



**Agenda**  
**Town of Duck Board of Adjustment**  
Keller Meeting Hall  
Wednesday, March 12, 2025 – 12:00 Noon

1. Call to Order
2. Introduction/Swearing In Ceremony for New Members
3. Election of Officers:
  - a. *Chair*
  - b. *Vice-Chair*
4. Overview of Variance Decision-Making Process
5. Public Hearings
  - a. ***Variance BOV 25-001:*** *The property owners are seeking variances of (1) 4.4 feet from the 25-foot minimum front setback and (2) 6.9 feet from the 20-foot minimum southern side setback to allow a new swimming pool and pool deck to be reconstructed in the same footprint as the existing, nonconforming improvements on the property at 130 S. Snow Geese Drive.*
  - b. ***Variance BOV 25-002:*** *The property owners are seeking a variance of 6.3 feet for the concrete pool patio and 3.1 feet for a wooden deck and trellis from the 30-foot minimum setback from the static vegetation line to permit the reconstruction of these features in the same, nonconforming location surrounding the swimming pool to the rear (oceanfront) of the residence at 139 Buffell Head Road.*
6. Staff Comments
7. Board Comments
8. Adjournment



Town of Duck, North Carolina  
**Department of Community Development**  
*BOV 25-001, 130 S. Snow Geese Drive*

*Agenda Item 5a*

**TO:** Chairman Finch and Members of the Town of Duck Board of Adjustment  
**FROM:** Sandy Cross, Senior Planner  
**DATE:** March 4, 2025  
**RE:** Staff Report for BOV 25-001, 130 S. Snow Geese Drive

**Application Information**

Application #:	BOV 25-001
Project Location:	130 S. Snow Geese Drive
Dare County PIN:	995015734574
Existing Use:	Single-Family Residence
Zoning:	Single-Family Residential (RS-1)
Property Owner/Applicant:	Paul & Kathleen Mauk

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**Public Hearing Notice**

Public Hearing Advertised:	February 22 & March 2, 2025 (Coastland Times)
Public Hearing Notices Sent:	February 18, 2025
Public Hearing Sign Posted:	February 19, 2025
Public Hearing Town Website:	February 18, 2025
Public Hearing Town Hall Posted:	February 19, 2025

**Application Summary**

Subsection 156.030(D)(3) of the Town Code requires a minimum front yard setback of twenty-five feet (25') for structures (including pools and decks). Subsection 156.030(D)(4) of the Town Code requires a minimum side yard setback of twenty feet (20') for structures along the streetside property line for a corner lot. The property owner is seeking a variance from these setback standards to allow a new swimming pool and pool surround deck to be constructed in the same footprint as the existing, nonconforming improvements on the property at 130 S. Snow Geese Drive. The proposed location of the new swimming pool and pool surround deck would be 20.6 feet from the front property line (encroaching 4.4 feet into the required 25' front setback) and 13.1 feet from the southern property line (encroaching 6.9 feet into the required 20' side setback). A copy of the existing survey showing the current location of the pool and pool surround deck is included as Exhibit C. The proposed pool and pool surround deck location is also included as Exhibit D and the existing location of the septic system is included as Exhibit E.



**Property Information**

Located in the Snow Geese South neighborhood, the corner property at 130 S. Snow Geese Drive is zoned Single-Family Residential (RS-1). According to an as-built survey prepared on November 8, 2024, the subject property is 10,168 square feet (0.23 acre) in size, making it a nonconforming lot less than the current minimum lot size of 15,000 square feet. The property has an oblong shape approximately 66 feet in width along the eastern (front) road boundary, 90 feet in width along the southern road boundary, widening to 95 feet at the rear, and 95 feet in depth along the northern property line. The subject property presently contains a four-bedroom, 2,639 square foot single-family residence that was permitted in 1999 and completed in 2000 under the jurisdiction and standards of Dare County. The existing improvements are in the same locations as when they were constructed in 2000. The property was purchased by the applicants in November of 2024.

- The property to the east across South Snow Geese Drive contains an oceanfront residence located at 132 S. Snow Geese Drive. This property is zoned RS-1 and contains a five-bedroom, single-family residence constructed in 1989. This lot is 9,000 square feet in size and the property does not contain a pool, but it did at one time.
- The adjoining property to the north located at 135 N. Snow Geese Drive is zoned RS-1 and was developed with a four-bedroom, single-family residence in 1978. This lot is nonconforming at 9,500 square feet in size and does not contain a pool.
- The adjoining property to the west located at 128 S. Snow Geese Drive is zoned RS-1 and contains a four-bedroom, single-family residence constructed in 1979. This lot is nonconforming at 9,000 square feet in size and does not contain a pool.
- Two parcels located across South Snow Geese Drive to the south both contain single family dwellings constructed in the late 1980's and zoned RS-1. These lots are non-conforming at 9,000 square feet in size and neither has a pool.

**Applicable Ordinance Standards**

***Section 156.030 RS-1 Single-Family Residential District***

***(D) Dimensional Requirements***

- (3) Minimum front yard: 25 feet.
- (4) Minimum side yard: 10 feet. An additional 10-foot side yard adjacent to the street is required for corner lots.



### **Background Information**

As previously referenced, the existing swimming pool and pool surround deck are situated in a nonconforming location as they encroach into the front and southern side setbacks. As they were approved and constructed in 2000 under the standards of Dare County, these improvements are legally nonconforming (“grandfathered”) and can thus remain and be repaired in their current locations. However, per Town standards for nonconforming structures in Section 156.073, a nonconforming structure removed or destroyed by more than 50% of its value cannot be reconstructed unless in compliance with current development standards. As the property owner seeks to replace the aging pool and pool surround deck in the same nonconforming locations, a variance is required to do so.

### **Variance Criteria/Staff Analysis**

Section 156.167 of the Duck Town Code states that when unnecessary hardships will result from carrying out the strict standards of the zoning ordinance, the Board of Adjustment may grant a variance from provisions of the zoning ordinance consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. As part of its decision, the Board of Adjustment members may impose conditions on the approval of a variance, as long as the conditions are reasonably related to the variance. Such conditions are often intended to mitigate potential impacts resulting from granting a variance.

During its evaluation of the variance application, the Board of Adjustment is required to consider and make findings concerning the following six criteria. If the Board finds that all six of the criteria have been met, then the Board should vote to grant the requested variance. If the Board finds that one or more of the criteria have not been met, then the Board should deny the requested variance.

**1. Sec. 156.167(A)(1) - Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.**

- Section 156.030(D)(3) of the Town Code establishes a 25-foot minimum setback for structures from the front property line. Section 156.030(D)(4) of the Town Code establishes a 20-foot minimum setback for structures from streetside property lines on corner lots.
- The existing location of the swimming pool, and pool surround deck is 20.6 feet from the front property line (encroaching 4.4 feet into the required 25’ front setback) and 13.1 feet from the southern property line (encroaching 6.9 feet into the required 20’ street-side setback).
- Town standards for nonconforming structures require that a nonconforming structure cannot be removed and reconstructed unless in compliance with current development standards.





*Agenda Item 5a*

- The property owner is seeking a variance from these setback standards to allow a new swimming pool, and pool surround deck to be constructed within the same footprint as the existing, nonconforming improvements.
  - This lot is non-conforming in size and there is no other location that the swimming pool can be located without further increasing the nonconformity.
  - Enforcement of the current minimum front setback and corner street-side setback requirement would reduce the pool area to ~ 225 square feet, essentially eliminating any opportunity to reconstruct the swimming pool and pool surround deck.
  - It is staff's opinion that it would be a substantial hardship on the property owner to comply with the Town's current setback standards, as it would result in the loss of a swimming pool and associated pool surround deck.
2. **Sec. 156.167(A)(2) - The hardship results from conditions that are peculiar to the subject property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.**
- The subject property is nonconforming because its lot size is less than 15,000 square feet, however because the Snow Geese South subdivision was platted after November 20, 1975, the lots in this subdivision are not afforded reduced setbacks consistent with Subsection 156.073 Lots of Non-Conforming Record.
  - The property is unique due to its corner lot location which requires an additional 10' street-side setback.
  - The small size of the lot contributes to the difficulty of relocating the pool/pool surround deck to a conforming location.
  - The location of the existing residence and decks on the property prevents relocation of the pool/pool surround deck in a conforming location.
  - There are other properties in the surrounding area that are nonconforming with regard to size, but most do not contain pools.
  - It is staff's opinion that the subject property has unique conditions peculiar to the property and that such conditions contribute to the hardship in relocating the proposed swimming pool and pool surround deck.
3. **Sec. 156.167(A)(3) - The hardship resulted from actions taken by the applicant or the property owner. The act of purchasing the property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.**
- The existing residence, swimming pool, pool deck, and septic system were developed under Dare County's purview in 2000. The pool and pool surround deck appear to have been constructed in slightly different dimensions and closer to the front property line than



*Agenda Item 5a*

shown on the original site plan. However, Dare County approved the project and issued a Certificate of Occupancy in May 2000.

- With the incorporation of the Town of Duck later in 2002, the existing pool and other improvements on the subject property became legally nonconforming (“grandfathered”) in regard to the front and south side setbacks.
- It does not appear that the swimming pool or associated pool surround deck have been expanded or relocated since their original construction.
- The current property owners purchased the property in November 2024 and had nothing to do with the original approval and construction of the present improvements.
- It is staff’s opinion that the hardship relating to the existing locations of the residence, swimming pool and pool surround deck have not resulted from actions of the applicant or current property owners.

**4. Sec. 156.167(A)(4) - The requested variance is consistent with the spirit, purpose, and intent of the regulation.**

- Like most local governments, the Town of Duck has adopted minimum structure setbacks. Common reasons why communities adopt setback standards include improving fire safety, allowing light, and preserving privacy.
- As the proposed swimming pool is fiberglass and the pool surround deck is concrete, there is no issue relating to fire safety.
- In addition, the proposed improvements are located approximately 97 feet from the residence to the south across S. Snow Geese Drive, 110 feet to the residence to the east across S. Snow Geese Drive, and 100 feet to the residence to the west, much greater than required fire separation distances.
- As the proposed swimming pool and pool surround deck are ground level, not elevated structures, they will not impact the availability of light to adjoining properties.
- As the proposed improvements are going back in the same location as the existing pool and pool surround deck, the project will not negatively impact the privacy of surrounding properties.
- It is staff’s opinion that the proposed project and requested variance comply with the purpose and intent of the Town’s minimum setback standards.

**5. Sec. 156.167(D) – The variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.**

- While it could be argued that the property owner could consider constructing a smaller pool or pool surround deck, staff notes that the existing and proposed improvements are modest in size when compared with many recently permitted swimming pools. The pool is approximately 8’x 15’ and ~120 square feet in size and the surrounding decking is ~ five feet (5’) wide adjoining the residence with the entire area encompassing 480 square feet.



*Agenda Item 5a*

- The dimensions of the proposed improvements are consistent with the dimensions of the existing improvements. The property owners are seeking to increase the size of the pool itself but are reducing the size of the pool surround deck accordingly and not seeking to expand the footprint of the existing improvements.
  - It is staff's opinion that the requested variance is likely close to the minimum possible and is certainly a reasonable request.
- 6. Sec. 156.167(E) - Granting the variance will be in harmony with the general purpose and intent of the Zoning Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.**
- The proposed improvements are consistent with the existing swimming pool, and pool surround deck that have existed on the subject property since 2000.
  - By placing the swimming pool and pool surround deck within the existing footprint, the property owner will be minimizing any change or impacts to the surrounding properties. The property will look and function much like it has in the past.
  - The existing pool barrier does not comply with the current NC building code requirements. With the replacement of the existing pool, a new pool barrier consistent with NC Building Code requirements would be required and create a safer situation.
  - It is staff's opinion that granting the variance will not negatively impact the neighboring properties or be detrimental to the public welfare.

**Staff Recommendation**

As outlined in detail above, it is staff's opinion that the applicants have satisfied the conditions of Findings 1, 2, 3, 4, 5, and 6.

As all the findings have been met in staff's evaluation of the requested variance, staff recommends **APPROVAL** of this variance application with the findings and conditions identified in the draft Order Approving the Variance.

**ATTACHMENTS**

**Applicant Exhibits:**

- A. Variance Application
- B. Variance Request Narrative
- C. Existing Survey of the Property with Pool and Pool Surround Deck Location (prepared by Sadler Surveying, PLLC)
- D. Site Plan Reflecting Proposed Pool and Pool Deck Location
- E. Septic Location



Town of Duck, North Carolina  
**Department of Community Development**  
*BOV 25-001, 130 S. Snow Geese Drive*

*Agenda Item 5a*

**Staff Exhibits:**

- F. Location Map and Property Information
- G. Original Dare County Permitted Site Plan
- H. Photos of Existing Conditions
- I. Draft Order Approving Variance

Rec'd 1/27/25

Attachment A



## Department of Community Development

PO Box 8369

1200 Duck Road

Town of Duck, North Carolina 27949

(252) 255-1234

### ZONING VARIANCE APPLICATION

Applicant: Paul & Kathleen Mauk Date: January 16, 2025

Mailing Address: 153 Thomas Dale, Williamsburg, VA 23185

Telephone #: 757.342.7459 Email: paulemauk@gmail.com

Representative (if different from applicant): NA

Mailing Address:

Representative Telephone #: Email:

**Property Information:**

Property Address/Location: 130 S Snow Geese, Duck, NC 27927

Dare County PIN #: 995015734574

Zoning District: RS-1 Use of Property: Single Family Residence

**Variance Request:**

Applicable Ordinance Section: Section 156.030(D)(3)&(4)

Ordinance Requirement: Section 156.030(D)(3): Minimum Front Yard: 25'

Section 156.030(D)(4): Minimum Side Yard: 20' (due to side street frontage)

Variance Requested: Owner requests that existing nonconformity be allowed to be rebuilt in-place:

Front Yard Setback to Pool Deck : 20'8"

Side Yard Setback to Pool Deck: 13'2"

*The Duck Board of Adjustment, with a vote of four-fifths of the membership, may grant a variance from specific provisions of the Zoning Ordinance. Consistent with the N.C. General Statutes, Section 156-167 of the Zoning Ordinance states that the Board of Adjustment is required to make certain findings as a prerequisite to granting a variance. The following questions are intended to offer the applicant an opportunity to address these criteria for the Board members. Please answer each question as thoroughly as possible.*

1. Describe the hardship created by strict application of standards in the Zoning Ordinance? The subject property residence has an existing pool and pool deck which pre-date the Town of Duck and the Town's Zoning Ordinance. The existing pool and pool deck is aging, damaged, and in need of replacement. If the Town's setback requirements are adhered to, there is no room to replace the pool in its current location. The only other space available on the site is occupied by the existing drainfield and repair area and there is no alternative location for the relocation of the drainfield. Therefore, strict application of the existing standards may eliminate the pool from the site.

2. Describe any special conditions or circumstances (such as property dimensions, location, or topography) contributing to the hardship that are peculiar to the subject land or structure and not applicable to other properties in the same area.

The property is unusual in that the house, although on S Snow Geese, is located on a corner. The front yard is oriented toward the east. The side yard is on the south side of the property on S Snow Geese which means the setback is 20' versus the usual 10' side yard setback.

3. Explain why the hardship is not the result of actions taken by the applicant or property owner.

The pool and pool deck locations pre-date the existence of the Town of Duck Zoning Ordinance. The non-conformity is the result of the creation of the Town's Ordinance.

4. Explain how the requested variance is the minimum possible to make reasonable use of the land, building, or structure.

The variance requested is the minimum possible in order to replace the pool.

5. Explain how the requested variance is consistent with the spirit, purpose, and intent of the standards in the zoning ordinance.

The setback requirements in the zoning ordinance are there to provide space between uses in order to facilitate harmonious, functional neighborhoods. This pool and pool deck has existed in its current location since the inception of the Town without negatively impacting the surrounding properties or the neighborhood.

6. State if the variance would be injurious to the surrounding neighborhood or detrimental to the public welfare. Describe any potential impacts.

The pool and pool deck has existed in its current location and configuration since the inception of the Town without causing injure to the surrounding neighborhood and without detriment to the public welfare. Allowing it to remain in its current location would not have any impact on the surrounding neighborhood, would preserve privacy and would not be detrimental to public welfare. The replacement of existing concrete pool deck with pool surface water would also reduce the lot coverage percentage. An email from the HOA supporting the Variance is attached.

Applicant Signature

Property Owner Signature (if different from applicant)

A complete application can be submitted in person to the Town of Duck Community Development Department at Duck Town Hall, 1200 Duck Road or mailed to Town of Duck, P.O. Box 8369, Duck, NC 27949. Checks should be made payable to the *Town of Duck*. A complete application consists of:

- ☐ Complete, signed zoning variance application form
- ☐ Zoning variance application fee (\$500)
- ☐ Plat, site plan, or building plans drawn to scale showing the existing and proposed improvements
- ☐ Other exhibits or information necessary to describe the proposal
- ☐ Any other information in support of the variance request

**FOR OFFICE USE ONLY**

Application Received Received By      1/27/2025

Fee Paid Receipt #      \$500, receipt #71/Check #1008



Rec'd 1/27/25

Attachment B

**Variance Request**

Mauk Family House

130 S Snow Geese

Duck, NC 27929

January 16, 2025

The Mauk Family House is an existing single-family residence located at 130 S Snow Geese. The house and pool were constructed prior to the establishment of the Town of Duck and therefore were required to comply with Dare County requirements. The improvements were configured on the property such that the front of the house faces the S Snow Geese dead-end on the east and S Snow Geese on the south and the swimming pool is on the south /east side of the house so the activity of the house would be oriented to the oceanfront. The placement was also due to the septic system being located on the west side of the property. This configuration was made non-compliant when the newly formed Town of Duck adopted their Zoning Ordinance, which applied a front and side yard setback which conflicted with the existing pool and enclosure.

This existing configuration has existed in harmony with the surrounding neighborhood and immediate neighbors since its creation. As the pool has aged, it has significant maintenance issues and needs replacement. The Variance Application seeks to replace the pool and pool deck within the confines of the existing, non-conforming pool and pool deck, thereby not increasing the nonconformity, but simply maintaining the existing footprint of improvements on the lot.

When considering relocating the pool to bring it into compliance with the Town's setback requirements, there is only one area available on the lot, and that is to the west of the existing house. That area is currently occupied by the parcel's septic system. Due to the setbacks on the west side of the property and the location of the existing house, there is not sufficient room to relocate the pool.

The following are stipulated as part of the Variance Application:

- The subject residence has an existing pool and pool deck which pre-date the Town of Duck and the Town's Zoning Ordinance. The existing pool is aging, and in need of replacement. If the Town's setback requirements are adhered to, there is not room to replace the pool in its current location. The only other site on the

property is occupied by the existing drainfield and repair area and there is no alternative location available for the relocation of the drainfield. Therefore, strict application of the existing standard may eliminate the pool from the site.

- The property is unusual in that it is a corner lot with both the front and side of the lot located on S Snow Geese. As S Snow Geese dead ends in front of the home setbacks are 25' from the front yard and 20' from the side yard (usually 10' however, 20' due to corner lot) both facing S Snow Geese. The Town's minimum yard requirements were established after the house and pool were constructed.
- The hardship is not the result of any actions taken by the applicant. The pool and pool deck locations pre-date the existence of the Town of Duck Zoning Ordinance. The non-conformity is the result of the creation of the Town's Ordinance.
- The requested variance is the minimum required to replace the existing pool and pool deck in their current location.
- The setback requirements in the zoning ordinance are there to provide space between uses in order to facilitate harmonious, functional neighborhoods. This pool has existed in its current location since the inception of the Town in a safe, harmonious way – without negatively impacting the surrounding properties or the neighborhood.
- The pool and pool deck have existed in its existing location since the inception of the Town without causing injury to the surrounding neighborhood and without being detrimental to the public welfare. Allowing it to remain in its current location would not have any impact on the surrounding neighborhood and would not be detrimental to the public welfare.



NOTES:

ADDRESS: 130 S. SNOW GEESE DRIVE

LOT AREA: 10,168 SQ FT  
- BY COORDINATE METHOD

EXISTING LOT  
COVERAGE INFORMATION:  
STRUCTURE UNDER ROOF/  
OVER CONCRETE: 1,909 SQ FT  
POOL AREA: 523 SQ FT  
HOT TUB: 42 SQ FT

EX. LOT COVERAGE: 2,474 SQ FT (24.3%)

FIRM REFERENCE:  
3720 9950 00 K  
CURRENT FLOOD ZONE: SEE PLOT  
ZONING R.F.P.E.: 10' NAVD 88

SETBACKS SHOWN ARE AS PER THE TOWN  
OF DUCK ZONING; THEY MUST BE  
VERIFIED BY ANY ENFORCEMENT ENTITY  
SUCH AS AN H.O.A.

THIS SURVEY IS BASED ON EXISTING  
FIELD EVIDENCE AND EXISTING RECORDS

LEGEND:

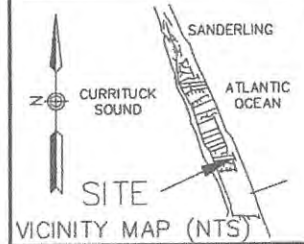
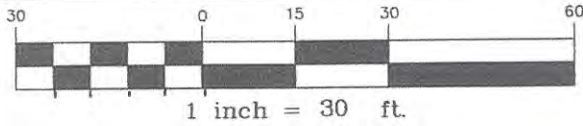
- EX. REBAR
- P/L STAKE SET
- PK NAIL SET
- COMPUTED POINT
- WATER METER
- CABLE TV PEDESTAL
- NO PARKING SIGN
- SATELLITE DISH
- FIRE HYDRANT



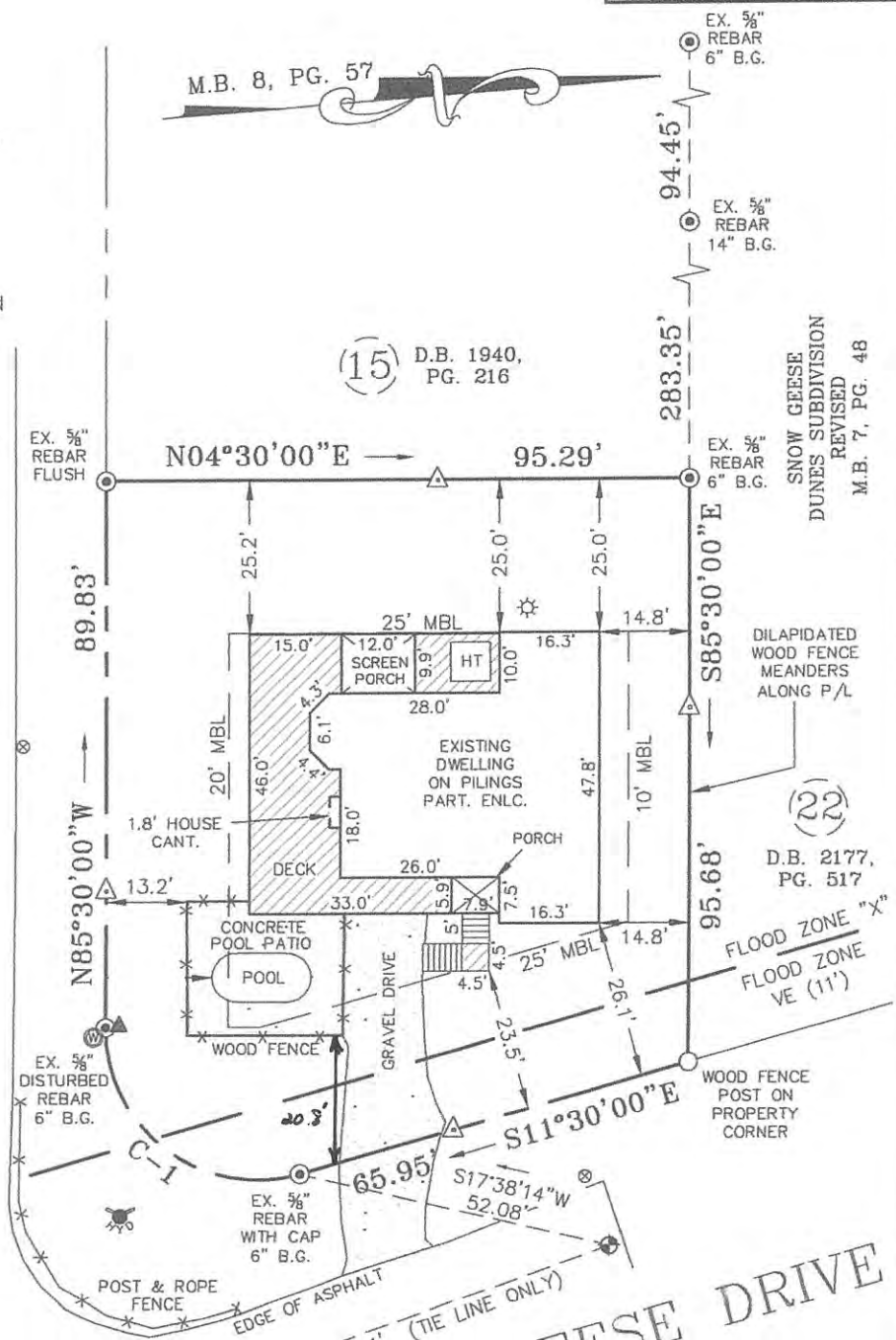
I, MICHAEL D. SADLER, P.L.S. DO CERTIFY  
THAT THIS PLAT IS OF AN ACTUAL SURVEY  
MADE UNDER MY SUPERVISION M.B. 8, PG. 57,  
THAT THE BOUNDARIES NOT SURVEYED ARE  
INDICATED AS DRAWN FROM INFORMATION IN  
M.B. 8, PG. 57, THAT THE RATIO OF PRECISION  
IS AT LEAST 1:10,000; AND THAT THIS MAP  
MEETS THE REQUIREMENTS OF THE STANDARDS  
OF PRACTICE FOR LAND SURVEYING IN NORTH  
CAROLINA (21 NCAC 56.1600)

THIS 8TH DAY OF NOVEMBER, 2024.

*Michael D. Sadler*  
P.L.S. L-5029



SOUTH SNOW  
GEESE DRIVE  
50' R/W



SOUTH SNOW GEESE DRIVE  
60' R/W

CURVE DATA:  
C-1: R= 25.00' L= 46.25'  
CH= S41°29'35"W 39.93'

SURVEYED FOR:  
  
PAUL MAUK &  
KATHLEEN MAUK

LOT 16,  
SNOW GEESE SOUTH  
  
ATLANTIC TOWNSHIP  
DUCK  
  
DARE COUNTY  
NORTH CAROLINA

SADLER SURVEYING, PLLC  
P-2511  
502 FIRST FLIGHT LANE,  
KILL DEVIL HILLS, NC 27948  
PHONE: 252-423-1317  
ALTERATION OF THIS DOCUMENT IS PROHIBITED

DATE: 11-7-24  
SCALE: 1"= 30'  
PIN NUMBER.: 21995015734574  
REC. REFS.: D.B. 1329, PG. 115  
M.B. 8, PG. 57  
FILE NO.: 24-196  
DWG NO.: 24196P

Rec'd 1/27/25



NOTES:

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- BY COORDINATE METHOD

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ZONING R.F.P.E.: 10' NAVD 88

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VERIFIED BY ANY ENFORCEMENT ENTITY  
SUCH AS AN H.O.A.

THIS SURVEY IS BASED ON EXISTING  
FIELD EVIDENCE AND EXISTING RECORDS

LEGEND:

- EX. REBAR
- P/L STAKE SET
- PK NAIL SET
- COMPUTED POINT
- WATER METER
- CABLE TV PEDESTAL
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Proposed:

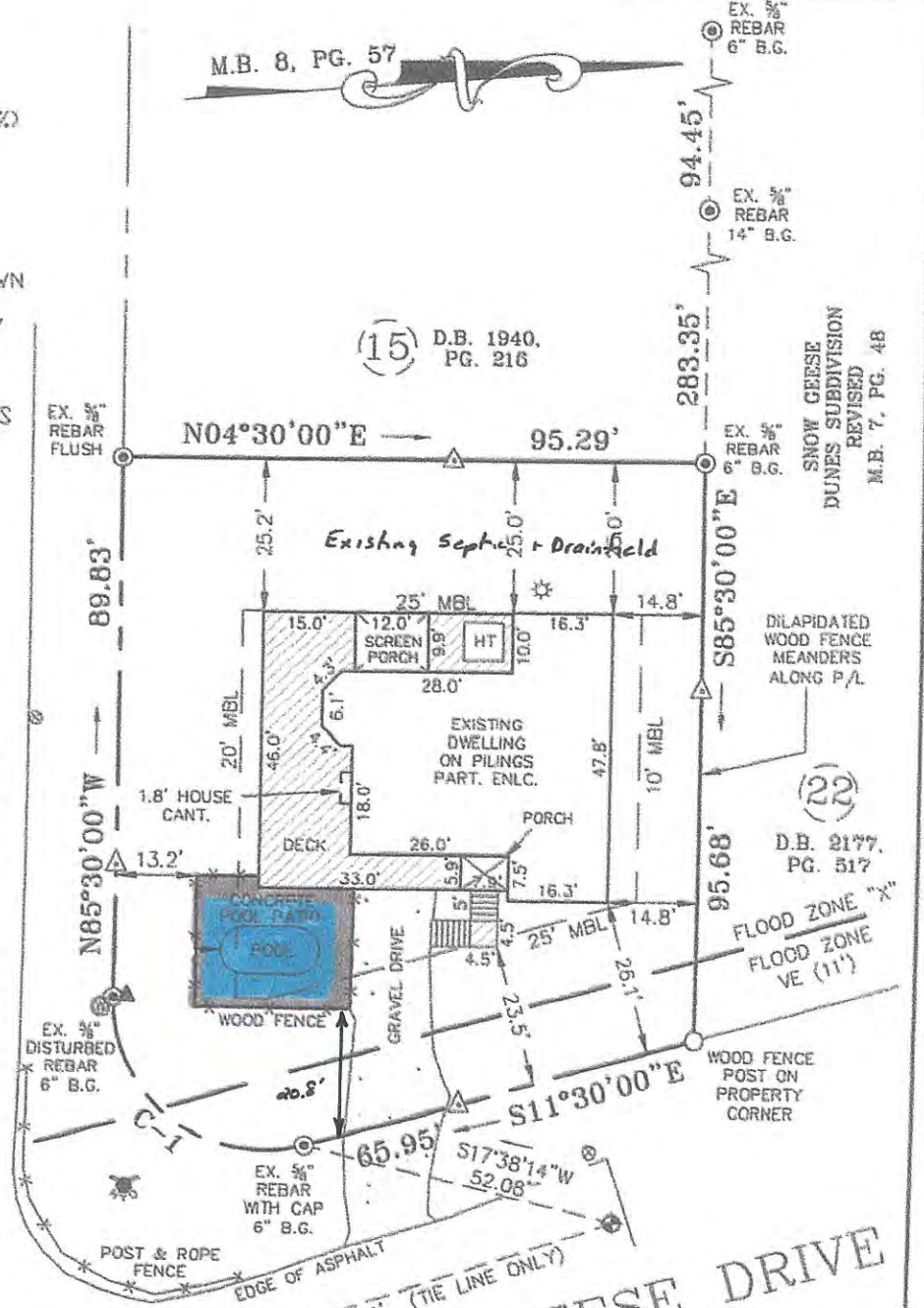
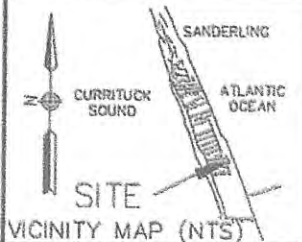
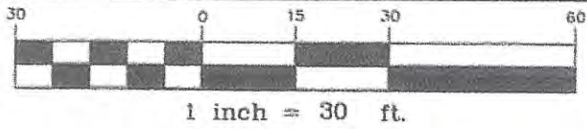
- Concrete
- pool



I, MICHAEL D. SADLER, P.L.S. DO CERTIFY  
THAT THIS PLAT IS OF AN ACTUAL SURVEY  
MADE UNDER MY SUPERVISION M.B. 8, PG. 57  
THAT THE BOUNDARIES NOT SURVEYED ARE  
INDICATED AS DRAWN FROM INFORMATION IN  
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MEETS THE REQUIREMENTS OF THE STANDARDS  
OF PRACTICE FOR LAND SURVEYING IN NORTH  
CAROLINA (2) NCAC 56.1600

THIS 8TH DAY OF NOVEMBER, 2024.

*Michael D. Sadler*  
P.L.S. L-5029



SOUTH SNOW GEESE DRIVE  
60' R/W

CURVE DATA:

C-1: R= 25.00' L= 46.25'  
CH= S41°29'35"W 39.93'

SURVEYED FOR:

PAUL MAUK &  
KATHLEEN MAUK

LOT 16,  
SNOW GEESE SOUTH

ATLANTIC TOWNSHIP  
DUCK

DARE COUNTY  
NORTH CAROLINA

SADLER SURVEYING, PLLC

P-2511  
502 FIRST FLIGHT LANE,  
KILL DEVIL HILLS, NC 27948  
PHONE: 252-423-1317

ALTERATION OF THIS DOCUMENT IS PROHIBITED

DATE: 11-7-24

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M.B. 8, PG. 57

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OF DUCK ZONING; THEY MUST BE  
VERIFIED BY ANY ENFORCEMENT ENTITY  
SUCH AS AN H.O.A.

THIS SURVEY IS BASED ON EXISTING  
FIELD EVIDENCE AND EXISTING RECORDS

LEGEND:

- EX. REBAR
- P/L STAKE SET
- PK NAIL SET
- COMPUTED POINT
- WATER METER
- CABLE TV PEDESTAL
- NO PARKING SIGN
- SATELLITE DISH
- FIRE HYDRANT

Proposed:

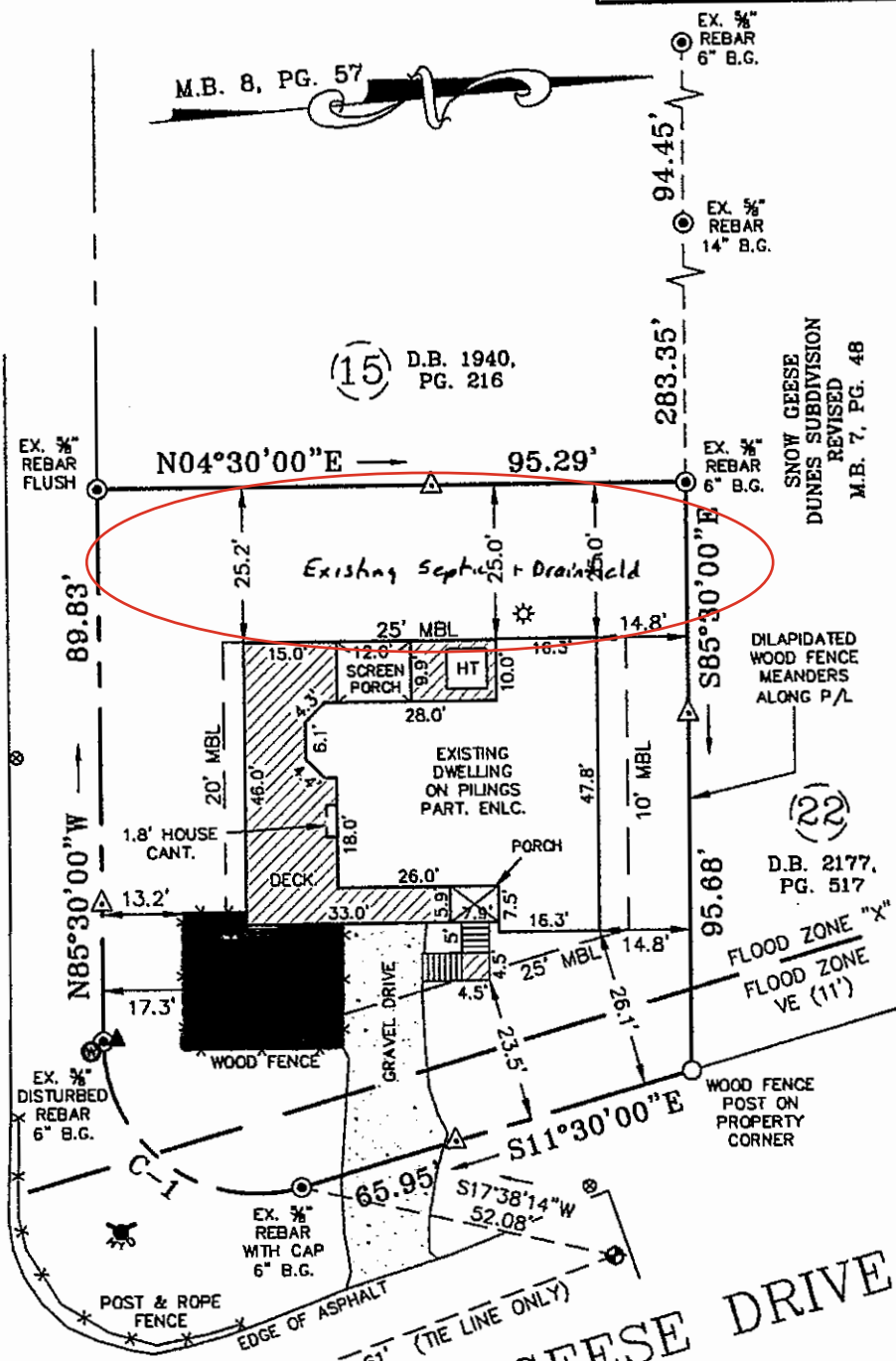
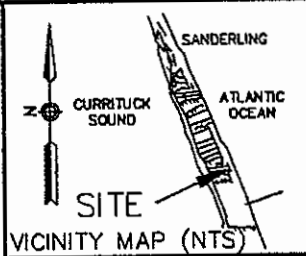
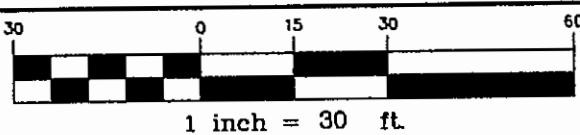
- concrete
- pool



I, MICHAEL D. SADLER, P.L.S. DO CERTIFY  
THAT THIS PLAT IS OF AN ACTUAL SURVEY  
MADE UNDER MY SUPERVISION M.B. 8, PG. 57,  
THAT THE BOUNDARIES NOT SURVEYED ARE  
INDICATED AS DRAWN FROM INFORMATION IN  
M.B. 8, PG. 57, THAT THE RATIO OF PRECISION  
IS AT LEAST 1:10,000, AND THAT THIS MAP  
MEETS THE REQUIREMENTS OF THE STANDARDS  
OF PRACTICE FOR LAND SURVEYING IN NORTH  
CAROLINA (21 NCAC 56.1600)

THIS 8TH DAY OF NOVEMBER, 2024.

*Michael D. Sadler*  
P.L.S. L-5029



SOUTH SNOW GEESE DRIVE  
60' R/W

CURVE DATA:

C-1: R= 25.00' L= 46.25'  
CH= S41°29'35"W 39.93'

SURVEYED FOR:

PAUL MAUK &  
KATHLEEN MAUK

LOT 16,  
SNOW GEESE SOUTH

ATLANTIC TOWNSHIP  
DUCK

DARE COUNTY  
NORTH CAROLINA

SADLER SURVEYING, PLLC



P-2511  
502 FIRST FLIGHT LANE,  
KILL DEVIL HILLS, NC 27948  
PHONE: 252-423-1317

ALTERATION OF THIS DOCUMENT IS PROHIBITED



DATE: 11-7-24

SCALE: 1"= 30'

PIN NUMBER.: 21995015734574

REC. REFS.: D.B. 1329, PG. 115  
M.B. 8, PG. 57

FILE NO.: 24-196  
DWG NO.: 24196P





This map is prepared from data used for the inventory of the real property for tax purposes. Primary information sources such as recorded deeds, plats, wills, and other primary public records should be consulted for verification of the information contained in this map.

130 S Snow Geese DR  
Duck NC, 27949  
Parcel: 012255000  
Pin: 995015734574

Owners: Mauk, Paul -Primary Owner  
Mauk, Kathleen -Primary Owner  
Building Value: \$305,600  
Land Value: \$456,000  
Misc Value: \$14,200  
Total Value: \$775,800

Tax District: Duck  
Subdivision: Snow Geese South  
Lot BLK-Sec: Lot: 16 Blk: Sec:  
Property Use: Residential  
Building Type: Traditional  
Year Built: 1999





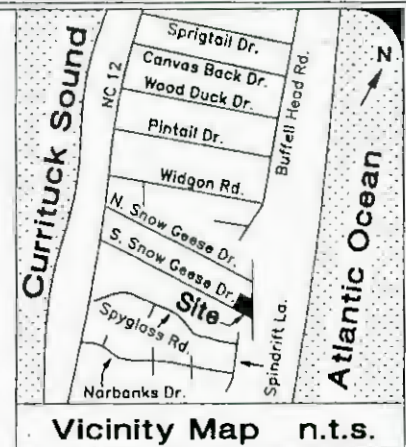
### SURVEYOR'S CERTIFICATE

I, Robert C. Cummins, certify that this plat was drawn under my supervision from an actual survey performed under my supervision, based on information recorded in MB 8, PG 57 that this plat was prepared in accordance with the "Standards of Practice for Land Surveying in North Carolina" as amended. Witness my original signature, registration number and seal this 27th day of January, 1999.

Robert C. Cummins  
Registered Land Surveyor, L-294



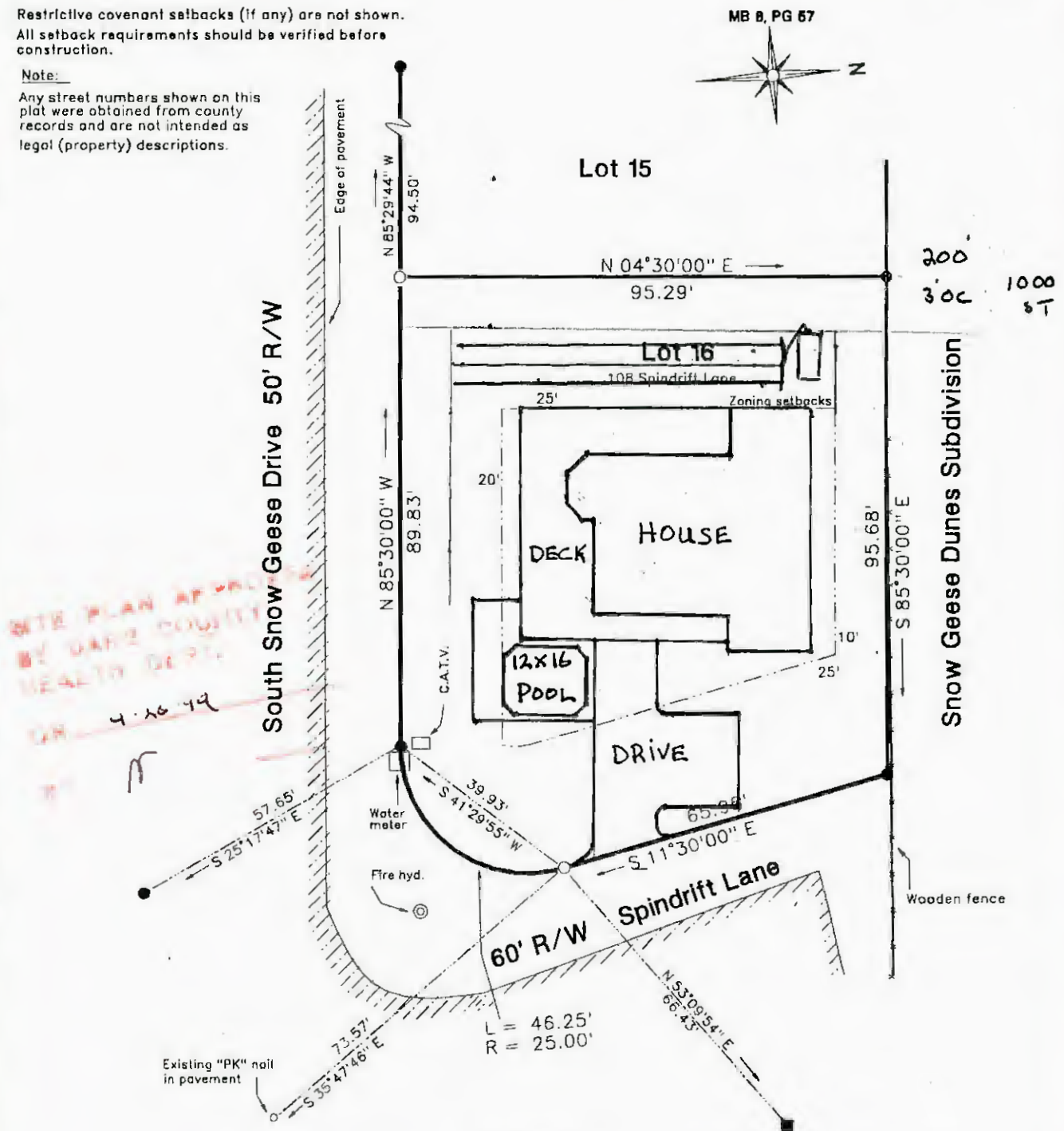
This survey was performed without benefit of a title report which may reveal deed restrictions, restrictive covenant requirements, conveyances and easements not shown on this plat.



Restrictive covenant setbacks (if any) are not shown.  
All setback requirements should be verified before  
construction.

Note:

Any street numbers shown on this plat were obtained from county records and are not intended as legal (property) descriptions.



SURVEY  
for  
**David Curtis Karvala and Wendy Norris Karvala**  
of  
**Lot 16, Snow Geese South Subdivision**  
in  
**Duck --- Atlantic Township --- Dare County --- North Carolina**

Reference	MB 8, PG 57
Av. Gr. El.	12 Feet
Flood Zone	"X"
FIRM	375348 0009 D
PIN	21 995015 73 3496
Zoning	RS-1
Field Date	January 26th, 1999
Scale	1" = 30'
Area	10,168 s.f. by c-c
File #	99108
Fieldbook/Page	DC

— LEGEND —

- Existing Conc. Mon.
- Existing Iron Rod
- Set Iron Rod
- Existing Iron Pipe

**CUMMINS SURVEYING**  
2400 N. CROATAN HWY.  
P. O. Box 2784  
KILL DEVIL HILLS  
NORTH CAROLINA  
27948  
(252) 441-1352





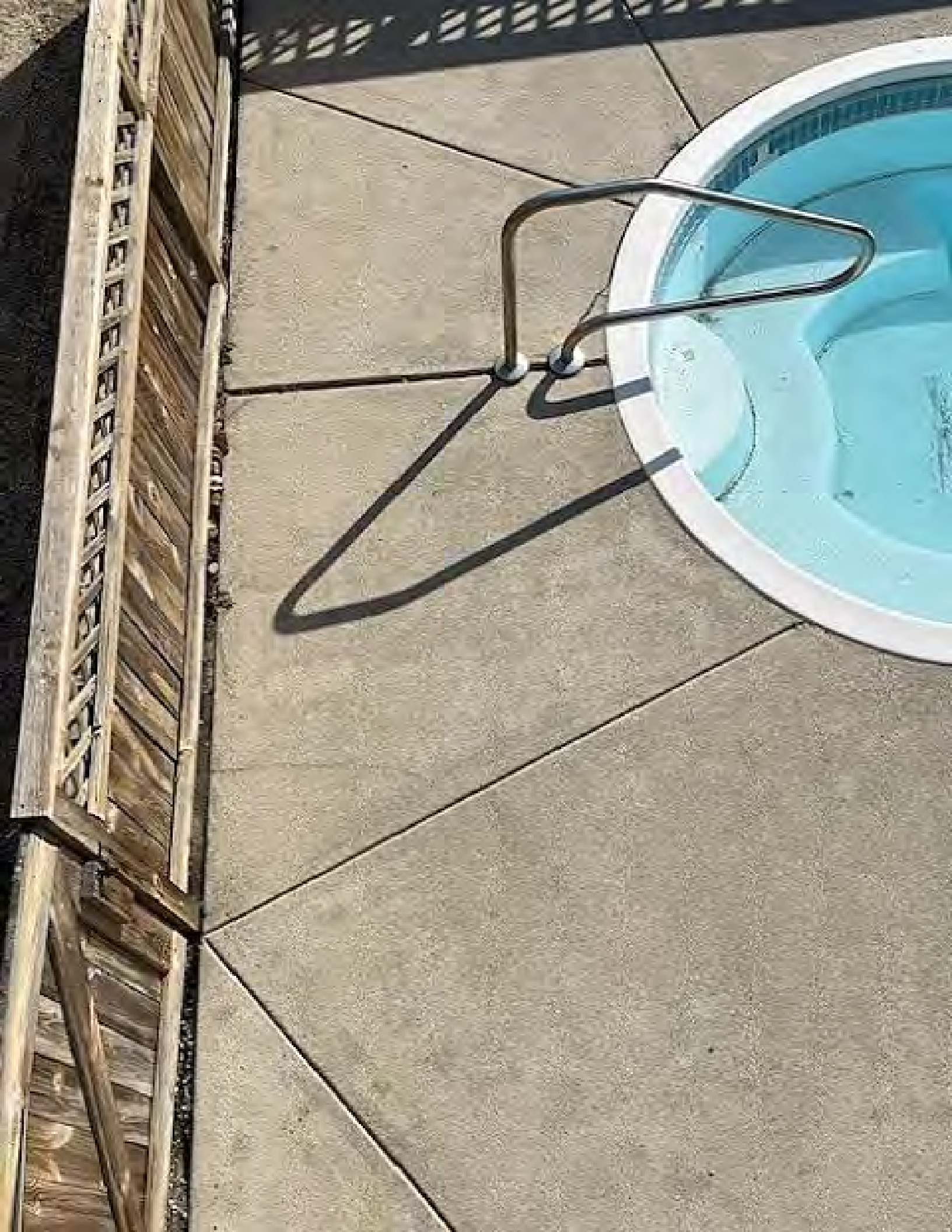














IN ORDER TO USE THE HOT TUB, YOU MUST READ THE INSTRUCTIONS CAREFULLY. THE HOT TUB IS NOT TO BE USED BY MORE THAN TWO PEOPLE AT ONE TIME. THE HOT TUB IS NOT TO BE USED BY CHILDREN WITHOUT ADULT SUPERVISION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS DRUNK OR UNDER THE INFLUENCE OF DRUGS. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS HAVING A HEART ATTACK OR OTHER MEDICAL PROBLEM. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS PREGNANT. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS TAKING MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A DIET. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A MEDICAL TREATMENT. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A SURGERY. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A CHEMOTHERAPY. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A RADIATION THERAPY. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A HORMONE THERAPY. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD THINNING MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD PRESSURE MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A DIABETES MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A CHOLESTEROL MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD SUGAR MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD CLOTTING MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD FLOW MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD VESSEL MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD CIRCULATION MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD PUMP MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD FILTER MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD CLEANER MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD PURIFIER MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD TONIC MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD SUPPLEMENT MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD ENRICHMENT MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD STIMULANT MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD TONIC MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD SUPPLEMENT MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD ENRICHMENT MEDICATION. THE HOT TUB IS NOT TO BE USED BY ANYONE WHO IS ON A BLOOD STIMULANT MEDICATION.























Return to: Town of Duck  
P.O. Box 8369  
Duck, NC 27949

Document Prepared by: Town of Duck  
P.O. Box 8369  
Duck, NC 27949

**TOWN OF DUCK BOARD OF ADJUSTMENT  
ORDER GRANTING A VARIANCE**

**130 S. Snow Geese Drive, Duck, NC**

The Board of Adjustment for the Town of Duck, having held a public hearing on March 12, 2025 to consider application number BOV-2025-001 submitted by Paul & Kathleen Mauk, a request for a variance to use the property located at 130 S. Snow Geese Drive in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's CONCLUSION that an unnecessary hardship would result from the strict application of the ordinance. This conclusion is based on the following FINDINGS OF FACT:

- Minimum structure setback and nonconformity standards in the Town Code prevent removal and reconstruction of the existing swimming pool and pool deck in the same nonconforming location as the existing improvements.
- The lot is nonconforming in size and there is no other location that the swimming pool can be located without further increasing the nonconformity.
- Therefore, compliance with the Town's current setback standards would result in the loss of the swimming pool and associated pool deck

2. It is the Board's CONCLUSION that the hardship results from conditions that are peculiar to the subject property. This conclusion is based on the following FINDINGS OF FACT:

- The subject property is nonconforming due to its relatively small size but is not afforded reduced setbacks consistent with Subsection 156.073 due to the subdivision plat date.

- The property has many unique aspects due to its corner lot location which requires increased setback along the street side.
- The location of the existing residence, swimming pool, pool deck, and septic system are unique characteristics of the subject property and contribute to the difficulty of relocating the pool/pool deck to a conforming location.
- There are other properties in the surrounding area that contain similar physical characteristics and existing nonconforming structures, but none have the combination of circumstances faced by the subject property.

3. It is the Board's CONCLUSION that the hardship did not result from actions taken by the property owner. This conclusion is based on the following FINDINGS OF FACT:

- The existing residence, swimming pool, pool deck, and septic system were approved and issued a Certificate of Occupancy by Dare County in 2000.
- With the incorporation of the Town of Duck later in 2002, the existing pool and other improvements on the subject property became legally nonconforming ("grandfathered") in regard to the front (east) and south side setbacks.
- It does not appear that the swimming pool or associated pool deck have been expanded or relocated since their original construction.
- The current property owners purchased the property in 2024 and had nothing to do with the original approval and construction of the present improvements.

4. It is the Board's CONCLUSION that granting the variance is consistent with the spirit, purpose, and intent of the regulation. This conclusion is based on the following FINDINGS OF FACT:

- Like most local governments, the Town of Duck has adopted minimum structure setbacks. Common reasons why communities adopt setback standards include improving fire safety, allowing light, and preserving privacy.
- As the proposed swimming pool and pool deck are fiberglass and concrete, there is no issue relating to fire safety.
- In addition, the proposed improvements are located approximately 97 feet from the residence to the south across S. Snow Geese Drive, 110 feet to the residence to the east across S. Snow Geese Drive, and 100 feet to the residence to the west, much greater than required fire separation distances.
- As the proposed swimming pool and deck are ground level, not elevated structures, they will not impact the availability of light to adjoining properties.
- As the proposed improvements are going back in the same location as the existing pool and pool deck, the project will not negatively impact the privacy of surrounding properties.

5. It is the Board's CONCLUSION that the requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. This conclusion is based on the following FINDINGS OF FACT:

- The existing and proposed improvements are fairly modest in size when compared with many recently permitted swimming pools. The pool and pool surround deck combined are approximately 480 square feet in size.
- The dimensions of the proposed swimming pool and pool deck are consistent with the dimensions of the existing improvements. The property owner is not seeking to expand the footprint of the existing improvements.

6. It is the Board's CONCLUSION that granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. This conclusion is based on the following FINDINGS OF FACT:

- The proposed improvements are consistent with the existing swimming pool, and pool surround deck that have existed on the subject property since 2000.
- By placing the swimming pool, and pool surround deck within the existing footprint, the property owner will be minimizing any change or impacts to the surrounding properties. The property will look much like it has in the past.

THEREFORE, as all the variance criteria have been met, IT IS ORDERED that the application for a setback variance of 4.4 feet be **APPROVED** allowing the swimming pool, hot tub, and pool deck to encroach as close as 20.6 feet from the front property line AND a setback variance of 6.9 feet be **APPROVED** allowing the swimming pool, and pool surround deck to encroach as close as 13.1 feet from the southern side property line.

(continued on the following page)

ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Olin Finch, Chair of the Board of Adjustment  
for the Town of Duck

North Carolina, Dare County

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Olin Finch, Chair of the Board of Adjustment for the Town of Duck.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Typed or printed name of Notary Public

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

Affix Notary Seal Inside This Box

***NOTE: Each decision of the Board is subject to review by the superior court by proceedings in the nature of certiorari. If an aggrieved party is dissatisfied with the decision of this Board, a petition may be filed with the clerk of superior court within thirty days after the date this order is filed in the Planning and Zoning Office or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to said aggrieved party by personal service or by registered or certified mail return receipt requested.***



**TO:** Chairman Finch and Members of the Town of Duck Board of Adjustment  
**FROM:** Sandy Cross, Senior Planner  
**DATE:** March 4, 2025  
**RE:** Staff Report for BOV 25-002, 139 Buffell Head Road

**Application Information**

Application #: BOV 25-002  
Project Location: 139 Buffell Head Road  
Dare County PIN: 995011751044  
Existing Use: Single-Family Residence  
Zoning: Single-Family Residential (RS-1)  
Property Owner/Applicant: Frederick & Kristen Schultz

---

**Public Hearing Notice**

Public Hearing Advertised: February 22 & March 2, 2025 (Coastland Times)  
Public Hearing Notices Sent: February 18, 2025  
Public Hearing Sign Posted: February 19, 2025  
Public Hearing Town Website: February 18, 2025  
Public Hearing Town Hall Posted: February 19, 2025

**Application Summary**

Subsection 156.124(C)(2)(b) of the Town Code states that accessory structures (such as decks and pools) cannot be located within 30 feet of the static vegetation line. Subsection 156.124 (C)(2)(c) further states that “existing structures which do not meet the setback criteria established by this section shall be regulated in accordance with the standards applicable to nonconforming structures established in Section 156.073. For the purposes of determining replacement cost, the value of each accessory structure shall be considered individually and shall not be combined with the value of any other structure.”

Property owners Frederick & Kristen Schultz are seeking a variance from this setback standard to permit the demolition and reconstruction of the east side decks at the rear (oceanfront) of the residence at 139 Buffell Head Road in the same, nonconforming location with a small westward expansion to tie into the existing principal residence deck. The existing residence has an inground pool, pool coping, concrete pool surround deck, and wood deck with trellis that are presently located within the 30’ setback. A portion of the concrete pool surround deck is located 6.3 feet



*Agenda Item 5b*

from the static vegetation line, thus encroaching 23.7 feet into the required thirty-foot (30') setback, and the wood deck with trellis is located 3.1 feet from the static vegetation line, thus encroaching 26.9 feet into the required thirty-foot (30') setback. It is important to note that the property owners do not wish to remove and replace the pool; the pool will remain in its current nonconforming location. A copy of a survey showing the existing decks is included in Attachment B and the location of the proposed decks is included as Attachment C.

**Property Information**

Located in the Carolina Dunes neighborhood, the property at 139 Buffell Head Road is zoned Single-Family Residential (RS-1). The subject property is 12,198 square feet (0.28 acre) in size according to the As-Built Survey dated 5/5/2021 prepared by Gloria J. Rogers, Professional Land Surveyor. The property is 75 feet in width and approximately 165 feet in depth measured to the static vegetation line on the oceanfront primary dune. The subject property presently contains a seven-bedroom, 6,741 square foot single-family residence that was constructed in 2006 under the jurisdiction and standards of the Town of Duck. The property was purchased by the Schultz' in 2020, and they have been actively renovating the structure in phases.

- The adjoining property to the south located at 141 Buffell Head Road is a 12,000 square foot oceanfront lot, according to Dare County Tax records and contains a five-bedroom, 2,588 square foot single-family residence constructed in 1995.
- The adjoining property to the north located at 137 Buffell Head Road is an 11,500 square foot oceanfront lot, according to Dare County Tax records, and contains a five-bedroom, 3,214 square foot single-family residence constructed in 1993.
- The properties across Buffell Head Road to the west include a 23,000 square foot lot with a four-bedroom, 3,110 square foot single-family residence constructed in 1983 and 16,000 square foot lot with a four-bedroom, 2,170 square foot single family residence constructed in 1987.
- All of the surrounding properties have pools, and all properties in the surrounding neighborhood are zoned Single-Family Residential (RS-1)

**Background Information**

In most areas of Duck, the minimum oceanfront building setback is measured from the First Line of Stable Natural Vegetation (FLSNV), typically located on the primary oceanfront dune. The FLSNV is determined on a property-by-property basis and staked on-site by a CAMA representative. However, just prior to the beginning of the beach nourishment project in 2017, the Town of Duck worked with CAMA officials to survey the existing vegetation and established a Static Vegetation Line (SVL) from which future measurements are taken. As the subject property is in the beach nourishment area, its setback measurements are taken from the SVL.



*Agenda Item 5b*

The issue leading to this variance request was identified when the Schultz' contractor met with the Community Development Department to propose demolition and reconstruction of the existing pool surround deck and wooden deck with trellis. After reviewing the recently prepared survey and field-checking the situation, Community Development staff confirmed that the existing decks are located within thirty feet (30') of the static vegetation line.

While the existing decks can be repaired and maintained in their present location, complete replacement of the decks requires full compliance with current Town standards if the cost of the project exceeds 50% of the value of the structure (i.e. cost to construct new pool, pool surround deck, wood deck and trellis). The cost of that replacement would be based on like materials.

**§ 156.073 NON-CONFORMING STRUCTURES.**

*Where a lawful structure exists on July 3, 2002, on the effective date of any applicable amendment of this chapter, that could not be built under the terms of this chapter by reason of restrictions on area, number of bedrooms, lot coverage, height, yards, its location on the lot or other requirements concerning the structure, the structure may be continued so long as it remains lawful, subject to the following provisions.*

*(A) No like non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.*

*(B) Should the non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed, except in conformity with the provisions of this chapter.*

The owners are proposing to replace the concrete pool deck and wooden deck with permeable pavers which cost substantially more than replacing with like materials and, therefore, due to the nonconforming location, if the pool surround deck, coping and wood decks are removed, they cannot be rebuilt unless in conformance with current minimum setback standards of the Town. They are also seeking to expand the pool deck to the west to tie into the principal structure eastside deck.

The applicant has noted an immediate interest in addressing the poor condition of the existing decks which they indicate have settled and are a hazard. The existing configuration and connection between the concrete pool deck and the wooden deck does pose a hazard from staff's perspective. See attached Exhibit F (existing condition photos taken by Staff 2/2025). Additionally, there is approximately a 12-18 inch gap between the principle structure eastside deck and the pool surround deck. There area is undecked and poses a hazard. Previously, there was a pool barrier located here and an unfinished surface. See attached Exhibits G and H. The owners are seeking to bridge this gap, adding pavers here as well. The applicants have indicated that the existing pool barrier is failing and likely does not meet current NC Building code in some regards.



*Agenda Item 5b*

NOTE: Should the Board of Adjustment grant the requested variance, the property owners will need to obtain a CAMA Minor Permit and a Development Permit from the Town of Duck.

**History**

When originally constructed in 2006, the residence on the subject property was located much further to the west of the dune and FLSNV. Over the subsequent decades, the dune and FLSNV (now SLV) have migrated to the west as a result of natural processes and beach erosion. The aerial photograph from 2006 (Attachment J) shows a FLSNV approximately 43 feet from the current SVL. A more recent aerial photograph from 2018 (Attachment K) shows the extent to which the dune and vegetation have migrated westward. A side-by-side comparison is included as well (Attachment L).

**Applicable Ordinance Standards**

**Duck Zoning Ordinance:**

***Section 156.124 Structures Within the Primary and Frontal Dunes***

*(C) Regulatory Standards*

*(2) Setbacks Established for Dune Protection*

- (a) Development shall be regulated in accordance with the setback criteria established by the Coastal Area Management Act (CAMA) as defined in 15A NCAC 07H .0306.
- (b) Accessory structures that are exempt from the CAMA setback criteria shall not be located within 30 feet of the first line of stable natural vegetation or static vegetation line. This shall include decks, gazebos, pools and any other structure which meets the exception criteria established by the Coastal Area Management Act (CAMA) in 15A NCAC 07H.0309. This setback shall not apply to dune walkover structures as defined in this section. Additionally, one dune deck per lot may be allowed no closer than 15 feet to the first line of stable natural vegetation or static vegetation line provided that the dune deck does not exceed 8 feet measured in any dimension, including the area that is combined with or adjacent to any dune walkover structure that may be present, and also provided that the dune deck is no higher than 30 inches above grade. In cases where the first line of stable natural vegetation is not evident on the subject property, this line shall be determined by interpolating a straight line between nearest identifiable first line of stable natural vegetation on the adjacent properties directly to the north and south of the subject property (this clause does not apply to properties subject to the static vegetation line).
- (c) Existing structures which do not meet the setback criteria established by this section shall be regulated in accordance with the standards applicable to nonconforming structures





*Agenda Item 5b*

established in Section 156.073. For the purposes of determining replacement cost, the value of each accessory structure shall be considered individually and shall not be combined with the value of any other structure.

**Coastal Area Management Act (CAMA):**

***7H. State Guidelines for Areas of Environmental Concern***

**.0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS**

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- 1) campsites;
- 2) driveways and parking areas with clay, packed sand, or gravel;
- 3) elevated decks not exceeding a footprint of 500 square feet. Existing decks exceeding a footprint of 500 square feet may be replaced with no enlargement beyond their original dimensions;
- 4) beach accessways consistent with Rule .0308(c) of this Section;
- 5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- 6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- 7) temporary amusement stands consistent with Section .1900 of this Subchapter;
- 8) sand fences;
- 9) swimming pools;
- 10) and fill not associated with dune creation that is obtained from an upland source and is of the same general characteristics as the sand in the area in which it is to be placed.

In all cases, this development shall be permitted only if it is landward of the vegetation line or pre-project vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; is not essential to the continued existence or use of an associated principal development; and meets all other non-setback requirements of this Subchapter.

It is important to note that under these exceptions, CAMA would allow a pool with a maximum 6' pool surround as well as a separate deck up to 500 square feet within the 60' setback.

Applicants will need to provide additional details related to the amount of decking that is not considered pool surround decking to confirm that it does not exceed 500 square feet within the 60-foot CAMA Ocean Hazard Setback when they apply for a CAMA Minor Permit. This would be subject to consideration of the 50% rule under Coastal Resource regulations, however they look at



*Agenda Item 5b*

50% differently than the Town of Duck and that is not the subject of discussion for this matter today.

The proposed improvements are located landward of the pre-project development line and if a CAMA Minor permit were submitted for these improvements, a permit would be permissible, however a reduction in decking may be necessary if they exceed 50%. See attached Exhibit I which includes rough deck calculations.

The Town Code is more restrictive and therefore a variance is needed in order to grant approval for the improvements requested.

**Variance Criteria/Staff Analysis**

Section 156.167 of the Duck Town Code states that when unnecessary hardships will result from carrying out the strict standards of the zoning ordinance, the Board of Adjustment may grant a variance from provisions of the zoning ordinance consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

During its evaluation of the variance application, the Board of Adjustment is required to consider and make findings concerning the following six criteria. If the Board finds that all six of the criteria have been met, then the Board should vote to grant the requested variance. If the Board finds that one or more of the criteria have not been met, then the Board should deny the requested variance.

As part of its decision, the Board of Adjustment members may impose conditions on the approval of a variance, as long as the conditions are reasonably related to the variance. Such conditions are often intended to mitigate any potential impact resulting from the variance.

**1. Sec. 156.167(A)(1) - Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.**

- The applicants' proposed project is a reasonable request to replace the house's oceanfront concrete pool surround deck and wooden trellis deck in their current location. The applicant is also seeking to expand the footprint, and size of the concrete pool surround deck slightly in an easterly direction in order to bridge the gap between the existing westside pool surround deck and the principal structure eastside deck to address an unsafe condition created partially by the removal of the westside pool barrier.
- The existing decks do not comply with current setback requirements from the static vegetation line on the dune. Section 156.124(C)(2)(b) of the Town Code prevents reconstruction of new decks in the same, nonconforming footprint as the existing decks.



*Agenda Item 5b*

- The current decking is 18 years old, not in good condition, and poses a safety hazard to tenants of the property. The applicant is seeking to upgrade the safety and sturdiness by demolishing the existing decks and replacing them entirely.
  - The gap between the existing westside pool surround deck and the principal structure eastside deck poses a hazard.
  - To comply with the 30-foot minimum setback standard, the pool surround deck and trellis deck would be unbuildable, and yet the pool would remain with very limited access.
  - It is staff's opinion that strict application of the ordinance would eliminate the ability to construct any decks for a pool surround, resulting in hardship to the applicant.
  - However, in staff's opinion, the proposed expansion of the deck in the area adjoining the residence is not necessary to maintain a reasonable width and a hardship does not exist to support the proposed expansion.
2. **Sec. 156.167(A)(2) - The hardship results from conditions that are peculiar to the subject property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.**
- Many surrounding properties to the north and south will have similar challenges as they look to repair or replace eastside amenities.
  - There are other properties in the surrounding area that contain similar physical characteristics (oceanfront location, existing nonconforming structures, beach erosion, etc.), however every property has its own set of circumstances unique and separate from the subject property.
  - It is staff's opinion that the subject property has unique conditions peculiar to the property in that it contains a weathered and unsafe wooden deck that ties into a settling concrete pool surround deck. There are many new and improved products available for such amenities, but they are not comparable to the existing decks.
  - These decks will improve the safety of the decks, albeit with new and improved products, and add aesthetically appealing and increased value to the property distinct from neighboring properties.
3. **Sec. 156.167(A)(3) - The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing the property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.**
- When constructed in 2006, the residence, pool and pool surround decking as well as the wooden trellis deck at 139 Buffell Head Road were located significantly further to the west of Atlantic Ocean and oceanfront dune. Its location in relationship to the first line of stable



*Agenda Item 5b*

natural vegetation at that time would have complied with the Town's current setback standards for accessory structures (which were not in place in 2006).

- The applicants purchased the subject property in 2021. Neither the previous owners nor the applicants have subsequently enlarged the decks or conducted any activities that exacerbated the nonconforming situation.
- It appears that the hardship has resulted from erosion and westward movement of the beach and dune, which has moved the static vegetation line closer to the residence.
- The gap between the westside pool surround deck and the principal structure eastside deck appears to previously have been unimproved and also included a pool barrier. That barrier no longer exists and now the gap appears to have eroded or been excavated creating an unsafe condition. It is unclear whether this is the result of actions by the property owner or whether it occurred naturally.
- It is staff's opinion that the hardship, for the most part, has not resulted from actions of the applicant.
- However, staff does not find the same circumstances in the area where expansion is being requested as the applicants appear to have removed a fence that existed in this area and are now proposing to expand the existing deck in this area.

**4. Sec. 156.167(D) - The requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.**

- The Board of Adjustment must decide if the existing width and location of the pool surround deck and wooden trellis deck is the minimum possible to allow reasonable use of the decks.
- The applicants' proposal includes a minor expansion of the nonconforming deck in an easterly direction. The expansion seeks to bridge the gap between the existing westside pool surround deck and the principal structure eastside deck to address an unsafe condition.
- To comply with the 30-foot minimum setback standard, essentially the entire pool surround deck and wooden trellis deck would not be rebuildable, however the pool would still remain. The functionality of the pool would be severely diminished.
- Staff notes that the requested variance for the existing deck is the minimum necessary to reconstruct the deck in its current configuration and address an unsafe condition.
- However, staff finds that the proposed expansion of the deck is not the minimum possible as the property functioned without this portion of the deck for 18 years.

**5. Sec. 156.167(E) - Granting the variance will be in harmony with the general purpose and intent of the Zoning Ordinance.**

- Section 156.124(A) of the Zoning Ordinance contains a purpose statement outlining the intent of the Town Council when adopting these standards for structures within the primary and frontal dunes. The ordinance reads, "It is the purpose of this section to develop



*Agenda Item 5b*

regulatory standards which will assist with the preservation of a continuous dune system within the town, acknowledging the protective and aesthetic values that this feature provides. Regulations are hereby established to limit structures within the dune system that are known to weaken its structural integrity.”

- Constructing a new deck structure into the western side of the dune within the 30-foot Town and 60-foot CAMA minimum setback has the potential to weaken or compromise the stability of the dune.
- It could also be debated that replacement of the decks within the same footprint could actually cause further damage to the adjoining dune or weaken the dune’s structural integrity.
- Staff notes however that the current structure consists of frangible concrete and a sizeable wooden structure. Replacement of the existing decks with permeable pavers may have less impact on the environment and reduce the potential for damage to others in the event of a casualty storm event.
- As the proposed deck is in the same location as decks that have existed within the dune for decades, and the gap between the westside pool surround deck and the principal structure eastside deck previously had a large wooden pool barrier, it is staff’s opinion that the proposed project will not substantially damage the dune system, and the proposed variance is consistent with the stated intent of the ordinance.

**6. Sec. 156.167(E) - Granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.**

- The proposed project would replace the existing decks in their original configuration, with a small connective section between the westside pool surround deck and the principal structure eastside deck. While there will be temporary noise and activity impacts during construction, there will be no additional visual impact to the surrounding properties and neighborhood. The decking and house will look much like it has in the past.
- The location of the proposed decks to the rear of the residence is minimally visible from Buffell Head Road. The proposed decks will likely not even be visible from adjoining properties to the north and south as the decks will be on grade.
- The Homeowner’s Association was notified of the project and provided comments in support of the application.
- Based on the information available, it is staff’s opinion that granting a variance will not negatively impact on the neighboring properties or be detrimental to the public welfare or environment.





**Staff Recommendation**

In summary, it is staff's opinion that the applicant has provided sufficient evidence to show that the subject property contains a legitimate hardship due to the movement of the dune system westward over the past 18 years. The applicant has proposed a reasonable project to replace the existing deteriorating decks with new, safer, less environmentally impactful decks in the same footprint. It does not appear that granting a variance will negatively impact the adjoining dune system or any of the surrounding properties.

- As outlined in detail above, it is staff's opinion that the applicants have satisfied the conditions of Findings 2, 5, and 6.
- However, although they meet most of the criteria, it is staff's opinion that the applicants have not satisfied the conditions of Findings 1, 3, and 4 due to the proposed expansion of the deck.

As all the findings have not been met in staff's evaluation of the requested variance, staff recommends **DENIAL** of this variance application. **HOWEVER**, the Board may choose to separate the deck expansion from the approval and treat that on its own merit. In this case, staff would recommend **APPROVAL** of the variance application without the deck expansion as concerns regarding Findings 1, 3, and 4 would be addressed.

**ATTACHMENTS**

**Applicant Exhibits:**

- A. Variance Application
- B. Current As-Built Survey Dated 5/5/2021
- C. Proposed Site Plan

**Staff Exhibits:**

- D. Location Map and Property Information
- E. Existing Conditions Photographs taken 2/2025
- F. Aerials – East facing 2018 & 2022
- G. Photographs taken 9/2024
- H. Aerial with area calculations
- I. Aerial Photograph Dated July 2006
- J. Aerial Photograph Dated September 2018
- K. Aerial Photograph Comparison
- L. Names and Addresses of Comments Received
- M. Draft Order Approving the Variance
- N. Draft Order Denying the Variance

BOV-2025-002



## Department of Community Development

PO Box 8369

1200 Duck Road

Town of Duck, North Carolina 27949

(252) 255-1234

NOTE: listed in Citizenseerve  
as BOV25-004

## ZONING VARIANCE APPLICATION

Applicant: Frederick & Kristen Schultz Date: 1/7/2025Mailing Address: 11620 partridge run lane, Potomac MD 20854Telephone #: 240-695-6632 Email: Rick11620@gmail.comRepresentative (if different from applicant): Evolve Design + Build (Jordan Daneker)Mailing Address: 3949 Caratoke Hwy, Barco NC 27917Representative Telephone #: 252-202-9008 Email: Office@Evolvedesignbuildllc.com**Property Information:**Property Address/Location: 139 Bufflehead RoadDare County PIN #: 995011751044Zoning District: RS-1 Use of Property: Single family residential**Variance Request:**Applicable Ordinance Section: 156.124 STRUCTURES WITHIN THE PRIMARY AND FRONTAL DUNES.Ordinance Requirement: The ordinance requires a 30' setback from the static vegetation line for accessory structures.

Variance Requested: \_\_\_\_\_

Request for an existing nonconformity to be allowed to be built in the same footprint, as the current and original foot print that predate the town ordinance. We are seeking an allowance to encroach 26.9" & 23.7 into the 30' setback, replacing the existing concrete pool deck with new permeable pavers.

*The Duck Board of Adjustment, with a vote of four-fifths of the membership, may grant a variance from specific provisions of the Zoning Ordinance. Consistent with the N.C. General Statutes, Section 156-167 of the Zoning Ordinance states that the Board of Adjustment is required to make certain findings as a prerequisite to granting a variance. The following questions are intended to offer the applicant an opportunity to address these criteria for the Board members. Please answer each question as thoroughly as possible.*

1. Describe the hardship created by strict application of standards in the Zoning Ordinance?

The pool and pool deck were constructed when the house was constructed in 2006 and met all applicable setback requirements in place at the time of construction. The Current pool coping is failing and the decking around the pool has settled, and caused a hazard to elder family members using the space. The barrier guide is non compliant, and failing apart which needs to be replaced for safety and to meet pool code. The current site also does not allow for a new location for improvements.

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2. Describe any special conditions or circumstances (such as property dimensions, location, or topography) contributing to the hardship that are peculiar to the subject land or structure and not applicable to other properties in the same area.

Due to erosion overtime, there is no fix or repair. There is also no other place to relocate the featured to on the site.

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3. Explain why the hardship is not the result of actions taken by the applicant or property owner.

The existing features have aged out due to building products lifespan. They have failed due to erosion and or natural wear and tear of the elements. Concrete is cracked and settlement has occurred.

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4. Explain how the requested variance is the minimum possible to make reasonable use of the land, building, or structure.

We are only requesting to replace what is absolutely necessary to maintain safe living conditions, and repair safety barriers to meet current codes. We are leaving the current pool in place and only replacing the current failing decking with permeable pavers. The current fence line still maintain the current footprint as well.

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5. Explain how the requested variance is consistent with the spirit, purpose, and intent of the standards in the zoning ordinance.

The Variance requested, is minimum to keep the appearance and safety of the property up and too town standards. We are not changing the current footprint of the existing features, only replacement to age and deterioration.

6. State if the variance would be injurious to the surrounding neighborhood or detrimental to the public welfare. Describe any potential impacts.

We are not changing the footprint, only improving existing conditions and resolving unsafe, failing pool barrier. There will be no detrimental impacts to the surrounding neighborhood.

Applicant Signature

Property Owner Signature (if different from applicant)

A complete application can be submitted in person to the Town of Duck Community Development Department at Duck Town Hall, 1200 Duck Road or mailed to Town of Duck, P.O. Box 8369, Duck, NC 27949. Checks should be made payable to the *Town of Duck*. A complete application consists of:

- ☐ Complete, signed zoning variance application form
- ☐ Zoning variance application fee (\$500)
- ☐ Plat, site plan, or building plans drawn to scale showing the existing and proposed improvements
- ☐ Other exhibits or information necessary to describe the proposal
- ☐ Any other information in support of the variance request

**FOR OFFICE USE ONLY**

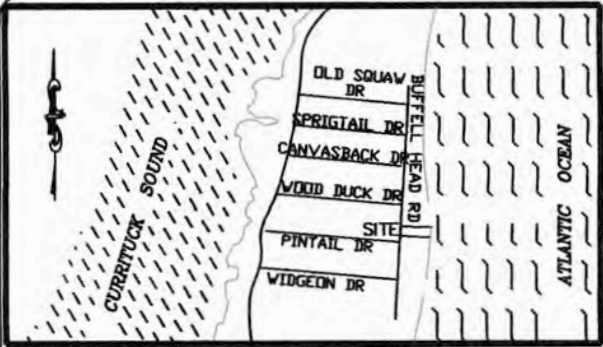
Application Received 2/3/2025

Received By Sandy Cross

Fee Paid \$500.00

Receipt # 117/Check 1033





VICINITY MAP  
N.T.S.

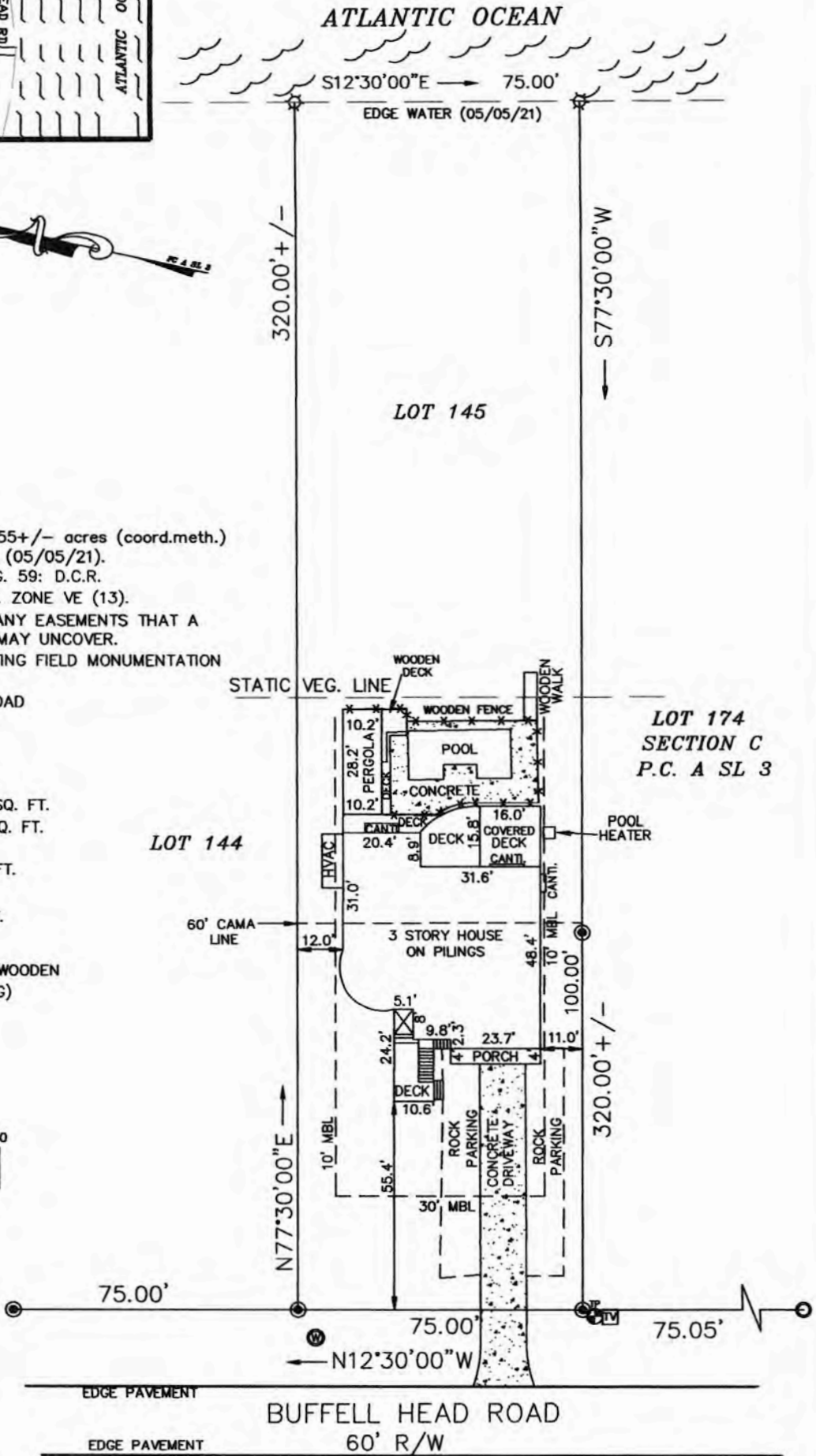
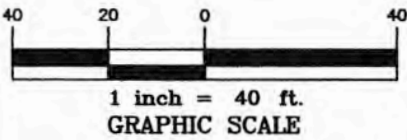
LEGEND

- PIN (F)
- PIPE (F)
- CALC PT
- WATER METER
- TELEPHONE
- CABLE TV
- TRANSFORMER

NOTES

- 1.) AREA = 24,000+/- sq. ft. / 0.55+/- acres (coord.meth.)  
AREA IS SHOWN TO EDGE WATER (05/05/21).
- 2.) AS RECORDED IN PLAT BK. 6, PG. 59: D.C.R.
- 3.) PROPERTY IS LOCATED IN F.I.R.M. ZONE VE (13).
- 4.) THIS PROPERTY IS SUBJECT TO ANY EASEMENTS THAT A MORE THOROUGH TITLE SEARCH MAY UNCOVER.
- 5.) THIS SURVEY IS BASED ON EXISTING FIELD MONUMENTATION AND RECORDED INFORMATION.
- 6.) ADDRESS: 139 BUFFELL HEAD ROAD
- 7.) PIN # 995011751044

AREA TO STATIC VEG. LINE= 12,198 SQ. FT.  
EXIST. IMPERVIOUS AREA = 4,562 SQ. FT.  
HOUSE = 2,510 SQ. FT.  
CONCRETE DRIVEWAY = 793 SQ. FT.  
COVERED PORCH = 376 SQ. FT.  
POOL AND POOL DECK = 883 SQ. FT.  
LOT COVERAGE = 37.4%  
(DOES NOT INCLUDE OPEN DECK OR WOODEN WALK OVER SAND OR ROCK PARKING)

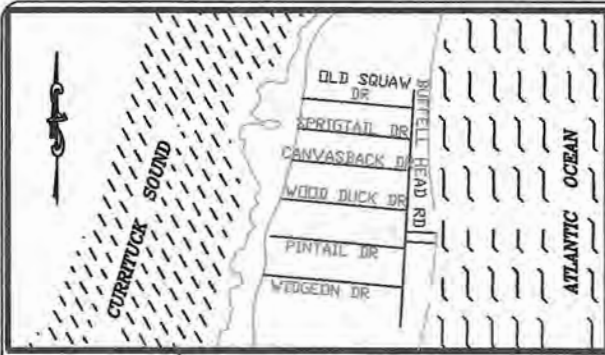


I, GLORIA J. ROGERS, P.L.S., CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION, THAT THE BOUNDARIES NOT ACTUALLY SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN EXISTING RECORDS AND THAT THIS MAP MEETS THE REQUIREMENTS OF NCAC TITLE 21, CHAPTER 56, SECTION .1600 AS AMENDED. WITNESS MY HAND AND SEAL THIS THE 5th DAY OF MAY, 2021.

*Gloria J. Rogers*  
P.L.S. L-3531

FILE NO. 2021-054	PHYSICAL SURVEY FOR <b>FREDERICK J. SCHULTZ AND KRISTEN A. SCHULTZ</b>		
SURVEY DATE 05/05/21			
CADD FILE 2021-054			
SCALE 1" = 40'			
DRAWN GJR	DARE CO.	DUCK	NORTH CAROLINA
GLORIA J. ROGERS PROFESSIONAL LAND SURVEYOR			
215 B STREET CAMDEN, N.C. 27921 (252) 338-1415 Phone (252) 333-8781 Cell			



VICINITY MAP  
N.T.S.

## LEGEND

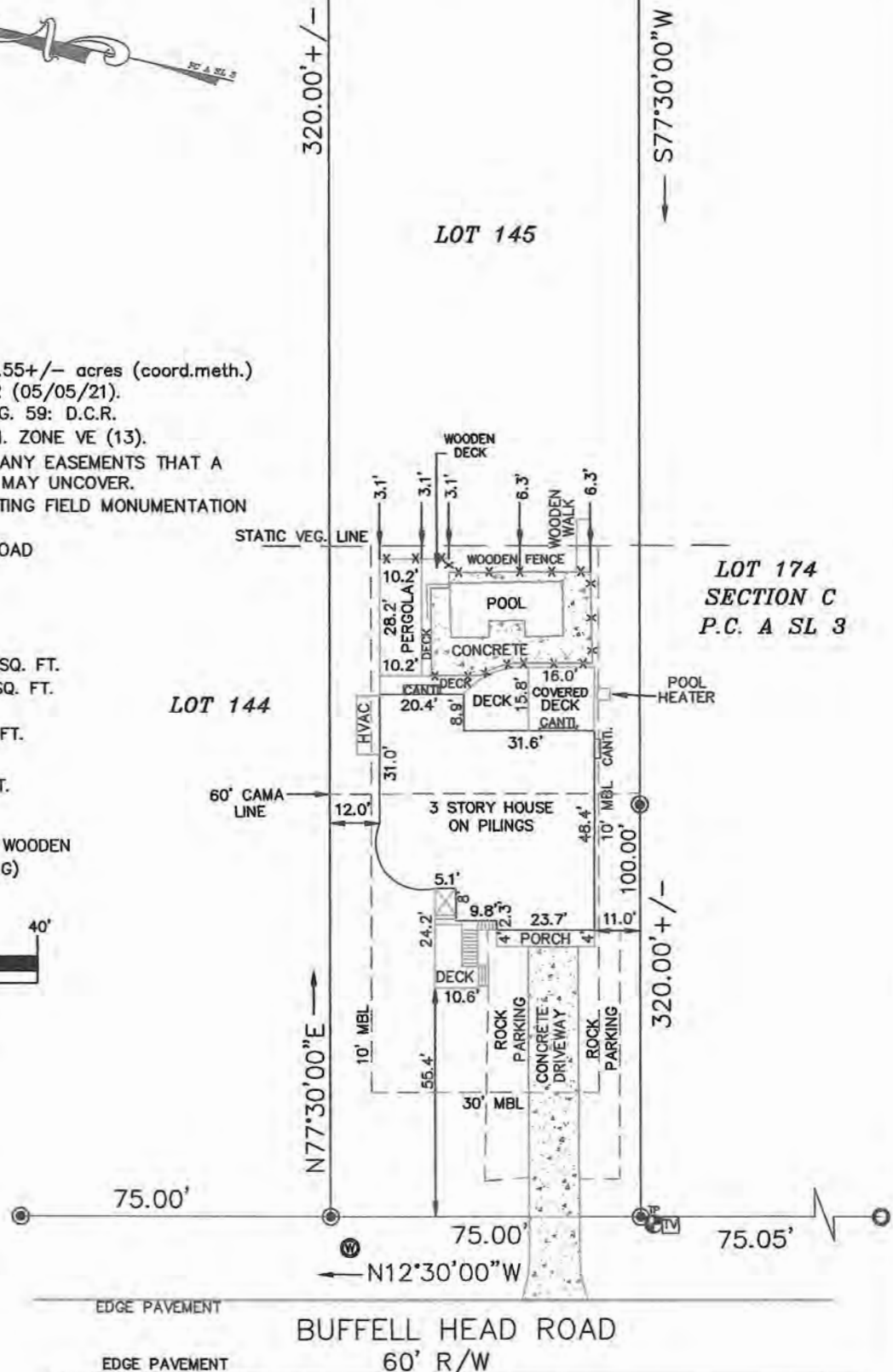
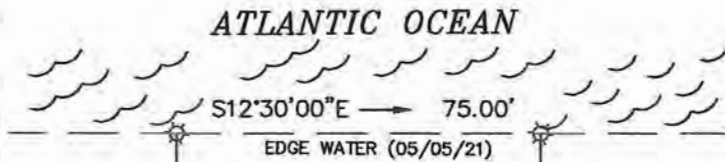
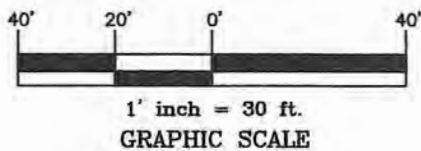
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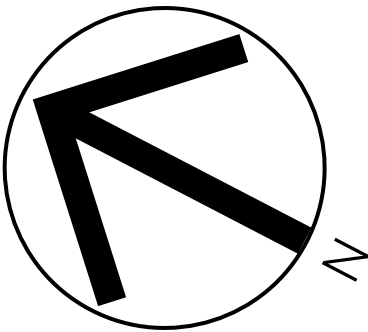


Shoultz Project

139 Bufflehead Rd  
Kitty Hawk, NC 27949

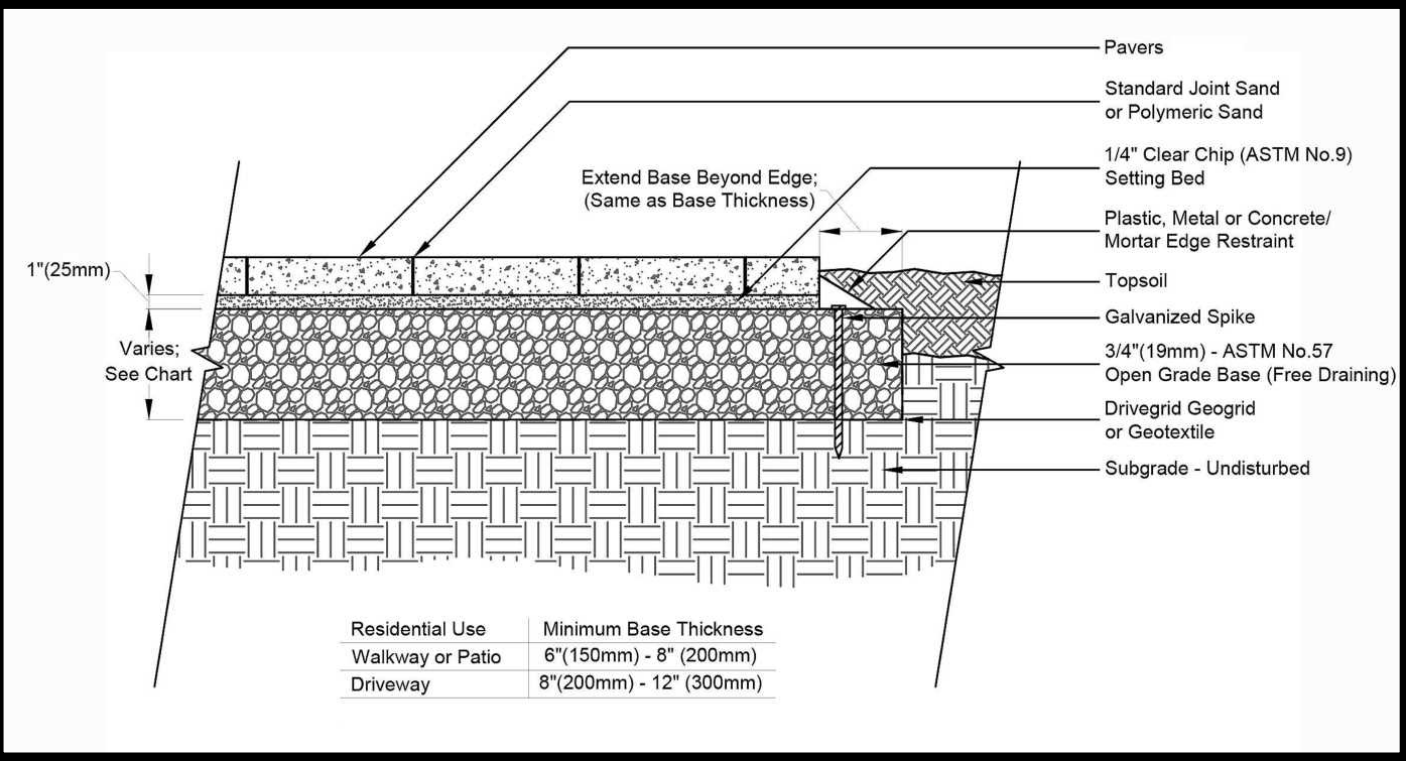
Document Date:  
February 1, 2025

Project Phase:  
Design Phase - v5



Overview Plan

L.100



CONSTRUCTION SCHEDULE		
MATERIAL	QTY.	UOM
EXISTING LOT		
STRUCTURE UNDER ROOF/OVER CONCRETE	2,474.46	SQ. FT.
EXISTING FRONT STEPS	285	SQ. FT.
EXISTING POOL	317.25	SQ. FT.
EXISTING DECKING	472.13	SQ. FT.
EXISTING LOT COVERAGE	3,548.84	SQ. FT.
PAVERS/POOL		
NEW POOL DECK PAVERS	796	SQ. FT.
NEW POOL COPING	122	SQ. FT.
CONCRETE DRIVEWAY	1,762	SQ. FT.
PAVER DRIVEWAY (100% LOT COVERAGE CREDIT)	932	SQ. FT.
TOTAL PROPOSED SQ. FT.	2,680	SQ. FT.
TOTALS		
LOT 145, SECTION B CAROLINA DUNES SUBDIVISION	24,000	SQ. FT.
30% COVERAGE ALLOWED	8,000	SQ. FT.
TOTAL SQ. FT. OF LOT COVERAGE	6,228.84	SQ. FT.
TOTAL SQ. FT. PERCENTAGE OF LOT COVERAGE	25.95%	
REMAINING ALLOWED SQ. FT. LOT COVERAGE	1,771.16	SQ. FT.

1

L.100

Overview Plan

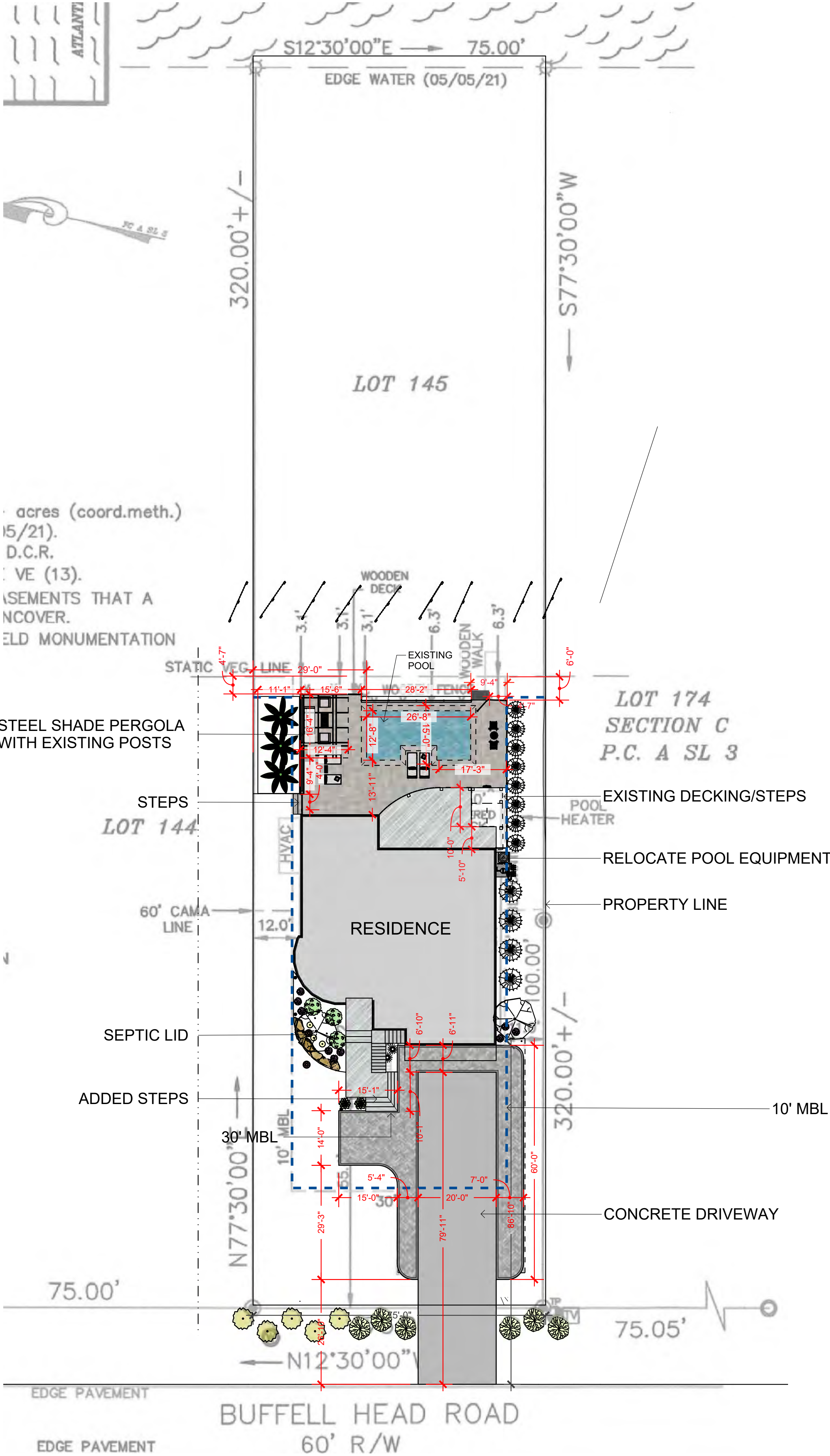
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16

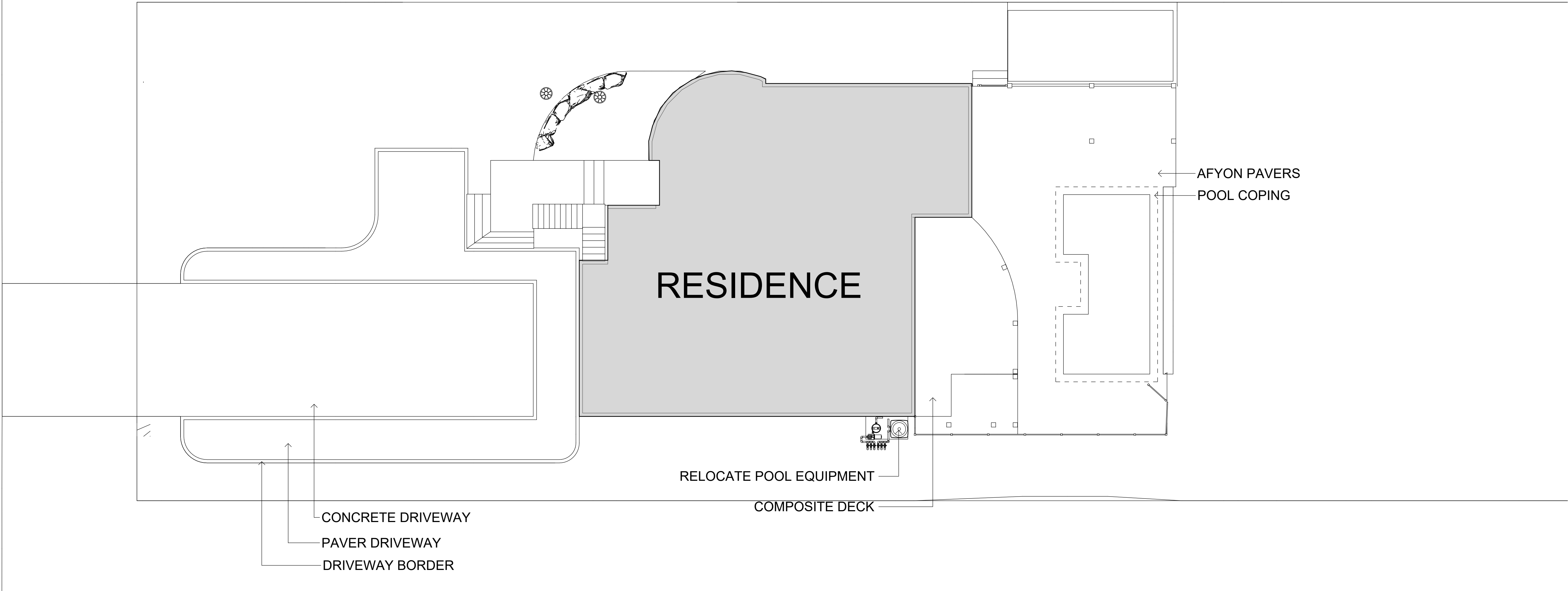
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- GENERAL NOTES:
- THE CONTRACTOR MAINTAINS ALL RESPONSIBILITY FOR THE USE, ACCURACY, AND CONFIRMATION OF ALL MATERIAL QUALITY AND QUANTITY ILLUSTRATED IN DRAWINGS.
  - ON-SITE ADJUSTMENTS MAY BE REQUIRED.
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  - ADDITIONAL MATERIAL MAY BE REQUIRED TO MEET FIELD CONDITIONS.
  - VERIFY ALL UTILITY LOCATIONS IN FIELD PRIOR TO BEGINNING WORK.





HARDSCAPE SCHEDULE		
MATERIAL	QTY.	UOM
CONCRETE DRIVEWAY	1,606	SQ. FT.
PAVER DRIVEWAY <i>Unilock Treo Smooth - Granite</i>	932	SQ. FT.
DRIVEWAY BORDER	156	SQ. FT.
AFYON CLOUD PAVERS	850	SQ. FT.
PAVER EDGE RESTRAINT	95	LIN. FT.
COMPOSITE DECK	366	SQ. FT.
POOL COPING	100	LIN. FT.
DRIVEWAY - CONCRETE	1784	SQ. FT.



1

L.101

Hardscape Plan

SCALE: 1/8" = 1' - 0"

0

8

16

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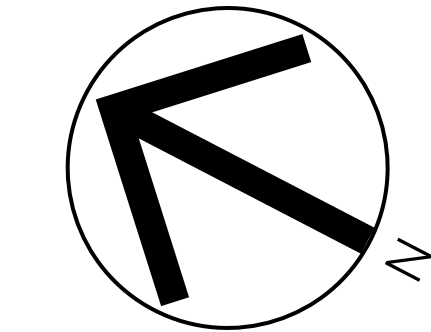


Shoultz Project

139 Bufflehead Rd  
Kitty Hawk, NC 27949

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February 1, 2025

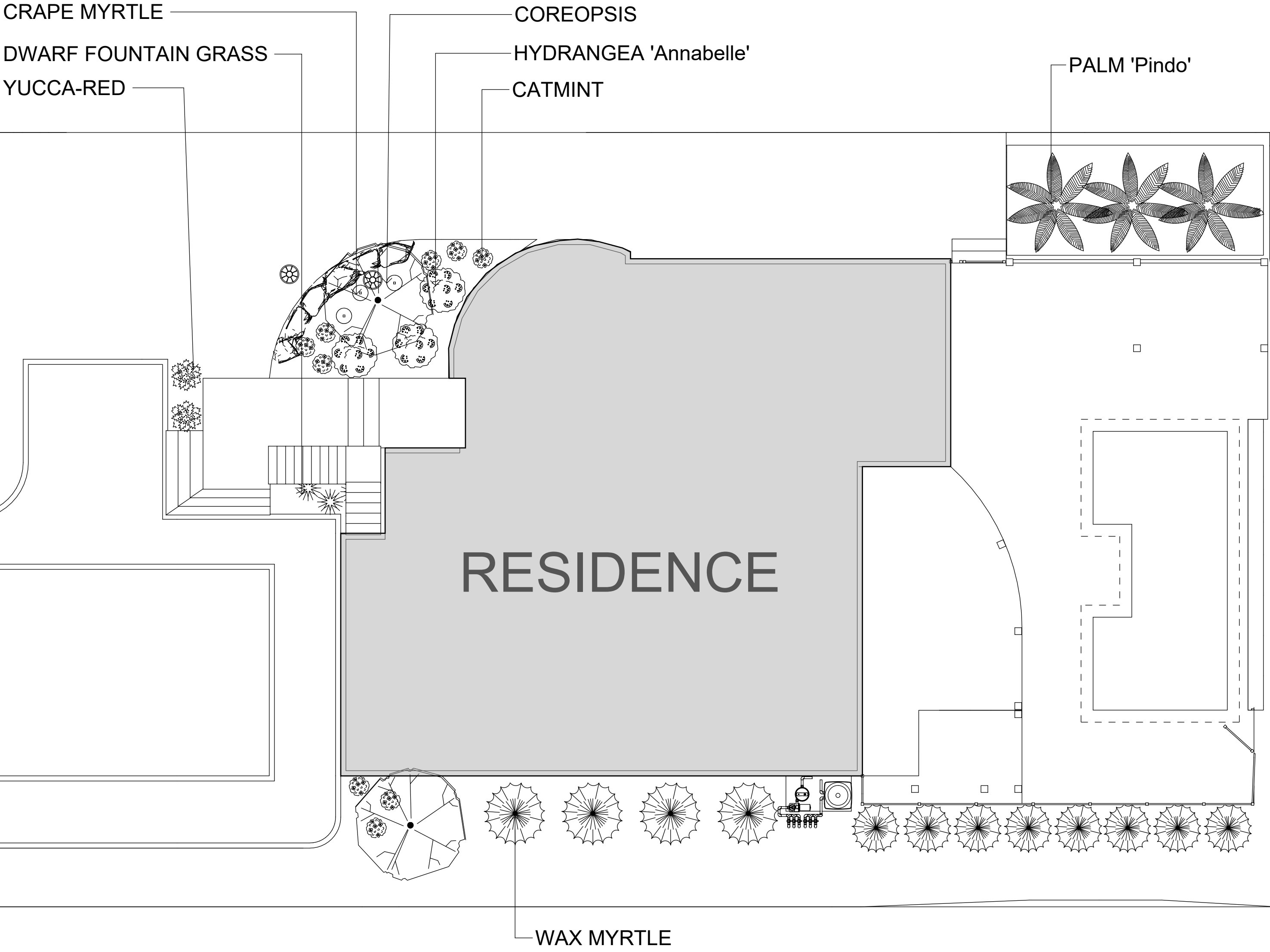
Project Phase:  
Design Phase - v5



Hardscape Plan

L.101

LANDSCAPE SCHEDULE		
COMMON NAME		QTY.
TREES		
CRAPE MYRTLE		2
PALM 'Pindo'		3
SHRUBS		
HYDRANGEA 'Annabelle'		3
WAX MYRTLE		13
GRASSES		
DWARF FOUNTAIN GRASS		3
PERENNIALS		
CATMINT		12
COREOPSIS		3
YUCCA-RED		2
MATERIAL	QTY.	UOM
MULCH BEDS	1472	SQ. FT.
BED EDGE	167	LIN. FT.
BOULDERS	2	TON



1

L.102

Landscape Plan

SCALE: 1/8" = 1' - 0"

0

8

16

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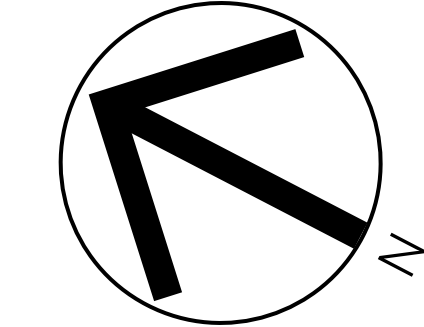


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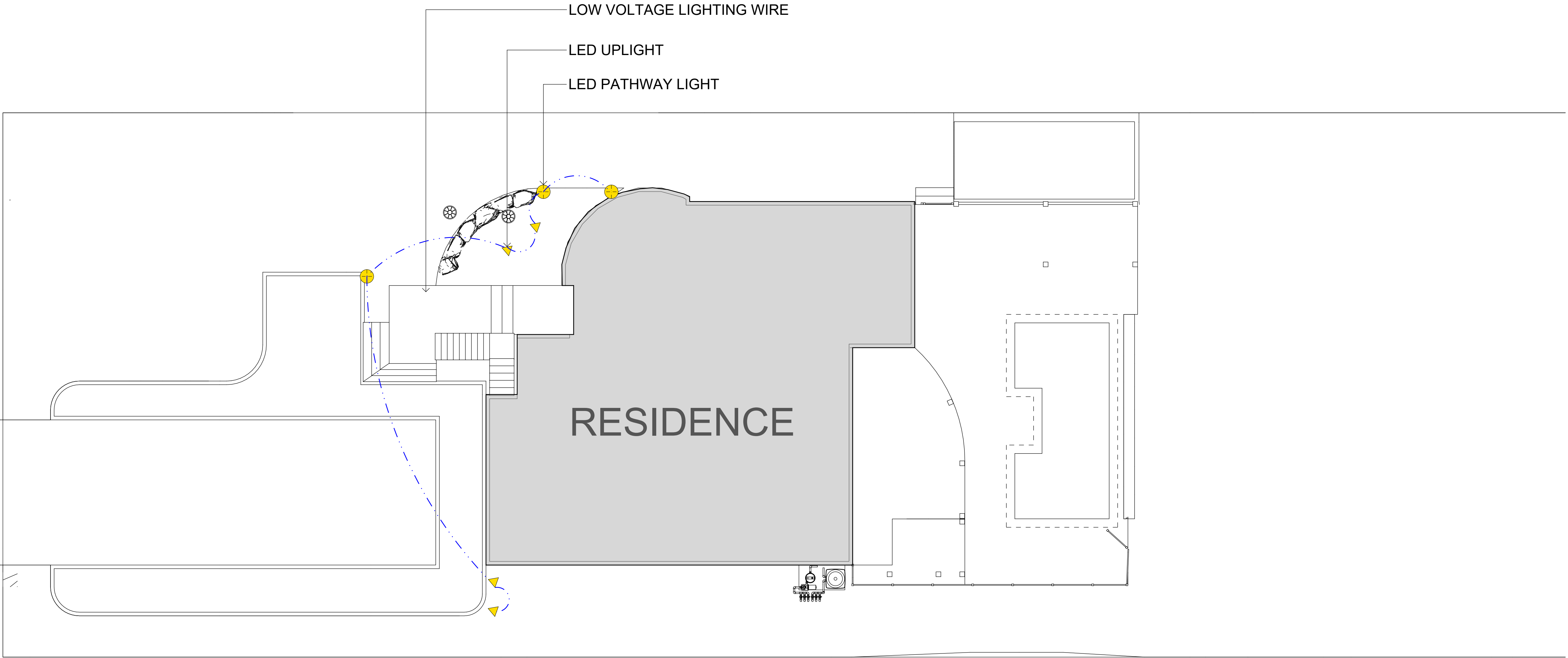
Project Phase:  
Design Phase - v5



Landscape Plan

L.102

LIGHTING SCHEDULE		
FIXTURE	QTY.	UOM
LED PATHWAY LIGHTS	3	EA.
LED UPLIGHT	3	EA.
LED TRANSFORMER	1	EA.



1  
L.103

Lighting Plan

SCALE: 1/8" = 1' - 0"

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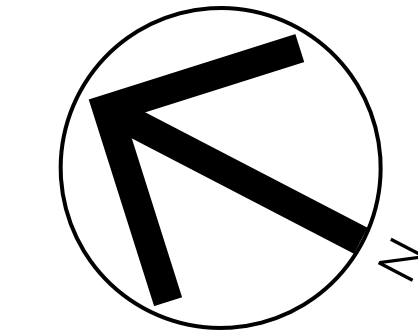


# Shoultz Project

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Design Phase - v5



Lighting Plan

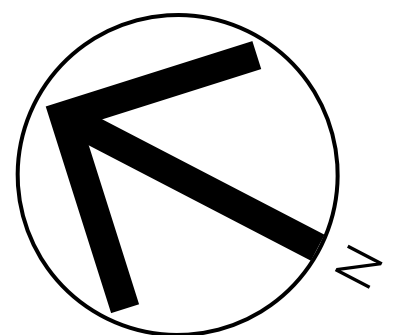
L.103



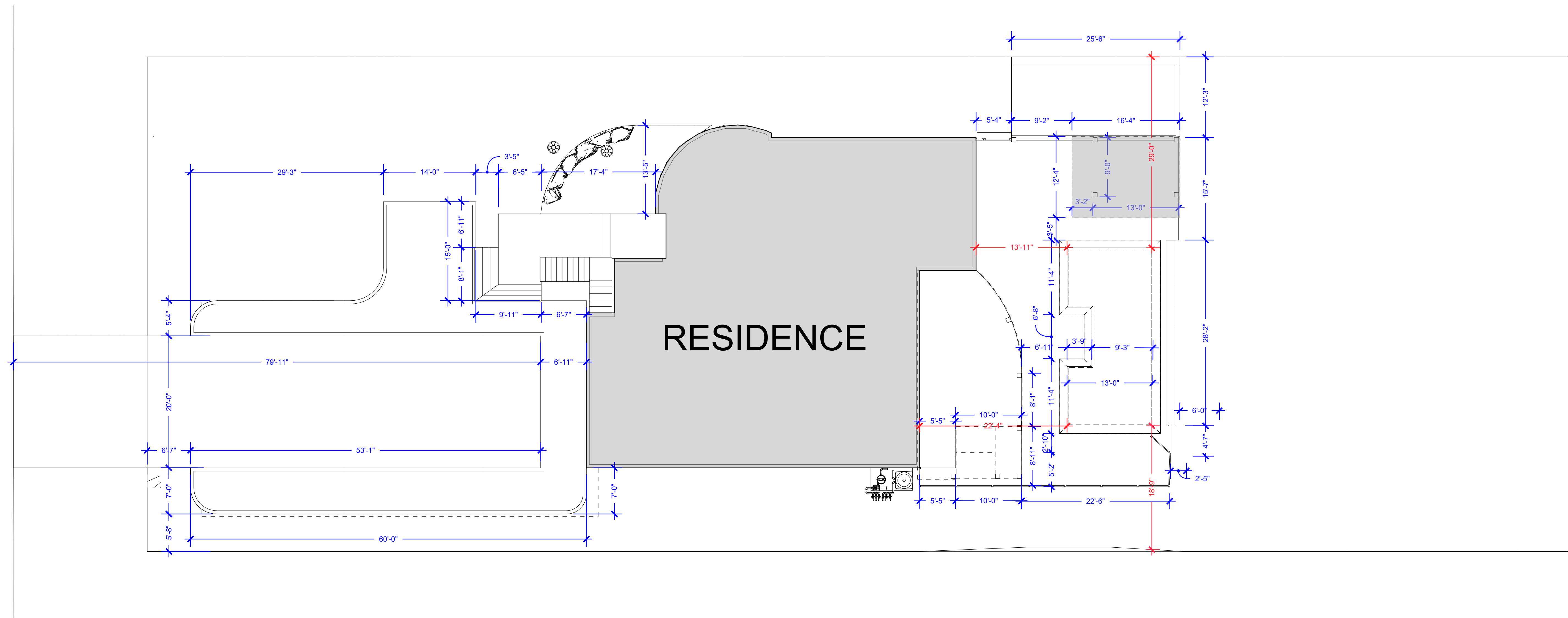


139 Bufflehead Rd  
Kitty Hawk, NC 27949

Project Phase:  
Design Phase - v5



# L.104



1  
L.104

## Dimension Plan

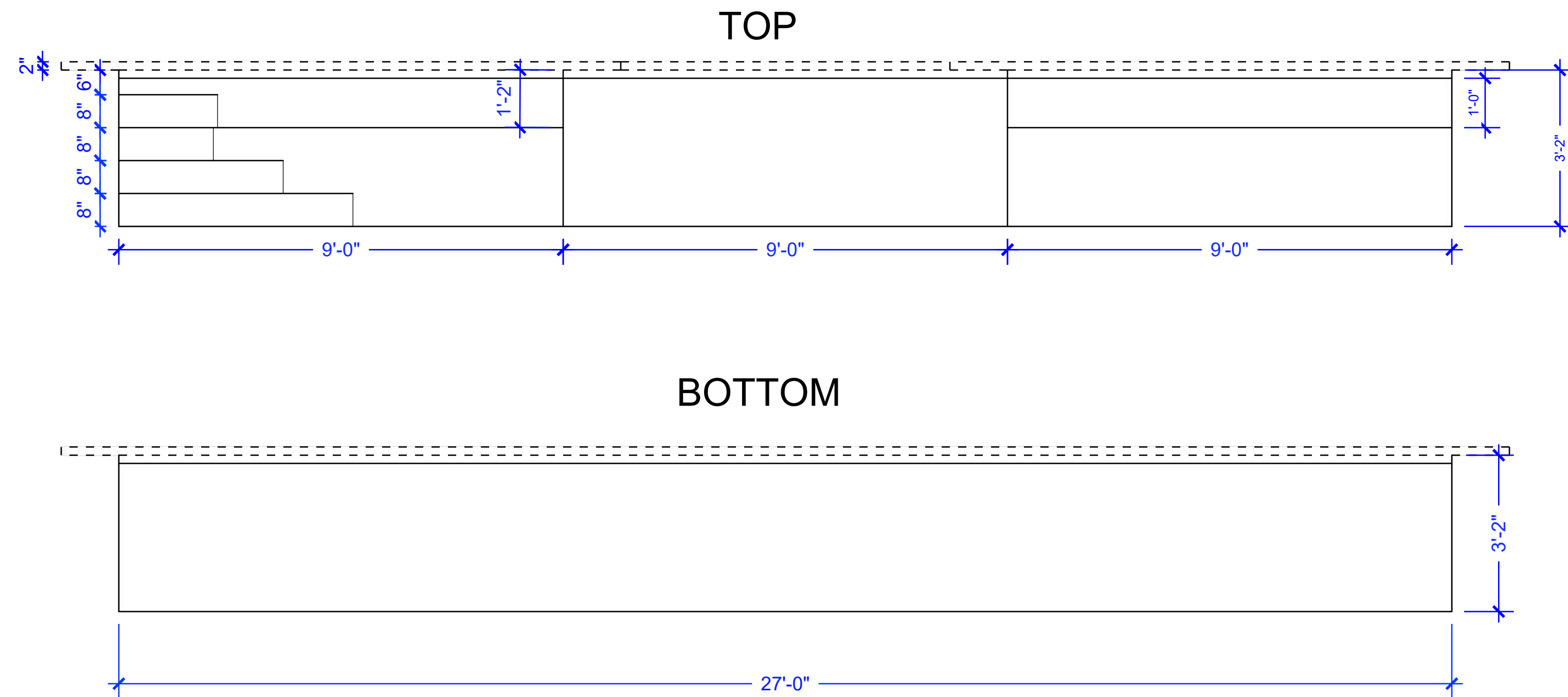
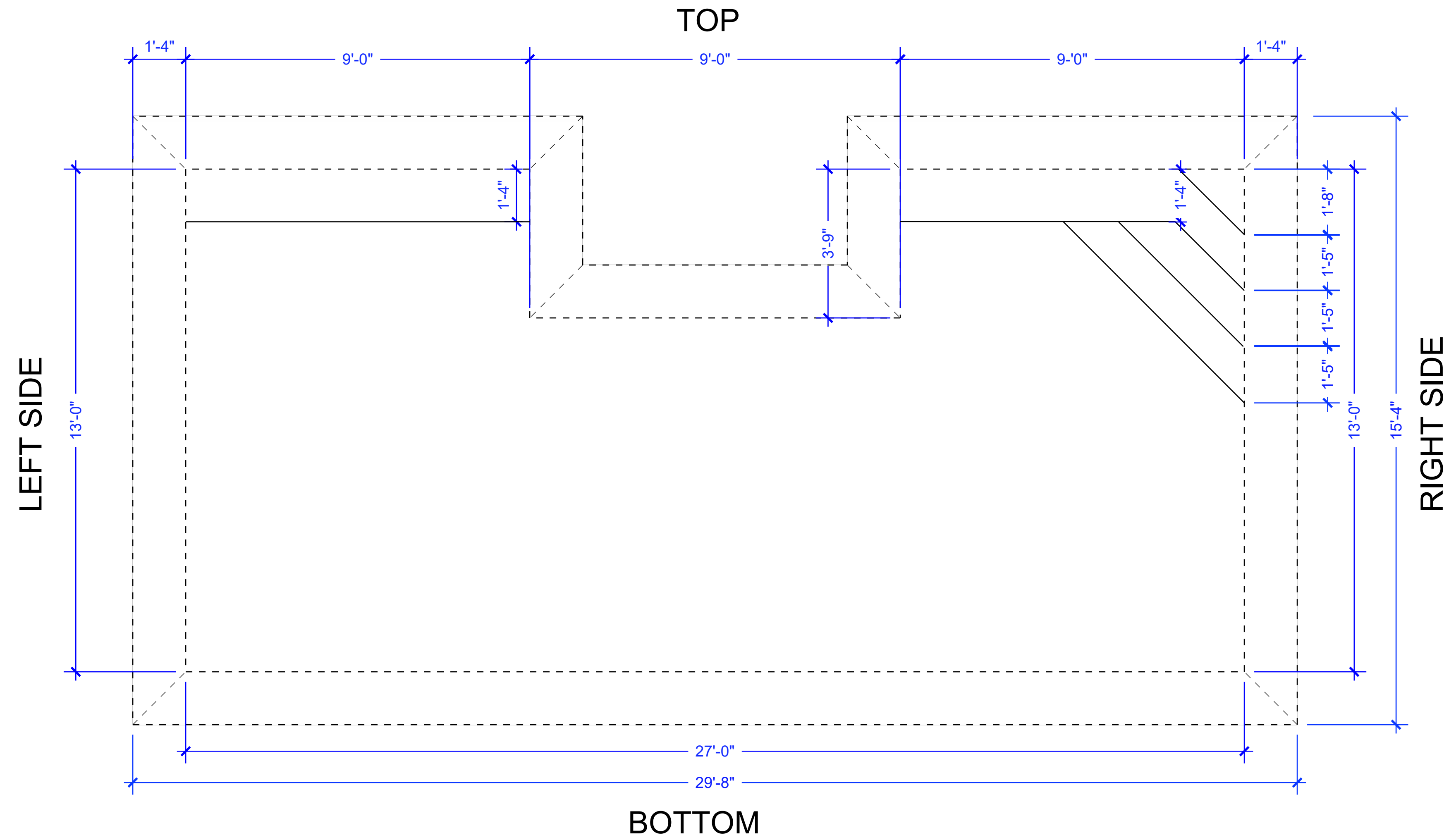
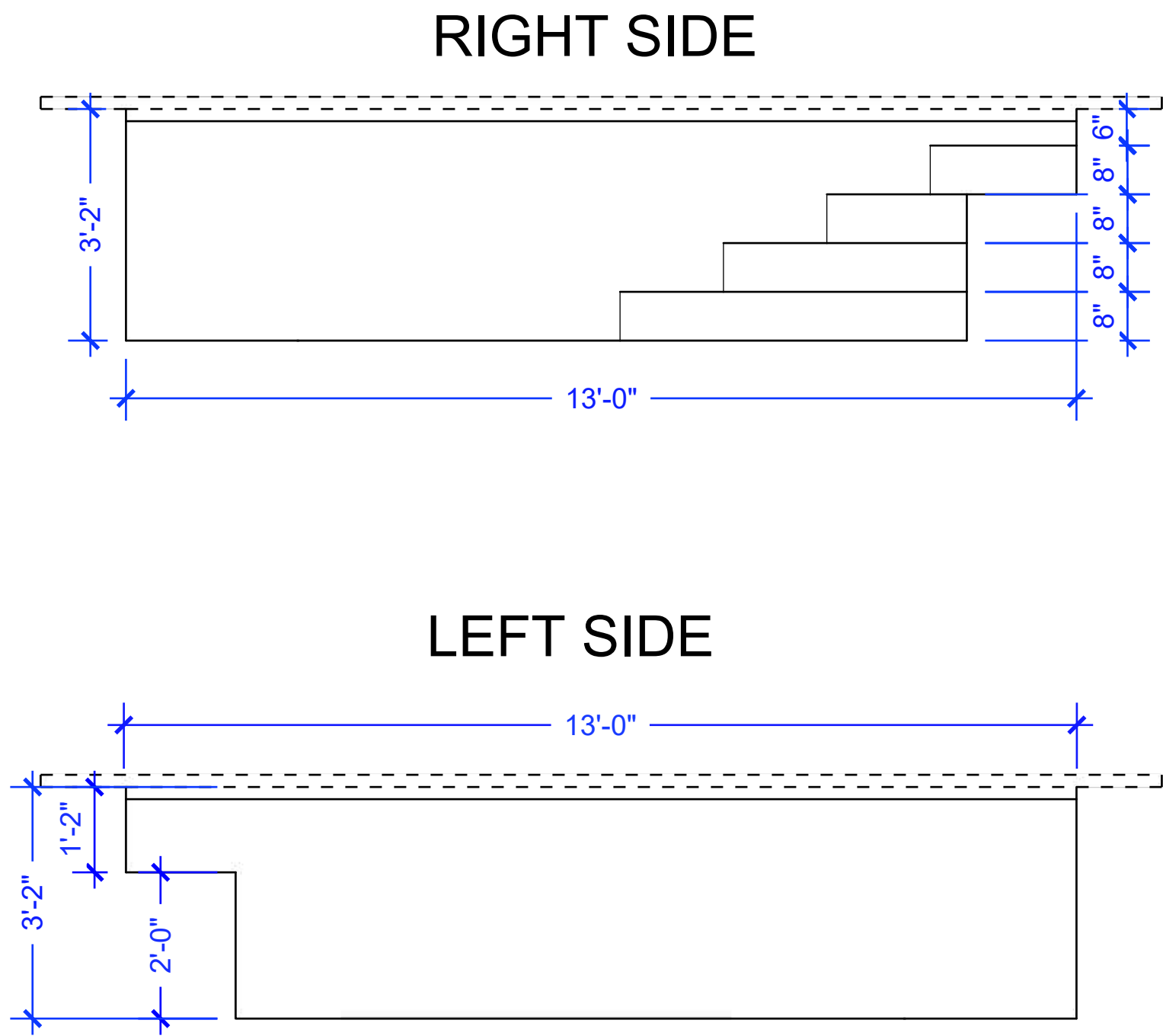
SCALE: 1/8" = 1' - 0"



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- MATERIAL QUANTITIES SHOWN ARE APPROXIMATE AND SHOULD BE VERIFIED THROUGH THE ESTIMATION AND/OR INSTALLATION OF THE MATERIALS.
- ADDITIONAL MATERIAL MAY BE REQUIRED TO MEET FIELD CONDITIONS.
- VERIFY ALL UTILITY LOCATIONS IN FIELD PRIOR TO BEGINNING WORK.





1  
L.105

Pool Plan

SCALE: 1/2" = 1' - 0"

0 2 4

GENERAL NOTES:

- THE CONTRACTOR MAINTAINS ALL RESPONSIBILITY FOR THE USE, ACCURACY, AND CONFIRMATION OF ALL MATERIAL QUALITY AND QUANTITY ILLUSTRATED IN DRAWINGS.
- ON-SITE ADJUSTMENTS MAY BE REQUIRED.
- PLANT AND MATERIAL SPECIFICATIONS ARE SUBJECT TO CHANGE BASED ON AVAILABILITY OR FOR ANY OTHER REASON AT THE DISCRETION OF THE CONTRACTOR.
- MATERIAL QUANTITIES SHOWN ARE APPROXIMATE AND SHOULD BE VERIFIED THROUGH THE ESTIMATION AND/OR INSTALLATION OF THE MATERIALS.
- ADDITIONAL MATERIAL MAY BE REQUIRED TO MEET FIELD CONDITIONS.
- VERIFY ALL UTILITY LOCATIONS IN FIELD PRIOR TO BEGINNING WORK.

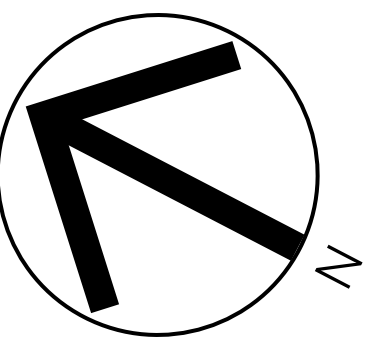


# Shoultz Project

139 Bufflehead Rd  
Kitty Hawk, NC 27949

Document Date:  
February 1, 2025

Project Phase:  
Design Phase - v5



Pool Plan

L.105



# Attachment D

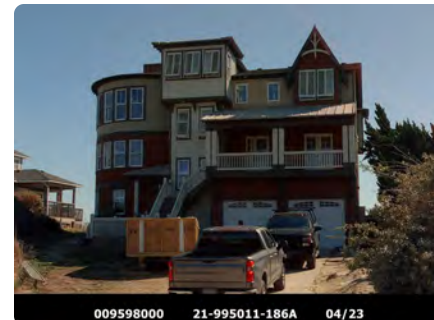


This map is prepared from data used for the inventory of the real property for tax purposes. Primary information sources such as recorded deeds, plats, wills, and other primary public records should be consulted for verification of the information contained in this map.

139 Buffell Head RD  
Duck NC, 27949  
Parcel: 009598000  
Pin: 995011751044

Owners: Schultz, Frederick J -Primary Owner  
Schultz, Kristen -Primary Owner  
Building Value: \$1,296,300  
Land Value: \$884,000  
Misc Value: \$42,100  
Total Value: \$2,222,400

Tax District: Duck  
Subdivision: Carolina Dunes Section B  
Lot BLK-Sec: Lot: 145 Blk: Sec: B  
Property Use: Residential  
Building Type: Modern Oceanfront Estate  
Year Built: 2006





# Attachment E













































02/05/2018

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**Attachment G**































# Attachment I





# Attachment J





# 139 Buffell Head Side by Side Comparison

Attachment K



07/17/2006



09/17/2018

Names and Addresses of Commenters

- 1) Ron Blunck, Carolina Dunes Association President  
7100 Eversfield Drive  
Hyattsville, MD 20782



Return to: Town of Duck  
P.O. Box 8369  
Duck, NC 27949

Document Prepared by: Town of Duck  
P.O. Box 8369  
Duck, NC 27949

**TOWN OF DUCK BOARD OF ADJUSTMENT  
ORDER GRANTING A VARIANCE**

**139 Buffell Head Road, Duck, NC**

The Board of Adjustment for the Town of Duck, having held a public hearing on March 12, 2025 to consider application number BOV-2025-002 submitted by Frederick and Kristin Shultz, a request for a variance to use the property located at 139 Buffell Head Road in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's CONCLUSION that an unnecessary hardship would result from the strict application of the ordinance. This conclusion is based on the following FINDINGS OF FACT:

- Minimum structure setback and nonconformity standards in the Town Code prevent removal and reconstruction of the existing pool surround deck and wooden deck with trellis in the same nonconforming location as the existing improvements.
- To comply with the 30-foot minimum setback would render the pool surround deck and wooden deck with trellis unbuildable and diminish access to the pool.
- The existing decks are not in good condition and pose a safety hazard.
- Therefore, compliance with the Town's current setback standards would result in the loss of any decks for a pool surround.

2. It is the Board's CONCLUSION that the hardship results from conditions that are peculiar to the subject property. This conclusion is based on the following FINDINGS OF FACT:

- The impacts from beach erosion and the location of the existing residence, swimming pool, pool surround deck and wooden deck with trellis are unique characteristics of the subject property and contribute to the difficulty of relocating the existing improvements to a conforming location.
- There are other properties in the surrounding area that contain similar physical characteristics and existing nonconforming structures, but none have the combination of circumstances faced by the subject property.

3. It is the Board's CONCLUSION that the hardship did not result from actions taken by the property owner. This conclusion is based on the following FINDINGS OF FACT:

- The existing residence, swimming pool, pool surround deck, and wooden deck with trellis were approved and issued a Certificate of Occupancy by the Town of Duck in 2006.
- The swimming pool, pool surround deck, and wooden deck with trellis were setback adequate distance from the First Line of Stable Natural Vegetation (FLSNV) when originally constructed.
- The Town of Duck adopted setback requirements for accessory structures after the construction of the existing residence, swimming pool, pool surround deck, and wooden deck with trellis and these said improvements on the subject property became legally nonconforming ("grandfathered") in regard to setbacks from the FLSNV.
- It does not appear that the existing pool surround deck and wooden deck with trellis have been expanded or relocated since their original construction.
- The current property owners purchased the property in 2020 and had nothing to do with the original approval and construction of the present improvements.

4. It is the Board's CONCLUSION that the requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. This conclusion is based on the following FINDINGS OF FACT:

- The existing pool surround deck and wooden deck with trellis are unsafe and fairly modest in size in comparison to other pools within the adjacent vicinity.
- The dimensions of the proposed pool surround deck and wooden deck with trellis are consistent with the dimensions of the existing improvements. The property owner is not seeking to expand the size of these existing improvements.

5. It is the Board's CONCLUSION that granting the variance is consistent with the spirit, purpose, and intent of the regulation. This conclusion is based on the following FINDINGS OF FACT:

- The Town of Duck has adopted regulatory standards which will assist with the preservation of a continuous dune system within the town, acknowledging the protective and aesthetic values that this feature provides. Regulations are hereby established to limit structures within the dune system that are known to weaken its structural integrity.
- As the current structure consists of frangible concrete and a sizeable wooden structure. Replacement of the existing decks with permeable pavers will have less impact on the



environment and reduce the potential for damage to others in the event of a casualty storm event.

6. It is the Board's CONCLUSION that granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. This conclusion is based on the following FINDINGS OF FACT:

- The proposed improvements are consistent with the existing pool surround deck and wooden deck with trellis that have existed on the subject property since 2006.
- As the proposed improvements are going back in the same location as the existing pool surround deck and wooden deck with trellis, the project will not negatively impact the privacy of surrounding properties.

THEREFORE, as all the variance criteria have been met, IT IS ORDERED that the application for a setback variance of 23.7 feet be **APPROVED** allowing the pool surround deck to encroach as close as 6.3 feet from the Static Vegetation Line (SVL) AND a setback variance of 26.9 feet be **APPROVED** allowing the wooden deck with trellis to encroach as close as 3.1 feet from the SVL.

(continued on the following page)

ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Olin Finch, Chair of the Board of Adjustment  
for the Town of Duck

North Carolina, Dare County

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Olin Finch, Chair of the Board of Adjustment for the Town of Duck.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Typed or printed name of Notary Public

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

Affix Notary Seal Inside This Box

***NOTE: Each decision of the Board is subject to review by the superior court by proceedings in the nature of certiorari. If an aggrieved party is dissatisfied with the decision of this Board, a petition may be filed with the clerk of superior court within thirty days after the date this order is filed in the Planning and Zoning Office or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to said aggrieved party by personal service or by registered or certified mail return receipt requested.***





**ORDER DENYING A VARIANCE**  
**139 Buffell Head Road**

The Board of Adjustment for the Town of Duck, having held a public hearing on March 12, 2025 to consider application number BOV-2025-002 submitted by Frederick and Kristin Shultz, a request for a variance to use the property located at 139 Buffell Head Road in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

- 1. It is the Board's CONCLUSION that unnecessary hardship would NOT result from the strict application of the ordinance. This conclusion is based on the following FINDINGS OF FACT:**
  - a. Section 156.124(C)(2)(b) of the Town Code establishes a 30-foot minimum setback for structures from the static vegetation line (SVL).
  - b. The existing pool surround deck has been in place since 2006.
  - c. The proposed expansion of the deck in the area adjoining the residence is not necessary to maintain a reasonable width of the pool surround deck, and a hardship does not exist to support the proposed expansion.
- 2. It is the Board's CONCLUSION that the hardship results from conditions that are peculiar to the subject property, such as location, size, or topography. This conclusion is based on the following FINDINGS OF FACT:**
  - a. The impacts from beach erosion and the location of the existing residence, swimming pool, pool surround deck and wooden deck with trellis are unique characteristics of the subject property and contribute to the difficulty of relocating the existing improvements to a conforming location.
  - b. There are other properties in the surrounding area that contain similar physical characteristics and existing nonconforming structures, but none have the combination of circumstances faced by the subject property.

**3. It is the Board's CONCLUSION that the hardship resulted from actions taken by the applicant or the property owner. This conclusion is based on the following FINDINGS OF FACT:**

- a. There is a hardship that has resulted from erosion and westward movement of the beach and dune, which has moved the SVL closer the accessory structures.
- b. The existing pool surround deck and wooden deck with trellis on the subject property are legally nonconforming and the variance would not expand the decking in the western direction.
- c. The gap between the pool surround deck and the principal structure eastside deck was unimproved and also included a pool barrier. The applicants' decision to remove the fence that existed in this area created a gap in this area.
- d. The specific need for the variance in this gap area was created by the applicants and their contractor by proposing to expand the nonconforming deck to the west.

**4. It is the Board's CONCLUSION that the requested variance is NOT the minimum variance that will make possible the reasonable use of the land, building, or structure. This conclusion is based on the following FINDINGS OF FACT:**

- a. The requested variance is the minimum necessary to allow the replacement of the existing pool surround deck and wooden deck with trellis in its current configuration.
- b. The expansion of the pool surround deck to connect with the principal structure eastside deck is NOT the minimum possible as the property functioned without this portion of deck for 18 years.

**5. It is the Board's CONCLUSION that granting the variance will be in harmony with the general purpose and intent of the Zoning Ordinance. This conclusion is based on the following FINDINGS OF FACT:**

- a. Like most local governments, the Town of Duck has adopted regulatory standards which will assist with the preservation of a continuous dune system within the town, acknowledging the protective and aesthetic values that this feature provides. Regulations are hereby established to limit structures within the dune system that are known to weaken its structural integrity.
- b. As the current structure consists of frangible concrete and a sizeable wooden structure. Replacement of the existing decks with permeable pavers will have less impact on the environment and reduce the potential for damage to others in the event of a casualty storm event.

**6. It is the Board's CONCLUSION that granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. This conclusion is based on the following FINDINGS OF FACT:**

- a. The proposed improvements are consistent with the existing pool surround deck and wooden deck with trellis that have existed on the subject property since 2006. The



expansion of the deck will be unnoticeable to the surrounding properties. The decking and house will look much like it has in the past.

- b. Granting a variance will not negatively impact on the neighboring properties or be detrimental to the public welfare or environment.

THEREFORE, on the basis of failure to make the finding required in Numbers 1, 3, and 4 above, IT IS ORDERED that the application for a VARIANCE be **DENIED.**

ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Chairman

***NOTE: Each decision of the Board is subject to review by the superior court by proceedings in the nature of certiorari. If an aggrieved party is dissatisfied with the decision of this Board, a petition may be filed with the clerk of superior court by the later of thirty (30) days after the decision is effective or after a written copy is delivered to the person or entity whose variance application was the subject of the hearing.***