b. **Fifth-wheel trailer.** - A vehicular unit mounted on wheels designed to

- provide temporary living quarters for recreational, camping, or travel use, of a size and weight that does not require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.
- c. Motor home. - As defined in G.S. 20-4.01(27)k.
 - d. Travel trailer. - A vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require a special highway movement permit when towed by a motorized vehicle.
 - e. Truck camper. - A portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use, consisting of a roof, floor, and sides and is designed to be loaded onto and unloaded from the bed of a pickup truck.

Further NCGS 20-116 provides that “the total outside width of any **VEHICLE** or load thereon shall not exceed **102 inches**, except as otherwise provided in this section.” By this, to qualify as a recreational **VEHICLE**, the park models will still need to meet the **102 inches maximum width** and **NOT** need a special highway movement permit (an “oversize load” designation). The definition in NCGS 105-187.1 does not exempt park models from meeting the other standards for vehicles. Attached is a picture of the park models being transported to the campground with the Oversized load sign.

Park models do not meet the Currituck County Unified Development Ordinance standards for a camper or travel trailer and will not be allowed at Hampton Lodge Campground.

Please contact me at your earliest convenience to discuss the removal of the park models. I do not want this issue to interfere with the other work occurring at the property.

Thanks
Laurie

Laurie B. LoCicero, AICP
Planning Director
Planning & Community Development
County of Currituck
Phone: 252-232-6028
Fax: 252-232-3026
www.currituckgovernment.com

From: Mike Nally [mailto:mike.nally@lywsusa.com]
Sent: Tuesday, August 27, 2019 12:49 PM
To: Laurie LoCicero
Subject: Park Model Research with NC DMV

Good Afternoon Laurie - we spoke with the North Carolina Department of Motor Vehicles and they confirmed our Park Models Recreational Vehicles do not require any special permits. They provided us the attached information for your reference.

Respectfully,
Mike

Mike Nally
Founder/CEO



302.841.7770 | mike.nally@lywsusa.com
Visit us on the web at LeadYourWaySolutions.com



From: [Conor Nally](#)
To: [Laurie LoCicero](#)
Cc: [Donna Voliva](#); [Ike McRee](#); [Johnson, Thomas](#); [Mike Nally](#); [Rachael Anderson](#)
Subject: Re: Park Models
Date: Wednesday, December 18, 2019 2:06:44 PM

No problem Laurie.

Thank you,
Conor Nally
Business Development Manager
302.841.8331 | conor.nally@lywsusa.com

On Wed, Dec 18, 2019 at 12:15 PM Laurie LoCicero
<Laurie.LoCicero@currituckcountync.gov> wrote:

Thanks for the update and effort Conor.

From: Conor Nally [mailto:conor.nally@lywsusa.com]
Sent: Wednesday, December 18, 2019 11:01 AM
To: Donna Voliva; Ike McRee; Johnson, Thomas; Laurie LoCicero; Mike Nally
Subject: Re: Park Models

Good Morning All,

Quick update, the last two park models were moved from the property today.

Thank you,
Conor Nally
Business Development Manager
302.841.8331 | conor.nally@lywsusa.com

Attachment: Attachment E (BOA 20-03 85' and Sunny, LLC)

On Fri, Dec 13, 2019 at 3:36 PM Conor Nally <conor.nally@lywsusa.com> wrote:

All,

Below is the updated schedule for moving the park models off the property.

- 12/16/2019 - 2 Park Models
- 12/17/2019 - 2 Park Models
- 12/18/2019 - 2 Park Models

We have to split the park models up as each group is going to a different campground. Right now, the weather is looking fairly clear, except for Tuesday the 17th. We're trying to get in and out before the rain and wind starts, but if anything changes I will update accordingly.

Thank you and have a great weekend.

Conor Nally

Business Development Manager

302.841.8331 | conor.nally@lywsusa.com

On Wed, Dec 11, 2019 at 5:54 PM Conor Nally <conor.nally@lywsusa.com> wrote:

All,

We've experienced weather delays when trying to move the park models. We have to cross the bay bridge tunnel and the recent wind/rain have us from prevented moving them over the tunnel. The weather through the end of this week currently still poses a hazard, and our current goal is to move them in a gap in the weather next week. If anything changes I will update accordingly. I will follow up to all when the date is confirmed.

Thank you,

Conor Nally

Business Development Manager

302.841.8331 | conor.nally@lywsusa.com

On Fri, Dec 6, 2019 at 5:00 PM Conor Nally <conor.nally@lywsusa.com> wrote:

Good Afternoon All,

Our current plan is to start moving the park models from the campground next week. We are waiting on our driver to confirm the exact moving date and time, and I will distribute this information when it is confirmed. We are moving the park models in groups, since they are going to campgrounds in different states, and we anticipate it will take 4-5 days to move all park models once we start. Lastly, if there are any changes in schedule due to weather delays or other unforeseen issues I will update everyone.

Thank you and have a great weekend.

Conor Nally

Business Development Manager

302.841.8331 | conor.nally@lywsusa.com

--

Conor Nally

Attachment: Attachment E (BOA 20-03 85' and Sunny, LLC)

Business Development Manager

302.841.8331 | conor.nally@lywsusa.com

Attachment: Attachment E (BOA 20-03 85' and Sunny, LLC)

From: [Conor Nally](#)
To: [Donna Voliva](#)
Cc: [Ike McRee](#); [Laurie LoCicero](#)
Subject: [EXTERNAL] Re: OBX KOA West
Date: Wednesday, May 13, 2020 10:48:20 AM

[CAUTION]: This email originated from outside of Currituck County's system. Do not click links or open attachments unless you verify that the attachment and contents are safe. Please report any suspicious emails or attachments to to [support](#).

Good Morning,

Quick follow up on the park models. I wanted to be clear on what additional information was needed for the park models. I was thinking the DMV registrations, and RVIA numbers. Is there other information that P&Z would need?

Thank you!

On Tue, May 12, 2020 at 4:39 PM Donna Voliva <Donna.Voliva@currituckcountync.gov> wrote:

Conor,

During a zoning inspection in April, there were seven campers stored on the property and not campsites. We discussed with the on-site contractor that campers could not be stored on site, but if these RVs are placed on a campsite they could remain pending the zoning inspection. At that time the campsites did not have final approval, and the campers could not be connected to utilities or occupied. Last week we completed a follow-up zoning inspection and found additional RVs were placed on campsites; not connected to utilities. The placement of RVs on campsites begins the 90 day time limit. No other campers should be brought to the campground and placed on unapproved campsites.

As for the "park model" units or cottages as they have been called, additional information must be provided to determine compliance with the UDO and the NCGS. Laurie's email from November 15, 2019 outlined the width of a vehicle/recreational vehicle:

"NCGS 20-116 -

The total outside width of any **VEHICLE** or load thereon shall not exceed **102 inches**, except as otherwise provided in this section.

By this, to qualify as a recreational **VEHICLE**, the park models will still need to meet the **102 inches (8.5') maximum width** and **NOT** need a special highway movement permit (an “oversize load” designation).

These park models measured 12' (144”) in width.

The definition in NCGS 105-187.1 does not exempt park models from meeting the other standards for vehicles.

There are other relevant General Statutes concerning brakes, lights and axles that these park models will not meet. “

Donna Voliva, CZO

Assistant Planning Director

Currituck County Department of Planning and Community Development

From: Conor Nally [mailto:conor.nally@lywsusa.com]
Sent: Friday, May 8, 2020 11:02 AM
To: Donna Voliva
Cc: Laurie LoCicero
Subject: OBX KOA West

Donna,

Thank you again for talking to me today about the park models. Just wanted to follow up with an email as well.

First, I wanted to confirm if P&Z can't give any of their final sign offs if park models are onsite before they are approved by P&Z.

Second, I attached the email you sent me below for reference. The process will be to review the evidence (registration, RVIA numbers, etc) for any new park models that ownership wants to bring to the site to ensure they meet code. I know that the park models do meet the UDO definition, and the NCGS 105-187.1(a)(3a) definition. The park models have been registered and titled with the NC DMV as park models. I can pass along the registrations once the DMV sends them back, as well as the RVIA numbers for each model.

The one item that needs to be confirmed is the width of the models, and the need for a special permit to move. Any vehicle over 8.5 feet needs a special permit to move, and a travel trailer is defined as a vehicle used for camping that doesn't need a special permit when being towed (NC GS 20-4.01.32b-b). I think it's important to note that the overall definition of a recreational vehicle in the NCGS doesn't reference a special permit at all. It states that a recreational vehicle is "A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motive power or is mounted on, or towed by, another vehicle." A park model is a classification of RV (like a fifth wheel or travel trailer). The link below to the RVIA definition of a park model may help clarify that further!

Link: <https://www.rvia.org/advocacy/policies/pmrv-definitions>

Again, my goal is to determine what information is needed to ensure the park models meet P&Z standards so they can be brought onto the campground by ownership. I will follow up with a call to Laurie Monday to talk through this and keep things moving. And please pile on with anything I missed.

Thank you and have a great weekend.

Conor Nally

Project Manager

302.841.8331 | conor.nally@lywsusa.com

--

Conor Nally

Project Manager

302.841.8331 | conor.nally@lywsusa.com

Attachment: Attachment F (BOA 20-03 85' and Sunny, LLC)







From: [Laurie LoCicero](mailto:Laurie.LoCicero)
To: todd0929@icloud.com
Cc: cmiller@bwdc.com; [Ben Stikeleather](#); [Ike McRee](#); [Donna Voliva](#)
Subject: RE: [EXTERNAL] OBX WEST KOA
Date: Friday, May 29, 2020 10:14:50 AM

Mr. Burbage,

I did not have an unpleasant interaction with your staff, they were very nice and pleasant considering my level of frustration with the situation. I hope they did not take my frustration personally.

It may be your interpretation that park models/on-frame modulars are allowed by our UDO but it is **not** County staff's interpretation that park models/on-frame modulars are allowed by the UDO. Working with Conor Nally, we requested the titles and any information your organization thought we needed to make an informed decision on these on items. Once we had that information, we would make a determination about these structures. This did not happen prior to these structures being brought to the campground. This is the second time that these structures have been brought to the property contrary to the UDO and without notification to county staff.

We can meet if you think you have further information. My preference would be to include the county attorney on any meeting we have.

If you want to meet, it will have to be after next Tuesday.

Thanks,
Laurie

Laurie B. LoCicero, AICP
 Planning Director
 Planning & Community Development
 County of Currituck
 Phone: 252-232-6028
 Fax: 252-232-3026
www.currituckgovernment.com

From: Todd Burbage [mailto:todd0929@icloud.com]
Sent: Thursday, May 28, 2020 4:05 PM
To: Laurie LoCicero
Cc: Carolyn Closson
Subject: [EXTERNAL] OBX WEST KOA

[CAUTION]: This email originated from outside of Currituck County's system. Do not click links or open attachments unless you verify that the attachment and contents are safe. Please report any suspicious emails or attachments to [support](#).

Good afternoon Mrs. Locicero,

I am the Managing member and owner of the OBX West KOA on Waterlilly Drive.

I understand that you just had an unpleasant interaction with one of my representatives from the above referenced property, regarding RVs.

Respectfully, Please allow me to make my position clear. Park models are **NATIONALLY** recognized RV's. They are built under the RV code, Titled in the State in which they reside (as personal property) and they are nationally recognized. This is a United States of America code (ANSI). No different than other national building codes. Blue Water Development and Sun Communities do business in over 37 states and in Australia. The only way in which any jurisdiction (Including Currituck County) can prohibit them in a code compliant campground is if the existing code specifically prohibits RV's/park models. Your code does not.

We have zero interest in fighting codes, municipalities or jurisdictions. We only want fair application of the law.

We will be sending you our North Carolina RV/Park model registration numbers today. I understand Currituck County required this prior to their delivery. This cost us considerable time and money.

I spent 1.2mm dollars on park models. The order was placed months ago. It takes that long because all States allow them and the demand is high.

All of this being said, I wish to have a productive and amicable relationship with you and your Department(s). Please direct ALL communications regarding park models to Carolyn and me. I will be following this matter personally and hopefully together we will finding a resolution.

I am happy to drop everything and meet you tomorrow to discuss in Currituck County.

Thank you,

Todd E Burbage
[9919 Stephen Decatur Hwy](#)
[Ocean City Md 21842](#)
[410-213-1900](#) office

Confidentiality: This communication may contain confidential and privileged information intended for the named recipient(s) only. If you have received this by mistake please destroy it and notify us of this error
Sent from my iPad



COUNTY OF CURRITUCK

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

NOTICE OF VIOLATION

June 10, 2020

85 and Sunny, LLC
 c/o Mr. Todd Burbage, Managing Member
 9919 Stephen Decatur Highway
 Ocean City, MD 21842

Re: Outer Banks West KOA Campground/Hampton Lodge
 1631 Waterlily Road, PIN 007900000010000

Dear Property Owner and Manager:

In response to citizen complaints and county staff observations in May and June, 2020, it is determined after investigation that violation of the Currituck County Unified Development Ordinance, (the "UDO"), is occurring at the above-referenced property, (the "Property"). Specifically, you have located on the Property, in use as a non-conforming campground, nine on-frame modular dwelling units, or "cabins/cottages" as you have described them, set them on concrete blocks or forms and connected them to utilities.

Section 10.5 of the UDO defines "Campground" as:

any area, place, parcel, or tract of land on which two or more campsites are occupied or intended for occupancy or facilities established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of campsites and facilities is granted gratuitously or by rental fee, lease or conditional sale, or by covenants, restrictions and easements. Campground includes but not limited to, a travel camp, recreational camps, family campground, camping resort, recreational vehicles, park and camping community. **Campground does not include a summer camp, migrant labor camp or park for manufactured homes**, or a construction camp, or storage area for unoccupied camping units. [Emphasis added].

UDO §10.5 defines the following “camping units” for camping and use in a campground:

- Camper – A portable dwelling (as a special equipped trailer or automobile vehicle) for use during casual travel and camping.
- Recreational vehicle – a vehicle which is:
 - a. Built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection
 - c. Designed to be pulled by a light duty truck
 - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping travel or seasonal use;
 - e. Is fully licensed and ready for highway use.
- Travel trailer – A structure that is:
 - a. Intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle), and
 - b. Is for temporary use as sleeping quarters, but that does not satisfy one or more of definitional criteria of a manufactured home.

The on-frame modular dwelling units, or “cabins/cottages”, located on the Property do not meet the definitional criteria established in the UDO for “Camper”, “Recreational Vehicle” or “Travel Trailer”. At thirteen feet wide, the on-frame modular dwelling units, or “cabins/cottages”, are not intended for “casual travel and camping”, are not designed “to be pulled by a light duty truck” as shown by Exhibit B attached hereto, not “intended to be transported over the streets and highways”, not “fully licensed and ready for highway use”, and they satisfy one or more definitional criteria of a “Manufactured Home” as defined in UDO §10.5.

The on-frame modular dwelling units, or “cabins/cottages”, you have located on the Property more closely meet the UDO definition of “Manufactured Home” defined as:

A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

Because the on-frame modular dwelling units, or “cabin/cottages”, do not meet the UDO definitional criteria for “Camper”, “Recreational Vehicle” or “Travel Trailer” they are not permitted on the Property. Further, an on-frame modular dwelling unit may not be located in a campground as a campground may not be a “park for manufactured homes”.

You have thirty (30) days from the date of this Notice of Violation to bring the cited violation into compliance by removing the existing nine on-frame modular dwelling units, or “cabins/cottages” as you describe them, from the Property. Remedies for failure to comply with this Notice of Violation shall include, but are not limited to, a civil penalty in the amount, and without further notice, of up to \$500.00 per day for the number of days

85 and Sunny
KOA OBX West
Page 3 of 3
June 10, 2020,

the cited violation continues, revocation of zoning and building permits, and injunctive relief in the appropriate court of law.

You may appeal this Notice of Violation to the Currituck County Board of Adjustment in accordance with Section 2.4.17 of the Currituck County Unified Development Ordinance. A copy of the required appeal application form may be obtained at the Currituck County Planning and Community Development office at 153 Courthouse Drive, Currituck, North Carolina 27929 or from the Clerk for the Board of Adjustment, Cheri Elliott, by calling (252) 232-3055.

Sincerely,



Laurie B. LoCicero
Planning & Community Development Director

Cc: Mr. Tom Johnson, William and Mullins.
Mr. Ben Stikeleather, County Manager
Mr. Ike McRee, County Attorney
Planning File

Enclosures

Attachment: Attachment I (BOA 20-03 85' and Sunny, LLC)

Exhibit A



Attachment: Attachment I (BOA 20-03 85' and Sunny, LLC)



Attachment: Attachment I (BOA 20-03 85' and Sunny, LLC)



Attachment: Attachment I (BOA 20-03 85' and Sunny, LLC)



Attachment: Attachment I (BOA 20-03 85' and Sunny, LLC)

Exhibit B



Attachment: Attachment I (BOA 20-03 85' and Sunny, LLC)



COUNTY OF CURRITUCK

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

NOTICE OF VIOLATION

July 24, 2020

85 and Sunny, LLC
 c/o Mr. Todd Burbage, Managing Member
 9919 Stephen Decatur Highway
 Ocean City, MD 21842

Re: Outer Banks West KOA Campground/Hampton Lodge
 1631 Waterlily Road, PIN 007900000010000

Dear Property Owner and Manager:

In response to citizen complaints and county staff observations in May, June, and July 2020, it is determined after investigation that violation of the Currituck County Unified Development Ordinance, (the "UDO"), is occurring at the above-referenced property, (the "Property"). Specifically, you have located on the Property, in use as a non-conforming campground, sixteen on-frame modular dwelling units, or "cabins/cottages" as you have described them, set them on concrete blocks or forms and connected them to utilities.

Section 10.5 of the UDO defines "Campground" as:

any area, place, parcel, or tract of land on which two or more campsites are occupied or intended for occupancy or facilities established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of campsites and facilities is granted gratuitously or by rental fee, lease or conditional sale, or by covenants, restrictions and easements. Campground includes but not limited to, a travel camp, recreational camps, family campground, camping resort, recreational vehicles, park and camping community. **Campground does not include a summer camp, migrant labor camp or park for manufactured homes**, or a construction camp, or storage area for unoccupied camping units. [Emphasis added].

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 - a. Built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection
 - c. Designed to be pulled by a light duty truck
 - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping travel or seasonal use;
 - e. Is fully licensed and ready for highway use.
- Travel trailer – A structure that is:
 - a. Intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle), and
 - b. Is for temporary use as sleeping quarters, but that does not satisfy one or more of definitional criteria of a manufactured home.

The on-frame modular dwelling units, or “cabins/cottages”, located on the Property do not meet the definitional criteria established in the UDO for “Camper”, “Recreational Vehicle” or “Travel Trailer”. At thirteen feet wide, the on-frame modular dwelling units, or “cabins/cottages”, are not intended for “casual travel and camping”, are not designed “to be pulled by a light duty truck” as shown by Exhibit B attached hereto, not “intended to be transported over the streets and highways”, not “fully licensed and ready for highway use”, and they satisfy one or more definitional criteria of a “Manufactured Home” as defined in UDO §10.5.

The on-frame modular dwelling units, or “cabins/cottages”, you have located on the Property more closely meet the UDO definition of “Manufactured Home” defined as:

A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

Because the on-frame modular dwelling units, or “cabin/cottages”, do not meet the UDO definitional criteria for “Camper”, “Recreational Vehicle” or “Travel Trailer” they are not permitted on the Property. Further, an on-frame modular dwelling unit may not be located in a campground as a campground may not be a “park for manufactured homes”.


You have thirty (30) days from the date of this Notice of Violation to bring the cited violation into compliance by removing the existing nine on-frame modular dwelling units, or “cabins/cottages” as you describe them, from the Property. Remedies for failure to comply with this Notice of Violation shall include, but are not limited to, a civil penalty in the amount, and without further notice, of up to \$500.00 per day for the number of days

85 and Sunny
KOA OBX West
Page 3 of 3
July 24, 2020,

the cited violation continues, revocation of zoning and building permits, and injunctive relief in the appropriate court of law.

You may appeal this Notice of Violation to the Currituck County Board of Adjustment in accordance with Section 2.4.17 of the Currituck County Unified Development Ordinance. A copy of the required appeal application form may be obtained at the Currituck County Planning and Community Development office at 153 Courthouse Drive, Currituck, North Carolina 27929 or from the Clerk for the Board of Adjustment, Cheri Elliott, by calling (252) 232-3055.

Sincerely,



Laurie B. LoCicero
Planning & Community Development Director

Cc: Mr. Thomas H. Johnson, Jr. Williams Mullen
Mr. Ben Stikeleather, County Manager
Mr. Ike McRee, County Attorney
Planning File

Attachment: Attachment I (BOA 20-03 85' and Sunny, LLC)



Attachment: Attachment J (BOA 20-03 85' and Sunny, LLC)

Direct Dial: 919.981.4006
tjohnson@williamsmullen.com

August 14, 2020

Received
8/17/20
C. Elliott

VIA NEXT DAY DELIVERY AND E-MAIL

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

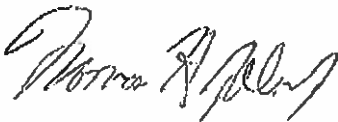
RE: Appeal of Notice of Violation
Outer Banks KOA Campground/Hampton Lodge
1631 Waterlilly Road, PIN 007900000010000

Dear Laurie,

Enclosed is our Appeal of the Notice of Violation dated July 24, 2020, a copy of which is enclosed. I ask that this Notice of Violation and the prior one that we appealed regarding a similar issue at this location be heard jointly before the Board of Adjustment.

Please confirm receipt. Thank you for your assistance.

Sincerely,



Thomas H. Johnson, Jr.

Enclosures

cc: Todd Burbage
Greg Linsmeyer

Attachment: BOA 20-03 Appeal (BOA 20-03 85' and Sunny, LLC)

43167024_1



Appeal Application

OFFICIAL USE ONLY:
 Case Number: BOA 20-03
 Date Filed: 8/17/20
 Gate Keeper: C. Elvin
 Amount Paid: \$500.00

Contact Information

APPLICANT:

Name: Thomas H. Johnson, Jr.
 Address: 301 Fayetteville Street, Ste 1700
Raleigh, NC 27601
 Telephone: 919-981-4006
 E-Mail Address: tjohnson@williamsmullen.com

PROPERTY OWNER:

Name: 85' and Sunny, LLC
 Address: 9919 Stephen Decatur Highway
Ocean City, MD 21842
 Telephone: 410-213-1900
 E-Mail Address: tburbage@bwdc.com

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Attorney for Property Owner

Property Information

Physical Street Address: 1631 Waterlilly Road, Coinjock, NC 27923
 Location: Outer Banks West KOA Campground/Hampton Lodge
 Parcel Identification Number(s): 007900000010000

Statement of Error, or Improper Decision or Interpretation

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

The determination being dated 07/24/2020.

Grounds for appeal

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

The "cabins/cottages" referred to the in Notice of Violation are park model recreational vehicles as defined in Section 10.5 of the Currituck County UDO and state and federal law. Since the "cabins/cottages" are park model recreational vehicles, they are allowed on the campground and none of the alleged violations set forth in the Notice of Violation are valid.

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.


 Appellant/Applicant 8/11/2020
 Date

Attachment: BOA 20-03 Appeal (BOA 20-03 85' and Sunny, LLC)

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 1631 Waterlily Road, Coinjock, NC 27923

I hereby authorize Thomas H. Johnson, Jr. of Williams Mullen or another attorney in the firm to appear with my consent before the Board of Adjustment in order to request an appeal or interpretation at the above location. I authorize you to advertise and present this matter in my name as the owner of the property.

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

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

Respectfully yours,
85 and Sunny, LLC

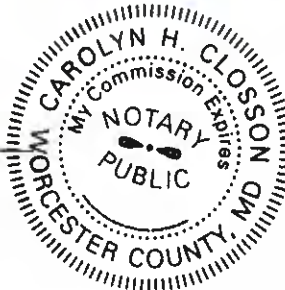
By: [Signature] Date 8/11/2020

Owner

Date

Sworn to and subscribed before me, this the 11th day of August, 2020.

Notary Public
My commission expires: 1/29/24





Appeal Application

OFFICIAL USE ONLY

Case Number: BOA 20-03
 Date Filed: 7/2/20
 Gate Keeper: C. Wright
 Amount Paid: \$500.00

Contact Information
APPLICANT:

Name: Thomas H. Johnson, Jr.
 Address: 301 Fayetteville Street, Ste 1700
Raleigh, NC 27601
 Telephone: 919-981-4006
 E-Mail Address: tjohnson@williamsmullen.com

PROPERTY OWNER:

Name: 85' and Sunny, LLC
 Address: 9919 Stephen Decatur Highway
Ocean City, MD 21842
 Telephone: 410-213-1900
 E-Mail Address: tburbage@bwdc.com

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Attorney for Property Owner

Property Information

Physical Street Address: 1631 Waterlily Road
 Location: Outer Banks West KOA Campground/Hampton Lodge
 Parcel Identification Number(s): 007900000010000

Statement of Error, or Improper Decision or Interpretation

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

The determination being dated 06 / 10 / 2020.

Grounds for appeal

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

The "cabins/cottages" referred to in the Notice of Violation are park models which are recreational vehicles as defined in Section 10.5 of the Currituck County UDO and state and federal law. Since the park models are recreational vehicles, they are allowed on the campground and none of the alleged violations set forth in the Notice of Violation are valid.

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.

Mon A. Sp. 6/29/2020
 Appellant/Applicant Date

Owner Verification

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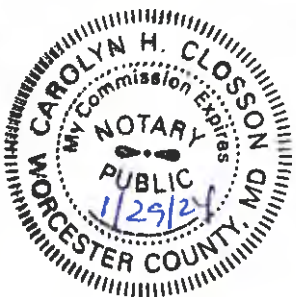
Respectfully yours,
85' and Sunny, LLC

By: [Signature] Date 6-29-2020

Owner _____ Date 29th day of June, 2020.

[Signature]

Notary Public
My commission expires: 1/29/24



Attachment: BOA 20-03 Appeal (BOA 20-03 85' and Sunny, LLC)



COUNTY OF CURRITUCK

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

NOTICE OF VIOLATION

June 10, 2020

85 and Sunny, LLC
 c/o Mr. Todd Burbage, Managing Member
 9919 Stephen Decatur Highway
 Ocean City, MD 21842

Re: Outer Banks West KOA Campground/Hampton Lodge
 1631 Waterlily Road, PIN 007900000010000

Dear Property Owner and Manager:

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Section 10.5 of the UDO defines "Campground" as:

any area, place, parcel, or tract of land on which two or more campsites are occupied or intended for occupancy or facilities established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of campsites and facilities is granted gratuitously or by rental fee, lease or conditional sale, or by covenants, restrictions and easements. Campground includes but not limited to, a travel camp, recreational camps, family campground, camping resort, recreational vehicles, park and camping community. **Campground does not include a summer camp, migrant labor camp or park for manufactured homes**, or a construction camp, or storage area for unoccupied camping units. [Emphasis added].

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Sincerely,



Laurie B. LoCicero
Planning & Community Development Director

Cc: Mr. Tom Johnson, William and Mullins.
Mr. Ben Stikeleather, County Manager
Mr. Ike McRee, County Attorney
Planning File

Enclosures

Attachment: NOV's (BOA 20-03 85' and Sunny, LLC)

Exhibit A



Attachment: NOV's (BOA 20-03 85' and Sunny, LLC)



Attachment: NOVs (BOA 20-03 85' and Sunny, LLC)



Attachment: NOVs (BOA 20-03 85' and Sunny, LLC)



Attachment: NOVs (BOA 20-03 85' and Sunny, LLC)

Exhibit B



Attachment: NOVs (BOA 20-03 85' and Sunny, LLC)



COUNTY OF CURRITUCK

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

NOTICE OF VIOLATION

July 24, 2020

85 and Sunny, LLC
 c/o Mr. Todd Burbage, Managing Member
 9919 Stephen Decatur Highway
 Ocean City, MD 21842

Re: Outer Banks West KOA Campground/Hampton Lodge
 1631 Waterlily Road, PIN 007900000010000

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Attachment: NOVs (BOA 20-03 85' and Sunny, LLC)

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 - b. Is for temporary use as sleeping quarters, but that does not satisfy one or more of definitional criteria of a manufactured home.

The on-frame modular dwelling units, or “cabins/cottages”, located on the Property do not meet the definitional criteria established in the UDO for “Camper”, “Recreational Vehicle” or “Travel Trailer”. At thirteen feet wide, the on-frame modular dwelling units, or “cabins/cottages”, are not intended for “casual travel and camping”, are not designed “to be pulled by a light duty truck” as shown by Exhibit B attached hereto, not “intended to be transported over the streets and highways”, not “fully licensed and ready for highway use”, and they satisfy one or more definitional criteria of a “Manufactured Home” as defined in UDO §10.5.

The on-frame modular dwelling units, or “cabins/cottages”, you have located on the Property more closely meet the UDO definition of “Manufactured Home” defined as:

A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

Because the on-frame modular dwelling units, or “cabin/cottages”, do not meet the UDO definitional criteria for “Camper”, “Recreational Vehicle” or “Travel Trailer” they are not permitted on the Property. Further, an on-frame modular dwelling unit may not be located in a campground as a campground may not be a “park for manufactured homes”.

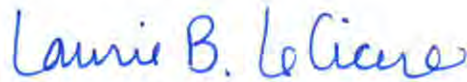
You have thirty (30) days from the date of this Notice of Violation to bring the cited violation into compliance by removing the existing nine on-frame modular dwelling units, or “cabins/cottages” as you describe them, from the Property. Remedies for failure to comply with this Notice of Violation shall include, but are not limited to, a civil penalty in the amount, and without further notice, of up to \$500.00 per day for the number of days

85 and Sunny
KOA OBX West
Page 3 of 3
July 24, 2020,

the cited violation continues, revocation of zoning and building permits, and injunctive relief in the appropriate court of law.

You may appeal this Notice of Violation to the Currituck County Board of Adjustment in accordance with Section 2.4.17 of the Currituck County Unified Development Ordinance. A copy of the required appeal application form may be obtained at the Currituck County Planning and Community Development office at 153 Courthouse Drive, Currituck, North Carolina 27929 or from the Clerk for the Board of Adjustment, Cheri Elliott, by calling (252) 232-3055.

Sincerely,



Laurie B. LoCicero
Planning & Community Development Director

Cc: Mr. Thomas H. Johnson, Jr. Williams Mullen
Mr. Ben Stikeleather, County Manager
Mr. Ike McRee, County Attorney
Planning File

Attachment: NOV's (BOA 20-03 85' and Sunny, LLC)



Currituck County Agenda Item Summary Sheet

Agenda ID Number – 3364

Agenda Item Title: BOA 20-04 85' and Sunny, LLC:

Submitted By: Jennie Turner – Planning & Community Development

Item Type: Quasi-Judicial

Presenter of Item: Laurie LoCicero

Board Action: Action

Brief Description of Agenda Item:

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.

Planning Board Recommendation:

Staff Recommendation:

TRC Recommendation:

See “Staff Report BOA 20-03, BOA 20-04, BOA 21-02 85’ and Sunny, LLC Appeal Request” on agenda packet page 11



Appeal Application

OFFICIAL USE ONLY:
 Case Number: BOA 20-04
 Date Filed: 9/24/20
 Gate Keeper: C. Elling
 Amount Paid: \$ 500.00

Contact Information

APPLICANT:	PROPERTY OWNER:
Name: <u>Thomas H. Johnson, Jr.</u>	Name: <u>85' and Sunny, LLC</u>
Address: <u>301 Fayetteville St., Ste. 1700</u>	Address: <u>9919 Stephen Decatur Hwy</u>
	<u>Raleigh, NC 27601</u>
	<u>Ocean City, MD 21842</u>
Telephone: <u>919-981-4006</u>	Telephone: <u>904-557-4021</u>
E-Mail Address: <u>tjohnson@williamsmullen.com</u>	E-Mail Address: <u>glinsmeyer@bwdc.com</u>

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Attorney for Applicant

Property Information

Physical Street Address: 1631 Waterlily Road
 Location: Outer Banks West KOA
 Parcel Identification Number(s): 0079-000-0001-0000

Statement of Error, or Improper Decision or Interpretation

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

The determination being dated 09/15/2020.

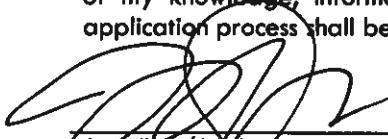
Grounds for appeal

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

The Notice of Violation does not include sufficient specificity to understand the nature of the alleged violation. Notwithstanding the foregoing, any work performed was for health and safety improvements that comply with the requirements of the Unified Development Ordinance.

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.


 Appellant/Applicant 9/18/2020
 Date
 Thomas H. Johnson, Jr., Attorney for 85' and Sunny, LLC

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 1631 Waterlilly Road, Coinjock, NC

I hereby authorize Thomas H. Johnson, Jr.
to appear with my consent before the Board of Adjustment in order to request an appeal or interpretation at the above location. I authorize you to advertise and present this matter in my name as the owner of the property.

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

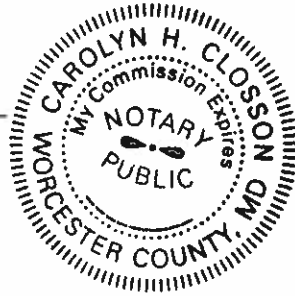
If you have any questions, you may contact me at the following at the address, phone number, or email address listed on this application.

Respectfully yours, 85' and Sunny, LLC

By: _____ Date 9/18/2020

Sworn to and subscribed before me, this the 18th day of September, 2020.

Notary Public
My commission expires: 1/29/24



Attachment: BOA 20-04 Appeal (BOA 20-04 85' and Sunny, LLC)



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

NOTICE OF VIOLATION #
 1389

85' and Sunny LLC
 9919 Stephen Decatur Hwy
 Ocean City, MD 21842

85' and Sunny, LLC
 301 Fayetteville Street Suite 1700 Raleigh, NC 27601
 P.O. Box 1000 Raleigh, NC 27602

Violation Date: September 15, 2020	Inspection Date:
Property Address: 1631 Waterlily Rd	PIN #: 0079-000-0001-0000
Violation Description: It has been brought to our attention that several items are being constructed without zoning approval. ***Please see the attached copy of the UDO.***	
Compliance Request: Stop all work until all permits have been applied for and approved. For more information contact Rachael Anderson at Rachae.Anderson@CurrituckCountyNC.gov (252) 232-6056	UDO Code Reference: Chapter 2, Subsection 2.4.9. Zoning Compliance Permit Required Compliance Date: October 22, 2020



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

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

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

Attachment: BOA 20-04 Appeal (BOA 20-04 85' and Sunny, LLC)

Chapter 2: Administration

SECTION 2.4: SPECIFIC REVIEW PROCEDURES**Subsection 2.4.9: Zoning Compliance Permit**

- (ii) Approval of a final plat shall not constitute acceptance by the county or other public agency of the offer of dedication of any streets, sidewalks, parks, or other public facilities shown on a plat. However, the county or other public agency may, to the extent of its statutory authority, accept such offer of dedication by resolution of the governing body or by actually exercising control over and maintaining such facilities.
- (c) **Effect of Development Approval**
Approval of a final plat allows the sale or conveyance of lots within the subdivision.
- (d) **Amendment of Development Approval**
Lot sizes may be varied on an approved final plat after recording, provided that:
- (i) No lot or tract shall be created or sold that is smaller than the size shown on the approved plat;
- (ii) Drainage easements shall not be changed;
- (iii) Right-of-ways shall not be changed;
- (iv) Street alignment and block sizes shall not be changed;
- (v) The rear portion of lots shall not be subdivided from the front portion; and
- (vi) The character of the preliminary plat shall be maintained.
- (e) **Expiration of Development Approval**
A final plat shall be recorded with the Currituck County Register of Deeds within 90 days of approval, or it shall be null and void.

2.4.9. Zoning Compliance Permit**A. Purpose**

The purpose of a zoning compliance permit is to ensure no development occurs until there is assurance the development complies with the requirements of this Ordinance.

B. Applicability

A zoning compliance permit is required before issuance of a building permit, any change in use, or commencement of activity that does not require issuance of a building permit.

C. Zoning Compliance Permit Procedure**(1) Pre-Application Conference**

Optional (see Section 2.3.2).

(2) Community Meeting

Not applicable.

(3) Application Submittal and Acceptance

Applicable (see Section 2.3.4). Prior to the issuance of a zoning compliance permit, verification must be submitted by the applicant that the lot will be served by either a state-approved package plant, public sewer facility, or a

Chapter 2: Administration

SECTION 2.4: SPECIFIC REVIEW PROCEDURES

Subsection 2.4.10: Sign Permit



waste treatment system complying with the requirements of the Albemarle Regional Health Services, where applicable.

(4) Staff Review and Action

Applicable (see Section 2.3.5). The Planning Director shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Planning Director or Technical Review Committee, and Section 2.4.9.D, Zoning Compliance Permit Review Standards.

(5) Public Hearing Scheduling and Public Notification

Not applicable.

(6) Public Hearing Procedures

Not applicable.

(7) Advisory Body Review and Recommendation

Not applicable.

(8) Decision-Making Body Review and Decision

Not applicable.

D. Zoning Compliance Permit Review Standards

A zoning compliance permit shall be approved upon a finding the applicant demonstrates the proposed development complies with all applicable standards in this Ordinance, the County Code of Ordinances, and all conditions of permits or development approvals approved under this Ordinance.

E. Effect of Development Approval

(1) Approval of a zoning compliance permit authorizes an applicant to apply for a building permit, or to commence construction if the proposed development does not require a building permit.

(2) If the zoning compliance permit application is filed concurrently with a building permit application, approval of the zoning compliance permit authorizes the county to complete its review of the building permit application.

F. Amendment of Development Approval

Applicable (see Section 2.3.14).

G. Expiration of Development Approval

Approval of a zoning compliance permit shall automatically expire if the development activity it authorizes is not commenced within six months after the date of approval.

2.4.10. Sign Permit

A. Purpose

The purpose of this section is to provide a uniform mechanism for reviewing applications for sign permits to ensure all signs comply with the standards of Section 5.12, Signage.

Attachment: BOA 20-04 Appeal (BOA 20-04 85' and Sunny, LLC)



Direct Dial: 919.981.4006
tjohnson@williamsmullen.com

September 23, 2020

VIA FEDERAL EXPRESS

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

RE: Appeal of Notice of Violation Dated September 15, 2020

Dear Sir or Madam:

Enclosed is an Appeal of a Notice of Violation issued on September 15, 2020 by Rachael Anderson regarding PIN #: 0079-000-001-0000, having an address of 1631 Waterlily Road, including a check for the \$500 filing fee. A copy of the Notice of Violation is enclosed for your information. Please confirm receipt and let us know when this matter will be scheduled for hearing before the Board of Adjustment.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas H. Johnson, Jr.'.

Thomas H. Johnson, Jr.

Enclosures

cc: Todd Burbage (Via E-mail)
Greg Linsmeyer (Via E-mail)

Attachment: BOA 20-04 Appeal (BOA 20-04 85' and Sunny, LLC)

43424816_1



Currituck County Agenda Item Summary Sheet

Agenda ID Number – 3365

Agenda Item Title: BOA 21-02 85' and Sunny, LLC:

Submitted By: Jennie Turner – Planning & Community Development

Item Type: Quasi-Judicial

Presenter of Item: Laurie LoCicero

Board Action: Action

Brief Description of Agenda Item:

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.

Planning Board Recommendation:

Staff Recommendation:

TRC Recommendation:

See “Staff Report BOA 20-03, BOA 20-04, BOA 21-02 85’ and Sunny, LLC Appeal Request” on agenda packet page 11



Steven D. Weber

Partner

t: 704.335.9065

f: 704.334.4706

steveweber@parkerpoe.com

Atlanta, GA
 Charleston, SC
 Charlotte, NC
 Columbia, SC
 Greenville, SC
 Raleigh, NC
 Spartanburg, SC
 Washington, DC

December 14, 2021

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Kevin Kemp
 Development Services Director
 Development Services Department
 153 Courthouse Road, Suite 110
 Currituck, North Carolina 27929

Re: Appeal of Aerator Fountain Minor Site Plan Denial - 85' and Sunny, LLC

Dear Director Kemp:

I represent 85' and Sunny, LLC ("85' and Sunny"). Please find enclosed 85' and Sunny's Application appealing the County of Currituck's denial of the aerator fountain minor site plan application dated November 16, 2021 ("Denial"). I have enclosed two hard copies of all documents. Also enclosed is my firm check in the amount of \$500.00 representing the appropriate application fee. Also, I have enclosed a flash drive with one PDF digital copy of all plans and documents.

At the hearing, I anticipate utilizing the exhibits attached to the Facts in Support of Appeal and live testimony of a representative of 85' and Sunny, LLC, Warren Eadus, P.G., Thomas H. Johnson Jr., Esq., one or more members of the RV Industry Association, one or more members of the North Carolina Manufactured and Modular Homebuilders Association, individuals referenced in the Facts in Support of Appeal and supporting Exhibits, and potentially others. I also will be presenting portions of the Currituck County Unified Development Ordinance and North Carolina General Statutes that are inconsistent with the Denial. I respectfully request that you, Donald ("Ike") McRee, Jr, as interim County Manager, Donna Voliva, Laurie LoCicero and any other staff involved in the application review and denial be available for questioning at the hearing. I also intend to cross-examine all witnesses called by the County at the hearing. I also plan to use illustrative exhibits at the hearing. Please let me know if you have questions or need additional information.

With best regards,

Steven D. Weber

Kevin Kemp
Development Services Director, Currituck County
December 14, 2021
Page 2

Enclosures

cc: Donald I. McRee, Jr., Esq. (via electronic mail w/enclosures)

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

2.C.b

Invoice Number	Invoice Date	Invoice Description	File No.	Amount
120821	12/08/21	Filing/Recording Fees	35677-00001	\$500.0

THE FACE OF THIS CHECK IS PRINTED BLUE - THE BACK CONTAINS A SIMULATED WATERMARK

Parker Poe
 1221 Main Street Suite 1100
 Columbia, SC 29201

WELLS FARGO BANK, N.A.-
 (7527) COLUMBIA
 67-776/532

CHECK NO: 13408

CHECK DATE
 12/08/2021

PAY Five Hundred and 00/100 Dollar(s)

VOID AFTER 90 DAYS
 \$*****500.00

Amount

TO THE ORDER OF
 CURRITUCK COUNTY



Authorized Signature

⑈ 13408 ⑈ ⑆ 053 20 7 766 ⑆ 20 100003 7 75 2 7 ⑈

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)



Appeal 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: Currituck County Planning & Community Development

Step 1: Application Submittal and Acceptance

The applicant must submit a complete application packet within thirty days of the date of the interpretation or decision, or notice of violation being appealed. A complete application packet consists of the following:

- Complete Currituck County Appeal Application.
- Application Fee (\$500).

On receiving an application, staff shall, 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 prepare a staff report. If an application is determined to be incomplete, the applicant may correct the deficiencies and resubmit the application for completeness determination within the thirty appeal window.

Step 2: Staff Review and Action

After accepting the appeal application, staff shall review it and prepare a written report. Staff shall transmit the appeal and the record of material considered by the decision-maker in making the decision or interpretation, including but not limited to the application and support materials, staff report, other plans, documents, reports, and studies considered in making the decision, and any minutes, transcripts, or record of the meetings held to consider and make the decision. These materials, plus the Land Use Plan, Unified Development Ordinance (UDO), and any other relevant adopted plan, shall constitute the record of the appeal.

Step 3: Public Hearing Scheduling and Public Notification

Staff shall ensure the public hearing 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.

The application shall meet the following public notification requirements:

- **Published Notice**
 Staff shall publish a notice of the hearing once a week for two successive calendar weeks in a newspaper having general circulation in the county. The first time notice is published, it shall not be less than 10 days nor more than 25 days before the date fixed for the hearing.

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

- **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.

*Mailed and Posted notifications are required only in cases where the appeal pertains to a specific parcel of land.

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 decide on the application based solely on the record of the appeal, as supplemented by arguments presented at the public hearing. The decision shall be one of the following:

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

A majority vote by the Board of Adjustment members present shall decide the application.

In deciding on the appeal application, the board is limited to the following determinations, which shall be based on clear and substantial evidence in the record:

- The decision-maker did not make an error or correctly applied the standards of the UDO in making the decision or interpretation;
- 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;
- The decision-maker made the decision based on a standard not contained in the UDO or other appropriate county ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in the UDO was applied; or
- The decision-maker made an error in applying a standard or measuring a standard.

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.

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.

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Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)



Appeal Application

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

Contact Information

APPLICANT: Name: <u>85' and Sunny LLC</u> Address: <u>9919 Stephen Decatur Hwy,</u> <u>Ocean City, MD 21842</u> Telephone: <u>410-213-1900</u> E-Mail Address: <u>abingham@obxwestkoa.com</u>	PROPERTY OWNER: Name: <u>85' and Sunny LLC</u> Address: <u>9919 Stephen Decatur Hwy,</u> <u>Ocean City, MD 21842</u> Telephone: <u>410-213-1900</u> E-Mail Address: <u>abingham@obxwestkoa.com</u>
LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: <u>Owner</u>	

Property Information

Physical Street Address: 1631 Waterlily Road Coinjock, NC 27923

Location: Waterlily Road

Parcel Identification Number(s): 8998-98-4817; 9908-14-8224; 9908-46-7483

Statement of Error, or Improper Decision or Interpretation

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

The determination being dated 11/16 /2021

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 the attached Facts in Support of Appeal Re: Denial of Aerator Fountain
Minor Site Plan Application.

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.

Appellant/Applicant	12/14/21 Date
---------------------	------------------

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

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 1631 Waterlily Road Coinjock, NC (Parcels 8998-98-4817; 9908-14-8224;
9908-46-7483

I hereby authorize Steven Kremer and Attorney Steven D. Weber
to appear with my consent before the Board of Adjustment in order to request an appeal or interpretation at the above location. I authorize you to advertise and present this matter in my name as the owner of the property.

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

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

Respectfully yours,

[Handwritten Signature]

Owner

12/14/21

Date

Sworn to and subscribed before me, this the 14 day of December, 2021.

Samantha L. Pielstick

Notary Public
My commission expires: 2-13-2022



Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Appeal Submittal Checklist

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

Appeal Submittal Checklist

Date Received: _____

BOA Date: _____

Project Name: _____

Applicant/Property Owner: _____

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

For Staff Only

Pre-application Conference (optional)

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

Comments

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

BEFORE THE
BOARD OF ADJUSTMENT

<p>85' AND SUNNY, LLC,</p> <p style="text-align: center;">Petitioner.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p style="text-align: center;">FACTS IN SUPPORT OF APPEAL RE: DENIAL OF FOUNTAIN MINOR SITE PLAN APPLICATION</p>
---	--	---

By and through its undersigned counsel, 85' and Sunny, LLC ("85' and Sunny" or "Petitioner") respectfully submits the following facts Petitioner is prepared to prove to the Board of Adjustment ("Board") that will lead the Board to conclude that the decision of the Administrator was in error, including Petitioner's grounds for the appeal. Petitioner reserves the right to provide additional facts, grounds and evidence, including live testimony and illustrative evidence, to the Board in support of Petitioner's Appeal Application prior to and at the hearing of this appeal.

1. Petitioner is the owner of the Outer Banks West KOA Campground ("KOA") in Currituck County. The KOA formerly was known as the Hampton Lodge Campground "Hampton Lodge"). Petitioner applied for a minor site plan approval ("Application") to install an aerator fountain and associated electrical service in its fire suppression pond on the KOA property on October 19, 2021 (attached hereto as **Exhibit 1**).

2. Currituck County (the "County") denied Petitioner's application on November 16, 2021 (attached hereto as **Exhibit 2**), on the grounds that: (1) the site contains alleged violations that have not been corrected, citing on-frame modular units/cabins (commercially known and hereinafter referred to as, "park model recreational vehicles") and construction without zoning approval; and (2) the proposed improvement is not consistent with the Letter of Determination ("LOD") issued by Laurie LoCicero dated January 7, 2019, as affirmed by the Board on April 11,

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

2019, and affirmed by the NC Court of Appeals.¹ (LOD attached hereto as **Exhibit 3**; Board Order attached hereto as **Exhibit 4**; NC Court of Appeals Opinion (“Opinion”) attached hereto as **Exhibit 5**)

3. The County’s first reason for denying Petitioner’s Application is based on an invalid, arbitrary and capricious interpretation of the law. The County argues that the site contains alleged violations that have not been corrected. Those alleged violations concern park model recreational vehicles and construction without zoning approval.

4. The County issued a Notice of Violation (“NOV”) on July 24, 2020 for the presence of the park model recreational vehicles at the KOA (Park Model NOV attached hereto as **Exhibit 6**).²

5. The Park Model NOV is invalid because park model recreational vehicles are not manufactured homes under State statutes. The County cannot apply an arbitrary and capricious definition to transform park model recreational vehicles into manufactured homes that is inconsistent with State law. The County does not regulate park model recreational vehicles, the State does, and Petitioner’s park model recreational vehicles are lawful under State requirements.

6. Prior to the issuance of the Park Model NOV, on information and belief, on or before July 25, 2019, County building inspectors visited Hampton Lodge to view the park model recreational vehicles located at the campground. (*See Exhibit 7*)

7. On or about July 25, 2019, the County contacted the owners of the former Hampton Lodge regarding the park model recreational vehicles. The County alleged that the park model

¹ The County email notification of application denial incorrectly describes the NC Court of Appeals Opinion as affirming the LOD; when in fact, the Opinion affirms the Board Order which affirmed the LOD.

² Petitioner appealed the July 24, 2020 NOV. (*See Exhibit 11*)

recreational vehicles did not meet the definitions of a “camper” or “travel trailer” under the UDO because “they are not intended to be transported over the streets and highways nor can they be used for casual travel.” (*See id.*)

8. On or about August 27, 2019, Hampton Lodge responded to the County with confirmation from the North Carolina Department of Motor Vehicles that the park model recreational vehicles do not require special permits to travel North Carolina roads, and therefore are recreational vehicles as defined by N.C.G.S. § 20-4.01(32b). (*See Exhibit 8*)

9. On information and belief, on or about November 1, 2019, the County notified Hampton Lodge that the County disagreed with the determination that the park model recreational vehicles meet the UDO definition of “camper” or “travel trailer” because the park model recreational vehicles allegedly do not meet the statutory limitation of 102 inches for the outside width of any vehicle under N.C.G.S. § 105-187.1. The UDO definition of travel trailer, however, applies to “structures” not “vehicles.” (*See UDO Section 10.5*)

10. The County’s contention that the “definition in NCGS 105-187.1 does not exempt park models from meeting the other standards for vehicles” (*See id.*) is invalid because the tenets of statutory construction require that “[c]ourts should ‘give effect to the words actually used in a statute’ and should neither ‘delete words used’ nor ‘insert words not used’ in the relevant statutory language during the statutory construction process.” *Midrex Techs., Inc. v. N.C. Dep’t of Revenue*, 369 N.C. 250, 258, 794 S.E.2d 785, 792 (2016) (quoting *Lunsford v. Mills*, 367 N.C. 618, 623, 766 S.E.2d 297, 301 (2014)). Therefore, the Board should disregard the County’s argument and accept the plain language of the statute that establishes that park model recreational vehicles are recreational vehicles.

11. On information and belief, the County conducted onsite investigations at the KOA following citizen complaints related to the park model recreational vehicles. On information and belief, these citizen complaints were made and the County investigations were conducted in May, June, and July 2020. As a result of the investigations, the County concluded that Petitioner had violated the Currituck County Unified Development Ordinance (“UDO”) by locating “on the Property, in use as a non-conforming campground, sixteen on-frame modular dwelling units, or ‘cabins/cottages’ as you have described them, set them on concrete blocks or forms and connected them to utilities.” The NOV further states:

The on-frame modular dwelling units, or “cabins/cottages”, located [on] the Property do not meet the definitional criteria established in the UDO for “Camper”, “Recreational Vehicle” or “Travel Trailer”. At thirteen feet wide, the on-frame modular dwelling units, or “cabins/cottages”, are not intended for “casual travel and camping”, are not designed “to be pulled by a light duty truck” as shown by Exhibit B attached hereto, not “intended to be transported over the streets and highways”, not “fully licensed and ready for highway use”, and they satisfy one or more definitional criteria of a “Manufactured Home” as defined in UDO § 10.5.

12. The County’s opinion that the park models are more akin to manufactured homes than recreational vehicles is incorrect, arbitrary and capricious, and inconsistent with State law.

13. The UDO defines a manufactured home as “[a] structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle.” (*See* UDO § 10.5)

14. However, the UDO definition of “manufactured home” is inconsistent with the North Carolina General Statutes definition of “manufactured home” which states a manufactured home is:

[a] structure, transportable in one or more sections, which, in the traveling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and **designed to be used as a dwelling** with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. (Emphasis added) (*See* N.C.G.S. § § 143-143.9(6), 143-145(7), and 160D-910)³

15. “Designed to be used as a dwelling unit” is a key differentiator between a recreational vehicle and manufactured home, as it speaks directly to the intended use of the vehicle. The North Carolina Legislature deemed those words important enough to include in the definition of manufactured home in N.C.G.S. § 160D-910, referencing the definition in N.C.G.S. § 143-145(7). The State regulates manufactured homes under N.C.G.S. § 160D, which applies to all local development regulations, and is therefore controlling. Accordingly, the County does not have authority to apply a different definition of manufactured home in an attempt to deem Petitioner’s park model recreational vehicles noncompliant.

16. Upon information and belief, the County has not defined “park model recreational vehicle.” However, the State of North Carolina has defined a “park model recreational vehicle” as a vehicle that meets all of the following conditions:

- a. Is designed and marketed as temporary living quarters for recreational, camping, travel, or seasonal use.
- b. Is certified by the manufacturer as complying with ANSI A119.5.
- c. Is built on a single chassis mounted on wheels with a gross trailer area not exceeding 400 square feet in the setup mode.

³ The North Carolina definition of “manufactured home” is the substantially the same as the federal definition in 42 U.S.C. 5401 *et. seq.* (1974).

Furthermore, the North Carolina General Statutes state that a recreational vehicle, as defined in N.C.G.S. § 20-4.01(32b), includes a park model recreational vehicle. (N.C.G.S. § 105-187.1(3A) and (4))

17. The County has not defined what it means to be a park model recreational vehicle. The Board must look to the statute to determine its meaning. The statutory language clearly and unambiguously states that a park model recreational vehicle is a recreational vehicle.

18. A park model recreational vehicle is designed as temporary living quarters for recreational camping, travel, or seasonal use, the same uses as recreational vehicles as defined in the UDO. As determined by the State of North Carolina, a park model recreational vehicle simply is another type of recreational vehicle.

19. As further proof, the park model recreational vehicles located at the KOA are recreational vehicles, the vehicle identification number (VIN) for each park model recreational vehicle identifies the vehicle type as recreational vehicle. VINs for each park model recreational vehicle are attached hereto as **Exhibit 9**. The County also is not enforcing the UDO countywide.

20. The County also alleged that Petitioner has completed work at the KOA without required permits. The County issued an NOV on September 15, 2020 for the alleged violation of UDO Subsection 2.4.9: Zoning Compliance Permit.⁴ (Permit NOV attached hereto as **Exhibit 10**)

21. There is no inspection date identified, and the violation description in the NOV states, “It has been brought to our attention that several items are being constructed without zoning approval.”

⁴ Petitioner appealed the September 15, 2020 NOV. (See **Exhibit 12**)

22. Without any detail regarding what and how many items were allegedly constructed without zoning approval, the NOV required the stoppage of all work until the permits had been applied for and approved.

23. The Permit NOV is invalid on its face for the following reasons, among others:

- a. The Permit NOV does not provide sufficient detail or facts for Petitioners even to understand the grounds for the Permit NOV. In other words, the NOV is impermissibly vague and ambiguous. For example, the Permit NOV provides no facts regarding: (i) the alleged construction activity; (ii) how the alleged construction activity violated the UDO; or (iii) what zoning approval is required prior to completion of the construction. Petitioners are left to guess at the County's vague and ambiguous enforcement, which renders the Permit NOV invalid; and
- b. On information and belief, the County conducted an inadequate investigation prior to issuing the Permit NOV. Mainly, if the NOV itself is to be believed, the County did not conduct any investigation at all. In addition, Petitioners understand that the County did not actually witness certain construction activity but issued the Permit NOV based solely on citizen complaints. Nonetheless, that second-hand information became part of the basis for the Permit NOV that the County issued without inspection and without any prior discussion with Petitioners about the matter.

24. The second reason for the County's denial of Petitioner's application is that the proposed improvement is not consistent with the LOD issued by Laurie LoCicero dated January 7, 2019 and affirmed by the Opinion.⁵

25. Petitioner's proposed improvement is the installation of an aerator fountain and associated electrical service to improve the health and safety of the KOA and surrounding properties. The fountain has two purposes: (1) to provide necessary aeration to control algae

⁵ As noted above, the Opinion affirmed the Board Order affirming the LOD.

growth and allow for unimpeded flow of water for fire suppression; and (2) to reduce insects and disease vectors in and around the pond, KOA, and neighboring properties.

26. The LOD interprets the number of campsites existing at Hampton Lodge as of January 1, 2013⁶ and whether modifications included in a past site plan application were permitted.

27. The LOD determined that “only changes to existing buildings and structures are permitted” at the KOA because it is a nonconforming use. The proposed new bathroom facilities, swimming pool, pool house and the like were not permitted because they were new and “not limited changes but are substantial and an impermissible expansion, enlargement and intensification of a nonconforming use.”

28. The Opinion affirmed the Board’s Order affirming the LOD.

29. Neither the LOD nor the Opinion prohibit the installation of Petitioner’s requested aerator fountain and associated electrical service, as it is a public safety device and utility (including stormwater management), not a potential expansion of a nonconforming use. Therefore, this reason for denying Petitioner’s application is also invalid. Additionally, any alleged construction activity that allegedly violated the UDO ceased and thus, no violation existed or exists.

30. Because both of the County’s reasons supporting its denial of Petitioner’s application are invalid, the Board should overturn the denial of the application and grant Petitioner a permit for the installation of the aerator fountain and associated electrical service.

⁶ The number of campsites is irrelevant to this appeal.

As noted above, Petitioners reserve the right to provide additional facts and evidence, including illustrative evidence, to the Board in support of Petitioner's Appeal Application prior to and at the hearing of this appeal.

Respectfully submitted this 14th day of December, 2021.



Steven D. Weber
N.C. State Bar #20189

Attorney for the Petitioners

OF COUNSEL:

PARKER POE ADAMS & BERNSTEIN LLP
Bank of America Tower
620 South Tryon St., Ste. 800
Charlotte, North Carolina
(704) 372-9000
steveweber@parkerpoe.com

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Exhibit 1

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

From: [Weber, Steven D.](#)
To: Donna.Voliva@CurrituckCountyNC.gov
Subject: Outer Banks West KOA Minor Site Plan Application - 10-19-20
Date: Tuesday, October 19, 2021 7:34:19 PM
Attachments: [Outer Banks West KOA Minor Site Plan Application.pdf](#)

Dear Ms. Voliva:

Please find enclosed a Minor Site Plan application for the installation of an aerator fountain and associated electrical service in the fire suppression pond at the Outer Banks West KOA campground. Please let me know if you have questions or need additional information. Thank you.

Steve Weber

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)



Steven D. Weber

Partner

t: 704.335.9065

f: 704.334.4706

steveweber@parkerpoe.com

Atlanta, GA
 Charleston, SC
 Charlotte, NC
 Columbia, SC
 Greenville, SC
 Raleigh, NC
 Spartanburg, SC
 Washington, DC

October 19, 2021

**Via Electronic Mail (Donna.Voliva@CurrituckCountyNC.gov)
 and Federal Express**

Ms. Donna Voliva, Senior Planner
 Currituck County
 Planning and Community Development
 153 Courthouse Road, Suite 110
 Currituck, North Carolina 27929

**Re: Outer Banks West KOA Minor Site Plan Application – Aerator Fountain
 1631 Waterlily Road, Coinjock, NC**

Dear Ms. Voliva:

Please find enclosed a Minor Site Plan application for the installation of an aerator fountain and associated electrical service in the fire suppression pond at the Outer Banks West KOA campground. We represent the owner of the campground and applicant, 85' and Sunny, LLC. The pond serves as the source of emergency fire suppression water for the campground. The pond has significant floating algae that can impede water flow and adversely impact the dry hydrant intake. The floating algae also promotes mosquito reproduction as mosquitoes seek surfaces to deposit their eggs in this type of growth (See USDA NRCS April 2008 in the Minor Site Plan application).

The aerator fountain is being installed for two purposes: (1) to provide necessary aeration to control algae growth and allow for unimpeded flow of water for fire suppression; and (2) to reduce insects and disease vectors in and around the pond, campground and neighboring properties. The aerator fountain is an environmentally-friendly method of reducing algae growth and insect breeding. Alternatives include algaecide and insecticide that may adversely impact native species and may have secondary and cumulative impacts to native species in nearby natural wetlands. The aerator fountain is necessary to maintain the campground in a safe condition, protect against health hazards, and promote safety of the surrounding uses, including the campground itself and neighboring properties.

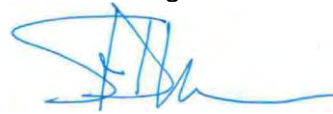
Currituck County
October 19, 2021
Page 2

Enclosed are two hard copies of all documents and a pdf. copy of the following:

- Executed Minor Site Plan Application
- Application Fee (\$200.00)
- Site Plan (two sets)
- Aerator fountain specifications and supporting documentation
- USDA NRCS Biology Technical Note (Wetlands, Mosquitoes, and West Nile Virus)

We appreciate the County's consideration of this Minor Site Plan. Please let us know if you have questions or need additional information.

With best regards,



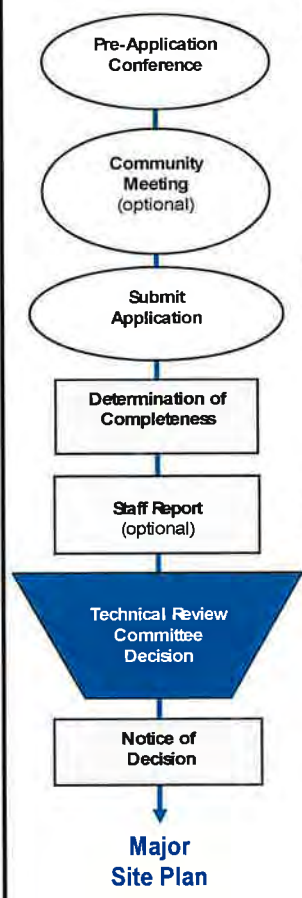
Steven D. Weber

Enclosures

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)



Minor Site Plan 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/planning-community-development

General

Minor site plan approval is required for any non-residential, multi-family, or mixed-use development or expansion that:

- Is less than 5,000 square feet of building's gross floor area, impervious surface, disturbed land area, and other use area.

Step 1: Application Submittal and Acceptance

- The applicant must submit a complete application packet consisting of the following:
- Completed Currituck County Minor Site Plan Application.
 - Application Fee (\$200).
 - Site plan drawn to scale. The plan shall include the items listed in the minor site plan design standards checklist.
 - Landscape plan drawn to scale. The plan shall include the items listed in the minor site plan design standards checklist, if applicable.
 - Exterior Lighting plan drawn to scale. The plan shall include the items listed in the minor site plan design standards checklist, if applicable.
 - Minor stormwater management plan and Form SW-001, if applicable.
 - Architectural elevations illustrating the design and character of the proposed structures, if applicable.
 - ARHS Construction Improvements Permit or letter of commitment from centralized sewer provider.
 - Number of Copies Submitted:
 - 2 Copies of required plans
 - 2 Hard copies 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 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. Applicants may submit applications for a site plan and building permit concurrently.

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Step 2: Staff Review and Action

Once an application is determined complete, it will be distributed to the Technical Review Committee (TRC). TRC shall review and prepare a written report that will include any outstanding concerns with the application. The applicant must address any outstanding concerns for approval. TRC shall approve, approve subject to conditions or disapprove the application. Conditions of approval shall be limited to those deemed necessary to ensure compliance with the standards of the UDO.

An application for a site plan shall be approved on a finding the applicant has demonstrated the proposed development:

- Is consistent with the Land Use Plan or other officially adopted plan;
- Complies with the applicable district, use-specific, development, environmental, and infrastructure design standards of the UDO;
- Complies with the Currituck County Stormwater Manual and all other applicable standards of the UDO and the County Code of Ordinances; and
- Complies with all standards or conditions of any prior applicable development permits or approvals.



Minor Site Plan Application

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

Contact Information

APPLICANT:	PROPERTY OWNER:
Name: <u>85' AND SUNNY, LLC</u>	Name: <u>85' AND SUNNY, LLC</u>
Address: <u>9919 Stephen Decatur Hwy</u>	Address: <u>9919 Stephen Decatur Hwy</u>
<u>Ocean City, MD 21842</u>	<u>Ocean City, MD 21842</u>
Telephone: <u>410-213-1900</u>	Telephone: <u>410-213-1900</u>
E-Mail Address: <u>abingham@obxwestkoa.com</u>	E-Mail Address: <u>abingham@obxwestkoa.com</u>

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Owner

Property Information

Physical Street Address: 1631 Waterlily Road Coinjock, NC 27923

Location: Waterlily Road

Parcel Identification Number(s): 8998-98-4817; 9908-14-8224; 9908-46-7483

Total Parcel(s) Acreage: 470.86

Existing Land Use of Property: Campground

Request

Project Name: OBX KOA West

Proposed Use of the Property: Existing Campground; installation of aerating fountain in fire suppression pond

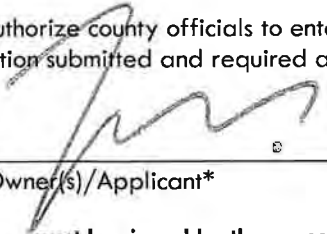
Deed Book/Page Number and/or Plat Cabinet/Slide Number: DB 178 PG 641; PC 6, SL11

Total square footage of land disturbance activity: Utility trench ~250 sf

Total lot coverage: 353,181 SF Total vehicular use area: 309,853 sf

Existing gross floor area: 12,879 sf Proposed gross floor area: N/A

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



 Property Owner(s)/Applicant*

10/11/2021

 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.**

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Minor Site Plan Design Standards Checklist

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

Minor Site Plan Design Standards Checklist

Date Received: _____

Project Name: _____

Applicant/Property Owner: _____

Site Plan Design Standards Checklist	
General	
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	Vicinity map showing property's general location in relation to streets, railroads, and waterways.
5	Existing zoning classification and zoning setback lines of the property.
6	Scaled drawing showing existing and proposed site features : Properties lines, acreage, adjacent use types, streets (right-of-ways), easements, buildings and accessory structures (including square feet and use), parking layout, vehicular use areas, driveways (including opposing driveways), loading spaces, refuse collection facilities (dumpsters), outdoor storage areas, ground based utility equipment, fences and walls, and sidewalks and pedestrian circulation. And location and sizes of existing and proposed infrastructure : Water mains (including water taps), water meter details, backflow prevention details, wells, sewer mains or on-site septic systems (including repair area), electrical service, fire hydrants, detail of fire apparatus access to buildings, and location and size of any other public utility within all adjacent public right-of-ways and easements.
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.
8	Sight distance triangles.
9	Proposed common areas, open space set-asides, and required buffers.
Landscape Plan	
10	All existing and proposed planting areas and vegetation that will be used to comply with the landscaping requirements, including the species, caliper, and spacing of all vegetation.
11	Existing and proposed physical barriers to be used to comply with the bufferyard and screening requirements.
12	Heritage tree inventory and proposed tree protection zones.
13	Adjoining property lines, zoning, and names and address of adjoining property owners.
Exterior Lighting Plan	
14	Location, height, and type of all proposed exterior lighting including but not limited to site, street, building, and security lighting.
15	Footcandle measurements of the entire site including lot lines, or light fixture documentation when minimal lighting is proposed.
Minor Stormwater Management Plan	
16	Minor Stormwater Management Plan and Form SW-001, if applicable.

Architectural Elevations	
17	Architectural drawings and/or sketches illustrating the design, character, height, and materials of the proposed buildings.
Flood Damage Prevention, if Applicable	
18	Proposed elevation of all structures and utilities.
19	Location, dimensions, and use of: Development and disturbance, existing and proposed structures and utility systems grading and pavement areas, fill materials, storage areas, drainage facilities, and other development.
20	Boundary of Special Flood Hazard Area (SFHA), floodway, Coastal Barrier Resource System (CBRS) Area, water course relocation, or a statement that the entire lot is within a specific SFHA.
21	Flood zone designation as determined on the County's Flood Insurance Rate Maps (FIRM).
22	Design Flood Elevation (Base Flood Elevation plus one foot freeboard).
23	Plans and/or details for the protection of public facilities and utilities (sewer, gas, electrical, and water systems) from inundation of flood waters up to Design Flood Elevation.
24	Water course alteration or relocation: Description of alteration or relocation, report on effects of proposed project on the flood carrying capacity of the water course, and effects to properties located up and downstream.
25	Fill – plans for non-structural fill (if being utilized in VE zone).

Minor Site Plan 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.

Minor Site Plan Submittal Checklist

Date Received: _____

Project Name: OBX KOA West

Applicant/Property Owner: _____

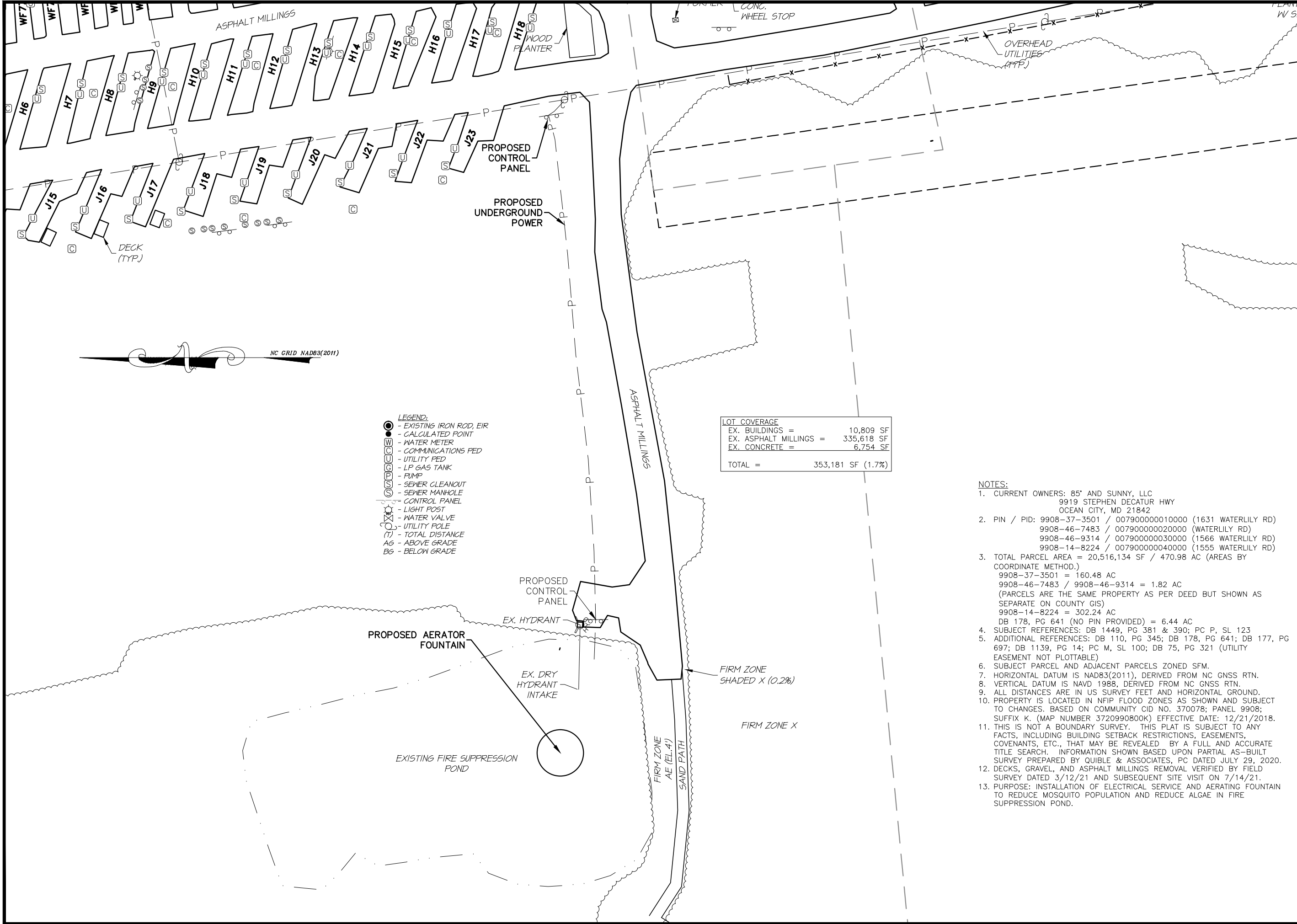
Minor Site Plan Submittal Checklist		
1	Completed Minor Site Plan application	
2	Application fee (\$200)	
3	Site plan	
4	Exterior Landscape plan, if applicable	
5	Lighting plan, if applicable	
6	Minor Stormwater Management plan and Form SW-001, if applicable	
7	Architectural elevations, if applicable	
8	ARHS Construction Improvements Permit or letter of commitment from centralized sewer provider.	
9	2 copies of plans	
10	2 hard copies of ALL documents	
11	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



- LEGEND:**
- - EXISTING IRON ROD, EIR
 - - CALCULATED POINT
 - ⊖ - WATER METER
 - ⊕ - COMMUNICATIONS PED
 - ⊙ - UTILITY PED
 - ⊗ - LP GAS TANK
 - ⊘ - PUMP
 - ⊙ - SENSER CLEANOUT
 - ⊙ - SENSER MANHOLE
 - ⊙ - CONTROL PANEL
 - ⊙ - LIGHT POST
 - ⊙ - WATER VALVE
 - ⊙ - UTILITY POLE
 - (T) - TOTAL DISTANCE
 - AG - ABOVE GRADE
 - BG - BELOW GRADE

LOT COVERAGE	
EX. BUILDINGS =	10,809 SF
EX. ASPHALT MILLINGS =	335,618 SF
EX. CONCRETE =	6,754 SF
TOTAL =	353,181 SF (1.7%)

- NOTES:**
- CURRENT OWNERS: 85° AND SUNNY, LLC
9919 STEPHEN DECATUR HWY
OCEAN CITY, MD 21842
 - PIN / PID: 9908-37-3501 / 007900000010000 (1631 WATERLILY RD)
9908-46-7483 / 007900000020000 (WATERLILY RD)
9908-46-9314 / 007900000030000 (1566 WATERLILY RD)
9908-14-8224 / 007900000040000 (1555 WATERLILY RD)
 - TOTAL PARCEL AREA = 20,516,134 SF / 470.98 AC (AREAS BY COORDINATE METHOD.)
9908-37-3501 = 160.48 AC
9908-46-7483 / 9908-46-9314 = 1.82 AC (PARCELS ARE THE SAME PROPERTY AS PER DEED BUT SHOWN AS SEPARATE ON COUNTY GIS)
9908-14-8224 = 302.24 AC
DB 178, PG 641 (NO PIN PROVIDED) = 6.44 AC
 - SUBJECT REFERENCES: DB 1449, PG 381 & 390; PC P, SL 123
 - ADDITIONAL REFERENCES: DB 110, PG 345; DB 178, PG 641; DB 177, PG 697; DB 1139, PG 14; PC M, SL 100; DB 75, PG 321 (UTILITY EASEMENT NOT PLOTTABLE)
 - SUBJECT PARCEL AND ADJACENT PARCELS ZONED SFM.
 - HORIZONTAL DATUM IS NAD83(2011), DERIVED FROM NC GNSS RTN.
 - VERTICAL DATUM IS NAVD 1988, DERIVED FROM NC GNSS RTN.
 - ALL DISTANCES ARE IN US SURVEY FEET AND HORIZONTAL GROUND.
 - PROPERTY IS LOCATED IN NFIP FLOOD ZONES AS SHOWN AND SUBJECT TO CHANGES. BASED ON COMMUNITY CID NO. 370078; PANEL 9908; SUFFIX K. (MAP NUMBER 3720990800K) EFFECTIVE DATE: 12/21/2018.
 - THIS IS NOT A BOUNDARY SURVEY. THIS PLAT IS SUBJECT TO ANY FACTS, INCLUDING BUILDING SETBACK RESTRICTIONS, EASEMENTS, COVENANTS, ETC., THAT MAY BE REVEALED BY A FULL AND ACCURATE TITLE SEARCH. INFORMATION SHOWN BASED UPON PARTIAL AS-BUILT SURVEY PREPARED BY QUIBLE & ASSOCIATES, PC DATED JULY 29, 2020.
 - DECKS, GRAVEL, AND ASPHALT MILLINGS REMOVAL VERIFIED BY FIELD SURVEY DATED 3/12/21 AND SUBSEQUENT SITE VISIT ON 7/14/21.
 - PURPOSE: INSTALLATION OF ELECTRICAL SERVICE AND AERATING FOUNTAIN TO REDUCE MOSQUITO POPULATION AND REDUCE ALGAE IN FIRE SUPPRESSION POND.

Quible & Associates, P.C.
SINCE 1959
ENGINEERING * CONSULTING * PLANNING
ENVIRONMENTAL SCIENCES * SURVEYING

NC License#: C-0208
PO Drawer 870, Kitty Hawk, NC 27949
Phone: (252) 491-8147
FAX: (252) 491-9145

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

MINOR SITE PLAN- AERATOR FOUNTAIN

OUTER BANKS WEST

CURRITUCK SOUND KOA HOLIDAY

CURRITUCK COUNTY
POPLAR BRANCH TOWNSHIP
NORTH CAROLINA

70' 140'

COPYRIGHT © 2017 QUIBLE & ASSOCIATES, P.C.

THIS DOCUMENT IS THE PROPERTY OF QUIBLE & ASSOCIATES, P.C. ANY ALTERATION OF THIS DOCUMENT IS PROHIBITED.

IF THIS DOCUMENT IS NOT SIGNED AND SEALED BY A LICENSED PROFESSIONAL ENGINEER THEN THIS DOCUMENT SHALL BE CONSIDERED PRELIMINARY. NOT A CERTIFIED DOCUMENT AND SHALL NOT BE USED FOR CONSTRUCTION, RECORDATION, SALES OR LAND ACQUISITION.

PROJECT: **P16099**

DRAWN BY: **OTH**

CHECKED BY: **WDE**

DATE: **10/07**

Indiana - April 2008 (ver. 1.0)

Wetlands, Mosquitoes, and West Nile Virus

The purpose of this document is to:

- Provide an understanding of the interaction between wetlands, mosquitoes, and West Nile virus (WNV).
- Reduce the fear that wetlands are a primary breeding ground for mosquitoes carrying WNV.
- List ways to reduce mosquito-breeding areas around your home and to prevent mosquito bites.

DISCLAIMER

The West Nile virus is relatively new to North America and many unknowns still exist. Every attempt has been made to see that the material presented in this document was the latest information available at the time of its publication. However, be aware that scientific research and information is constantly changing. Please contact the agencies and resources listed in the [REFERENCES](#) Section for the most current information regarding the interaction of West Nile virus, mosquitoes and wetlands.

WEST NILE VIRUS

Concerns over the spread of WNV have brought considerable attention to mosquitoes and their habitats.

To a large degree, West Nile virus is a disease associated with human habitats and not wetland sites.

The by-products of human's activities have been a major contributor to the creation of mosquito breeding habitats. In 2002, for example, the Fort Wayne/Allen County Department of Health surveyed mosquito-breeding sites near human West Nile virus cases. The survey found that 66% of these breeding sites were tires.



Culex mosquito laying eggs

The West Nile virus is a mosquito-borne virus that was first isolated in the West Nile District of Uganda in 1937. In the U.S. since 1999, WNV human, bird, veterinary or mosquito activity have been reported from all states except Hawaii and Alaska.

It is important to note that not all mosquitoes carry WNV, not all mosquitoes feed on humans, and breeding habitat varies for each mosquito species.

About 200 mosquito species are found in the United States. The mosquito that has been most closely associated with transmitting West Nile virus in the northeast United States, and in Indiana, is the northern house mosquito (*Culex pipiens*). These mosquitoes "prefer" to bite birds, but if breeding sites are available near people's homes and domestic animal enclosures, *Culex pipiens* will bite people and domestic animals. The Centers for Disease Control and Prevention (CDC) indicates that although other species may contribute to human WNV transmission, control of *Culex* mosquitoes continues to be the most important strategy to reduce risk for WNV transmission to humans.

The larvae of *Culex* mosquitoes prefer to live in nutrient-rich, organic (often polluted) sites, such as leakage from septic tanks, abandoned swimming pools, clogged gutters, and similar enriched-water containers. *Culex* are generally weak fliers and do not move far from home, although they have been known to fly up to two miles. *Culex pipiens* are most active during dawn and dusk.

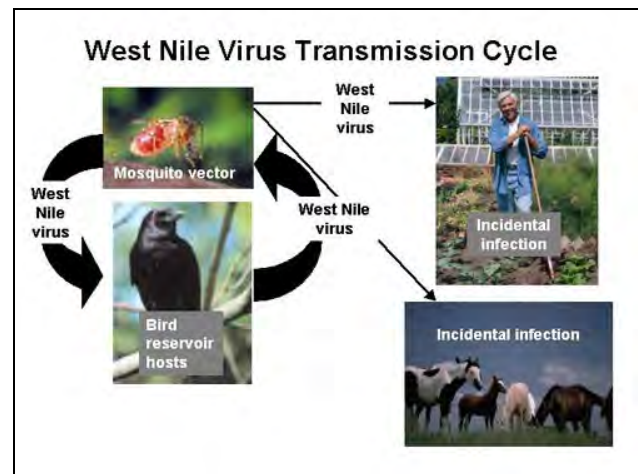
WNV is spread to people by the bite of an infected mosquito. Mosquitoes acquire WNV when feeding on infected birds that have high levels of WNV in their blood. The virus replicates and is then stored in the mosquito's salivary glands before being transmitted to humans or other animals during the mosquito bite.

Humans and domestic mammals are considered "dead-end" hosts, because they do not contribute to the transmission cycle even though they become ill. In a very small number of cases, WNV also has been spread through blood transfusions, organ transplants, breastfeeding and during pregnancy from mother to baby (one case). WNV is not spread through casual contact such as touching or kissing a person with the virus.

Statistically, a person's risk of contracting West Nile is low, and less than 1% of those infected develop serious illness from the virus.

Those at highest risk for serious illness are the elderly and those with lowered immune systems. However, people of all ages can develop serious illness, so it is important for everyone to protect themselves from mosquito bites to minimize the risk of infection. While people may feel that they have no control over the risk of exposure, this is not true. Self-protection is still the best way to reduce your risk of contracting WNV. There are many ways you can prevent mosquito bites and reduce mosquito-breeding areas around your home. See [PREVENTION/ACTIONS](#) for additional information.

Horses. Mosquitoes may also spread the WNV to horses. It is important to take preventive actions early, prior to the time of the year when mosquitoes are likely to bite and infect horses. Horses may become infected without showing any clinical signs. See APHIS Animal Disease Alert, [West Nile Virus: Protecting Your Horses](#), for further information. The Alert also has information on WNV vaccines available for horses, reducing mosquito-breeding sites, use of insect repellants, and reducing outdoor exposure.



Reporting Dead Birds. While most survive, birds infected with West Nile virus can become ill or die. Dead birds in an area may mean that WNV is circulating between the birds and the mosquitoes in that area. At least 220 bird species that reside in North America have become infected with West Nile virus. However, blue jays, crows, falcons, and hawks are highly sensitive to the virus, and therefore, are the best indicators of West Nile virus activity in a community.

Warning:
Dead wild birds should not be handled with bare hands.

If you find a dead blue jay, crow, falcon, or hawk, please call your [local health department](#) and ask them if they would like to pick it up and send it to the State Laboratory. Local agencies have different policies for collecting and testing birds. Many health departments will not start collecting sick or dead birds until the peak of the mosquito-breeding season. Once West Nile virus is detected in a county, further testing of dead birds is usually not necessary.

HEALTHY WETLANDS

Wetlands play an essential role in maintaining a well-functioning environment. Wetlands filter and clean water, reduce flooding, control erosion, and provide sites for recreational activities such as canoeing, fishing, and bird watching. Before European settlement, Indiana's wetlands covered approximately 25% of the state. As settlers moved west, wetlands were drained for timber, farming, and commercial and industrial development thus eliminating approximately 87% of the state's original wetlands.

Wetland-dependent wildlife species have been severely impacted by this significant reduction in the amount and quality of wetland habitat. Wetlands are among the most biologically productive habitats in the world. Wetlands warm quickly in the spring and produce abundant quantities of food for amphibians, reptiles, shorebirds, migrating birds, and waterfowl. Even small sites, much less than an acre, can produce hundreds of frogs, toads, and salamanders. Wetlands also provide critical links to other habitat types and wildlife populations.

Mosquitoes and other aquatic invertebrates are an integrated part of the wetland ecosystem providing a food source for many invertebrates, birds, bats, amphibians, and fish species. They also are crucial in the pollination of some rare species of plants, such as orchids.

Culex pipiens rarely breeds in healthy wetlands, which do not support prolific mosquito breeding because of the presence of predators, including many mosquito-eating predators.

Insects, wildlife, and fish that eat immature mosquitoes (larvae) in the water, or eat flying adults, are often present in wetlands. Frogs, salamanders, and many aquatic insects such as backswimmers, damselflies, water striders, dragonflies, and dragonfly larvae feed on mosquitoes. Wetland wildlife including birds (e.g. swallows and ducklings) and little brown bats also consume numerous mosquitoes.

These natural predators make wetlands less than ideal mosquito breeding sites. The two-acre Edmond Avenue wetland restoration project near Portsmouth, New Hampshire, for example, demonstrated a near 100% reduction in mosquito habitat and the virtual elimination of *Culex* species.

DEGRADED AND ALTERED WETLANDS

Sometimes mosquito control programs recommend that wetlands be drained in order to control mosquitoes. While it is true that mosquitoes require standing water to breed, they also have a very short life cycle (from 4 days to a month), and the eggs can remain dormant for more than a year. Therefore, even after a wetland has been drained, it may still hold enough water after a rain to breed mosquitoes.



Damaged or degraded wetlands can provide ideal habitat for some mosquito species that carry West Nile virus. Excess nutrients in contaminated waters can spur microbial growth and cause harmful algal blooms, which feed mosquito larvae. Filling or draining wetlands may also increase mosquito outbreaks, as an altered landscape with stagnant pools of water may no longer contain mosquito predators. Note that most wetlands are considered "Waters of the United States" and are protected by the Clean Water Act. As such, any drainage or filling action may require a federal and/or state permit.

A drained area may actually produce more mosquitoes than it did when it was a wetland because it can no longer support natural mosquito predators.

Research from South Dakota State University found that there were many more mosquitoes in degraded wetlands than in higher quality wetlands. Storm water runoff and incompatible surrounding land use practices adversely affect natural wetlands. This includes storm water runoff from urban and newly urbanized areas and sediment from both agriculture and construction activities. Therefore, maintaining the natural functions of wetlands (i.e., minimizing disturbance) is a good start to potentially reducing mosquito habitat.

MANAGEMENT CONSIDERATIONS

In situations where wetlands pose an unacceptable risk of exposure to mosquitoes, attempting to reduce the mosquito population in the wetland may be a consideration.

The following recommendations are intended to increase mosquito predators, and to reduce mosquito-breeding areas in wetlands:

- Design meandering channel connections between shallow and deeper waters to allow the flow of predators into and out of habitats where mosquitoes may breed.
- Design or manage wetlands to have at least some permanent or semi-permanent open water. More mosquito predators are found in open water areas. Mosquito larvae also tend to use emergent vegetation as protection from predators. Note, however, that the emergent fringe provides much of the wetland's wildlife value.
- Reduce nutrient-loading and sedimentation problems by installing perimeter fences to keep cattle or other livestock from entering the wetland.
- Reduce the number of isolated, stagnant, shallow (2-3 inches deep) areas. Mosquitoes tend to congregate in these types of pools.
- Construct a buffer between the adjacent land and the wetland to filter nutrients and sediments.
- Construct artificial homes for mosquito predators such as purple martins, swallows and bats, which feed on adult mosquitoes.

Water level management. Some studies seem to indicate that maintaining high water levels in early spring, followed by a drawdown in late spring, will reduce mosquito populations. This process will tend to dehydrate mosquito larvae. After drawdown, the water is allowed to return to pre-drawdown levels. This type of management, however, can adversely affect aquatic vegetation and wetland-associated wildlife.

Larvicides. When surveillance indicates the presence of infected mosquitoes that pose a risk to health, chemical controls may be required if elimination or modification of breeding sites is not possible or is ineffective. [EPA-approved larvicides](#), that target mosquitoes during their aquatic stage, are viewed as the least damaging to non-target wildlife. These and other chemicals used by mosquito control agencies must be applied by qualified applicators and comply with state and federal requirements. An effective larviciding program must be part of an Integrated Pest Management program.

Ornamental ponds. In addition to the applicable recommendations above, consider the following suggestions to help reduce mosquito populations in ornamental ponds:

- Add a waterfall, or install an aerating pump, to keep water moving. Wave action or water movement on the pond surface is an important factor in reducing mosquito larvae. Note that natural ponds and most Indiana farm ponds have sufficient surface water movement to provide adequate aeration.
- Keep the surface of the water clear of free-floating vegetation and debris during the peak mosquito season, as some species of mosquitoes will tend to seek out surfaces on which to deposit eggs.
- Consider stocking fathead minnows, topminnows, or goldfish to reduce mosquito production. This type of biological control can be a viable control method where the use of pesticides is not preferred, particularly in artificial water bodies where concerns about the impact on non-target animals are lower.

Mosquito fish. Some county mosquito-control programs distribute mosquito fish (*Gambusia affinis*) as a means of mosquito control. While mosquito fish can be an effective control approach in artificial fishponds, they are not the control choice for wetlands. Of the Indiana wetlands that will support fish, most are already inhabited by insect-eating fish as effective as mosquito fish. Furthermore, studies indicate that mosquito fish will feed on naturally occurring mosquito predators including amphibians, reptiles and other beneficial organisms found in wetlands.

Bug Zappers. Studies indicate that the use of bug zappers around the home to control mosquitoes are ineffective. In fact, the probability of being bitten by mosquitoes increases in the vicinity of these traps. Many of the non-target insects killed by bug zappers are insect predators and parasites. An estimated 71 billion to 350 billion beneficial insects may be killed annually in the United States by these electrocuting devices. In addition, studies indicate that bug zappers pose an immediate threat because of the release of insect-borne bacteria and viruses. They also release insect particles that are potential allergens and/or cause various respiratory conditions such as asthma.

PREVENTION / ACTIONS

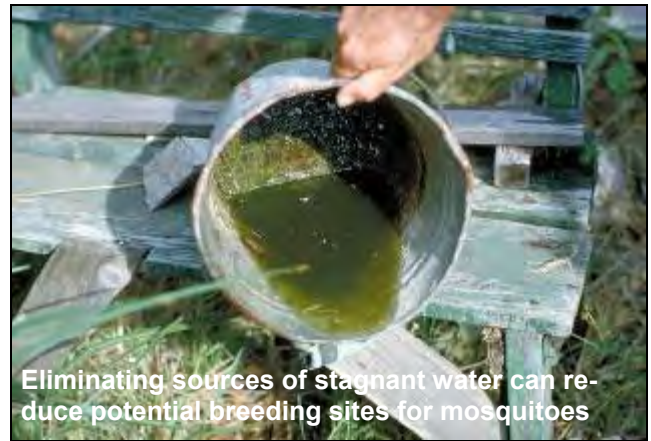
While natural wetlands do not support large populations of *Culex pipiens*, water that stands for more than a week near your home is sufficient to breed mosquitoes. Eliminating mosquito habitat in your backyard is the primary method for minimizing mosquito population booms.

Take the following steps to reduce mosquito-breeding opportunities around your home:

- Get rid of unused tires, or keep them under cover, so they do not collect water.

Tires create a nearly perfect breeding environment for mosquitoes because they hold water, absorb heat and offer protection from predators and chemical treatments.

- Eliminate or empty any artificial water-collecting containers such as unused buckets, water troughs, and wheelbarrows, etc., when not in use.
- Clean out house roof gutters.
- Clean bird baths and animal water bowls at least once a week.
- Empty plant pots or drip trays at least once a week.
- Clean and chlorinate outdoor swimming pools, saunas and hot tubs. If not in use, keep empty and covered.
- Check for standing water below air conditioner drain outlets and outdoor faucets.
- Drain and cover boats.
- Check for standing water especially after any rain, watering the lawn or garden, or after washing the car.
- Level the ground around your home so water can run off or be absorbed evenly and not collect in low spots.
- Fill or drain tire ruts.
- Check for soggy areas over septic absorption fields.
- Drain or cover old cisterns.
- Drain culverts and ditches containing stagnant water.



Take these actions to reduce your contact with mosquitoes:

- The CDC recommends using a mosquito repellent that contains DEET (N,N-diethyl-m-toluamide) or Picaridin (KBR 3023), following label directions. Of the active ingredients registered with the EPA, the CDC believes that these two have demonstrated a higher degree of efficacy and typically provide longer-lasting protection than others. For details on when and how to apply repellent, see [Insect Repellent Use and Safety](#) on the CDC West Nile virus Web site.
- Wear clothing that covers the skin such as long sleeve shirts and pants when out after dusk or in shaded areas during the daytime.
- Reduce outside activity during dawn and dusk when mosquitoes are actively feeding.
- Make sure that doors and windows have tight-fitting screens. Repair or replace all screens that have tears or holes.
- Use the proper type of light outside: incandescent lights attract mosquitoes, whereas fluorescent lights neither attract nor repel mosquitoes.
- Be aware that crowds or other “mass gatherings” give off large amounts of carbon dioxide, which can attract more mosquitoes from a greater distance.
- As you plan outdoor activities, remember that West Nile virus infections usually peak in late summer and early autumn, before mosquito numbers are reduced by hard freezes.
- Vitamin B and “ultrasonic” devices are NOT effective in preventing mosquito bites.

Prevention and control of West Nile virus is most effectively accomplished through Integrated Pest Management (IPM) programs. IPM, as the name implies, utilizes a variety of physical, chemical, mechanical, cultural, biological, and educational measures, singly or in appropriate combination, to exploit the mosquito's vulnerabilities and attain the desired level of control. These programs should include surveillance for West Nile virus activity in mosquito vectors, birds, horses, other animals, and humans, and implementation of appropriate mosquito control measures to reduce mosquito populations when necessary.

REFERENCES

IN Department of Natural Resources (IDNR)

Indiana Wetland Conservation Plan Fact Sheet:
[Did You Know?...Healthy Wetlands Devour Mosquitoes](#)

IN State Board of Animal Health (ISBAH)

[West Nile virus](#)

IN State Department of Health (ISDH)

[West Nile virus](#)

[Local Health Departments](#)

Purdue University

[West Nile virus](#)

[Mosquitoes in and Around the Home](#)

[Management of Ponds, Wetlands, & Other Water Reservoirs to Minimize Mosquitoes \(WQ-41-W\)](#)

U.S. Department of Agriculture (U.S.D.A.) Animal and Plant Health Inspection Service (APHIS)

Animal Disease Alert:

[West Nile Virus: Protecting Your Horses](#)

U.S.D.A Cooperative State Research, Education and Extension Service (CSREES)

National Pest Alert:

[West Nile virus](#)

U.S. Department of Health & Human Services - Centers for Disease Control and Prevention (CDC)

[West Nile virus Basics](#)

U.S. Environmental Protection Agency (EPA)

Pesticide Fact Sheet:

[The Insect Repellent DEET](#)

[West Nile virus Facts](#)

[Wetlands and West Nile Virus.](#)

U. S. Geological Survey (USGS)

National Biological Information Infrastructure:

[West Nile virus](#)

National Wildlife Health Center:

[West Nile virus](#)

Thanks to the following for their technical review:

Sandra K.L. Norman, DVM, Director, Companion Animal/Equine, Indiana State Board of Animal Health
 Robert R. Pinger, Director, Public Health Entomology Laboratory, Department of Physiology and Health Science, Ball State University
 Robert D. Waltz, Ph.D., State Chemist & Seed Commissioner, Purdue University
 Ralph E. Williams, Ph.D., D-ABFE, Department of Entomology, Purdue University

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ADDITIONAL REFERENCES USED IN THIS PUBLICATION

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www.stormwatercenter.net/Practice/100-Mosquitos%20in%20Constructed%20Wetlands.pdf
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EQUINOX

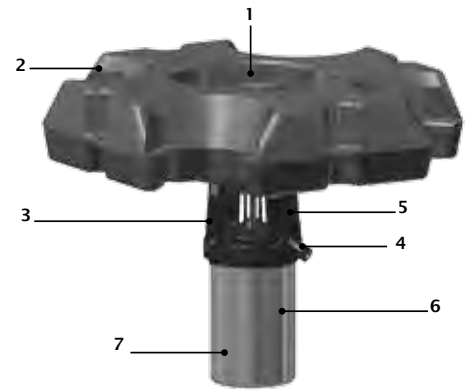
AERATING FOUNTAIN

- » Most energy efficient system in the industry.
- » 5 year all-inclusive warranty.
- » Operates in 30in or 75cm of water. (No additional depth needed when adding LED lights; additional 10in or 26cm required if adding high voltage lights.)
- » Complete package includes assembled unit, power control center, and cable. (No PCC for 50HZ.)
- » Power control center comes standard with surge arrestor, timer and GFCI (Exc: optional EPD for 460V.)
- » Cable quick disconnect standard.
- » Safety tested and listed with ETL & ETL-C, conforming to UL standards; and carries a 3rd party listing with CE.
- » Effectively controls algae, aquatic weeds, and foul odors; while deterring insects and insect breeding.
- » Published results from 3rd party testing verify highest oxygen transfer and pumping rates in the industry.

Product specifications and CADs can be found online through www.otterbine.com or www.caddetails.com.



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You'll Love Your Pattern*



PRODUCT ILLUSTRATION

1. High-tech thermal plastic pumping chambers are staged to allow for easy interchange.
2. Rugged low visibility closed cell foam filled float includes handles and protective pockets for lights when applicable.
3. Industrial strength thermal plastic screen helps keep debris out of the unit.
4. Electrical quick disconnect is part of the upper plate to prevent damage.
5. Mixed flow pumping system achieves maximum pumping capacities.
6. Oil cooled, efficient 3450/2875 RPM custom built motor incorporates a g-type seal to ensure dependability and long life.
7. Corrosion resistant, durable 18 gauge/316 grade stainless steel motor housing.

60 HZ	1 HP	2 HP	3 HP	5 HP
Spray Height (ft)	10	13	15	20
Spray Diam. (ft)	35	40	58	72
GPM	150	210	275	400
Volt/Ph/Amp 3450@60hz	115/1/15 230/1/7.5	230/1/11.4	230/1/12	230/1/20

Packet Pg. 128

Manufactured by: Otterbine® Barebo, Inc. | 3840 Main Road East | Emmaus, PA 18049 U.S.A | PH: 610-965-6018

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

STORMWATER POND MANAGEMENT, INC*COMPLETE POND MAINTENANCE SERVICES*

560 South End Road Knotts Island, NC 27950

Johnny Barnes (757) 615-6701

Richard Williams (757) 641-2455

Fax number (252)429-3455

Email: SPM560@cox.net

“WORKING WITH COMMUNITIES FOR A CLEANER AND HEALTHIER ENVIRONMENT”

Currituck Sound KOA
1631 Waterlily Road
Coinjock, NC 27923

09/10/20

Attn: Robin Helfant

Fountain and Light Installation

Scope of Work:

- Supply all necessary equipment, material and labor to complete “Scope of Work”
- Contractor will supply Non Residential Electrical Permit issued by Currituck County.
- Install a new 3hp 1ph/230v Otterbine Fountain with the Equinox Pumping Chamber and 150’ of 6/3 SOOW Cord.
- A 4 Light RGBW Light Kit will be installed on the fountain float with 150’ of 12/5 SOOW Cord.
- Control panels will be installed on wooden, pressure treated pedestal and backboard.
- Power will be run to control panel by others.
- Fountain and control panel come with a manufacturer’s 5 year warranty
- Clean up job site upon completion.

Eleven Thousand Eight Hundred Ninety Seven Dollars and Zero Cents

\$11,897.00

Terms:

By signing this you are entering into a legally binding contract.

Payment Terms:

Payment of entire invoice amount is required within 30 days from invoice date or receipt of goods, whichever is later.

Warranty:

Stormwater Pond Management does hereby warrant that all labor and materials furnished and work performed in conjunction with the above referenced project are in accordance the “Scope of Work” and any authorized modifications and

STORMWATER POND MANAGEMENT, INC
COMPLETE POND MAINTENANCE SERVICES

will be free from defects due to defective materials or workmanship for a period of 1 year from the Date of Substantial Completion.

Plant material is guaranteed for a one (1) year period. Replacement of plants under the warranty plan will be done no later than one week before the one year deadline is up.

The guarantee is void under the following provisions:

- Any type of damage caused by acts of nature, including storms, hurricanes, tidal flooding, tornadoes or blizzards
- Any acts of vandalism
- Any type of damage caused by herbicides, pesticides or fertilizers not applied by Stormwater Pond Management Personnel
- Any type of damage caused by pollution or undesirable water quality including saltwater contamination.
- Any type of damage caused by floating debris
- Any type of damage caused by wildlife or water fowl to plants or planting area.

Stormwater Pond Management

BY: _____

Name: _____

Title: _____

Date: _____

*Outer Banks West KOA
Currituck Sound KOA*

BY: *Robin E. Helfant*

Name: *Robin E. Helfant*

Title: *General Manager*

Date: *2-9-2021*

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Robin Helfant

From: Chris Conner <cwc5450@gmail.com>
Sent: Thursday, February 18, 2021 9:11 AM
To: Robin Helfant
Subject: Trenching and Permit
Attachments: Permit and Trenching Proposal.pdf

Good Morning Robin,

Attached is the proposal for us to do the trench from the breaker panel to the fountain control panel pedestal. It also includes the \$105.00 for the permit fee.

Below is the material list for the power.

400'- 1" pvc conduit (bell end)
400'x3- black, red and white 6gauge thnn wire
400'- green 8 gauge thnn wire
2- 1" 90 degree elbows
2- 1" male terminal adapters
2- 1" conduit locknuts
2- 1" rigid insulating bushings

--

Chris Conner
Stormwater Pond Mgmt.
VA. Certificate # DIN0579
(757)641-3620

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560 South End Road Knotts Island, NC 27950

Johnny Barnes (757) 615-6701

Richard Williams (757) 641-2455

Fax number (252)429-3455

Email: SPM560@cox.net

“WORKING WITH COMMUNITIES FOR A CLEANER AND HEALTHIER ENVIRONMENT”

Currituck Sound KOA
1631 Waterlily Road
Coinjock, NC 27923

02/18/21

Attn: Robin Helfant

Trench and Permit Application

Scope of Work:

- Supply all necessary equipment, material and labor to complete “Scope of Work”
- Obtain Permit for the installation of new fountain.
- Trench from existing power source to proposed fountain control panel pedestal.
- Trench will be dug to a depth of 24”.
- Assist in installing wire and conduit in trench.
- Fill in trench leaving several areas open for inspection.
- Areas left open will be covered upon completion of trench inspection.
- Clean up job site upon completion.

One Thousand Three Hundred Dollars and Zero Cents

\$1,300.00

Terms:

By signing this you are entering into a legally binding contract.

Payment Terms:

Payment of entire invoice amount is required within 30 days from invoice date or receipt of goods, whichever is later.

Warranty:

Stormwater Pond Management does hereby warrant that all labor and materials furnished and work performed in conjunction with the above referenced project are in accordance the “Scope of Work” and any authorized modifications and will be free from defects due to defective materials or workmanship for a period of 1 year from the Date of Substantial Completion.

STORMWATER POND MANAGEMENT, INC
COMPLETE POND MAINTENANCE SERVICES

Plant material is guaranteed for a one (1) year period. Replacement of plants under the warranty plan will be done no later than one week before the one year deadline is up.

The guarantee is void under the following provisions:

- Any type of damage caused by acts of nature, including storms, hurricanes, tidal flooding, tornadoes or blizzards
- Any acts of vandalism
- Any type of damage caused by herbicides, pesticides or fertilizers not applied by Stormwater Pond Management Personnel
- Any type of damage caused by pollution or undesirable water quality including saltwater contamination.
- Any type of damage caused by floating debris
- Any type of damage caused by wildlife or water fowl to plants or planting area.

Stormwater Pond Management

BY: _____

Name: _____

Title: _____

Date: _____

Currituck Sound KOA

BY: _____

Name: _____

Title: _____

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“WORKING WITH COMMUNITIES FOR A CLEANER AND HEALTHIER ENVIRONMENT”

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

THE FACE OF THIS CHECK IS PRINTED BLUE - THE BACK CONTAINS A SIMULATED WATERMARK

Parker Poe Adams & Bernstein LLP
The Legacy Center
620 South Tryon Street, Suite 800
Charlotte, NC 28202

WELLS FARGO BANK, NA -
(7682) CHARLOTTE
66-21/530

CHECK NO: **489690**

CHECK DATE
10/19/2021

PAY Two Hundred and 00/100 Dollar(s)

VOID AFTER 90 DAYS
\$*******200.00**
Amount

TO THE
ORDER OF:

CURRITUCK COUNTY, NORTH CAROLINA
153 COURTHOUSE ROAD
SUITE 110
CURRITUCK, NC 27929



Authorized Signature

⑈489690⑈ ⑆053000219⑆ 2000009087682⑈

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Exhibit 2

From: [Donna Voliva](#)
To: [Weber, Steven D.](#)
Cc: [Kevin Kemp](#); [Laurie LoCicero](#)
Subject: RE: [EXTERNAL] Outer Banks West KOA Minor Site Plan Application
Date: Tuesday, November 16, 2021 1:37:25 PM

*****Caution: External email*****

Steven,

The county staff reviewed the minor site plan application for the fountain in the existing pond. At this time a permit cannot be issued because:

1. The site contains alleged violations that have not been corrected (on-frame modular units/cabins and work without permits). In accordance with Section 9.6.1. of the UDO, "The Director may deny or withhold authorization to use or develop any land, structure, or improvements until an alleged violation and associated civil penalty related to such land, use, or development is corrected."; and,
2. The proposed improvement is not consistent with the Letter of Determination issued by Laurie LoCicero dated January 7, 2019 and affirmed by the NC Court of Appeals.

I will return the application package to you as soon as possible. Please let me know if you have any questions or would like to discuss this in more detail.

Donna Voliva, CZO

Assistant Planning Director
Currituck County Department of Planning and Community Development

From: Weber, Steven D. <steveweber@parkerpoe.com>
Sent: Wednesday, November 10, 2021 4:21 PM
To: Donna Voliva <Donna.Voliva@CurrituckCountyNC.gov>
Subject: [EXTERNAL] Outer Banks West KOA Minor Site Plan Application

[CAUTION]: This email originated from outside of Currituck County's system. Do not click links or open attachments unless you verify that the attachment and contents are safe. Please report any suspicious emails or attachments to [support](#).

Good afternoon Donna. I wanted to check on the status of the minor site plan application we submitted on October 19. Do you have any sense of when the County will complete its review?
Thanks.

Steve

Steve Weber
 Partner

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)



620 South Tryon Street | Suite 800 | Charlotte, NC 28202
 Office: 704.335.9065 | Fax: 704.335.9748 | [vcard](#) | [map](#)

Visit our website at
www.parkerpoe.com

From: Donna Voliva <Donna.Voliva@CurrituckCountyNC.gov>
Sent: Thursday, October 21, 2021 7:51 AM
To: Weber, Steven D. <steveweber@parkerpoe.com>
Subject: RE: [EXTERNAL] Outer Banks West KOA Minor Site Plan Application

*****Caution: External email*****

Mr. Weber,

I received the minor site plan application for Outer Banks West KOA by email and hard copies by mail. We will review the documents and get back with you.

Thank you,

Donna Voliva, CZO
 Assistant Planning Director
 Currituck County Department of Planning and Community Development

From: Weber, Steven D. <steveweber@parkerpoe.com>
Sent: Tuesday, October 19, 2021 7:35 PM
To: Donna Voliva <Donna.Voliva@CurrituckCountyNC.gov>
Subject: [EXTERNAL] Outer Banks West KOA Minor Site Plan Application

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Dear Ms. Voliva:

Please find enclosed a Minor Site Plan application for the installation of an aerator fountain and associated electrical service in the fire suppression pond at the Outer Banks West KOA campground. Please let me know if you have questions or need additional information. Thank you.

Steve Weber

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Steve Weber

Partner



620 South Tryon Street | Suite 800 | Charlotte, NC 28202
Office: 704.335.9065 | Fax: 704.335.9748 | [vcard](#) | [map](#)

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Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Exhibit 3

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)



COUNTY OF CURRITUCK

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

January 7, 2019

LETTER OF DETERMINATION

85' and Sunny, LLC
c/o Mr. Thomas H. Johnson, Jr.
Williams Mullen
301 Fayetteville St.
Suite 1700
Raleigh, NC 27601
PO Box 1000
Raleigh, NC 27602

RE: Application for Interpretation; 85' and Sunny, LLC;
Hampton Lodge Campground; 1631 Waterlily Road, Coinjock, NC 27923

Dear Mr. Johnson:

This Letter of Determination is in response to your August 30, 2018 Application for Interpretation requesting on behalf of 85' and Sunny, LLC, (the "Applicant"), a determination of (1) the number of campsites that existed at Hampton Lodge Campground ("Hampton Lodge") on January 1, 2013, and (2) whether modifications to Hampton Lodge shown on the applicant's site plan are permitted. The Application for Interpretation also references a site plan submitted by Quible and Associates on behalf of the Applicant that shows 314 campsites for recreational vehicles and 78 campsites for tents.

The Unified Development Ordinance ("the UDO") that went into effect January 1, 2013 removed private or recreational campgrounds as an allowed use in the Single Family Mainland ("SFM") Zoning District. When the 2013 UDO was enacted, the use of Hampton Lodge as a campground became a non-conforming use. Prior to the current UDO, private or recreational campgrounds were allowed in the Recreational Residential Zoning District with a special or conditional use permit. The 2013 UDO changed the nomenclature of several zoning districts, but essentially the Recreational Residential Zoning District became the Single Family Mainland Zoning District.

Attachment: Attachment_1_Hampton Lodge LOD January 7, 2019 (BOA 19-02 Hampton Lodge Campground)
Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Once private or recreational campgrounds were removed as an allowed use and became completely non-conforming, *Chapter 8 Nonconformities* became the guide for regulating existing campgrounds. The purpose and intent of *Chapter 8 Nonconformities* of the 2013 UDO "is to *regulate and limit the continued existence of those uses, structures, lots of record, signs and site features that do not conform to the provisions of this Ordinance of and subsequent amendments.*" (See UDO §8.1.1) Once uses are established as nonconforming, they are "generally incompatible with the permitted uses in the district in which they are located" (See UDO § 8.2.1). Furthermore, a nonconforming use shall not be enlarged, expanded in area or intensified, be extended to additional structures or land outside the original structure and open air uses shall not be extended to occupy more land area than that in use when the open air use became nonconforming. (See UDO §8.2.3) There is an expectation that nonconformities will eventually become compliant with land use regulations over time due to natural decline; that they will either convert to a permitted use or cease to exist.

To determine the number of campsites existing at Hampton Lodge on January 1, 2013, I have reviewed permits and approvals issued to Hampton Lodge since 1967. The reviewed permits and approvals include those issued by Albemarle Regional Health Services and Currituck County. Albemarle Regional Health Services reviews and issues septic permits and is not a department of Currituck County government. Albemarle Regional Health Services permits do not grant zoning approval nor do they establish vested rights to develop property. I have also reviewed the 1971, 1975, 1982 Zoning Ordinances for Currituck County; the 1989, 1992, 2007 and 2013 UDO's for Currituck County; official Currituck County Zoning Maps; and minutes from the Currituck County Board of Adjustment, Currituck County Board of Commissioners and Currituck County Planning Board relevant to Hampton Lodge.

Prior to the effective date of zoning for Hampton Lodge the following permits were issued to Hampton Lodge:

- May 2, 1967: Septic permit application (#551) for bath house
- June 29, 1967: Septic permit application (#562) for a trailer
- August 29, 1969: Septic permit application (#744) for 6 camper spaces (spaces 1-6)

On October 7, 1971, county-wide zoning was adopted that included the Hampton Lodge property. Under the 1971 Zoning Ordinance and Official Zoning Map, campgrounds were permitted in the Recreational Residential (RR) Zoning District with the following requirements:

- A preliminary plat submitted to the Planning Board with each camp application for tent sites and camping trailers
- Minimum 6 acres of land
- 3,000 square feet for each tent and camping trailer space
- 200' setback for buildings, tent spaces or trailer spaces from any property line maintained as a natural buffer

- Maximum 400' distance for drinking water, toilet facilities
- Maximum 1500' distance to washhouses; does not apply where community water and sewer connections are provided
- Campgrounds allowed in Flood Plain district with a conditional use permit with the same regulations as above

Hampton Lodge was zoned RR under the 1971 Zoning Map. No documentation was found showing that Hampton Lodge submitted an application or received approval of a preliminary plat for the tent sites and camping trailers at Hampton Lodge.

Minutes from the March 20, 1973 meeting of the Currituck County Board of Commissioners show that the Board of Commissioners discussed a request by Action Development, Inc. for a "sub-division plat" for Hampton Lodge. Based on unrecorded draft plats found in the county's archives, it appears that Action Development, Inc. was seeking to create a camper subdivision that required installation of certain infrastructure. At the March 20, 1973 Board of Commissioners' meeting, the board determined that the camper subdivision plat would not be approved until posting of a required bond and compliance with all other requirements and procedures of the Currituck County Subdivision and Zoning Ordinances. Action Development, Inc. did not complete the process required for approval of a camper subdivision and no further action was taken on the Action Development, Inc. camper subdivision application.

For the time period governed by the 1971 Currituck County Zoning Ordinance and Official Map, documents show health department issuance of the following septic permits:

- April 26, 1972: Septic permit application (#1436) for 6 camper spaces (spaces 1-6)
- July 9, 1972: Septic permit application (#1220) 6 camper spaces (spaces 1-6)
- July 11, 1972: Septic permit application (#1551) for 6 camper spaces (spaces 1-6)
Septic permit application (#1552) for 6 camper spaces (spaces 1-6)
- August 14, 1972: Septic permit application (#1598) for 6 camper spaces (spaces 97-102)
Septic permit application (#1599) for 6 camper spaces (spaces 103-108)
Septic permit application (#1600) for 6 camper spaces (spaces 109-114)
Septic permit application (#1601) for 6 camper spaces (spaces 115-120)
Septic permit application (#1602) for 4 camper spaces (spaces 121-124)

Attachment: Attachment_1_Hampton Lodge LOD January 7, 2019 (BOA 19-02 Hampton Lodge Campground)
Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

- May 7, 1973: Septic permit application (#1831) for 4 camper spaces (spaces 1-4)

With an effective date of January 1, 1975, the Currituck County Board of Commissioners enacted the 1975 Zoning Ordinance and Official Zoning Map. Under the 1975 Zoning Ordinance, camping was a permitted use of property only in recreation campgrounds located in the Recreational Residential (RR) Zoning District with a conditional use permit. The 1975 Zoning Ordinance required the following conditions for issuance of a conditional use permit allowing camping as a use in the RR Zoning District:

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

On October 29, 1975 a conditional use permit was issued for Hampton Lodge in a Currituck County Board of Adjustment case (BOA 75-8). The Board of Adjustment case was instituted as an appeal of the Currituck County Code Enforcement Officer's determination prohibiting the upgrade of twelve waterfront camp sites. The minutes from the October 29, 1975 Board of Adjustment meeting record that the applicant wanted "to upgrade the twelve waterfront lots by addition of septic tank systems to provide sewage disposal for those sites" at Hampton Lodge. The Board of Adjustment made the following Findings of Fact:

- That Hampton Lodge Campground is a recreational campground;
- That twelve existing campsites are to be upgraded by the addition of sewage disposal;
- That no plat of the sites exist but they do and will conform to the ordinance requirements;
- That the Health Department indicate the land is suitable for septic tanks;
- That property value will be improved by the addition.

A condition of the Board of Adjustment's decision required submission of a plat for the twelve camp sites to the Currituck County Code Enforcement Officer and the twelve sites must be in conformity with the 1975 Zoning Ordinance. A copy of a site plan showing camper sites 23-35 with the additional sewage is included in the record of the case. Some of the camp sites shown on the plan do not appear to be a minimum of 3000 square feet required by the 1975 Zoning Ordinance. These lots could have predated the 1971 Zoning Ordinance. The site plan also recognized waterfront camper sites 23-101.

For the time period governed by the 1975 Zoning Ordinance and Official Zoning Map, documents show issuance of the following building and septic permits:

- September 29, 1978: Septic permit application (#3471) for a modular home
- March 30, 1981: Building permit (#4296) for electrical service to 14 campsites

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

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

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

- September 20, 1983: Building permit (#5625) rewire *existing* campsites
- March 5, 1984: Building permit (#0122) new 200 amp service and rewire for 18 *existing* campsites
- June 26, 1984: Building permit (#0362) new service at *existing* campsites rewire 26 *existing* campsites
- December 28, 1986: Building permit (#1981) electrical upgrade to 200 amp waterfront

With effective date of April 2, 1989, the Currituck County Board of Commissioners enacted a Unified Development Ordinance (UDO) and Official Zoning Map. A Residential Recreation (RR) Zoning District was designated in the UDO and described as "designed to provide for some existing campgrounds and camper subdivisions and is retained for the purposes of regulating these existing uses. It is not intended to be expanded." On May 18, 1992, the purpose for the RR Zoning District was amended to provide that the RR Zoning District was "not intended to be expanded except in cases where: a) an existing property containing an RR designation is split by zoning lines; b) the expansion only occurs within lot boundaries as such boundaries existed as of April 2, 1989; and, c) the campground/camper subdivision shall meet all criteria established in Article 14 (Conditional and Special Uses) in addition to not exceeding an overall maximum density of 4.5 unit (included campers and motel room) and beds (included group sleeping quarters) per acre." A use permit was required with the following conditions:

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

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

There is no evidence in county archives that Hampton Lodge applied for or received a use permit under the 1989 UDO. For the time period governed by the 1989 UDO there are records showing issuance of the following building permit:

- February 23, 1990: Building permit (#6630) 200 amp electrical service on A lots – camping

With an effective date of November 16, 1992, a revised Unified Development Ordinance, (the "1992 UDO"), was enacted by the Currituck County Board of Commissioners. The Residential Recreation (RR) Zoning District was a designated zoning district created for the purpose "to provide for some existing campgrounds and camper subdivisions and is retained for the purposes of regulating these existing uses. It is not intended to be expanded except in cases where: a) an existing property containing an RR designation is split by zoning lines; b) the expansion only occurs within lot boundaries as such boundaries existed as of April 2, 1989; and, c) the campground/camper subdivision shall meet all criteria established in Article 14 (Conditional and Special Uses) in addition to not exceeding an overall maximum density of 5.5 units (includes campers and motel rooms) and beds (includes group sleeping quarters) per acre." Private campgrounds were a permitted use in the RR Zoning District with a special use permit with the following conditions:

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

The 1992 UDO, as amended, was the in effect from November 16, 1992 to September 4, 2007.

On April 24, 1996 the Currituck County Board of Commissioners issued Hampton Lodge a conditional use permit for an outdoor concert special event. The Board of Commissioners action on the outdoor concert special event use permit was the first consideration of a land development request, other than building and septic permits for this property, since 1975. The conditional use permit applicant, John E. Pappas, included a site plan in support for the special event conditional use permit. That site plan illustrated 234 campsites. A zoning permit was also required for the special event and the plan associated with the zoning permit application illustrated 90 vehicular parking spaces for the event on a grassed area on the west side of the gravel road.

The following year, Hampton Lodge again applied for a special event conditional use permit for an outdoor bluegrass concert and craft show. In support of the

application, Hampton Lodge submitted a site plan illustrating 234 campsites. The Currituck County Board of Commissioners issued a special event conditional use permit to Hampton Lodge on March 26, 1997.

On January 28, 1998, the Board of Adjustment issued a decision on an appeal of an administrative decision regarding the property. The Code Enforcement Officer had determined numerous additions were made to campers in violation of Section 804(5) of the effective UDO; the property owner appealed that decision. In the record of the case, staff found a list of 32 campsites that obtained permits for screened in porches. Due to state record retention laws, only an index listing could be found of the *camper owner*, permit type and date issued. The actual permits are not available as the county was not required to keep the actual permit for that time interval. No property verification could be made regarding the location of the campers. The decision of the Board of Adjustment was to allow for the additions to remain that obtained building permits but those additions that did not obtain building permits were required to be removed.

For the time period governed by the 1992 UDO, as amended, the following septic permits were issued to Hampton Lodge:

- January 10, 1995: Septic repair permit (#3615I) for 4 camper spaces (spaces 13-16)
- Septic repair permit (#3614I) for 4 camper spaces (spaces 9-12)
- Septic repair permit (#3613I) for 4 camper spaces (spaces 5-8)
- Septic repair permit (#3612I) for 4 camper spaces (spaces 1-4)

With effective date of December 4, 2007, the Currituck County Board of Commissioners enacted the 2007 Unified Development Ordinance, (the "2007 UDO") and Official Zoning Map. The Residential Recreation (RR) Zoning District was a designated zoning district that was described as "not intended to be expanded except in cases where: a) an existing property containing an RR designation is split by zoning lines; and b) the expansion only occurs within lot boundaries as such boundaries existed as of April 2, 1989; and, c) the campground/camper subdivision shall meet all criteria established in Article 14 (Conditional and Special Uses) in addition to not exceeding an overall maximum density of 5.5 units (includes campers and motel rooms) and beds (includes group sleeping quarters) per acre." Private campgrounds were permitted in the RR Zoning District with a special use permit and with the following conditions:

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

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

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

With an effective date of January 1, 2013, the Currituck County Board of Commissioners enacted a new Unified Development Ordinance, (the "2013 UDO") and Official Zoning Map. Under the 2013 UDO, private campgrounds were removed as a permitted use and the Residential Recreation (RR) Zoning District was eliminated. All existing private campgrounds became non-conforming uses and subject to regulation under Chapter 8 of the 2013 UDO. As a private campground, Hampton Lodge is a legal non-conforming land use subject to the general and specific standards of Chapter 8 of the 2013 UDO. In addition to the standards provided under 2013 UDO §§8.2.1, 8.2.2, and 8.2.3 the nonconforming use at Hampton Lodge is further required to meet the standards contained in 2013 UDO §8.2.6 that provides:

Private campgrounds are not allowed as a principle use in Currituck County. All existing campgrounds and campground subdivisions are nonconforming uses subject to the following standards:

A. General Standards

- (1) Camping is an allowed use of land only in existing campgrounds and campground subdivisions.*
- (2) Campers may not be modified in any manner that would render the unit non-transportable.*
- (3) No tent or camper may be located on a campsite or campground subdivision for more than 90 days.*
- (4) Additions to campers are not permitted.*
- (5) Modification to existing campgrounds are permitted provided the changes do not increase the nonconformity with respect to number of campsites that existed on January 1, 2013.*

B. Existing Campgrounds

- (1) Existing campgrounds may not be expanded to cover additional land area or exceed the total number of campsites that existed January 1, 2013.*
- (2) Campers may not be placed on permanent foundation.*
- (3) Campsites may have a wooden platform not to exceed 100 square feet. Platforms must be 12 inches or less in height from existing grade. Handicap ramps are not subject to the maximum height requirement and square footage provided the ramp does not exceed five feet in width*

(4) Campgrounds shall not include permanent residences, excluding one dwelling unto to be occupied by the park caretaker or manager.

The application also cites *Stokes County v. Pack*, 91 N.C. App. 616, 372 S.E.2d 726 (1988) as law allowing full use of property comprising Hampton Lodge that, from time to time in the past, has been used in a variety of ways to support camping and recreation of campers. *Stokes* is distinguishable from the Hampton Lodge situation in that *Stokes* allowed for the completion of a nonconforming use but prohibited expansion of a nonconforming use. Hampton Lodge's position that because at times camping may have occurred on certain areas of the property it is entitled to as many campsites as it desires is tantamount to the expansion of a nonconforming use. The more applicable case is *Kirkpatrick v. Village of Pinehurst*, 138 N.C. App. 79, 530 S.E.2d 338 (2000), where the court precluded expansion of a campground beyond the acreage originally occupied and precluded renovations that would add more campsites to a nonconforming campground. The applicant is proposing a greater number of campsites than the County has on record and to add more amenities to the site, making it a more attractive destination and prolonging the life of a nonconforming use. *Malloy v. Zoning Board of Adjustment* 155 N.C. App. 628, 632, 573, S.E. 2d 760, 763 (2002) is also pertinent to this situation. The court upheld that a nonconforming welding and gas supply business could not replace an existing storage tank with a new, larger tank, in part, because it would allow additional and faster service to their customers. This is akin to having additional amenities for visitors at Hampton Lodge Campground.

Based on the forgoing, I conclude that in 1975, the county issued a conditional use permit for Hampton Lodge. In the record of the 1975 case, documentation was submitted that established 101 existing campsites. Other than building permits and septic permits, no other land use approvals were sought that required action by a Currituck County board. In 1996 and 1997 a conditional use permit was issued for a special event, an outdoor concert, to be held on the property. With the applications for the special event conditional use permits, site plans were submitted that illustrated 234 camp sites. None of the plans showed any designated tent campsites; just areas available for tent camping. Taking into account all of the county's records and documentation, and submittals by Hampton Lodge, it is my determination that 234 campsites have received some form of approval between 1971 and 1997 and 234 campsites existed on January 1, 2013.

Based on the foregoing, I make the following conclusion regarding the number of tent campsites at Hampton Lodge. Because the 2013 UDO does not define "campsite" I have, pursuant to 2013 UDO §10.1.12, reviewed *A Planner's Dictionary (2004)* published by the American Planning Association. This publication defines "campsite" as "any plot, parcel, tract or portion thereof, intended for the exclusive occupancy by a camping unit" and "camping unit" is defined as "any tent, trailer, lean-to, recreation vehicle or similar structure established or maintained and operated in a campground as temporary living quarters for recreation, education or vacation purposes." I cannot verify, and therefore do not conclude, that 78 tent campsites were established prior to January 1, 2013. County documentation and historic submissions by Hampton Lodge

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

only show an area where tent camping has been allowed. Tent campsites would need to be calculated based on the historical tent area divided by the minimum campsite size (3000 square feet) required by all zoning regulations before the 2013 UDO.

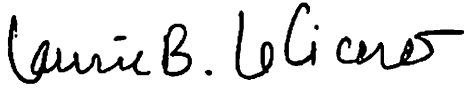
As to modifications proposed for Hampton Lodge and specifically illustrated on the site plan submitted with the Hampton Lodge application for this determination, I conclude the following: It is my determination that **some** of the modifications illustrated on the Applicant's proposed site plan are permitted. The 2013 UDO provides specific and general rules governing non-conforming uses and nonconforming campgrounds. 2013 UDO §8.2.6.A(5) provides that "modifications" can be made to existing campgrounds so long as the number of campsites do not increase. Because the 2013 UDO does not define "modification", I have, pursuant to 2013 UDO §10.1.12, reviewed the definition for the term "modification" from accepted sources. In its application for this determination, the Applicant suggests citation *Black's Law Dictionary* (10th ed. 2014) for the definition of "modification" as "[a] change to something; an alteration or amendment." I have also considered the Applicant's definition for "modification" found in *Merriam-Webster's (2018)* that defines "modification" as "the making of a limited change in something".

Applying these definitions, it is my determination that something needs to exist before a change, alteration or amendment can be made. Considering the fact that the county has not allowed the expansion of the Recreational Residential Zoning District in applicable years and in 2013 completely eliminated campgrounds as a permitted use in Currituck County, *only changes to existing buildings and structures are permitted*. Existing facilities are those facilities illustrated in plans submitted in 1996 and 1997 with the special events conditional use permit applications. Those facilities are restroom facilities, piers, docks, bulkheads, camp store, and other recreation facilities. The **new** facilities listed in the application for, such as the new bathroom facilities, swimming pool, pool house and the like, are not permitted. In the affidavits of Delores Myers and Jacqueline Myers, appended to the application, it was noted that construction of an inground swimming pool was started in the early 1970's, was never completed and was ultimately filled. Furthermore, the new bathroom facilities, swimming pool, pool house and other additional structures illustrated on the proposed site plan are not limited changes but are substantial and an impermissible expansion, enlargement and intensification of a nonconforming use.

If you or an aggrieved party believes this determination represents an error in the application of the 2013 UDO, an appeal may be filed with the Currituck County Board of Adjustment. The appeal must be filed with our office within 30 days of the date of this determination. A copy of the appeal application is available upon request or can be found on the Currituck County website <http://co.currituck.nc.us/wp-content/uploads/2017/12/appeal.pdf> .

Thomas H. Johnson
January 7, 2019
Page 11 of 11

Sincerely,



Laurie LoCicero, AICP
Planning and Community Development Director

Cc: Ike McRee, County Attorney
Donna Voliva, Planning and Community Development Assistant Director



Attachment: Attachment_1_Hampton Lodge LOD January 7, 2019 (BOA 19-02 Hampton Lodge Campground)

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)



Exhibit 4



COUNTY OF CURRITUCK
Planning and Community Development Department
Planning and Zoning Division
153 Courthouse Road, Suite 110
Currituck, North Carolina 27929
Telephone (252) 232-3055 / Fax (252) 232-3026

May 20, 2019

Thomas H. Johnson, Jr.
Williams Mullen
301 Fayetteville Street, Suite 1700
Raleigh, NC 27601

RE: BOA 19-02 Hampton Lodge Campground - Appeal

Dear Mr. Johnson:

Enclosed please find the Board of Adjustment Order for the Hampton Lodge Campground appeal heard on April 11th, 2019. This Order affirms the decision of the Letter of Determination dated January 7, 2018.

Sincerely,

Laurie B. LoCicero, AICP
Planning and Community Development Director

LBL/ce

cc: Ike McRee, County Attorney
Thomas Nash, Trimpi & Nash LLP
Lauren Arizaga-Womble, The Twiford Law Firm, P.C.

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

BOARD OF ADJUSTMENT
Case: BOA-19-02

IN RE:
HAMPTON LODGE CAMPGROUND

:
:
:
:
:

ORDER

THIS MATTER was heard before the Currituck County Board of Adjustment (the "Board") on April 11, 2019, after due notice as by law provided. At issue was the Appeal of a Letter of Determination dated January 7, 2019 ("LOD") on behalf of 85' and Sunny, LLC ("Sunny") for a non-conforming campground, Hampton Lodge. Present were D. Ike McRee, Jr., Attorney on behalf of the Currituck County Planning and Development Director, Laurie LoCicero ("County/Planning Director"), Thomas H. Johnson, Jr. and Lauren E. Fussell Attorneys on behalf of the Appellant, and Thomas P. Nash, IV, Attorney on behalf of the Waterlily Protection Association ("WPA").

Based on a review of the record proper and the evidence presented, the Board of Adjustment makes the following:

FINDINGS OF FACT

1. On August 30, 2018, the Applicant requested an interpretation from the County Planning Director presenting two issues: 1) the number of campsites that existed at Hampton Lodge on January 1, 2013, per Section 8.2.6.B.(1) of the Currituck County Unified Development Ordinance (the "2013 UDO"); and 2) Are the modifications shown on the Site Plan permitted under Section 8.2.6.A.(5) of the UDO?

2. On January 7, 2019, the Planning Director issued the LOD to the Appellant, the LOD and its findings of facts and conclusions of law being incorporated herein by reference,

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finding 234 campsites and an area permitted for tent camping existed on January 1, 2013. The Planning Director further determined modifications pursuant 2013 UDO §10.1.12 were permitted on existing facilities at Hampton Lodge, illustrated in site plans submitted to the County in 1996 and 1997.

3. On January 17, 2019, Sunny filed an appeal on 3 issues: 1) December 19, 2018, email notice from the Planning Director to CAMA regarding the Hampton Lodge CAMA submittal; 2) the LOD regarding modifications to Hampton Lodge; and 3) the LOD regarding number of campsites.

4. On February 27, 2019, WPA filed a motion to intervene in Sunny's appeal requesting to participate and be heard before the Board at the time of the hearing. On March 20, 2019, Sunny filed a response in opposition to WPA's motion to intervene.

5. WPA is an affected party as defined in 2013 UDO §10.5.

6. At the time this matter was called for hearing, the County and Sunny consented to WPA's participation in the proceedings pursuant 2013 UDO §2.3.8.C.(1) as an "affected party." Sunny preserved their objection as to WPA's standing as an aggrieved party with special damages in any subsequent proceedings.

7. Each witness appearing before the Board was duly sworn and subject to cross-examination.

8. The hearing was properly noticed and advertised in accordance with the requirements of the UDO and other applicable law.

9. Hampton Lodge has existed since at least May 1967.

10. From 1971, when county-wide zoning was adopted, until January 1, 2013, campgrounds were permitted uses in certain zoning districts in Currituck County.

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11. There is no evidence Hampton Lodge applied to become a conforming campground under the UDO from 1971 to January 1, 2013.

12. From the adoption of the 1971 UDO to the adoption of the of the 1975 UDO fifty-eight (58) septic permits were issued to Hampton Lodge for "spaces" numbered up to 124.

13. On March 20, 1973, the Currituck County Board of Commissioners discussed a request by Action Development, Inc. for approval of a sub-division plat for Hampton Lodge showing a proposed camper subdivision. The Board of Commissioners determined the plat would not be approved until a bond was posted and there was compliance with all other requirements and procedures of the Currituck County Subdivision and Zoning Ordinances. Action Development did not complete the required process and there was no further action.

14. On October 29, 1975, a conditional use permit was issued for Hampton Lodge by the Board in case number BOA 75-8. The permit was for the upgrade of twelve (12) waterfront camp sites by adding septic systems. A site plan submitted as condition of the issued permit recognizes waterfront camper sites 23-101.

15. From the adoption of the 1975 UDO to the adoption of the 1982 UDO, Hampton Lodge received one (1) septic permit for a modular home and one (1) building permit for electrical service to 14 campsites.

16. From the adoption of the 1982 UDO to the adoption of the 1989 UDO, Hampton Lodge received four (4) building permits to install electrical wiring for existing campsites.

17. From the adoption of the 1989 UDO to the adoption of the 1992 UDO, Hampton Lodge received one (1) building permit to install 200-amp electrical service on A lots – camping.

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18. From the adoption of the 1992 UDO to the adoption of the 2007 UDO, Hampton Lodge received two (2) special event conditional use permits and four (4) septic repair permits for existing spaces, 1-4, 5-8, 9-12, and 13-16.

19. In 1996 and 1997, Hampton Lodge applied for two special event permits at which time they submitted a site plan of the campground. The site plan shows 234 campsites, 90 vehicular parking spaces and an area for tent camping. The same site plan was submitted in 1996 and 1997.

20. The 96/97 site plan was used at Hampton Lodge to direct customers to campsite locations until the campground was sold to Sunny in 2018.

21. From the adoption of the 2007 UDO to the adoption of the 2013 UDO, there were no permits issued to Hampton Lodge by the County.

22. The 2013 UDO does not define the term "campsite". The Planning Director properly utilized the procedures set forth in 2013 UDO §10.1.12 when determining the definition of campsite.

23. The Planning Director applied the definitions for "campsite" and "camping unit" from a *A Planner's Dictionary* (2004). As defined in *A Planner's Dictionary*, a campsite is "any plot, parcel, tract or portion thereof, intended for the exclusive occupancy by a camping unit." The term camping unit is defined in *A Planner's Dictionary* as "any tent, trailer, lean-to, recreation vehicle or similar structures established or maintained and operated in a campground as temporary living quarters for recreation, education or vacation purposes."

24. The burden of proving a nonconformity lawfully exists and the extent thereof rests with the owner of the land upon which the alleged nonconformity is located.

25. The 96/97 site plan is the most competent evidence regarding the number of campsites that existed at Hampton Lodge on January 1, 2013.

26. The site plans submitted by Sunny demonstrate 392-700 “potential” campsites for Hampton Lodge, not existing campsites on January 1, 2013, as required by UDO 8.2.6.A.(5).

27. On January 1, 2013, there were 234 existing campsites and a designated area which was used for tent camping at Hampton Lodge.

28. The number of campsites within the tent camping area should be calculated based on the designated area for tent camping on a scaled version of the 96/97 site plan, divided by the minimum campsite size (3000 square feet) required by all zoning regulations prior to the 2013 UDO.

29. The 2013 UDO §8.1 and §8.2 govern non-conforming uses in general and non-conforming campgrounds in Currituck County.

30. Pursuant to statutory rules of construction and the rules for interpretation contained in 2013 UDO §10.1 on interpretation, 2013 UDO §§8.1 – 8.6 must be read together to understand and interpret the terms and provisions of the UDO.

31. The purpose and intent of 2013 UDO §8 is to regulate and limit the continued existence of non-conformities.

32. 2013 UDO § 8.2.6.A.(5) provides modifications to existing campgrounds may be made so long as the number of campsites is not increased.

33. The 2013 UDO does not define the term “modification.” The Planning Director properly utilized the procedures set forth in 2013 UDO §10.1.12 determining the definition of modification.

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34. The term “modification”, as defined by Black’s Law Dictionary (10th ed.2014) and Merriam Webster Dictionary (2018) as “a change to something; an alteration or amendment; making a limited change in something.”

35. The “something” must exist before a change, alteration or amendment can be performed. Only modifications to buildings and structures which existed at Hampton Lodge on January 1, 2013, are permitted.

36. Modifications to existing buildings and structures are permitted inasmuch as the changes do not extend to additional structures or to land outside the original structure.

37. Sunny’s proposal and site plan includes the addition of new facilities to Hampton Lodge, i.e. new bathroom facilities, swimming pool, pool house, piers etc.

38. The Planning Director’s letter of determination should be affirmed.

Based on the foregoing Findings of Fact, the Board of Adjustments makes the following

CONCLUSIONS OF LAW

1. Pursuant to 2013 UDO §2.3.8.C.(1) WPA is an affected party and should participate in the hearing before the Board.

2. Pursuant to 2013 UDO §10.1.12, the Planning Director has the authority to provide a definition for undefined terms within the ordinance.

3. Pursuant to 2013 UDO §§ 2.4.16(D)(3) and 10.1, 2013 UDO §8.2.6.A.(5) must be read in pari materia with the 2013 UDO, specifically 2013 UDO §8.

4. Modifications to existing buildings and structures are permitted inasmuch as the changes do not extend to additional structures or to land outside the original structure.

5. The new facilities proposed by Sunny qualify as an impermissible expansion, enlargement and intensification of a nonconforming use and are not permitted.

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6. The Board acknowledges that there are or may be numerous conclusions of law set forth in the section of this Order denominated "Findings of Fact," and the Board hereby ratifies and accepts any such conclusions of law contained in the same.

Based on the foregoing Findings of Fact and Conclusions of Law, it is, therefore, **ORDERED, ADJUDGED, and DECREED the Planning Director's January 7, 2018, Letter of Determination, is Affirmed.**

Entered in open session this 11th day of April 2019 and signed this 17th day of May 2019.



TROY BREATHWAITE, Chairman
Curtuck County Board of Adjustment

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APPENDIX


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CERTIFICATE OF FILING AND SERVICE

This is to certify that I have this day hand delivered the certified copy of the Record of Proceedings from Currituck County Board of Adjustment BOA 19-02 to the Currituck County Clerk of Superior Court and have served a copy of the foregoing certified copy of Record of Proceedings upon the parties by depositing a copy hereof, postage pre-paid, in the United States mail, properly addressed to the attorney for said parties as follows:

Thomas H. Johnson, Jr., Esq.
Williams Mullen
P.O. Box 1000
Raleigh, NC 27602

This the 19th day of August, 2019.


Donald I. McRee, Jr.

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Exhibit 5

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-422

No. COA20-648

Filed 17 August 2021

Currituck County, No. 19-CVS-239

85' AND SUNNY, LLC, Petitioner,

v.

CURRITUCK COUNTY, Respondent.

Appeal by Respondent and cross-appeal by Petitioner from order entered 2 March 2020 by Judge L. Lamont Wiggins in Currituck County Superior Court. Heard in the Court of Appeals 8 June 2021.

Williams Mullen, by Thomas H. Johnson, Jr., and Lauren E. Fussell, for Petitioner-Appellee/Cross-Appellant.

Currituck County Attorney Donald I. McRee, Jr., for Respondent-Appellant/Cross-Appellee.

COLLINS, Judge.

¶ 1

This case arises from improvements 85 Degrees and Sunny, LLC (“Petitioner”), seeks to make to a campground located in Currituck County, North Carolina. Both Currituck County (“Respondent”) and Petitioner appeal from the superior court’s order reversing the Currituck County Board of Adjustment’s (“Board”) (1) determination of the number of campsites that existed on Petitioner’s campground as of 1 January 2013, and (2) conclusion that Currituck County’s Unified

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Development Ordinance (“UDO”) permitted some, but not all, of Petitioner’s proposed improvements to the campground. We affirm in part and reverse in part the superior court’s order and remand to the superior court to essentially affirm the Board’s entire order.

I. Procedural History and Factual Background

¶ 2 The Hampton Lodge Campground (“Campground”) has existed since at least May 1967. At the time the Campground began operation, the County did not regulate the use of property by zoning regulations. Under the County’s initial 1971 zoning ordinance, campgrounds were a permitted use of property in certain districts, subject to certain requirements. There was no documentation that the Campground’s owners had complied with the 1971 ordinance’s requirements for approved campgrounds and the Campground operated as a nonconforming use. The Campground has continued as a nonconforming use under subsequent County zoning regulations adopted in 1975, 1982, 1989, 1992, 2007, and 2013.

¶ 3 Under the current UDO, adopted in 2013, the Campground continues to be a nonconforming use. The UDO provides that “[a] nonconforming use shall not be changed to any other nonconforming use[,]” UDO § 8.2.2., and generally “shall not be enlarged, expanded in area, or intensified[,]” UDO § 8.2.3.A. Additionally, section 8.2.6. of the UDO deems all existing private campgrounds as nonconforming uses, subject to certain standards, including in relevant part:

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*Opinion of the Court***A. General Standards**

- (1) Camping is an allowed use of land only in existing campgrounds and campground subdivisions.

. . . .

- (5) Modifications to existing campgrounds are permitted provided the changes do not increase the nonconformity with respect to [the] number of campsites that existed on January 1, 2013.

B. Existing Campgrounds

- (1) Existing campgrounds may not be expanded to cover additional land area or exceed the total number of campsites that existed on January 1, 2013.

UDO § 8.2.6.

¶ 4

Throughout the Campground's history, owners and developers have submitted documentation to county entities reflecting varying numbers of campsites in existence. A camper subdivision plat showing over 700 campsites was submitted in 1973, but never approved. A site plan submitted alongside an application for a conditional use permit for a concert in 1996 showed 234 campsites at the property, 90 vehicular parking spaces, and a tent camping area. A site plan submitted with a similar application in 1997 again showed 234 campsites and a tent camping area. Neither plan indicated the specific number of tent campsites within the tent camping area.

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¶ 5 Petitioner purchased the Campground in June 2018 and submitted a Major Site Plan (“Plan”) to Currituck County for review. The Plan showed 314 campsites for recreational vehicle, trailer, or camper use, and 78 campsites for tent camping. The Plan also proposed the following improvements:

- two new restroom and bathhouse facilities,
- a swimming pool and pool house,
- improvements to the on-site septic system,
- two dog park areas,
- playground improvements, and
- the demolition and replacement of an existing residence and barn for the caretaker/manager of the campground.

¶ 6 In its review of the Plan, the County determined that the number of campsites exceeded the number of campsites that existed on 1 January 2013, and the additional amenities shown on the Plan were not permitted under the UDO.¹

¶ 7 In August 2018, Petitioner filed an Application for Interpretation and supporting materials with the Currituck County Planning and Development Director (“Director”). Petitioner sought a determination of (1) the number of campsites existing on the Campground on 1 January 2013 and (2) whether the UDO allowed Petitioner’s proposed improvements to the property.

¶ 8 The Director issued a Letter of Determination (“Letter”) on 1 January 2013 wherein the Director determined “that 234 campsites have received some form of

¹ A copy of the County’s determination is not in the Record on Appeal but is referenced in Plaintiff’s Petition for Writ of Certiorari to the superior court.

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approval between 1971 and 1997 and 234 campsites existed on January 1, 2013.” The Director also determined that the number of “[t]ent campsites would need to be calculated based on the historical tent area divided by the minimum campsite size (3000 square feet) required by all zoning regulations before the 2013 UDO.” The Director could “[n]ot verify, and therefore [did] not conclude, that 78 tent campsites were established prior to January 1, 2013.”

¶ 9 Regarding Petitioner’s proposed improvements, the Director interpreted the term “modification” in section 8.2.6.A.(5) to require that “something needs to exist before a change, alteration, or amendment can be made[,]” and concluded as follows: “only changes to existing buildings and structures are permitted”; existing facilities—“restroom facilities, piers, docks, bulkheads, camp store, and other recreation facilities”—could be modified; “[t]he new facilities listed in the application . . . such as the new bathroom facilities, swimming pool, pool house and the like” “are not limited changes but are substantial and an impermissible expansion, enlargement and intensification of a nonconforming use” prohibited under section 8.2.3.A.

¶ 10 Petitioner appealed to the Board. At the hearing before the Board, the Director testified to the history of permits applied for and issued to the Campground, including the 1996 and 1997 conditional use permits. Petitioner tendered Warren Eadus, who was accepted as an expert witness in site plans. Eadus testified that there were 408 RV sites and 50 tent sites at the Campground. Paul O’Neal, who resided three miles

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south of the Campground for 50 years, testified that he was hired to perform maintenance on the campsites in 1980. O'Neal testified that in 1980, there were 175 to 200 campsites, and the Campground had not changed from that time. John Pappas, a previous owner of the Campground, testified that there were 252 utility hookups, that a previous music festival was held with close to 400 camping units in attendance, and stargazers had camped for 25 years in the wooded portion of the property.

¶ 11 Other previous owners averred that “[c]ampers have been free to utilize the entire premises for their campsite” and “[t]here has never been a limitation imposed on the number of the sites, the location of the sites, nor occupancy by vehicles of any kind, or tents, or simply sleeping bags and campfire sites.” Ann Slade, a co-manager of the Campground since 1998, averred that the entire Campground was used “as needed for tents, trailers and recreational vehicles.” Slade averred that in addition to the campsites with utility connections, campers would use campsites in both the forested and open field areas of the property. According to Slade, during music festivals in 1995 through 1997, approximately 400 campsites were used at the Campground. Similarly, James Baeurle, Petitioner’s current operator, testified to the Board that on many occasions, 400 to 500 people camped at the campground for one event.

¶ 12 After the hearing, the Board issued an order wherein it found, in part:

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27. On January 1, 2013, there were 234 existing campsites and a designated area which was used for tent camping at Hampton Lodge.

28. The number of campsites within the tent camping area should be calculated based on the designated area for tent camping on a scaled version of the 96/97 site plan, divided by the minimum campsite size (3000 square feet) required by all zoning regulations prior to the 2013 UDO.

....

36. Modifications to existing buildings and structures are permitted inasmuch as the changes do not extend to additional structures or to land outside the original structure.

37. Sunny's proposal and site plan includes the addition of new facilities to Hampton Lodge, i.e. new bathroom facilities, swimming pool, pool house, piers etc.

¶ 13

Upon its findings, the Board concluded, in relevant part:

3. Pursuant to 2013 UDO §§ 2.4.16(D)(3) and 10.1, 2013 UDO §8.2.6.A.(5) must be read in pari materia with the 2013 UDO, specifically 2013 UDO §8.

4. Modifications to existing buildings and structures are permitted inasmuch as the changes do not extend to additional structures or to land outside the original structure.

5. The new facilities proposed by Sunny qualify as an impermissible expansion, enlargement and intensification of a nonconforming use and are not permitted.

Based upon its findings of fact and conclusions of law, the Board affirmed the Director's Letter.

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¶ 14 Petitioner petitioned the superior court for a writ of certiorari to review the Board's decision. After reviewing the record on appeal, the Plan, the UDO, and the memoranda of the Parties, and hearing oral arguments on 27 January 2020, the superior court granted certiorari and reversed the Board. By written order, the superior court found in relevant part:

12. The . . . requested number of RV and tent campsites proposed in Petitioner's Major Site Plan are consistent with the number of campsites in existence on Hampton Lodge on January 1, 2013. Therefore, the Court hereby allows 314 RV sites and 78 tent sites on the Property and finds the number of proposed campsites does not exceed the number of campsites in existence on the property as of January 1, 2013, and does not increase or expand the intensity of the nonconforming use, as set forth in Section 8.2.6 of the UDO. Notably, the property has potential, excluding wetland acreage, to be developed differently, and more intensely, than as proposed by Petitioner on the Major Site Plan.

13. . . . [A]ll health and safety improvements to Hampton Lodge that are included on the Major Site Plan, specifically including, infrastructure improvements to update access roads and water and septic systems on the property, do not violate the provisions of the UDO governing nonconforming uses. The new bathhouses and expansions of existing bathhouses proposed in the Major Site Plan are permitted improvements to the Property pursuant to the provisions of the UDO. The Court finds the proposed health and safety improvements to Hampton Lodge do not increase or intensify the nonconforming use and are in keeping with the public policy of the State of North Carolina to allow improvements to nonconforming uses to enhance health and safety.

14. The Major Site Plan also proposes adding a porch

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to the existing footprint of the Camp Store located on the property. While the proposed porch addition is not within the footprint of the Camp Store in existence on January 1, 2013, the proposed addition is an appendage that will not increase the intensity or scope of the nonconforming use. Therefore, the proposed porch on the Camp Store is allowed.

15. The Major Site Plan proposes installing a pool on Hampton Lodge. The pool is not permitted within the provisions of the UDO and is not allowed.

¶ 15

The superior court concluded, in relevant part:

16. The . . . Board of Adjustment's decision was arbitrary and capricious [and] not supported by substantial, competent and material evidence in view of the entire record as set forth above.

17. The . . . Board of Adjustment committed an error of law in concluding that the new facilities proposed by Petitioner qualify as impermissible expansion, enlargement and intensification of a nonconforming use and are not permitted under the UDO, with the exception of the swimming pool.

The superior court thus

remanded with instructions for the Board of Adjustment to reverse the [Letter] and find that at least 314 campsites for RV, trailer, or camper use and 78 sites for ordinary tent camping as shown on the Major Site Plan existed as of January 1, 2013, and that the modifications shown on the Major Site Plan, except for the pool, are in compliance with the provisions of the UDO, should be allowed, and do not increase or expand the intensity of the nonconforming use.

¶ 16

Respondent appealed and Petitioner cross-appealed.

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*Opinion of the Court***II. Discussion**

¶ 17 On appeal, Respondent contends that the superior court erred by (1) failing to articulate the standard of review applied to each issue; (2) reversing the Board's decision as to the number of campsites existing at the Campground on 1 January 2013; and (3) reversing the Board's decision that certain modifications proposed in Petitioner's Plan were not permitted under the UDO. Petitioner contends that the superior court erred by affirming the Board's determination that the swimming pool was not allowed under the UDO.

A. Standard of Review

¶ 18 A different standard of review applies at each level of an appeal from a decision of an administrative official charged with enforcing a zoning or unified development ordinance. A "board of adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of the zoning or unified development ordinance" ² N.C. Gen. Stat. § 160A-388(b1) (2019); N.C. Gen. Stat. § 153A-345.1 (2019) ("The provisions of [N.C. Gen. Stat. §] 160A-388 are applicable to counties."). ³ In such an appeal, "the board of adjustment may reverse or affirm,

² The Director is the County's administrative official charged with enforcing the UDO, see UDO § 9.5.1., and is empowered to decide applications for interpretation of the UDO, see UDO § 2.4.16.

³ Effective 19 June 2020, the General Assembly consolidated the provisions governing planning and development regulations by local governments into a new Chapter 160D of the General Statutes. See An Act to Clarify, Consolidate, and Reorganize the Land-Use

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wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made.” N.C. Gen. Stat. § 160A-388(b1)(8). Additionally, “[t]he board shall have all the powers of the official who made the decision.” *Id.*

¶ 19 A party may seek superior court review of a board of adjustment’s decision by filing a petition for review in the nature of certiorari. N.C. Gen. Stat. § 160A-388(e2)(2) (2019).

(1) When reviewing the decision of a decision-making board under the provisions of this section, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body’s findings, inferences, conclusions, or decisions were:

- a. In violation of constitutional provisions, including those protecting procedural due process rights.
- b. In excess of the statutory authority conferred upon the city or the authority conferred upon the decision-making board by ordinance.
- c. Inconsistent with applicable procedures specified by statute or ordinance.
- d. Affected by other error of law.
- e. Unsupported by substantial competent evidence in view of the entire record.

Regulatory Laws of the State, S.L. 2019-111 § 2; An Act to Complete the Consolidation of Land-Use Provisions Into one Chapter of the General Statutes as Directed by S.L. 2019-111, as Recommended by the General Statutes Commission, S.L. 2020-25 § 51(b).

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f. Arbitrary or capricious.

N.C. Gen. Stat. § 160A-393(k) (2019).

¶ 20 “Generally, the petitioner’s asserted errors dictate the scope of judicial review.” *NCJS, LLC v. City of Charlotte*, 255 N.C. App. 72, 76, 803 S.E.2d 684, 688 (2017). “[I]f the petitioner contends the [b]oard’s decision was not supported by the evidence or was arbitrary and capricious, then the reviewing court must apply the whole record test.” *Id.* (quotation marks and citations omitted). In applying the whole record test, the “reviewing superior court sits in the posture of an appellate court and does not review the sufficiency of evidence presented to it but reviews that evidence presented” to the board. *Mann Media, Inc. v. Randolph Cnty. Plan. Bd.*, 356 N.C. 1, 12, 565 S.E.2d 9, 17 (2002) (quotation marks and citation omitted). The whole record test requires the superior court to “examine all competent evidence (the ‘whole record’) in order to determine whether the [board’s] decision is supported by substantial evidence.” *Id.* at 14, 565 S.E.2d at 17. “Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion[.]” *Sun Suites Holdings, L.L.C. v. Bd. of Aldermen of Garner*, 139 N.C. App. 269, 273, 533 S.E.2d 525, 528 (2000). “The ‘whole record’ test does not allow the reviewing court to replace the board’s judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it *de novo.*” *Mann Media*, 356 N.C. at 14, 565 S.E.2d at 17-18 (citation omitted).

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¶ 21 Where a party contends the board's decision was based on an error of law, *de novo* review is proper. *Id.* at 13, 565 S.E.2d at 17. Under *de novo* review, the superior court "consider[s] the matter anew[] and freely substitutes its own judgment for the agency's judgment." *Sutton v. N.C. Dep't of Labor*, 132 N.C. App. 387, 389, 511 S.E.2d 340, 341 (1999).

¶ 22 A superior court may apply both the whole record test and *de novo* review in a single case, "but the standards are to be applied separately to discrete issues." *Sun Suites*, 139 N.C. App. at 273-74, 533 S.E.2d at 528 (citations omitted). This Court reviews a superior court's order reviewing a board's decision to determine "whether the superior court applied the correct standard of review" and "whether the superior court correctly applied that standard." *Myers Park Homeowners Ass'n, Inc. v. City of Charlotte*, 229 N.C. App. 204, 208, 747 S.E.2d 338, 342 (2013) (quotation marks, brackets, and citation omitted).

B. Superior Court's Articulated Standards of Review

¶ 23 At the outset, Respondent argues that the superior court's order must be vacated for failure to articulate the standard of review it applied to each issue. We disagree.

¶ 24 When reviewing an order by a county board of adjustment, a superior court "must set forth sufficient information in its order to reveal the scope of review utilized and the application of that review." *Mann Media*, 356 N.C. at 13, 565 S.E.2d at 17

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(quotation marks and citations omitted). In this case, Petitioner alleged before the superior court that: the Board's decision to affirm the Letter was arbitrary and capricious; the Board's conclusion that only 234 campsites existed as of 1 January 2013 was arbitrary and capricious and was not supported by substantial, competent, and material evidence; the Board committed an error of law in concluding that Petitioner was permitted to modify existing facilities but not construct new facilities; and the Board's decision to affirm the Letter was an abuse of discretion.

¶ 25 The superior court's order specifically recites these allegations. The superior court's findings, along with its conclusion that "the Board of Adjustment's decision was arbitrary and capricious [and] not supported by substantial, competent and material evidence in view of the entire record as set forth above[,]" was sufficient information to reveal that the superior court applied the whole record test to Petitioner's arguments that the Board's decision to affirm the Letter was arbitrary and capricious and the Board's conclusion that only 234 campsites existed as of 1 January 2013 was arbitrary and capricious and was not supported by substantial, competent, and material evidence. Additionally, the superior court's order specifically articulated the *de novo* standard for Petitioner's argument that the Board committed an error of law in applying the UDO to the proposed improvements. It is evident that the superior court articulated the correct standard of review it applied to each issue.

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*Opinion of the Court***C. Determination of the Number of Campsites**

¶ 26 Respondent argues that the superior court failed to correctly apply the whole record test in its review of the Board's conclusion that, as of 1 January 2013, 234 improved campsites and a number of tent campsites—determined by dividing the delineated tent camping area by 3,000 square feet—existed at the Campground. Respondent contends that there was substantial evidence in the record to support the Board's conclusion.

¶ 27 The Board found, in relevant part, as follows:

19. In 1996 and 1997, Hampton Lodge applied for two special event permits at which time they submitted a site plan of the campground. The site plan shows 234 campsites, 90 vehicular parking spaces and an area for tent camping. The same site plan was submitted in 1996 and 1997.

20. The 96/97 site plan was used at Hampton Lodge to direct customers to campsite locations until the campground was sold to Sunny in 2018.

....

25. The 96/97 site plan is the most competent evidence regarding the number of campsites that existed at Hampton Lodge on January 1, 2013.

26. The site plans submitted by Sunny demonstrate 392-700 "potential" campsites for Hampton Lodge, not existing campsites on January 1, 2013, as required by UDO 8.2.6.A.(5).

27. On January 1, 2013, there were 234 existing campsites and a designated area which was used for tent camping at Hampton Lodge.

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28. The number of campsites within the tent camping area should be calculated based on the designated area for tent camping on a scaled version of the 96/97 site plan, divided by the minimum campsite size (3000 square feet) required by all zoning regulations prior to the 2013 UDO.

¶ 28 The Board's findings were supported by the 1996 and 1997 site plans. These site plans, submitted to county entities by previous owners of the campgrounds, each showed 234 campsites and a tent camping area. The Board found that these site plans were used until 2018 "to direct customers to campsite locations," a finding that is not specifically challenged by Petitioner and is therefore binding on appeal. *See Church v. Bemis Mfg. Co.*, 228 N.C. App. 23, 26, 743 S.E.2d 680, 682 (2013) ("Unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal."). The Director also testified that when she visited the Campground in June 2018, the tent area was marked with a single sign and corresponded to the tent area shown on the 1996 and 1997 site plans. Because a "reasonable mind might accept" this evidence "as adequate to support" the Board's determination of the number of campsites, the Board's determination was supported by substantial evidence. *See Sun Suites*, 139 N.C. App. at 273, 533 S.E.2d at 528.

¶ 29 Petitioner argues that evidence in the record suggested a greater number of campsites than found by the Board. This evidence, Petitioner contends, supports the superior court's findings that 314 campsites for RV, trailer, or camper use, and 78

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campsites for tent camping existed at the campground on 1 January 2013, and that “the property has potential, excluding wetland acreage, to be developed differently, and more intensely, than as proposed by Petitioner.” While the court must take into account “contradictory evidence or evidence from which conflicting inferences could be drawn[.]” “[t]he ‘whole record’ test does not allow the reviewing court to replace the Board’s judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo[.]” *Thompson v. Wake Cnty. Bd. of Educ.*, 292 N.C. 406, 410, 233 S.E.2d 538, 541 (1977) (citation omitted).

¶ 30 Here, the Board’s determination of the number of campsites was supported by substantial evidence. Although there was the evidence from which conflicting inferences could have been drawn, the superior court erred by replacing the Board’s judgment with its own, even if “the court could justifiably have reached a different result had the matter been before it de novo[.]” *Id.* The superior court thus incorrectly applied the whole-record test to the issue of the number of campsites at the Campground on 1 January 2013.

D. Proposed Improvements to the Campground

¶ 31 Respondent also contends that the superior court erred by reversing the Board’s conclusion that the UDO prohibited certain of the proposed improvements to the campground. Respondent argues that the Board correctly concluded that both

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the general standards regarding nonconforming uses and the specific provisions concerning nonconforming campgrounds apply to Petitioner's proposed improvements.

¶ 32 Petitioner, on the other hand, argues that the superior court correctly reversed the Board's conclusion that the UDO prohibited certain of the proposed improvements to the campground, but erred by affirming the Board's conclusion that the pool was not a permissible improvement. Petitioner argues that only the specific provisions concerning nonconforming campgrounds in Chapter 8 control, and that the Board committed an error of law by applying the general standards of the UDO concerning nonconforming uses. In Petitioner's view, all of its proposed improvements are permitted under the UDO because they do not expand the Campground's land area or add to the number of campsites that existed on 1 January 2013.

¶ 33 The resolution of this dispute turns on the proper construction of Chapter 8 of the UDO. Chapter 8 of the UDO regulates nonconforming uses. While nonconforming uses "are allowed to continue, and are encouraged to receive routine maintenance[,] UDO § 8.1.2., the "purpose and intent" of Chapter 8 "is to regulate and limit the continued existence" of nonconforming uses. UDO § 8.1.1. Nonconforming uses and structures "are not favored under the public policy of North Carolina, and zoning ordinances are construed against indefinite continuation of a non-conforming use." *Jirtle v. Bd. of Adjustment for the Town of Biscoe*, 175 N.C.

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App. 178, 181, 622 S.E.2d 713, 715 (2005) (quotation marks and citation omitted).

¶ 34 Section 8.2.3. provides general standards concerning the “[e]xpansion and [e]nlargement” of nonconforming uses:

A. Except in accordance with this subsection, a nonconforming use shall not be enlarged, expanded in area, or intensified.

B. An existing nonconforming use may be enlarged into any portion of the structure where it is located provided the area for proposed expansion was designed and intended for such use prior to the date the use became a nonconformity. In no instance shall a nonconforming use be extended to additional structures or to land outside the original structure.

C. Open air uses that are nonconformities, including but not limited to outdoor sales areas, parking lots, or storage yards, shall not be extended to occupy more land area than that in use when the open air use became nonconforming.

U.D.O. § 8.2.3.

¶ 35 Chapter 8 also contains specific provisions governing nonconforming campgrounds. “Existing campgrounds may not be expanded to cover additional land area or exceed the total number of campsites that existed on January 1, 2013.” UDO § 8.2.6.B.(1). “Modifications to existing campgrounds are permitted provided the changes do not increase the nonconformity with respect to the number of campsites that existed on January 1, 2013.” UDO § 8.2.6.A.(5).

¶ 36 Ordinary principles of statutory construction apply to local zoning ordinances such as the UDO. *See Westminster Homes, Inc. v. Town of Cary Zoning Bd. of*

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Adjustment, 354 N.C. 298, 303, 554 S.E.2d 634, 638 (2001). Generally, “when two statutes arguably address the same issue, one in specific terms and the other generally, the specific statute controls.” *High Rock Lake Partners, LLC v. N.C. Dep’t of Transp.*, 366 N.C. 315, 322, 735 S.E.2d 300, 305 (2012) (citations omitted). But our courts have also recognized that, where possible, general and specific provisions addressing the same subject “should be read together and harmonized[.]” *LexisNexis Risk Data Mgmt. v. N.C. Admin. Off. of Cts.*, 368 N.C. 180, 186, 775 S.E.2d 651, 655 (2015) (quotation marks and citations omitted).

¶ 37 Here, it is possible to construe the general provisions concerning nonconforming uses and the specific provisions concerning campgrounds harmoniously: Section 8.2.3. applies to all nonconforming uses, including nonconforming campgrounds, while section 8.2.6. imposes additional requirements on nonconforming campgrounds. Thus, modifications to a nonconforming campground may not result in it being “enlarged, expanded in area, or intensified[.]” UDO § 8.2.3.A., nor may modifications expand a campground beyond the land area or number of campsites existing as of 1 January 2013, UDO § 8.2.6.B.(1), or otherwise “increase the nonconformity with respect to the number of campsites that existed” on that date, UDO § 8.2.6.A.(5). This construction satisfies the “cardinal rule of statutory construction that significance and effect should . . . be accorded every part of the act, including every section, paragraph, sentence or clause, phrase, and word.”

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State v. Williams, 286 N.C. 422, 432, 212 S.E.2d 113, 120 (1975) (quotation marks and citation omitted).

¶ 38 Moreover, Petitioner’s interpretation of Chapter 8 is contrary to the principle that “[a] construction which operates to defeat or impair the object of the statute must be avoided if that can reasonably be done without violence to the legislative language.” *Burgess v. Your House of Raleigh, Inc.*, 326 N.C. 205, 215, 388 S.E.2d 134, 140 (1990) (quoting *State v. Hart*, 287 N.C. 76, 80, 213 S.E.2d 291, 295 (1975)). Petitioner’s interpretation would allow any and all improvements to a nonconforming campground so long as they do not enlarge the campground’s land area or number of campsites beyond that which existed on 1 January 2013 or otherwise change the campground to another nonconforming use under section 8.2.2. Under this interpretation, an owner could indefinitely extend the lifespan of a nonconforming campground by regularly upgrading the campground with new amenities. This would contradict the stated purposes of Chapter 8 to “regulate and *limit* the continued existence” of nonconforming uses, UDO § 8.1.1. (emphasis added), and promote the continued viability of a land use that the County has deemed “generally incompatible with the permitted uses in the district[,]” *see* UDO § 8.2.1. (defining nonconforming uses).

¶ 39 The Board’s determination that “[t]he new facilities proposed by [Petitioner] qualify as an impermissible expansion, enlargement and intensification of a

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nonconforming use and are not permitted” was in accordance with law, consistent with the purpose and intent of UDO Chapter 8 regulating and limiting the continued existence of nonconforming uses, and properly preserved the legislative body’s intent. The trial court did not err by affirming the Board’s conclusion that the pool was not a permissible proposed improvement. However, the trial court erred by reversing the Board’s conclusion that the remainder of the new facilities proposed by Petitioner are an impermissible expansion, enlargement, and intensification of a nonconforming use and are not permitted.

III. Conclusion

¶ 40 The superior court articulated the proper standard of review to apply to each issue on appeal.

¶ 41 The superior court incorrectly applied the whole record test to the Board’s determination of the number of campsites on Petitioner’s campground as of 1 January 2013 as the Board’s decision concerning the number of campsites on the Campground was supported by substantial, competent evidence in view of the entire record.

¶ 42 The superior court correctly applied *de novo* review and properly affirmed the Board’s conclusion that Petitioner’s proposed swimming pool is an impermissible expansion, enlargement, and intensification of a nonconforming use and is not permitted under the UDO. The superior court incorrectly applied *de novo* review and erred by reversing the Board’s conclusion that the remaining new facilities proposed

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by Petitioner are an impermissible expansion, enlargement, and intensification of a nonconforming use and are not permitted.

¶ 43

Accordingly, we affirm the portion of the superior court's order that affirms the Board's conclusion regarding the pool. We reverse the remainder of the superior court's order and remand this matter to the superior court to affirm the remainder of the Board's order. The net result is that the Board's order affirmed.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Chief Judge STROUD and Judge WOOD concur.

Exhibit 6

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)



COUNTY OF CURRITUCK

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

NOTICE OF VIOLATION

July 24, 2020

85 and Sunny, LLC
 c/o Mr. Todd Burbage, Managing Member
 9919 Stephen Decatur Highway
 Ocean City, MD 21842

Re: Outer Banks West KOA Campground/Hampton Lodge
 1631 Waterlily Road, PIN 007900000010000

Dear Property Owner and Manager:

In response to citizen complaints and county staff observations in May, June, and July 2020, it is determined after investigation that violation of the Currituck County Unified Development Ordinance, (the "UDO"), is occurring at the above-referenced property, (the "Property"). Specifically, you have located on the Property, in use as a non-conforming campground, sixteen on-frame modular dwelling units, or "cabins/cottages" as you have described them, set them on concrete blocks or forms and connected them to utilities.

Section 10.5 of the UDO defines "Campground" as:

any area, place, parcel, or tract of land on which two or more campsites are occupied or intended for occupancy or facilities established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of campsites and facilities is granted gratuitously or by rental fee, lease or conditional sale, or by covenants, restrictions and easements. Campground includes but not limited to, a travel camp, recreational camps, family campground, camping resort, recreational vehicles, park and camping community. **Campground does not include a summer camp, migrant labor camp or park for manufactured homes**, or a construction camp, or storage area for unoccupied camping units. [Emphasis added].

UDO §10.5 defines the following “camping units” for camping and use in a campground:

- Camper – A portable dwelling (as a special equipped trailer or automobile vehicle) for use during casual travel and camping.
- Recreational vehicle – a vehicle which is:
 - a. Built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection
 - c. Designed to be pulled by a light duty truck
 - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping travel or seasonal use;
 - e. Is fully licensed and ready for highway use.
- Travel trailer – A structure that is:
 - a. Intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle), and
 - b. Is for temporary use as sleeping quarters, but that does not satisfy one or more of definitional criteria of a manufactured home.

The on-frame modular dwelling units, or “cabins/cottages”, located at the Property do not meet the definitional criteria established in the UDO for “Camper”, “Recreational Vehicle” or “Travel Trailer”. At thirteen feet wide, the on-frame modular dwelling units, or “cabins/cottages”, are not intended for “casual travel and camping”, are not designed “to be pulled by a light duty truck” as shown by Exhibit B attached hereto, not “intended to be transported over the streets and highways”, not “fully licensed and ready for highway use”, and they satisfy one or more definitional criteria of a “Manufactured Home” as defined in UDO §10.5.

The on-frame modular dwelling units, or “cabins/cottages”, you have located on the Property more closely meet the UDO definition of “Manufactured Home” defined as:

A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

Because the on-frame modular dwelling units, or “cabin/cottages”, do not meet the UDO definitional criteria for “Camper”, “Recreational Vehicle” or “Travel Trailer” they are not permitted on the Property. Further, an on-frame modular dwelling unit may not be located in a campground as a campground may not be a “park for manufactured homes”.

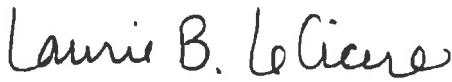
You have thirty (30) days from the date of this Notice of Violation to bring the cited violation into compliance by removing the existing nine on-frame modular dwelling units, or “cabins/cottages” as you describe them, from the Property. Remedies for failure to comply with this Notice of Violation shall include, but are not limited to, a civil penalty in the amount, and without further notice, of up to \$500.00 per day for the number of days

85 and Sunny
KOA OBX West
Page 3 of 3
July 24, 2020,

the cited violation continues, revocation of zoning and building permits, and injunctive relief in the appropriate court of law.

You may appeal this Notice of Violation to the Currituck County Board of Adjustment in accordance with Section 2.4.17 of the Currituck County Unified Development Ordinance. A copy of the required appeal application form may be obtained at the Currituck County Planning and Community Development office at 153 Courthouse Drive, Currituck, North Carolina 27929 or from the Clerk for the Board of Adjustment, Cheri Elliott, by calling (252) 232-3055.

Sincerely,



Laurie B. LoCicero
Planning & Community Development Director

Cc: Mr. Thomas H. Johnson, Jr. Williams Mullen
Mr. Ben Stikeleather, County Manager
Mr. Ike McRee, County Attorney
Planning File

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Exhibit 7

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

From: Laurie LoCicero <Laurie.LoCicero@CurrituckCountyNC.gov>
Sent: Thursday, July 25, 2019 2:47 PM
To: Conor Nally <conor.nally@lywsusa.com>; Warren Eadus <eadus@quible.com>; Mike Nally <mike.nally@lywsusa.com>
Cc: Donna Voliva <Donna.Voliva@CurrituckCountyNC.gov>; Bill News <Bill.News@CurrituckCountyNC.gov>; Ike McRee <Ike.Mcree@CurrituckCountyNC.gov>
Subject: RE: Hampton Lodge Park Models

Conor, Mike and Warren,
The County's building inspectors visited the park models at Hampton Lodge last week after our phone call for assessment. We have concerns that the park models stored on the site do not meet standards for campers or travel trailers.

Section 10.5 of the Currituck County Unified Development Ordinance defines a camper as "a portable dwelling (as a special equipped trailer or automobile vehicle) for use during casual travel and camping" and a travel trailer as "a structure that is: a. intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle), and b. is for temporary use as sleeping quarters, but that does not satisfy one or more of the definitional criteria of a manufactured home."

Upon inspection of the park models, it is apparent that they are not intended to be transported over the streets and highways nor can they be used for casual travel. NCGS 20-4.01 defines a travel trailer as "a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of a size and weight that does not require a special highway movement permit and designed to be towed by a motorized vehicle." NCGS 20-116 limits such vehicles to 102 inches. The park models are 13'9" wide, transported to the site on trucks, required the special highway movement permit and "wide load" designation. NCGS 20-124 requires brakes; these park models do not have brakes, nor do they have signals as required by NCGS 20-125.1.

We also believe the 100 amp electrical panel rather than a 30 or 50 amp electrical panel these park models are more like a manufactured home rather than a camper, RV or travel trailer.

Since the park models do not meet any of the cited criteria, they are not permitted by the County's UDO. You will need to remove them immediately. We would like to give you a chance to bring this issue into compliance without impacting the other work taking place on the property. Please contact us with a timeframe for removing the park models.

Thanks,
Laurie

Laurie B. LoCicero, AICP
Planning Director
Planning & Community Development
County of Currituck
Phone: 252-232-6028
Fax: 252-232-3026
www.currituckgovernment.com

From: Conor Nally [<mailto:conor.nally@lywsusa.com>]
Sent: Tuesday, July 23, 2019 2:31 PM
To: [Bill News](#)
Cc: Laurie LoCicero; Donna Voliva; Warren Eadus; Mike Nally
Subject: Re: Hampton Lodge Park Models

Bill,

The park models do allow for permanent 100 amp electrical connection. However, it is not a requirement to operate the park models. We connect them to the 30 or 50 amp hook ups just as another RV would on a site. There is no specific line item for a 30 or 50 amp cord on the sheets I sent you because the factory doesn't provide them. We buy the electrical hook ups required to connect the park models to the pedestals.

Lastly, we are in the process of obtaining the RVIA stickers and will update when we get those as well!

Thank you,
Conor Nally
Business Development Manager
302.841.8331 | conor.nally@lywsusa.com

On Tue, Jul 23, 2019 at 12:59 PM Bill News <Bill.News@currituckcountync.gov> wrote:

Connor,

One quick note, on the information you have provided it states permanent 100 amp electrical connection, there is a conduit drop for permanent feeders to be ran to inside panel box. There is no 30 or 50 amp cord that you typically see with a RV unit that connects to a pedestal. We also have not seen a RVIA certification label for these units just the label you have provided.

Just some things to consider, thanks.

Question 4:

Can a recreational vehicle not regulated by the State Electrical Code be hard wired by a permanent feeder or branch circuit to an electrical system that is regulated by the State Electrical Code?

Answer 4:

No.

If a recreational vehicle becomes a permanent structure and is no longer a vehicle, then the construction provisions of the permanent structure must be permitted, inspected, and comply with all the State Building Codes or be regulated by the NC Manufactured Building Division.

For the State Electrical Division to consider an apparatus a vehicle and not a permanent structure, the apparatus must maintain a standard of mobility. The State Electrical Division considers an apparatus as mobile when such apparatus can connect or disconnect from an external electrical supply system without engaging in the installation or alteration of any electric work, wiring, devices, appliances or equipment that is regulated by the State Electrical Code. Therefore, a vehicle that is not regulated by the State Electrical Code can only physically connect to an external electrical supply system that is regulated by the State Electrical Code by an accessible cord-and-plug.

LABELS

Labels – Acceptable Examples of Recreational Park Trailer (Park Model) Labels for Temporary Use



RVIA Park Model Label (oldest units)



RPTIA Park Model Label (older units)



RVIA Recreational Park Trailer Label (new units)

Labels – Required for Permanent Installations



NC Modular Construction Validating Stamp



HUD Manufactured Housing Label

Bill News
Chief Building Code Official
County of Currituck
Planning & Community Development
Phone(252)232-6023
Cell(252)202-5398
Email: bill.news@currituckcountync.gov
Website: www.currituckgovernment.com

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

From: Conor Nally [mailto:conor.nally@lywsusa.com]
Sent: Tuesday, July 23, 2019 11:20 AM
To: Laurie LoCicero; Donna Voliva; Bill Newns
Cc: Warren Eadus; Mike Nally
Subject: Hampton Lodge Park Models

All,

I've attached the RVIA numbers for the Hampton Lodge park models. Our team is currently working to get the registrations from NC DMV. Once we send out the documents to the DMV (which we should be ready to do by the end of this week) we should expect to get the registrations in 4-8 weeks depending on the DMV's backlog.

Thank you,
Conor Nally
Business Development Manager
302.841.8331 | conor.nally@lywsusa.com

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Exhibit 8

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

From: Laurie LoCicero <Laurie.LoCicero@CurrituckCountyNC.gov>

Sent: Tuesday, November 12, 2019 6:26 PM

To: tjohnson@williamsmullen.com; Warren Eadus <eadus@quible.com>

Cc: Ike McRee <Ike.Mcree@CurrituckCountyNC.gov>; Rachael Anderson <Rachael.Anderson@CurrituckCountyNC.gov>; Donna Voliva <Donna.Voliva@CurrituckCountyNC.gov>

Subject: FW: Park Model Research with NC DMV

Tom and Warren,

I have reached out to Conor and Mike Nally about the below issues with park models at Hampton Lodge but have not heard back from them. I do not know if they are still involved with Hampton Lodge. We are going to move forward with enforcement action on the park models. As a courtesy, I wanted to touch base with you both because it could impact other work at the site.

Let me know of any questions.

Thanks

Laurie

Laurie B. LoCicero, AICP
 Planning Director
 Planning & Community Development
 County of Currituck
 Phone: 252-232-6028
 Fax: 252-232-3026
www.currituckgovernment.com

From: Laurie LoCicero
Sent: Friday, November 01, 2019 3:42 PM
To: 'Mike Nally'; Conor Nally
Cc: Donna Voliva; Ike McRee
Subject: RE: Park Model Research with NC DMV

Conor and Mike,

Hope you all are doing well. I wanted to touch base with you about the status of the park models at Hampton Lodge.

Have you received titles from NCDMV that these park models are indeed vehicles and do not require any special highway movement permit?

The information you sent about park models is from NCGS 105-187.1. NCGS 105-187.1 addresses Highway Use tax and defines a park model RV as below:

§ 105-187.1. Definitions.

The following definitions and the definitions in G.S. 105-164.3 apply to this Article:

- (1) Commissioner. - The Commissioner of Motor Vehicles.
- (2) Division. - The Division of Motor Vehicles, Department of Transportation.
- (3) Long-term lease or rental. - A lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days.
- (3a) **Park model RV. - A vehicle that meets all of the following conditions:**
 - a. **Is designed and marketed as temporary living quarters for recreational, camping, travel, or seasonal use.**
 - b. **Is certified by the manufacturer as complying with ANSI A119.5.**
 - c. **Is built on a single chassis mounted on wheels with a gross trailer area not exceeding 400 square feet in the setup mode.**
- (4) **Recreational vehicle. - Defined in G.S. 20-4.01. The term also includes a park model RV.**
- (5) Rescue squad. - An organization that provides rescue services, emergency medical services, or both.

- (6) Retailer. - A retailer as defined in G.S. 105-164.3 who is engaged in the business of selling, leasing, or renting motor vehicles.
- (7) Short-term lease or rental. - A lease or rental that is not a long-term lease or rental. (1989, c. 692, s. 4.1; 1991, c. 79, s. 4; 2000-173, s. 10(a); 2001-424, s. 34.24(e); 2001-497, s. 2(b); 2002-72, s. 19(a); 2016-5, s. 3.19(a).)

NC General Statute 20-4.01 regarding the definition of **Recreational Vehicle** is below:

- (32b) **Recreational Vehicle.** - A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motive power or is mounted on, or towed by, another vehicle. The basic entities are camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper. This term shall not include a manufactured home as defined in G.S. 143-143.9(6). The basic entities are defined as follows:
 - a. Camping trailer. - A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.
 - b. Fifth-wheel trailer. - A vehicular unit mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use, of a size and weight that does not require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.
 - c. Motor home. - As defined in G.S. 20-4.01(27)k.
 - d. Travel trailer. - A vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require a special highway movement permit when towed by a motorized vehicle.
 - e. Truck camper. - A portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use, consisting of a roof, floor, and sides and is designed to be loaded onto and unloaded from the bed of a pickup truck.

Further NCGS 20-116 provides that “the total outside width of any **VEHICLE** or load thereon shall not exceed **102 inches**, except as otherwise provided in this section.” By this, to qualify as a recreational **VEHICLE**, the park models will still need to meet the **102 inches maximum width** and **NOT** need a special highway movement permit (an “oversize load” designation). The definition in NCGS 105-187.1 does not exempt park models from meeting the other standards for vehicles. Attached is a picture of the park models being transported to the campground with the Oversized load sign.

Park models do not meet the Currituck County Unified Development Ordinance standards for a camper or travel trailer and will not be allowed at Hampton Lodge Campground.

Please contact me at your earliest convenience to discuss the removal of the park models. I do not want this issue to interfere with the other work occurring at the property.

Thanks
Laurie

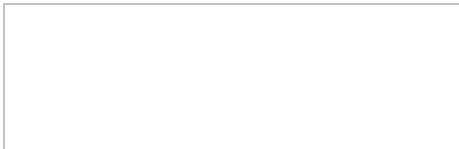
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Fax: 252-232-3026
www.currituckgovernment.com

From: Mike Nally [<mailto:mike.nally@lywsusa.com>]
Sent: Tuesday, August 27, 2019 12:49 PM
To: Laurie LoCicero
Subject: Park Model Research with NC DMV

Good Afternoon Laurie - we spoke with the North Carolina Department of Motor Vehicles and they confirmed our Park Models Recreational Vehicles do not require any special permits. They provided us the attached information for your reference.

Respectfully,
Mike

Mike Nally
Founder/CEO



302.841.7770 | mike.nally@lywsusa.com
Visit us on the web at LeadYourWaySolutions.com



Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)



Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Exhibit 9

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

OBX West KOA Park Model Vehicles

Site #	Vin #	Title #	Manufacturer	RVIA #
O7	1C9112937L1324663	773915200913100	CHAMPION HOME BUILDERS	RVIA-1032889
O8	1C9112935L1324600	773932200912100	CHAMPION HOME BUILDERS	RVIA-1032784
O9	1C9112932L1324635	773931200913100	CHAMPION HOME BUILDERS	RVIA-1032879
O10	1C9112937L1324601	773937200917100	CHAMPION HOME BUILDERS	RVIA-1032786
WF35	1C9112935L1324662	773939200915100	CHAMPION HOME BUILDERS	RVIA-1032886
WF36	1C9112939L1324597	773921200915100	CHAMPION HOME BUILDERS	RVIA-1032780
WF37	1C9112937L1324629	773933200911100	CHAMPION HOME BUILDERS	RVIA-1032870
WF38	1C9112933L1324613	773936200918100	CHAMPION HOME BUILDERS	RVIA-1032849
WF39	1C9112931L1324593	773927200919100	CHAMPION HOME BUILDERS	RVIA-1032775
WF40	1C9112937L1324632	773935200919100	CHAMPION HOME BUILDERS	RVIA-1032874
WF41	1C9112938L1324607	773938200916100	CHAMPION HOME BUILDERS	RVIA-1032789
WF42	1C9112933L1324594	773926200910100	CHAMPION HOME BUILDERS	RVIA-1032776
WF43	1C9112930L1324665	773929200917100	CHAMPION HOME BUILDERS	RVIA-1032891
WV83	1C9112939L1324664	773928200918100	CHAMPION HOME BUILDERS	RVIA-1032890
WV84	1C9112937L1324596	773924200912100	CHAMPION HOME BUILDERS	RVIA-1032778
WV85	1C9112935L1324659	773923200913100	CHAMPION HOME BUILDERS	RVIA-1032883
WV86	1C9112931L1324626	773919200919100	CHAMPION HOME BUILDERS	RVIA-1032865
WV87	1C911293XL1324592	773913200915100	CHAMPION HOME BUILDERS	RVIA-1032774
WV88	1C9112935L1324628	773917200911100	CHAMPION HOME BUILDERS	RVIA-1032869
WV89	1C9112931L1324609	773914200914100	CHAMPION HOME BUILDERS	RVIA-1032845
WF90	1C9112930L1324598	773920200916100	CHAMPION HOME BUILDERS	RVIA-1032781

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Exhibit 10

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)



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

NOTICE OF VIOLATION #
 1389

85' and Sunny LLC
 9919 Stephen Decatur Hwy
 Ocean City, MD 21842

85' and Sunny, LLC
 301 Fayetteville Street Suite 1700 P.O. Box 1000
 Raleigh, NC 27601 Raleigh, NC 27602

Violation Date: September 15, 2020	Inspection Date:
Property Address: 1631 Waterlily Rd	PIN #: 0079-000-0001-0000
Violation Description: It has been brought to our attention that several items are being constructed without zoning approval. ***Please see the attached copy of the UDO.***	
Compliance Request: Stop all work until all permits have been applied for and approved. For more information contact Rachael Anderson at Rachael.Anderson@CurrituckCountyNC.gov (252) 232-6056	UDO Code Reference: Chapter 2, Subsection 2.4.9. Zoning Compliance Permit
	Required Compliance Date: October 22, 2020



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

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

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

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

SECTION 2.4: SPECIFIC REVIEW PROCEDURES**Subsection 2.4.9: Zoning Compliance Permit**

- (ii) Approval of a final plat shall not constitute acceptance by the county or other public agency of the offer of dedication of any streets, sidewalks, parks, or other public facilities shown on a plat. However, the county or other public agency may, to the extent of its statutory authority, accept such offer of dedication by resolution of the governing body or by actually exercising control over and maintaining such facilities.
- (c) **Effect of Development Approval**
Approval of a final plat allows the sale or conveyance of lots within the subdivision.
- (d) **Amendment of Development Approval**
Lot sizes may be varied on an approved final plat after recording, provided that:
 - (i) No lot or tract shall be created or sold that is smaller than the size shown on the approved plat;
 - (ii) Drainage easements shall not be changed;
 - (iii) Right-of-ways shall not be changed;
 - (iv) Street alignment and block sizes shall not be changed;
 - (v) The rear portion of lots shall not be subdivided from the front portion; and
 - (vi) The character of the preliminary plat shall be maintained.
- (e) **Expiration of Development Approval**
A final plat shall be recorded with the Currituck County Register of Deeds within 90 days of approval, or it shall be null and void.

2.4.9. Zoning Compliance Permit**A. Purpose**

The purpose of a zoning compliance permit is to ensure no development occurs until there is assurance the development complies with the requirements of this Ordinance.

B. Applicability

A zoning compliance permit is required before issuance of a building permit, any change in use, or commencement of activity that does not require issuance of a building permit.

C. Zoning Compliance Permit Procedure**(1) Pre-Application Conference**

Optional (see Section 2.3.2).

(2) Community Meeting

Not applicable.

(3) Application Submittal and Acceptance

Applicable (see Section 2.3.4). Prior to the issuance of a zoning compliance permit, verification must be submitted by the applicant that the lot will be served by either a state-approved package plant, public sewer facility, or a

SECTION 2.4: SPECIFIC REVIEW PROCEDURES
Subsection 2.4.10: Sign Permit



waste treatment system complying with the requirements of the Albemarle Regional Health Services, where applicable.

- (4) Staff Review and Action**
Applicable (see Section 2.3.5). The Planning Director shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Planning Director or Technical Review Committee, and Section 2.4.9.D, Zoning Compliance Permit Review Standards.
- (5) Public Hearing Scheduling and Public Notification**
Not applicable.
- (6) Public Hearing Procedures**
Not applicable.
- (7) Advisory Body Review and Recommendation**
Not applicable.
- (8) Decision-Making Body Review and Decision**
Not applicable.

D. Zoning Compliance Permit Review Standards

A zoning compliance permit shall be approved upon a finding the applicant demonstrates the proposed development complies with all applicable standards in this Ordinance, the County Code of Ordinances, and all conditions of permits or development approvals approved under this Ordinance.

E. Effect of Development Approval

- (1)** Approval of a zoning compliance permit authorizes an applicant to apply for a building permit, or to commence construction if the proposed development does not require a building permit.
- (2)** If the zoning compliance permit application is filed concurrently with a building permit application, approval of the zoning compliance permit authorizes the county to complete its review of the building permit application.

F. Amendment of Development Approval

Applicable (see Section 2.3.14).

G. Expiration of Development Approval

Approval of a zoning compliance permit shall automatically expire if the development activity it authorizes is not commenced within six months after the date of approval.

2.4.10. Sign Permit

A. Purpose

The purpose of this section is to provide a uniform mechanism for reviewing applications for sign permits to ensure all signs comply with the standards of Section 5.12, Signage.

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Exhibit 11

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

WILLIAMS MULLEN

Direct Dial: 919.981.4006
tjohnson@williamsmullen.com

August 14, 2020

VIA NEXT DAY DELIVERY AND E-MAIL

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

RE: Appeal of Notice of Violation
Outer Banks KOA Campground/Hampton Lodge
1631 Waterlilly Road, PIN 007900000010000

Dear Laurie,

Enclosed is our Appeal of the Notice of Violation dated July 24, 2020, a copy of which is enclosed. I ask that this Notice of Violation and the prior one that we appealed regarding a similar issue at this location be heard jointly before the Board of Adjustment.

Please confirm receipt. Thank you for your assistance.

Sincerely,



Thomas H. Johnson, Jr.

Enclosures

cc: Todd Burbage
Greg Linsmeyer

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

43167024_1



Appeal Review Process

SCANNED
CC/8.11.2020



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: Currituck County Planning & Community Development

Step 1: Application Submittal and Acceptance

The applicant must submit a complete application packet within thirty days of the date of the interpretation or decision, or notice of violation being appealed. A complete application packet consists of the following:

- Complete Currituck County Appeal Application.
- Application Fee (\$500).

On receiving an application, staff shall, 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 prepare a staff report. If an application is determined to be incomplete, the applicant may correct the deficiencies and resubmit the application for completeness determination within the thirty appeal window.

Step 2: Staff Review and Action

After accepting the appeal application, staff shall review it and prepare a written report. Staff shall transmit the appeal and the record of material considered by the decision-maker in making the decision or interpretation, including but not limited to the application and support materials, staff report, other plans, documents, reports, and studies considered in making the decision, and any minutes, transcripts, or record of the meetings held to consider and make the decision. These materials, plus the Land Use Plan, Unified Development Ordinance (UDO), and any other relevant adopted plan, shall constitute the record of the appeal.

Step 3: Public Hearing Scheduling and Public Notification

Staff shall ensure the public hearing 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.

The application shall meet the following public notification requirements:

- **Published Notice**
 Staff shall publish a notice of the hearing once a week for two successive calendar weeks in a newspaper having general circulation in the county. The first time notice is published, it shall not be less than 10 days nor more than 25 days before the date fixed for the hearing.

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

- **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.

*Mailed and Posted notifications are required only in cases where the appeal pertains to a specific parcel of land.

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 decide on the application based solely on the record of the appeal, as supplemented by arguments presented at the public hearing. The decision shall be one of the following:

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

A majority vote by the Board of Adjustment members present shall decide the application.

In deciding on the appeal application, the board is limited to the following determinations, which shall be based on clear and substantial evidence in the record:

- The decision-maker did not make an error or correctly applied the standards of the UDO in making the decision or interpretation;
- 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;
- The decision-maker made the decision based on a standard not contained in the UDO or other appropriate county ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in the UDO was applied; or
- The decision-maker made an error in applying a standard or measuring a standard.

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.

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.

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Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

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 1631 Waterlilly Road, Coinjock, NC 27923

I hereby authorize Thomas H. Johnson, Jr. of Williams Mullen or another attorney in the firm to appear with my consent before the Board of Adjustment in order to request an appeal or interpretation at the above location. I authorize you to advertise and present this matter in my name as the owner of the property.

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

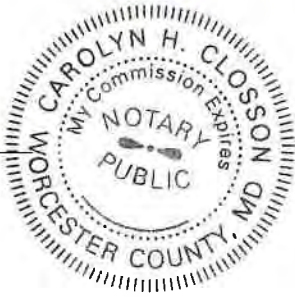
If you have any questions, you may contact me at the following at the address, phone number, or email address listed on this application.

Respectfully yours,
85 and Sunny, LLC

By: [Signature] Date 8/11/2020

Sworn to and subscribed before me, this the 11th day of August, 2020.

Notary Public
My commission expires: 1/29/24



Attachment: 2021.12.14 85 and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Appeal Submittal Checklist

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

Appeal Submittal Checklist

Date Received: _____

BOA Date: _____

Project Name: _____

Applicant/Property Owner: _____

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

For Staff Only

Pre-application Conference (optional)

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

Comments _____



COUNTY OF CURRITUCK

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

NOTICE OF VIOLATION

July 24, 2020

85 and Sunny, LLC
 c/o Mr. Todd Burbage, Managing Member
 9919 Stephen Decatur Highway
 Ocean City, MD 21842

Re: Outer Banks West KOA Campground/Hampton Lodge
 1631 Waterlily Road, PIN 007900000010000

Dear Property Owner and Manager:

In response to citizen complaints and county staff observations in May, June, and July 2020, it is determined after investigation that violation of the Currituck County Unified Development Ordinance, (the "UDO"), is occurring at the above-referenced property, (the "Property"). Specifically, you have located on the Property, in use as a non-conforming campground, sixteen on-frame modular dwelling units, or "cabins/cottages" as you have described them, set them on concrete blocks or forms and connected them to utilities.

Section 10.5 of the UDO defines "Campground" as:

any area, place, parcel, or tract of land on which two or more campsites are occupied or intended for occupancy or facilities established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of campsites and facilities is granted gratuitously or by rental fee, lease or conditional sale, or by covenants, restrictions and easements. Campground includes but not limited to, a travel camp, recreational camps, family campground, camping resort, recreational vehicles, park and camping community. **Campground does not include a summer camp, migrant labor camp or park for manufactured homes**, or a construction camp, or storage area for unoccupied camping units. [Emphasis added].

UDO §10.5 defines the following “camping units” for camping and use in a campground:

- Camper – A portable dwelling (as a special equipped trailer or automobile vehicle) for use during casual travel and camping.
- Recreational vehicle – a vehicle which is:
 - a. Built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection
 - c. Designed to be pulled by a light duty truck
 - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping travel or seasonal use;
 - e. Is fully licensed and ready for highway use.
- Travel trailer – A structure that is:
 - a. Intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle), and
 - b. Is for temporary use as sleeping quarters, but that does not satisfy one or more of definitional criteria of a manufactured home.

The on-frame modular dwelling units, or “cabins/cottages”, located at the Property do not meet the definitional criteria established in the UDO for “Camper”, “Recreational Vehicle” or “Travel Trailer”. At thirteen feet wide, the on-frame modular dwelling units, or “cabins/cottages”, are not intended for “casual travel and camping”, are not designed “to be pulled by a light duty truck” as shown by Exhibit B attached hereto, not “intended to be transported over the streets and highways”, not “fully licensed and ready for highway use”, and they satisfy one or more definitional criteria of a “Manufactured Home” as defined in UDO §10.5.

The on-frame modular dwelling units, or “cabins/cottages”, you have located on the Property more closely meet the UDO definition of “Manufactured Home” defined as:

A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

Because the on-frame modular dwelling units, or “cabin/cottages”, do not meet the UDO definitional criteria for “Camper”, “Recreational Vehicle” or “Travel Trailer” they are not permitted on the Property. Further, an on-frame modular dwelling unit may not be located in a campground as a campground may not be a “park for manufactured homes”.

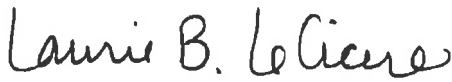
You have thirty (30) days from the date of this Notice of Violation to bring the cited violation into compliance by removing the existing nine on-frame modular dwelling units, or “cabins/cottages” as you describe them, from the Property. Remedies for failure to comply with this Notice of Violation shall include, but are not limited to, a civil penalty in the amount, and without further notice, of up to \$500.00 per day for the number of days

85 and Sunny
KOA OBX West
Page 3 of 3
July 24, 2020,

the cited violation continues, revocation of zoning and building permits, and injunctive relief in the appropriate court of law.

You may appeal this Notice of Violation to the Currituck County Board of Adjustment in accordance with Section 2.4.17 of the Currituck County Unified Development Ordinance. A copy of the required appeal application form may be obtained at the Currituck County Planning and Community Development office at 153 Courthouse Drive, Currituck, North Carolina 27929 or from the Clerk for the Board of Adjustment, Cheri Elliott, by calling (252) 232-3055.

Sincerely,



Laurie B. LoCicero
Planning & Community Development Director

Cc: Mr. Thomas H. Johnson, Jr. Williams Mullen
Mr. Ben Stikeleather, County Manager
Mr. Ike McRee, County Attorney
Planning File

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Exhibit 12



Appeal Review Process



Appeal

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: [Currituck County Planning & Community Development](http://www.currituckcountync.gov)

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- Complete Currituck County Appeal Application.
- Application Fee (\$500).

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Step 3: Public Hearing Scheduling and Public Notification

Staff shall ensure the public hearing 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.

The application shall meet the following public notification requirements:

- **Published Notice**
 Staff shall publish a notice of the hearing once a week for two successive calendar weeks in a newspaper having general circulation in the county. The first time notice is published, it shall not be less than 10 days nor more than 25 days before the date fixed for the hearing.

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

- **Mailed Notice***
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 - 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.
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- **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**
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- Modification of the decision or interpretation (in whole or in part); or
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A majority vote by the Board of Adjustment members present shall decide the application.

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- The decision-maker made the decision based on a standard not contained in the UDO or other appropriate county ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in the UDO was applied; or
- The decision-maker made an error in applying a standard or measuring a standard.

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.

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.

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Appeal Application

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

Contact Information

APPLICANT:

Name: Thomas H. Johnson, Jr.
 Address: 301 Fayetteville St., Ste. 1700
Raleigh, NC 27601
 Telephone: 919-981-4006
 E-Mail Address: tjohnson@williamsmullen.com

PROPERTY OWNER:

Name: 85' and Sunny, LLC
 Address: 9919 Stephen Decatur Hwy
Ocean City, MD 21842
 Telephone: 904-557-4021
 E-Mail Address: glinsmeyer@bwdc.com

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Attorney for Applicant

Property Information

Physical Street Address: 1631 Waterlily Road
 Location: Outer Banks West KOA
 Parcel Identification Number(s): 0079-000-0001-0000

Statement of Error, or Improper Decision or Interpretation

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

The determination being dated 09/15/2020.

Grounds for appeal

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

The Notice of Violation does not include sufficient specificity to understand the nature of the alleged violation. Notwithstanding the foregoing, any work performed was for health and safety improvements that comply with the requirements of the Unified Development Ordinance.

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.

9/18/2020
Date

Appellant/Applicant
Thomas H. Johnson, Jr., Attorney for 85' and Sunny, LLC

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

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 1631 Waterlilly Road, Coinjock, NC

I hereby authorize Thomas H. Johnson, Jr.
to appear with my consent before the Board of Adjustment in order to request an appeal or interpretation at the above location. I authorize you to advertise and present this matter in my name as the owner of the property.

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

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

Respectfully yours, 85' and Sunny, LLC

By: [Signature] Date 9/18/2020

Sworn to and subscribed before me, this the 18th day of September, 2020.

[Signature]
Notary Public
My commission expires: 1/29/24



Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

Appeal Submittal Checklist

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

**Appeal
Submittal Checklist**

Date Received: _____

BOA Date: _____

Project Name: _____

Applicant/Property Owner: _____

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

For Staff Only

Pre-application Conference (optional)

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

Comments _____

THE FRONT OF THIS CHECK IS PRINTED GREEN - THE BACK CONTAINS A SIMULATED WATERMARK

BB&T
Operating

001 2.C.b

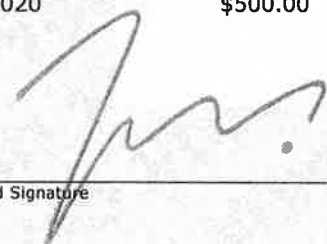
85 and Sunny, LLC.
dba Outer Banks West KOA
9919 Stephen Decatur Highway
Ocean City, MD 21842

65-3305
5000

Five Hundred and 00/100 Dollars

Check No. 001848 9/18/2020 \$500.00

Pay To The Order Of
Currituck county
Planning and Community Development
153 Courthouse Road, Suite 110
Currituck, NC 27929



Authorized Signature

⑈001848⑈ ⑆055003308⑆ 0005158642753⑈

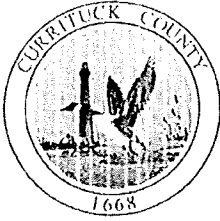
85 and Sunny, LLC.

001848

Date	Invoice No.	Invoice Date	Description	Amount
9/18/2020	09182020	9/18/2020	Appeal review process fee	500.00

Check Date	9/18/2020	Check Number	001848	Total	500.00
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Attachment: 2021.12.14 85 and Sunny - Complete submission (BOA 21-02 85 and Sunny, LLC)



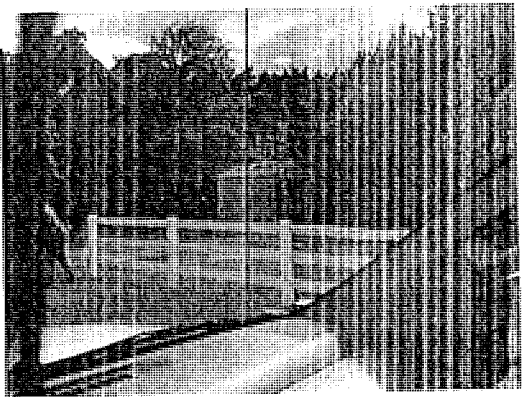
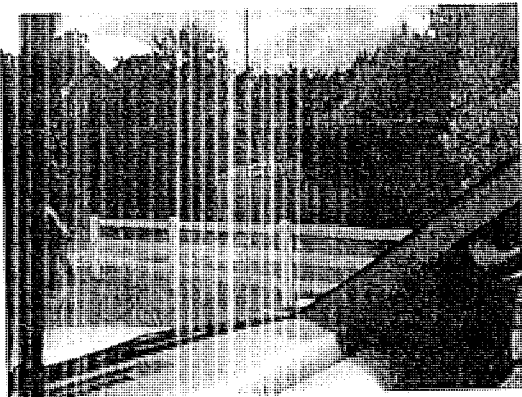
COUNTY OF CURRITUCK
 Code Enforcement Program
 153 Courthouse Road, Suite 108
 Currituck, NC 27929
 (252) 232-6056

NOTICE OF VIOLATION #
 1389

85' and Sunny LLC
 9919 Stephen Decatur Hwy
 Ocean City, MD 21842

85' and Sunny, LLC
 301 Fayetteville Street Suite 1700 P.O. Box 1000
 Raleigh, NC 27601 Raleigh, NC 27602

Violation Date: September 15, 2020	Inspection Date:
Property Address: 1631 Waterlily Rd	PIN #: 0079-000-0001-0000
Violation Description: It has been brought to our attention that several items are being constructed without zoning approval. ***Please see the attached copy of the UDO.***	
Compliance Request: Stop all work until all permits have been applied for and approved. For more information contact Rachael Anderson at Rachael.Anderson@CurrituckCountyNC.gov (252) 232-6056	UDO Code Reference: Chapter 2, Subsection 2.4.9. Zoning Compliance Permit Required Compliance Date: October 22, 2020



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

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

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

Attachment: 2021.12.14 85' and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

SECTION 2.4: SPECIFIC REVIEW PROCEDURES**Subsection 2.4.9: Zoning Compliance Permit**

- (ii) Approval of a final plat shall not constitute acceptance by the county or other public agency of the offer of dedication of any streets, sidewalks, parks, or other public facilities shown on a plat. However, the county or other public agency may, to the extent of its statutory authority, accept such offer of dedication by resolution of the governing body or by actually exercising control over and maintaining such facilities.
- (c) **Effect of Development Approval**
Approval of a final plat allows the sale or conveyance of lots within the subdivision.
- (d) **Amendment of Development Approval**
Lot sizes may be varied on an approved final plat after recording, provided that:
 - (i) No lot or tract shall be created or sold that is smaller than the size shown on the approved plat;
 - (ii) Drainage easements shall not be changed;
 - (iii) Right-of-ways shall not be changed;
 - (iv) Street alignment and block sizes shall not be changed;
 - (v) The rear portion of lots shall not be subdivided from the front portion; and
 - (vi) The character of the preliminary plat shall be maintained.
- (e) **Expiration of Development Approval**
A final plat shall be recorded with the Currituck County Register of Deeds within 90 days of approval, or it shall be null and void.

2.4.9. Zoning Compliance Permit**A. Purpose**

The purpose of a zoning compliance permit is to ensure no development occurs until there is assurance the development complies with the requirements of this Ordinance.

B. Applicability

A zoning compliance permit is required before issuance of a building permit, any change in use, or commencement of activity that does not require issuance of a building permit.

C. Zoning Compliance Permit Procedure**(1) Pre-Application Conference**

Optional (see Section 2.3.2).

(2) Community Meeting

Not applicable.

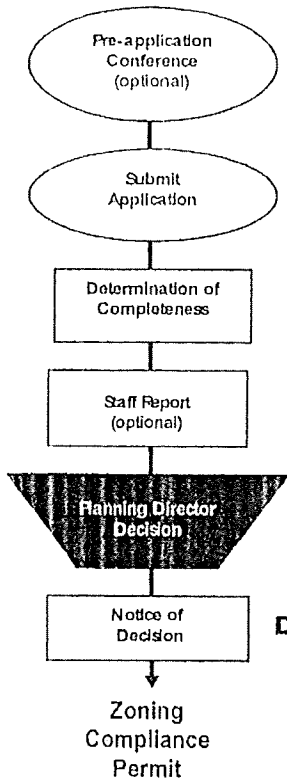
(3) Application Submittal and Acceptance

Applicable (see Section 2.3.4). Prior to the issuance of a zoning compliance permit, verification must be submitted by the applicant that the lot will be served by either a state-approved package plant, public sewer facility, or a

Chapter 2: Administration

SECTION 2.4: SPECIFIC REVIEW PROCEDURES

Subsection 2.4.10: Sign Permit



waste treatment system complying with the requirements of the Albemarle Regional Health Services, where applicable.

(4) Staff Review and Action

Applicable (see Section 2.3.5). The Planning Director shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Planning Director or Technical Review Committee, and Section 2.4.9.D, Zoning Compliance Permit Review Standards.

(5) Public Hearing Scheduling and Public Notification

Not applicable.

(6) Public Hearing Procedures

Not applicable.

(7) Advisory Body Review and Recommendation

Not applicable.

(8) Decision-Making Body Review and Decision

Not applicable.

D. Zoning Compliance Permit Review Standards

A zoning compliance permit shall be approved upon a finding the applicant demonstrates the proposed development complies with all applicable standards in this Ordinance, the County Code of Ordinances, and all conditions of permits or development approvals approved under this Ordinance.

E. Effect of Development Approval

- (1) Approval of a zoning compliance permit authorizes an applicant to apply for a building permit, or to commence construction if the proposed development does not require a building permit.
- (2) If the zoning compliance permit application is filed concurrently with a building permit application, approval of the zoning compliance permit authorizes the county to complete its review of the building permit application.

F. Amendment of Development Approval

Applicable (see Section 2.3.14).

G. Expiration of Development Approval

Approval of a zoning compliance permit shall automatically expire if the development activity it authorizes is not commenced within six months after the date of approval.

2.4.10. Sign Permit

A. Purpose

The purpose of this section is to provide a uniform mechanism for reviewing applications for sign permits to ensure all signs comply with the standards of Section 5.12, Signage.

Attachment: 2021.12.14 85'and Sunny - Complete submission (BOA 21-02 85' and Sunny, LLC)

ORIGIN ID: RBWA (704) 374-6127
CLARE DANCEY
PARKER POE ADAMS & BERNSTEIN LLP
200 MEETING STREET
SUITE 301
CHARLESTON, SC 29401
UNITED STATES US

SHIP DATE: 14DEC21
ACTWTG: 3.00 LB
CAD: 105445605/NET/4400
BILL SENDER

TO KEVIN KEMP
DEVELOPMENT SERVICES DEPARTMENT
153 COURTHOUSE ROAD
SUITE 110
CURRITUCK NC 27929
REF: 36677-00001
INVT: 232-6075
DEPT: PO

56DJ3/E934/FE4A

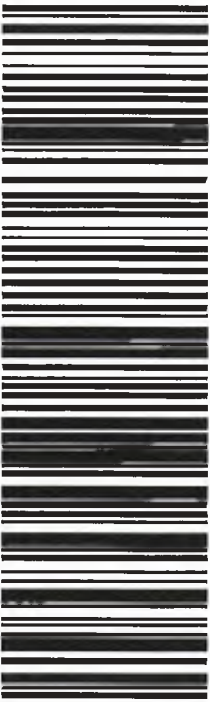


J212221101801uv

TRK# 7754 9179 1198
0201

WED - 15 DEC 4:30P
PRIORITY OVERNIGHT

XENTUA
NC-US ORF 27929



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