



**Agenda**  
**Town of Duck Board of Adjustment**  
Keller Meeting Hall  
Monday, January 12, 2026 – 10:00 AM

1. Call to Order
2. Overview of Appeal Process
3. Public Hearings
  - a. BOA-2025-001 An application submitted by Casey C. Varnell, attorney for appellants, Kevin R. Knotts and Diane G. Knotts owners of 115 Ocean Bay Blvd, Duck, NC 27949 appealing the zoning administrator’s determination that the recent installation of pavers within the rear yard setback are in violation of code provisions found in Section 156.012 Yard Requirements and 156.051 Building Features Exempt from Setbacks or Minimum Yard Requirements.
4. Approval of Minutes
  - a. April 12, 2023 Minutes
5. Staff Comments
6. Board Comments
7. Adjournment



**TO:** Chairman Finch and Members of the Duck Board of Adjustment  
**FROM:** Sandy Cross, Planning and Permits Manager, Dept. of Community Development  
**DATE:** November 12, 2025  
**RE:** Staff Report for BOA 2025-001, 115 Ocean Bay Blvd

**Application Information**

Application #: BOA 2025-001  
Project Location: 115 Ocean Bay Blvd  
Dare County PIN: 995006487667  
Zoning: Single Family Residential Conventional District (RS-1)  
Property Owners: Kevin R. and Diane G. Knotts  
Appellant/Contact: Casey C. Varnell, Attorney for Appellants  
Decision Rendered: July 30, 2025  
Appeal Application Submitted: August 29, 2025  
  
Public Hearing Advertised: October 26, 2025  
November 2 & 9, 2025 (Coastland Times)  
Public Hearing Notices Sent: October 24, 2025  
Public Hearing Sign Posted: October 24, 2025  
Public Hearing Town Website: October 24, 2025  
Public Hearing Town Hall Posted: October 24, 2025

**Requested Action**

This appeal application was submitted by Casey C. Varnell, Attorney for Appellants, Kevin R. Knotts and Diane G. Knotts (the “Appellants”), owners of real property located at 115 Ocean Bay Blvd, Duck, NC 27949 (the “Property”). This is an appeal of the Zoning Administrator’s determination that the recent installation of pavers within the rear yard setback of the Appellants’ Property constitutes a violation of Town Code Section 156.012 (Yard Requirements) and Section 156.051 (Building Features Exempt from Setbacks or Minimum Yard Requirements). These Code sections, along with all other relevant Code Sections, are attached hereto and incorporated herein by reference as **Staff Exhibits B through G**.

The Appellants contend that the Town erroneously issued the Notice of Violation (**Staff Exhibit I**) based upon the Appellants’ position that pervious pavers are not “structures” under the Town



Code and are therefore permitted in the rear setback. The Appellants are requesting that the Board of Adjustment overturn the Staff’s decision and allow Appellants to submit a permit for approval of the pervious pavers which were installed without the issuance of a Town permit. The Appellants are NOT appealing the fact that “a land disturbance permit was required to be issued prior to commencement of the site improvements.”

### **Background Information**

Staff notified Appellants via email correspondence on March 19, 2025 that we had reason to be in Sound Sea Village and discovered that a new paver patio/deck had been installed adjacent to their permitted pool deck at their Property. We included photographic evidence of the paver patio/deck as noted in the Notice of Violation, which is attached hereto attached as **Staff Exhibit I**.

Staff researched the new construction permit B21-000361 for 115 Ocean Bay Blvd. The permit was issued on 1/24/2022. That site plan approval specifically stated that the pool deck may not encroach the rear setback. All inspections associated with this construction were completed, a final as-built survey was received, and a Certificate of Completion was issued on 5/30/2023. The issued permit and associated site plans, final as-built survey and Certificate of Occupancy were attached to the Notice of Violation. These documents make clear that the paver/patio deck was not present at the conclusion of the project under permit B21-000361.

Following the March 19, 2025 correspondence, staff communicated via email to arrange a meeting with the Appellants at the Property to discuss this matter. We met on site on April 16, 2025. At that time, Staff informed the Appellants that a permit was required for the installation of a paver patio/deck; that no permit was obtained by their contractor who they identified to be Jason Emminizer; and that the paver patio/deck was not permissible in the rear setback. Staff explained during that meeting that paver patio/decks are not permitted in the setback. The paver/patio deck could be located in the side yard.

Following our meeting, the Appellants indicated that they had “much to consider, based on the coverage, the synthetic turf, pavers, and the need for a survey and permits” and that they would be back in touch with the Town once they sorted things out.

On May 13, 2025, the Appellants advised that they had hired David Neff, Kwasny Engineering, PLLC, to sort out their setback issue. They further indicated that they would personally ensure they have a permit in place and comply with the entirety of Town Code.

On June 10, 2025, Appellants submitted a preliminary “proposed” site plan prepared by David Neff, Kwasny Engineering, PLLC, dated 4/25/25. This site plan included the removal of the paver/patio deck from the rear setback. Staff reviewed this site plan and noted several items that needed correcting. Specifically, Mr. Neff noted several areas of “approved permeable deck”; however, Town Staff has not issued approval for any permeable patio, deck, or other structure, since the approval of the original construction of this home on this Property on January 24, 2022.



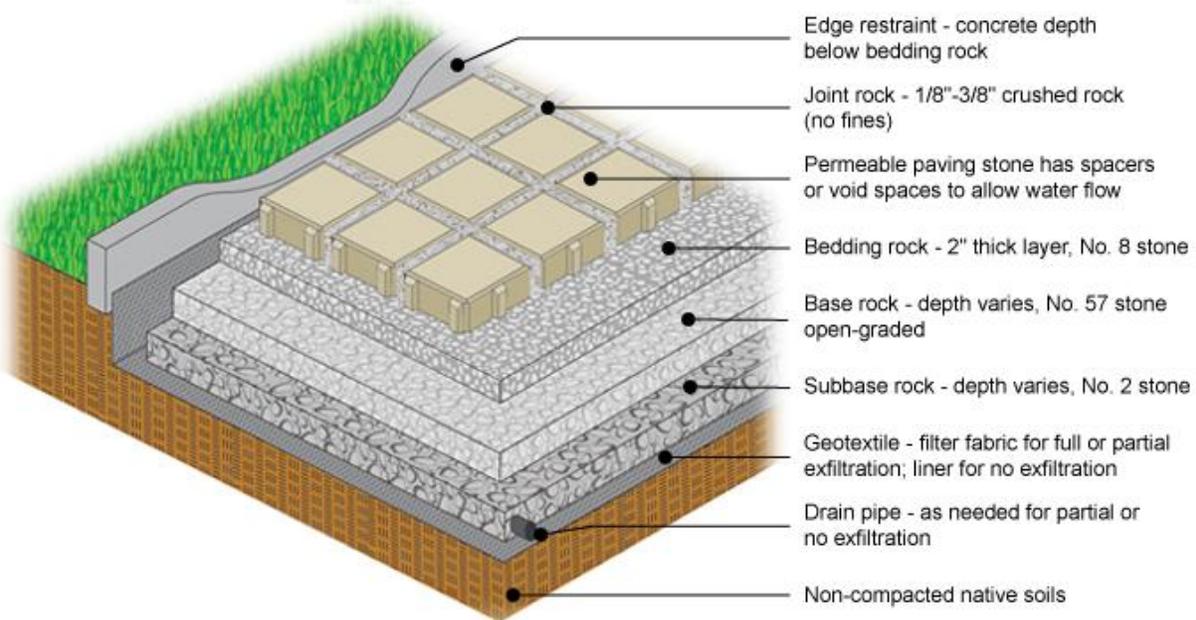
The proposed site plan prepared by Mr. Neff also reflected a gravel parking area. However, unbeknownst to the Town, the Appellants' parking area was subsequently converted to permeable pavement at some point following the issuance of the Certificate of Occupancy. Town Staff discovered the conversion of the parking area from gravel to permeable pavement during its site visit on March 19, 2025. Lastly, the site plan indicated a maximum lot coverage of 30%, where 40% is permissible consistent with Town Code Section 156.071 (B)(2)(d). Mr. Neff's proposed site plan, with corrections reflecting "proposed permeable deck", "existing permeable parking" and "maximum lot coverage of 40%", would be approvable if submitted with a permit application and Dare County Environmental Health Department approval.

On July 22, 2025, Staff received notice from attorney Casey Varnell indicating that he would be representing the Appellants in this matter. Mr. Varnell requested a formal zoning interpretation in this matter. Mr. Varnell first suggested that Staff requested removal of the "paver deck" due to the appearance of the pavers being raised off the ground. This is incorrect.

Staff requested that Appellants remove the paver patio/deck because it is a "structure", which is not permitted in front, side or rear setback areas under Section 156.012 of the Town Code or unless specifically exempted. Furthermore, Town Code section 156.051(F) specifically exempts certain walkway features from setbacks or minimum yard requirements. HOWEVER, walkway structures are not exempt from minimum yard requirements if the walkway abuts a swimming pool deck or is located within 3 feet of a swimming pool, which is the case in this matter.

It should also be further noted that Mr. Varnell's appeal states, "[i]t is our understanding that the classification of 'paver deck' has been issued by the Town due to the appearance of the pavers being raised off the ground after being installed in accordance with the pervious paver factory installation requirements which included support by slatted boards." This description of "slatted boards" may better be described as a low retaining wall based on Staff observation and the attached photograph identified as **Staff Exhibit H**.

A review of **Staff Exhibit H** indicates that the paver patio/deck does appear to be raised with a low retaining wall within 5' of the property line. Retaining walls may be utilized to retain fill but may not be located any closer than 5' to the property line, pursuant to Section 156.128 of the Town Code. It would appear, based on "parole information" from Appellants' Engineer's report that the fill used to elevate the paver patio/deck was a stone base combination similar to something along these lines.



Mr. Varnell further contends that “the report of the engineer acts to prove that our clients' pavers do not qualify as a ‘deck’ but were merely installed in such a manner as to ensure the pervious nature of the pavers. The pavers were raised as part of the design requirements associated with the installation of the pavers, and this technique guarantees the lack of impact stormwater will have on properties adjacent to our clients' Property which is embedded in the intent of the Town ordinance(s) applicable to entirely pervious materials utilized in the construction of residential site improvements.”

To be clear, lot coverage is not the issue at hand with regard to the Appellants’ paver patio/deck. The Town encourages the use of permeable materials to help with stormwater issues and has ordinances that provide lot coverage credit for the use of permeable materials. In this case, however, the Appellants’ paver patio/deck is an extension of the concrete pool deck and encroaches upon the rear setback. Therefore, it must be removed. If Appellants were to relocate the paver patio/deck as designed by Mr. Neff, Appellant would need to submit a permit application, including an updated site plan reflecting the proposed new location of the same and Dare County Environmental Health Department approval

### **Analysis of Staff’s Decision**

Permits for development within the Town are not new. Staff issues new development permits for single family dwellings, pools, permeable pavement driveways, and permeable pavement patios/decks on a regular basis. Town Staff reviews applications and either issues a permit or requests revisions if a submitted permit does not comply with the Town Code.



As previously noted, the Town has ordinances that clarify how lot coverage is managed when it comes to permeable products including both permeable pavers and artificial turf. The Town also has ordinance language that details setback requirements and the types of things which may permissibly be located within a setback.

The use of the term “Structure” when taken from the definition of “Yard” under Section 156.002 and “Yard Requirements” under Section 156.012, expressly includes pools, sheds, decks, patios, gazebos and similar features, principal structure or principal use, structure intended for outdoor recreational use, such as pools and tennis courts, or other accessory buildings or structures. While this paver patio/deck “structure” was not crafted with piling, joists and girders, it is no different than a traditional patio or deck. The fact that the paver patio/deck is pervious or impervious surface has no bearing as to whether or not it is a “structure”. While the patio/paver deck can be used as a means to improve stormwater infiltration, there are still certain setback requirements as defined in Town Code Section 156.030 (RS-1 SINGLE-FAMILY RESIDENTIAL CONVENTIONAL DISTRICT), which clearly show the Town’s intention to provide for the low-density development of single-family detached dwellings in an environment that promotes orderly neighborhoods, characterized by low vehicular traffic flows, abundant open space and limited impact of development on the natural environment and adjacent land uses.

Over the last 23 years since the Town’s incorporation, the Town has consistently treated decks and patios as “structures”. Even if the appellants contend that their paver patio/deck is not a “deck” or “patio”, which Staff expressly denies, the paver patio/deck, as constructed, is certainly a “similar feature” of a deck or patio. As such, Staff cannot support an interpretation that considers a paver patio/deck installed within the setback of the Property to be anything other than a “structure”.

In addition to contradicting the intent of the RS-1 zoning district, overturning Staff’s determination would be inconsistent with the Town’s Comprehensive and Land Use Plan as follows:

**3: Preserve and protect terrestrial ecosystems.**

- 3.2: Continue tree preservation and landscaping site development standards.

Discussion: Vegetation helps reduce stormwater flooding and helps treat stormwater. It also improves air quality by trapping dust, sand, and other airborne particles.

**4: Guide the character, location, and type of development and activity in town to reinforce the “Duck Experience”.**

- 4.2: Ensure that development of land minimizes negative direct and secondary environmental impacts, avoids risks to public health, safety, and welfare and is consistent with the carrying capacity of the land.

**5: Protect and preserve Duck’s coastal residential character.**

- 5.1: Closely protect the character of existing single family neighborhoods as well as multi-family enclaves through the adoption and enforcement of appropriate development standards.



- 5.4: Support legislation providing local governments with tools to protect and enhance the scale and character of development in Duck.

The Town of Duck’s 2020 Comprehensive and Land Use Plan document was developed through extensive public participation and guided by community input. It is the blueprint for growth in Duck, driving the development of our Town Code and the enforcement of the Code. Its fundamental focus is to protect the health, safety, and welfare of the community. The plan communicates a cohesive community direction, providing a framework for making land use decisions, and serves as a policy tool and guideline for community decision making, especially by Town staff and elected and appointed leadership. Overturning staff’s determination would prove to be inconsistent with Town’s community sentiment and collective vision.

**Staff Exhibits**

- A. Location Map
- B. Subsection 156.002 of the Town Code, Definitions
  - a. DEVELOPMENT APPROVAL.
  - b. DEVELOPMENT REGULATION.
  - c. STRUCTURE.
  - d. *YARD*.
- C. Subsection 156.012 Yard Requirements.
- D. Subsection 156.030 RS-1 Single-Family Residential Conventional District.
- E. Subsection 156.051 Building Features Exempt from Setbacks or Minimum Yard Requirements.
- F. Subsection 156.071 Nonconforming Lots of Record
- G. Subsection 156.128 Land Disturbing Activities.
- H. Photos taken 10/21/2025
- I. Notice of Violation and associated attachments dated July 30, 2025
- J. Appellant Appeal Application

**Directions to the Subject Property**

(from Duck Town Hall, 1200 Duck Road)  
Drive approximately 2.8 miles north to Ocean Bay Blvd.  
Turn right on Ocean Bay Blvd.  
Destination will be on the right at the corner with Clay Street.

# Exhibit A



OCEAN BAY BLVD

CLAY ST



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.

115 Ocean Bay BLVD  
Duck NC, 27949  
Parcel: 009329000  
Pin: 995006487667

Owners: Knotts, Kevin R -Primary  
Owner  
Knotts, Diane G -Primary Owner  
Building Value: \$1,143,000  
Land Value: \$309,800  
Misc Value: \$0  
Total Value: \$1,452,800

Tax District: Duck  
Subdivision: Sound-sea Village Second  
Plat  
Lot BLK-Sec: Lot: 31 & 25 Ft Of 32 Blk:  
Sec:  
Property Use: Residential  
Building Type: Beach Contemporary  
Year Built: 2022



# STAFF EXHIBIT B

## § 156.002 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

...

**DEVELOPMENT APPROVAL.** An administrative or quasi-judicial approval made pursuant to this chapter that is written and that is required prior to commencing development or undertaking a specific activity, project or development proposal. **DEVELOPMENT APPROVALS** include, but are not limited to, zoning permits, site plan approvals, special use permits (formerly conditional use permits), variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this chapter, including plat approvals, permits issued, development agreements entered into, and building permits issued.

**DEVELOPMENT REGULATION.** A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, flood plain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement or any other regulation adopted pursuant to this chapter.

...

**STRUCTURE.** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

...

**YARD.** A required open space other than a court, unoccupied and unobstructed by an improvement or a structure or portion of a structure (including pools, sheds, decks, patios, gazebos and similar features); provided, that fences, walls, poles, posts and other customary yard accessories, ornaments and furniture may be permitted in any yard, subject to height limitations and requirements limiting obstruction of visibility or any other requirement of this chapter and further provided that driveways and parking spaces may be located within the required front and side yards but no closer than 5 feet to the side property line and further provided that building mechanicals such as heating and air conditioning units may be located in the side or rear yard but no closer than 5 feet from any property line.

# Staff Exhibit C

## **§ 156.012 YARD REQUIREMENTS.**

Unless otherwise provided in this chapter, no principal structure or principal use, structure intended for outdoor recreational use, such as pools and tennis courts, or other accessory buildings or structures shall be located within the front, side or rear yards (setback areas).

(Ord. 04-21, passed 10-6-2004, § 12)

# STAFF EXHIBIT D

## § 156.030 RS-1 SINGLE-FAMILY RESIDENTIAL CONVENTIONAL DISTRICT.

The following regulations shall apply to the RS-1 Single-Family Residential District:

(A) Intent. The RS-1 District is established to provide for the low-density development of single-family detached dwellings in an environment that promotes orderly neighborhoods, characterized by low vehicular traffic flows, abundant open space and limited impact of development on the natural environment and adjacent land uses.

...

(D) Dimensional requirements.

(1) Minimum lot size:

(a) Single-family lots served by a private well and an on-site septic tank/drain field system: 20,000 square feet of area;

(b) Single-family lots served by a central water supply and an on-site septic tank/drain field system: 15,000 square feet of area; and

(c) Single-family lots served by a central water supply and a central wastewater disposal system: 15,000 square feet of area.

(2) Minimum lot width: 75 feet, measured at the building setback line.

(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 a corner lot.

(5) Minimum rear yard: 25 feet.

(6) Maximum allowable lot coverage by principal use and all accessory structures: 30%. Lot coverage may be increased to 35% provided that stormwater management improvements meeting the following criteria are provided on the development site:

(a) Stormwater runoff from the built-upon area of the site must be directed into an approved stormwater management system designed to accommodate the volume of runoff generated by 1.5 inches of rainfall over a 2 hour period (1.5 inch design storm).

(b) The stormwater management system shall be designed in accordance with the standards, methodology, and procedures prescribed in the state Stormwater Best Management Practices Manual (NCDENR BMP Manual).

(c) Storage capacity (interstitial storage) within existing soils and/or fill material shall not be counted towards the volume requirement for the stormwater management design.

(d) The designed stormwater management system may include any of the following low-impact development principles and best management practices as the primary method for the treatment of stormwater:

1. Landscaped swales;
2. Infiltration basins;
3. Bioretention or rain gardens;
4. Rainwater harvesting to include cisterns and/or rain barrels;
5. Subsurface drainage systems;
6. Other methods approved by the Zoning Administrator.

(e) The bottoms of stormwater swales and basins should maintain 12 inches above the seasonal high-water table to avoid long periods of standing water due to elevated water tables. The seasonal high water table elevation must be verified by a soil inspection by a licensed soil scientist or may be verified by a County Health Department wastewater site evaluation.

(f) The stormwater management systems shall adhere to all setbacks, separations, and standards required by the state on-site wastewater regulations and building code. In no instance shall open drainage systems be located beneath a building.

(g) Rainwater harvesting, rain barrels or cisterns must include plans for the ultimate disposal of the collected rainwater (pump to irrigation, slow release through drip tubing etc.). Open systems must include plans to prevent mosquito breeding.

(h) The stormwater management plan must clearly delineate water sheds or drainage areas within the subject property. This should include a roof plan depicting roof runoff and the method to collect or direct the volume from each portion of the roof area towards the stormwater management system. In some situations, the plan may require a detailed topographic survey and a detailed grading plan.

(i) Stormwater plans must be prepared by a state licensed professional engineer or surveyor and shall include volumetric calculations. Prior to the issuance of a certificate of completion for the project, a state licensed professional engineer or surveyor shall certify that the proposed improvements have been constructed in accordance with the project design.

(j) If permeable surfaces, such as pervious pavement or artificial turf, are used as part of the lot coverage calculation, then the property owner must provide written certification that the surface material was installed and will be maintained according to the manufacturer's specifications.

(7) Height limitation: 35 feet.

(Ord. 04-22, passed 11-3-2004, § 17; Am. Ord. 14-02, passed 6-4-2014; Am. Ord. 16-04, passed 7-6-2016; Am. Ord. 16-07, passed 11-2-2016; Am. Ord. 16-08, passed 2-1-2017; Am. Ord. 17-04, passed 6-7-2017; Am. Ord. 21-01, passed 6-2-2021; Am. Ord. 22-07, passed 9-7-2022; Am. Ord. 23-02, passed 5-3-2023)

# STAFF EXHIBIT E

## § 156.051 BUILDING FEATURES EXEMPT FROM SETBACKS OR MINIMUM YARD REQUIREMENTS.

Building features that may be exempt from minimum yard requirements, setbacks or building restriction lines are described as follows:

(A) Sills, cornices and similar ornamental features as well as roof eaves and overhangs may project not exceeding 12 inches into any required front, side or rear yard or beyond any required front, side or rear setback or building restriction line;

(B) Bay windows, stoops, covered entryways, stairs and similar features of a principal structure may project not exceeding 3 feet into any required front yard or beyond any required front setback or building restriction line (plus an additional 12 inches for features as noted in this section); and

(C) No ornamental feature, bay window, stoop, stairs, eave, overhang or similar feature of an accessory structure shall project into any required front, rear or side setback or building restriction lines applicable to accessory structures;

(D) Community ocean and sound access walkway structures located within common property designated as such at the time of subdivision plat recordation, within an easement granted to a subdivision or community association for the purposes of providing community access to the ocean or sound, or within the right-of-way of a private street, are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2). Dune walkover structures subject to this exemption must still comply with all applicable standards found in § 156.124(C)(1);

(E) Private walkway structures less than 4 feet in width that directly connect to walkway structures listed in division (D) above are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2). This exemption shall also apply to private walkway structures constructed for the purpose of providing ocean or sound access that are shared between 2 adjoining property owners. Dune walkover structures subject to this exemption must still comply with all applicable standards found in § 156.124(C)(1);

(F) Private walkway structures less than 4 feet in width constructed less than 12 inches above grade are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2). Dune walkover structures and sound access walkways are not exempt from minimum yard requirements unless in compliance with the standards of § 156.051(E). Walkway structures are not exempt from minimum yard requirements if the walkway abuts a swimming pool deck or is located within 3 feet of a swimming pool; and

(G) Municipally owned walkways, boardwalks, multi-use paths and sidewalks are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2).

(Ord. 04-23, passed 10-6-2004, § 24; Am. Ord. 05-04, passed 4-6-2005; Am. Ord. 06-01, passed 4-5-2006; Am. Ord. 08-05, passed 11-5-2008; Am. Ord. 17-07, passed 8-2-2017; Am. Ord. 21-01, passed 6-2-2021; Am. Ord. 22-08, passed 9-7-2022)

# STAFF EXHIBIT F

## § 156.071 NON-CONFORMING LOTS OF RECORD.

(A) Any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on July 3, 2002, subject to the following provisions:

(1) Permits for the erection of a single-family dwelling on lots less than 7,500 square feet in area shall be reviewed by the Town Council in accordance with the requirements of town code § 156.155 – Special Use Permits.

(2) Special use permits for the erection of a single-family dwelling on lots 7,500 square feet in area or greater shall be reviewed administratively in accordance with the requirements of this chapter.

**(B) For lots of record as of November 20, 1975, the following dimensional requirements shall apply:**

(1) Lots with 10,000 square feet or less:

(a) Front yard setback: 25 feet;

(b) Side yard setback: 8 feet. For corner lots, the side yard setback is 10 feet on the side of the lot that abuts the street;

(c) Rear yard setback: 20 feet; and

(d) Lot coverage: 50%.

**(2) Lots with 10,001 to 14,999 square feet:**

(a) Front yard setback: 25 feet;

(b) Side yard setback: 8 feet. For corner lots, the side yard setback is 10 feet on the side of the lot that abuts the street;

**(c) Rear yard setback: 20 feet; and**

**(d) Lot coverage: 40%.**

(C) If two or more lots of record or portions of lots with continuous frontage have been physically combined for the purpose of development, and if one or more of the lots involved is less than 7,500 square feet, the lots shall be considered recombined for the purposes of future development.

(Ord. 04-21, passed 10-6-2004, § 31; Am. Ord. 13-06, passed 11-6-2013; Am. Ord. 21-01, passed 6-2-2021)

# Staff Exhibit G

## § 156.128 LAND DISTURBING ACTIVITIES.

(A) Mandatory standards for land disturbance activities.

(1) The provisions of this section shall apply to any land disturbance activity regardless of the size of the disturbed area. A land disturbance permit is required as provided in division (B)(1) below.

...

(B) Land disturbance permit required.

(1) A land disturbance permit shall be required for filling and/or grading a lot; any lot clearance, filling or grading activity prior to issuance of a building permit; any installation of gravel or pavers or accessory structures and similar site features whether or not subject to building permit requirements; and any removal or installation of site features such as septic systems, wells and drainage systems that disturb the land.

...

# Staff Exhibit H - Photos taken 10/21/2025







# Staff Exhibit I

July 30, 2025

**VIA CERTIFIED MAIL, U.S. MAIL AND ELECTRONIC MAIL:**

Kevin R. & Diane G. Knotts  
4807 Prestwick Drive  
Fairfax, VA 22030  
(571) 212-7014  
[knotts@zumuthihg.com](mailto:knotts@zumuthihg.com)

**RE: NOTICE OF VIOLATION – 115 Ocean Bay Blvd  
Chapter 156 - Zoning**

Dear Mr. and Mrs. Knotts,

I notified you via email correspondence on March 19, 2025 that I had reason to be in Sound Sea Village and discovered that a new paver patio/deck had been installed east of your permitted pool deck at your property located at 115 Ocean Bay Blvd, Duck, NC 27949 (the “Property”). I have attached evidence of your paver patio/deck as Exhibit 1. I researched your new construction permit B21-000361 issued on 1/24/2022. That site plan approval specifically stated that the pool deck may not encroach the rear setback. All inspections associated with this construction were completed, a final as-built survey was received, and a Certificate of Completion was issued on 5/30/2023. The issued permit and associated site plans, final as-built survey and Certificate of Occupancy are attached hereto as Exhibit 2, 3 and 4, respectively.

Following the March 19, 2025 correspondence, we communicated via email to arrange a meeting at your Property to discuss this matter. We met on site on April 16, 2025. At that time, I informed you that a permit was required for the installation of a paver patio/deck; that no permit was obtained by your contractor (Jason Emminizer); and that the paver patio/deck was not permissible in the rear setback. Following our meeting, you indicated that “we have much to consider, based on the coverage, the synthetic turf, pavers, and the need for a survey and permits. We will get back – in order of PERMITS first – once we sort out things” (See Exhibit 5).

On May 13, 2025, you advised that you hired David Neff, Kwasny Engineering, PLLC, to sort out your setback issue. You indicated that you would personally ensure you have a permit in place and comply with all of the DUCK ordinances (See Exhibit 6).

P. O. Box 8369 ● Duck, North Carolina 27949  
252-255-1234 ● 252-255-1236 (fax) ● [www.ducknc.gov](http://www.ducknc.gov)

On June 10, 2025, you provided a preliminary site plan prepared by David Neff, Kwasny Engineering, PLLC dated 4/25/25 (*See Exhibit 7*). I have reviewed this site plan and there are several items that are incorrect. Specifically, Mr. Neff has noted several areas of “approved permeable deck”. We have not issued approval for any permeable patio, deck, or other structure at this point. The site plan also reflects a gravel parking area. This has been converted to permeable pavement, based on my site visit of March 19, 2025, and as evidenced by a photo taken on 7/29/2025 (*See Exhibit 8*). Lastly, the site plan indicates a maximum lot coverage of 30%, where 40% is permissible consistent with Town Code Section 156.071 (B)(2)(d) (*See Exhibit 9*).

As you know, from my email dated July 9, 2025 and attached as Exhibit 10, we do not count artificial turf as coverage provided the turf is installed per manufacturer’s specifications and that you record a document confirming same and acknowledging that you will maintain the product according to those specifications.

On July 22, 2025, we received notice from attorney Casey Varnell indicating that he would be assisting you in this matter and requesting a formal request for zoning interpretation in this matter (*See Exhibit 11*). Mr. Varnell indicates that we have requested removal of the “paver deck” due to the appearance of the pavers being raised off the ground. This is incorrect. The paver patio/deck must be removed because “structures”, principal or accessory, are not permitted in the front, side, or rear yard setback areas under Section 156.012 of the Town Code, or unless specifically permitted. (*See Exhibit 12*). Furthermore, Town Code section 156.051(F) specifically exempts certain walkway features from setbacks or minimum yard requirements. However, walkway structures are not exempt from minimum yard requirements if the walkway abuts a swimming pool deck or is located within 3 feet of a swimming pool, which is the case with your paver patio/deck (*See Exhibit 13*).

To be clear, lot coverage is not the issue at hand with regard to the paver patio/deck. The paver patio/deck encroaches upon the rear setback and therefore must be removed. If it is to be relocated, you must submit a permit with a site plan reflecting the proposed new location of the paver patio/deck and obtain approval from Dare County Environmental Health Department.

As of today, five (5) months after you have been on notice of this issue, we have not received any permit request to remove the paver patio/deck encroachment from the rear setback or relocate same to an approvable location consistent with the Town Code.

As such, please accept this correspondence as the Town’s official Notice of Violation based on your violations of multiple provisions of Chapter 156 of the Town Code, including but not limited to:

- Section 156.012: Yard Requirements (*See Exhibit 12*)
- Section 156.051: Building Features Exempt From Setbacks of Minimum Yard Requirements (*See Exhibit 13*)
- Section 156.128 (B)(1): Land disturbance permit required (*See Exhibit 14*)

We ask that you remove your paver patio/deck encroachment from the rear setback or submit a development application consistent with Section 156.128(B)(1) to relocate the paver patio/deck to an

approvable location within 15 days of the date of this letter. A permit application is enclosed for your reference (*See Exhibit 15*).

Should you fail to initiate removal or submit a permit working towards with compliance by the stated deadline, the Town will impose Civil Citations in accordance with Section 10.99 of the Code (*See Exhibit 16*) in an amount ranging from \$50.00 to \$1,000.00 per day for each day the violations remain uncorrected.

This notice may be construed as a zoning interpretation in response to Mr. Varnell's July 9, 2025 letter attached as Exhibit 11.

If you have any questions or would like to schedule a meeting to discuss compliance options, please do not hesitate to contact our office.

Sincerely,



Sandy Cross  
Planning and Permits Manager  
Certified Floodplain Manager/Floodplain Administrator/CZO

Enclosures

cc: Town Manager, Drew Havens  
Town Attorney, Robert Hobbs  
Town Attorney, Johny Hallow  
Attorney Representing Kevin & Diane Knotts, Casey Varnell

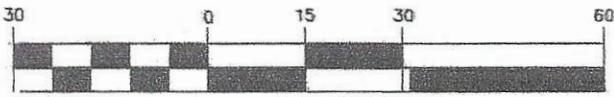
# Exhibit 1





023





(63)

D.B. 2072, PG. 86

PK NAIL SET  
IN POWERPOLE  
#Q1733 RL42  
N68°00'28"W  
3.36'  
TO PROP. CN.

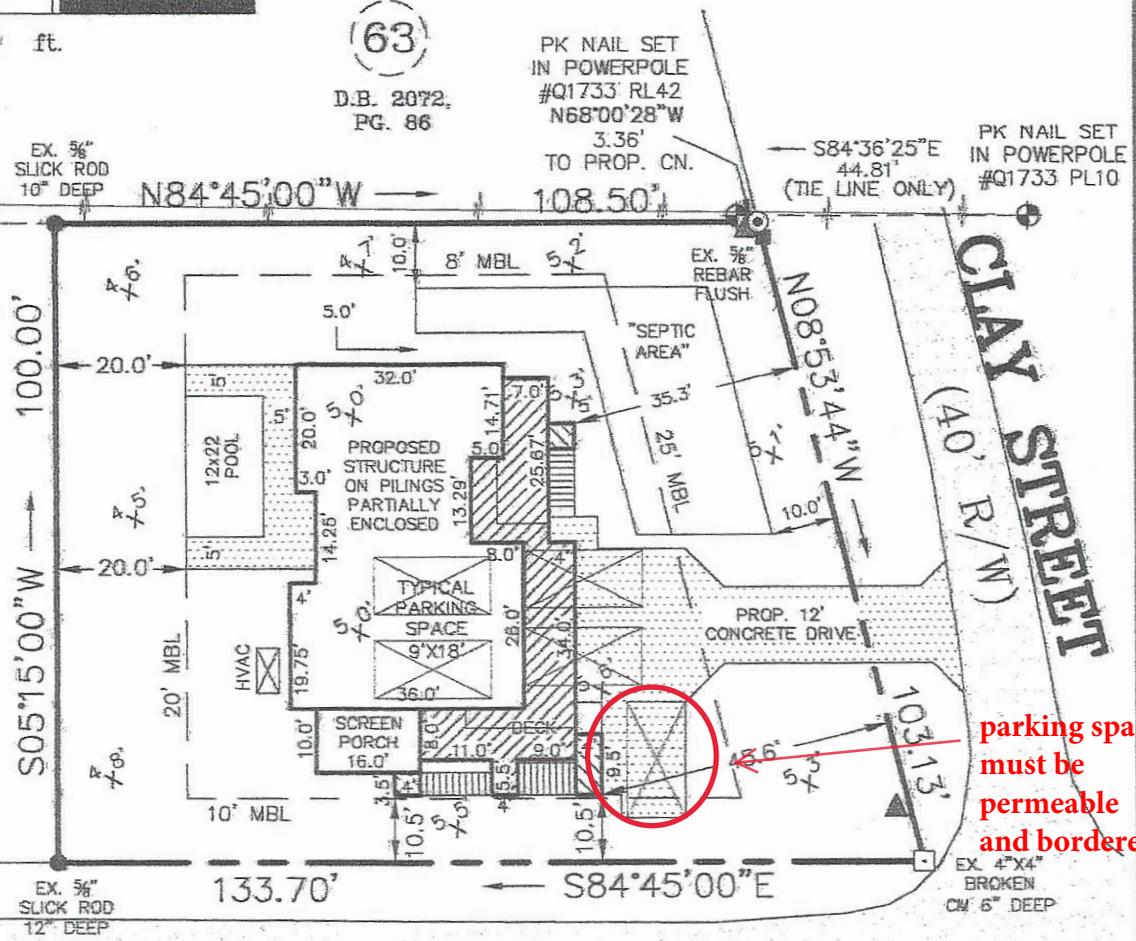
S84°36'25"E  
44.81'  
(TIE LINE ONLY)

PK NAIL SET  
IN POWERPOLE  
#Q1733 PL10

PARCEL C  
P.C.-C, SL 869  
D.B. 1837, PG. 78

**LEGEND:**

- ⊙ Ex. Rebar
- ⊠ Ex. CM
- Ex. Slick Rod
- ⊕ Pk Nail Set
- ⊞ Phone Ped.
- ▲ CATV
- ⊙ Power Pole
- 7.0' Spot Elevation NAVD 88



parking space  
must be  
permeable  
and bordered

**OCEAN BAY BOULEVARD (40' R/W)**

**NOTES:**

Address: 115 Ocean Bay Boulevard

Lot Area = 12,110 Sq. Ft.

Proposed Lot Coverage Information:

Structure Under Roof/  
Over Concrete = 2,226.7 Sq. Ft.

Concrete Drive/Walks = 1,029.3 Sq. Ft.

Pool and Pool Patio = 580.2 Sq. Ft.

Proposed Lot Coverage = 3,836 Sq. Ft. (31.7%)

Flood Zones are subject to change

Setbacks shown are as per the Town of Duck Zoning; they do not reflect any Restrictive Covenants that may exist.

This survey was based on the existing property corners found in conjunction with the recorded reference given.

Certifier hereon is not responsible for utilities and/or features that are not visible at the time of the survey, nor any additional setbacks that are not shown.

APPROVED

By Joseph H. Heard at 2:58 pm, Jan 21, 2022

I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plat was drawn from an actual field and survey that the error of closure as calculated by latitudes and departures is at least 1:10,000.

Witness my hand and seal this 5th day of January A.D. 2022

*[Signature]*  
P.L.S. L-3227



**REVISED SITE PLAN**

LOT 31 & 25' OF LOT 32,  
SECOND PLAT OF SOUND-SEA VILLAGE

SURVEYED FOR  
**KEVIN R. KNOTTS  
and DIANE G. KNOTTS**

ATLANTIC TOWNSHIP  
DUCK

DARE COUNTY  
NORTH CAROLINA

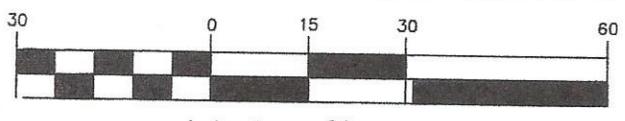
DATE SURVEYED:  
12-1-21  
REV.: 1-5-22  
SCALE: 1" = 30'  
FILE NO.: 21-326  
DWG NO.: 21326SPR

F.I.R.M.: 3720 9950 00 K  
F.I.R.M. DATE: 6-19-2020  
FLOOD ZONE: "X"  
REC. REF. M.B. 2, PG. 244  
D.B. 2528, PG. 328  
PIN NO.:  
21995006487667

*Styons Surveying Services*  
C-1697  
2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948  
Phone: (252) 441-1415 Fax: (252) 480-1182  
Any unauthorized use or alteration of this document is prohibited  
A red seal must be present for this to be an original document

M.B. 2, PG. 244





(63)

D.B. 2072, PG. 86

PK NAIL SET IN POWERPOLE #Q1733 RL42 N68°00'28"W 3.36' TO PROP. CN.

S84°36'25"E 44.81' (TIE LINE ONLY) PK NAIL SET IN POWERPOLE #Q1733 PL10

PARCEL C  
P.C.-C, SL. 369  
D.B. 1837, PG. 78

**LEGEND:**

- ⊙ Ex. Rebar
- Ex. CM
- Ex. Slick Rod
- ⊕ Pk Nail Set
- Phone Ped.
- ▲ CATV
- ⊙ Power Pole
- 7.0' Spot Elevation NAVD 88



**OCEAN BAY BOULEVARD (40' R/W)**

**APPROVED**  
By Joseph H. Heard at 2:58 pm, Jan 21, 2022

**NOTES:**

- Address: 115 Ocean Bay Boulevard
- Lot Area = 12,110 Sq. Ft.
- Flood Zones are subject to change
- Building Setbacks shown are to be verified by the Town of Duck Planning Dept..

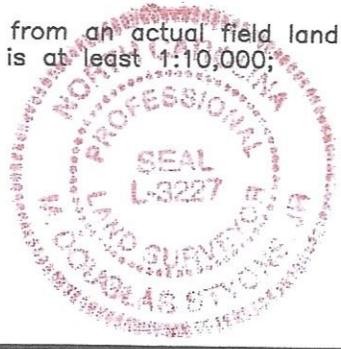
This survey was based on the existing property corners found in conjunction with the recorded reference given.

Certifier hereon is not responsible for utilities and/or features that are not visible at the time of the survey, nor any additional setbacks that are not shown.

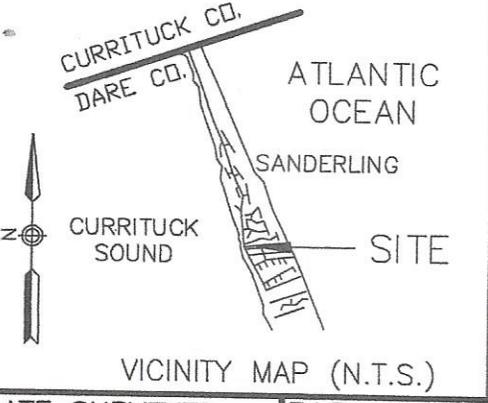
I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plat was drawn from an actual field land survey that the error of closure as calculated by latitudes and departures is at least 1:10,000;

Witness my hand and seal this 20th day of December A.D. 2021

*[Signature]*  
P.L.S. L-3227



M.B. 2, PG. 244



LOT 31 & 25' OF LOT 32,  
SECOND PLAT OF SOUND-SEA VILLAGE

SURVEYED FOR  
**KEVIN R. KNOTTS  
and DIANE G. KNOTTS**

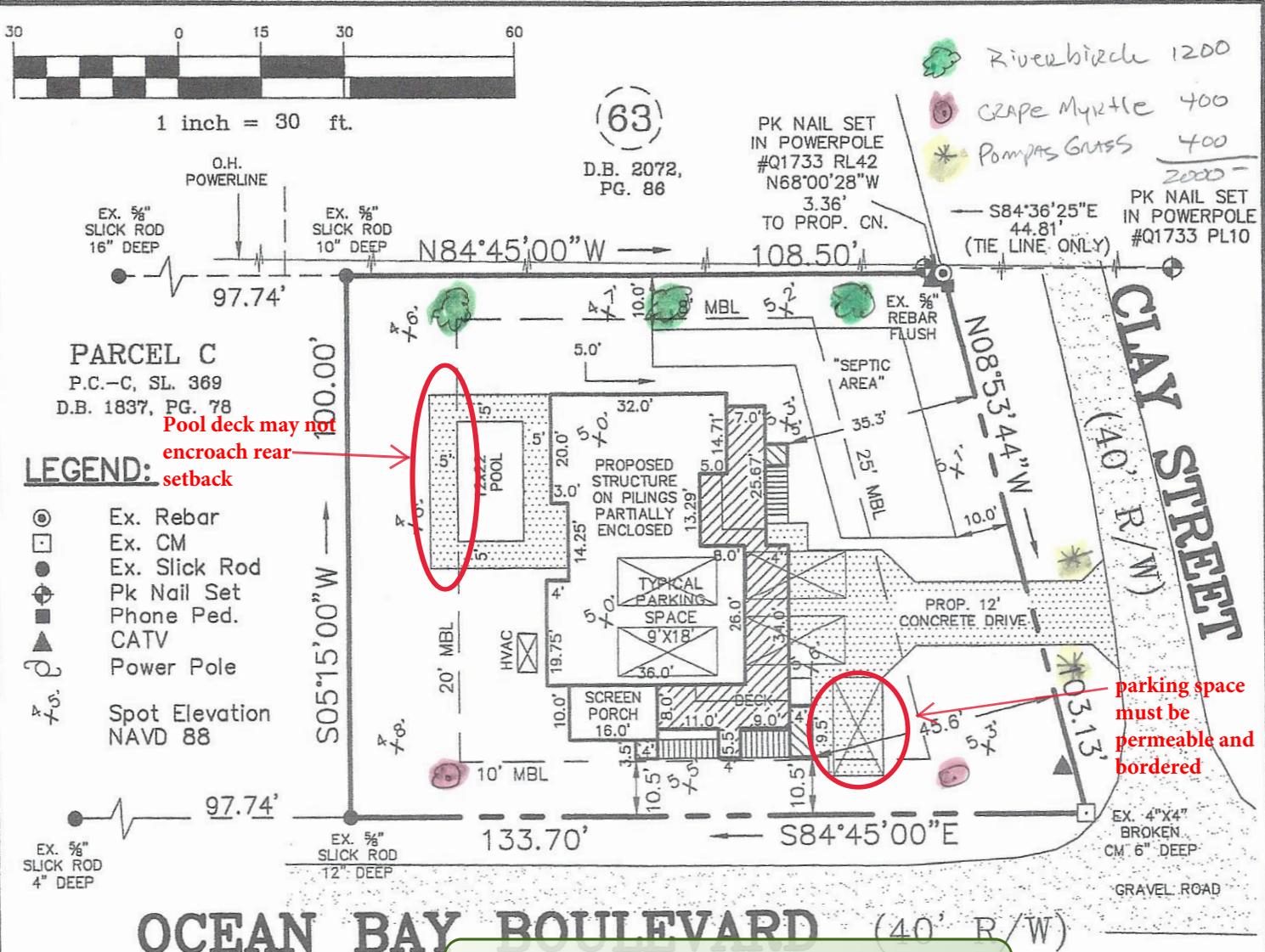
ATLANTIC TOWNSHIP DUCK DARE COUNTY NORTH CAROLINA

DATE SURVEYED:  
12-1-21  
REV.:  
SCALE: 1" = 30'  
FILE NO.: 21-326  
DWG NO.: 21326V

F.I.R.M.: 3720 9950 00 K  
F.I.R.M. DATE: 6-19-2020  
FLOOD ZONE: "X"  
REC. REF. M.B. 2, PG. 244  
D.B. 2528, PG. 328  
PIN NO.:  
21995006487667

*Styons Surveying Services* C-1697  
2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948  
Phone: (252) 441-1415 Fax: (252) 480-1182

Any unauthorized use or alteration of this document is prohibited  
A red seal must be present for this to be an original document



**OCEAN BAY BOULEVARD (40' R/W)**

**NOTES:**

Address: 115 Ocean Bay Boulevard  
 Lot Area = 12,110 Sq. Ft.  
 Proposed Lot Coverage Information:  
 Structure Under Roof/Over Concrete = 2,226.7 Sq. Ft.  
 Concrete Drive/Walks = 1,029.3 Sq. Ft.  
 Pool and Pool Patio = 740 Sq. Ft.  
 Proposed Lot Coverage = 3,996.0 Sq. Ft. (33.0%)  
 Flood Zones are subject to change

**APPROVED**  
 By Joseph H. Heard at 5:47 pm, Jan 20, 2022

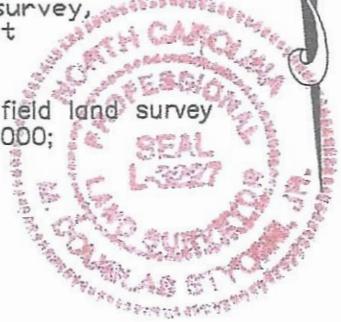
Setbacks shown are as per the Town of Duck Zoning; they do not reflect any Restrictive Covenants that may exist.

This survey was based on the existing property corners found in conjunction with the recorded reference given.

Certifier hereon is not responsible for utilities and/or features that are not visible at the time of the survey, nor any additional setbacks that are not shown.

I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plat was drawn from an actual field land survey that the error of closure as calculated by latitudes and departures is at least 1:10,000;

Witness my hand and seal this 14th day of December A.D. 2021



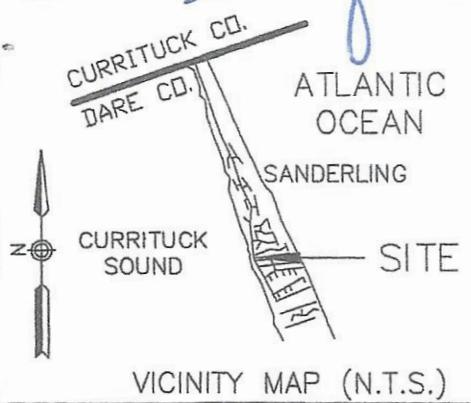
P.L.S. *[Signature]* L-3227

**SITE PLAN**

LOT 31 & 25' OF LOT 32,  
 SECOND PLAT OF SOUND-SEA VILLAGE

SURVEYED FOR  
**KEVIN R. KNOTTS**  
 and **DIANE G. KNOTTS**

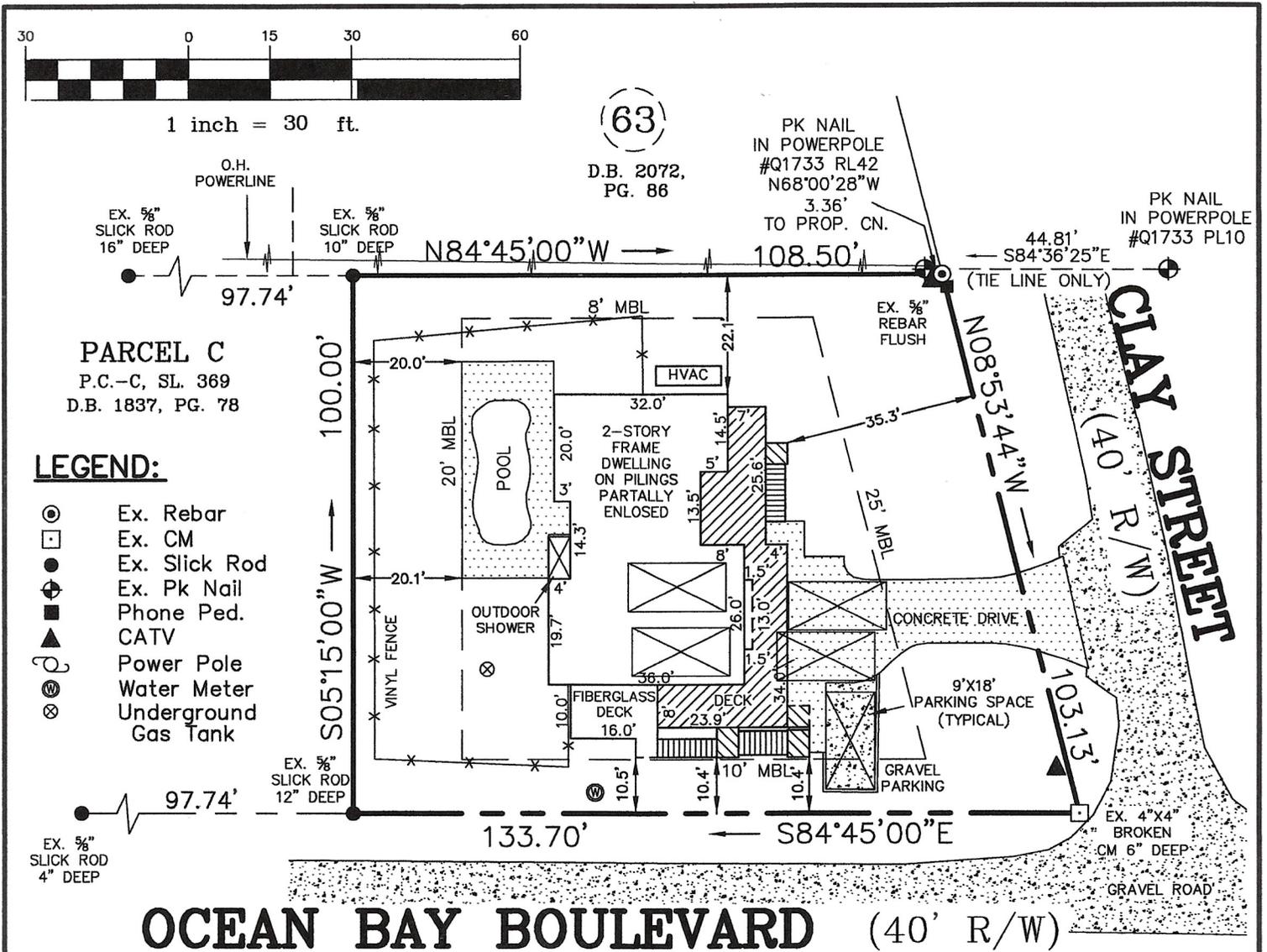
ATLANTIC TOWNSHIP DUCK DARE COUNTY NORTH CAROLINA



DATE SURVEYED: 12-1-21  
 REV.: 12-10-21 SITE PLAN  
 SCALE: 1" = 30'  
 FILE NO.: 21-326  
 DWG NO.: 21326SP

F.I.R.M.: 3720 9950 00 K  
 F.I.R.M. DATE: 6-19-2020  
 FLOOD ZONE: "X"  
 REC. REF. M.B. 2, PG. 244  
 D.B. 2528, PG. 328  
 PIN NO.: 21995006487667

*Styons Surveying Services* C-1697  
 2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948  
 Phone: (252) 441-1415 Fax: (252) 480-1182  
 Any unauthorized use or alteration of this document is prohibited  
 A red seal must be present for this to be an original document



**NOTES:**

Address: 115 Ocean Bay Boulevard

Lot Area = 12,110 Sq. Ft.

Existing Lot Coverage:

Structure Under Roof/Over Concrete: 2,311 Sq. Ft.

Pool Area = 691 Sq. Ft.

Concrete Drive = 814 Sq. Ft.

Lot Coverage = 3,816 Sq. Ft. (31.5%)

Flood Zones are subject to change.

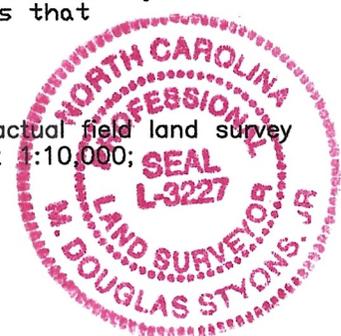
This survey was based on the existing property corners found in conjunction with the recorded reference given.

Certifier hereon is not responsible for utilities and/or features that are not visible at the time of the survey, nor any additional setbacks that are not shown.

I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plat was drawn from an actual field land survey that the error of closure as calculated by latitudes and departures is at least 1:10,000;

Witness my hand and seal this 5th day of May A.D. 2023

*[Signature]*  
P.L.S. L-3227



M.B. 2, PG. 244

**AS-BUILT SURVEY**

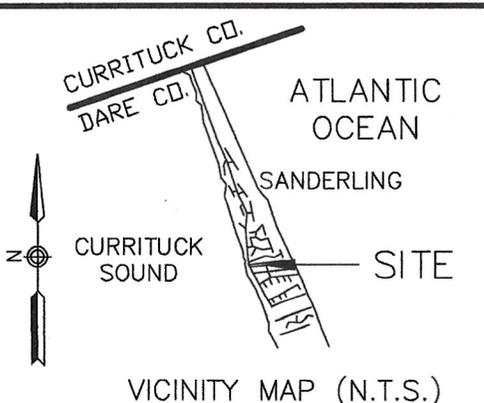
LOT 31 & 25' OF LOT 32,  
SECOND PLAT OF SOUND-SEA VILLAGE

SURVEYED FOR

**KEVIN R. KNOTTS  
and DIANE G. KNOTTS**

ATLANTIC TOWNSHIP  
DUCK

DARE COUNTY  
NORTH CAROLINA



DATE SURVEYED:  
5-3-2023

REV.:

SCALE: 1" = 30'

FILE NO.: 21-326

DWG NO.: 21326AB

F.I.R.M.: 3720 9950 00 K  
F.I.R.M. DATE: 6-19-2020

FLOOD ZONE: "X"

REC. REF. M.B. 2, PG. 244

D.B. 2528, PG. 328

PIN NO.:  
21995006487667

*Styons Surveying Services* C-1697  
2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948  
Phone: (252) 441-1415 Fax: (252) 480-1182

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**Certificate of Occupancy/Compliance**

This document is issued pursuant to NCGS 160A-423 and section 307.4 of the NC Administration and Enforcement Requirement Code. This certificate is issued after the completion of all work authorized under a permit is certified compliant with applicable building codes and any other laws, rules, and regulations that apply.

**115 OCEAN BAY BLVD  
DUCK NC, 27949**

Subdivision: Soundsea Village  
Zoning: RS-1 Single Family Residential  
Permit Number: B21-000361  
Structure Type: Single Family

Flood Zone: Unshaded X  
PIN Number: 995006487667  
Issue Date: 01/24/2022  
Number of Units/Bedrooms: 4  
Number of Occupants: 8

Approved Uses: New 4 BR SFD with swimming pool and elevator

**CONTRACTOR INFORMATION**

Name: Jeffrey H. Haskett Homes, Inc.  
Address: 4711 Lindberg Avenue  
Kitty Hawk, NC 27949

License: 46718

**OWNER INFORMATION**

Name: KNOTTS, KEVIN  
Address: 4807 PRESTWICK DR  
FAIRFAX, VA 22030

Building Inspector

*[Signature]* 5/30/23  
Date

CAMA LPO/ CFM

*[Signature]* 05/30/23  
Date

Zoning Administrator

*[Signature]* 05/30/23  
Date

**From:** [Kevin Knotts](#)  
**To:** [Sandy Cross](#)  
**Cc:** [Diane Knotts](#)  
**Subject:** Thankyou for the meeting today  
**Date:** Wednesday, April 16, 2025 12:32:45 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

---

Sandy

We have much to consider, based on the coverage, the synthetic turf, pavers, and the need for a survey and permits.

We will get back – in order of PERMITS first – once we sort out things

Again Thanks

Kevin



**Kevin R. Knotts**

Azimuth Consulting Services, Inc. / DBOC Joint Venture

Mobile/SMS: 571-212-7017

Email: [kknotts@azimuthihg.com](mailto:kknotts@azimuthihg.com)

Contractor Support to JPEO A&A

---

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

**Caution:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender.

# Exhibit 6

**From:** [Kevin Knotts](#)  
**To:** [Sandy Cross](#)  
**Subject:** 115 Ocean Bay - Set- Back  
**Date:** Tuesday, May 13, 2025 3:16:39 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

---

Sandy

I hope this note finds you well and not floating away

We have had some rain today in Duck

I wanted to let you know that I have hired David Neff – Kwasny Engineering PLLC – to fix/sort out my set-back issue

I wanted to let you know we are going to do everything by the book. Once the engineering is done,

I will personally ensure we have a permit in place and comply with all of the DUCK ordinances.

Thank you for your patience

As always

Kevin



**Kevin R. Knotts**

Azimuth Consulting Services, Inc. / DBOC Joint Venture

Mobile/SMS: 571-212-7017

Email: [kknotts@azimuthihg.com](mailto:kknotts@azimuthihg.com)

Contractor Support to JPEO A&A

---

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

**Caution:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender.

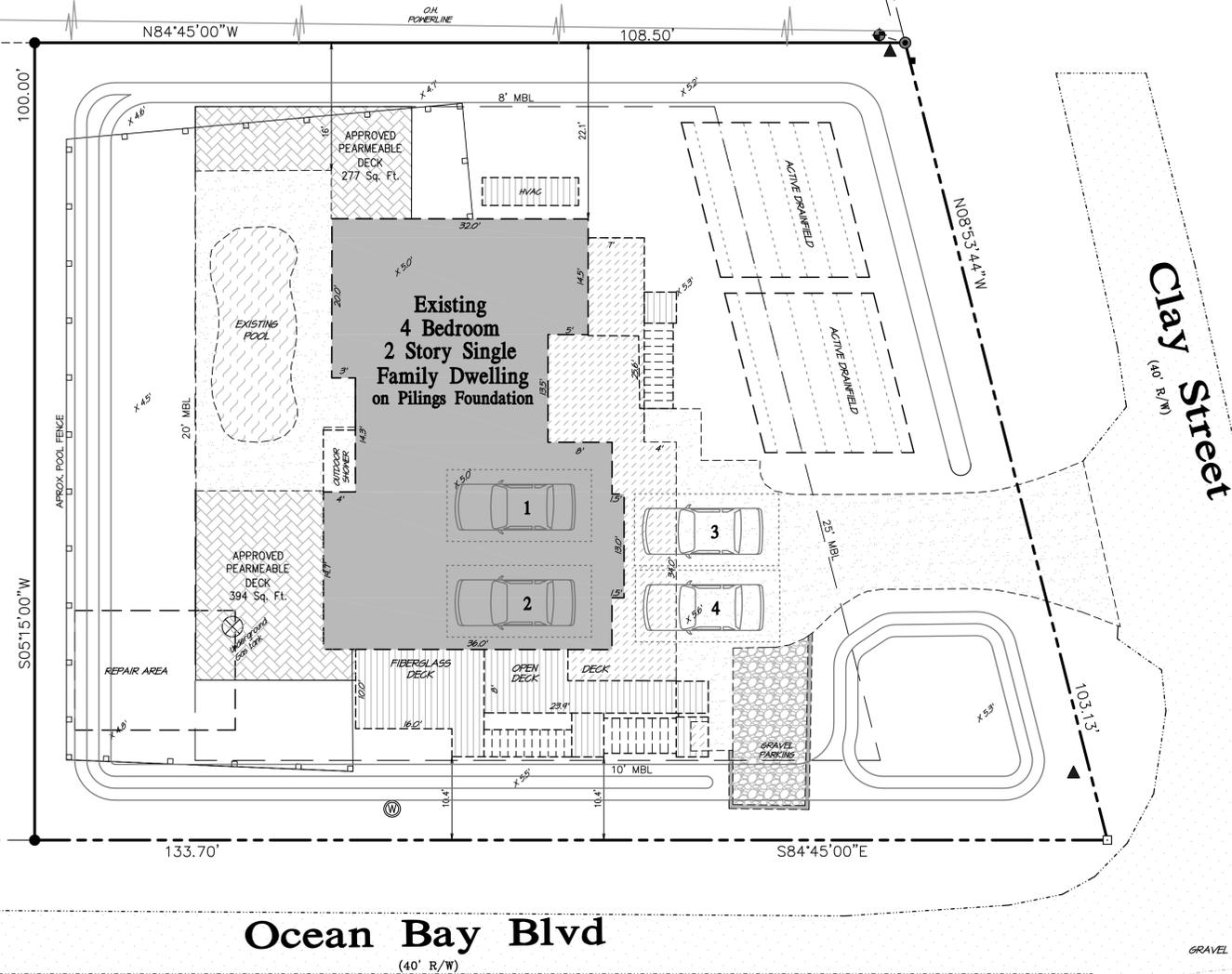
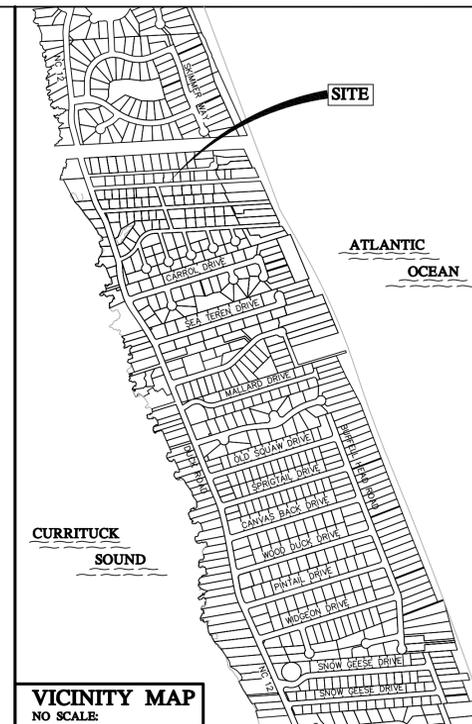
# Exhibit 7

63  
D.B. 2072,  
PG. 86

PARCEL C  
P.C.-C, SL. 369  
D.B. 1837, PG. 78

## GENERAL NOTES:

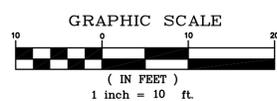
- \* SUBJECT PROPERTY: Lot 31 and 25, Sound-sea Village Subdivision  
Duck, Dare County, North Carolina
- \* STREET ADDRESS: 115 Ocean Bay Blvd  
Duck, Dare County, North Carolina
- \* PARCEL ID NUMBER: 009329000
- \* GLOBAL PIN: 995006487667
- \* RECORDED REFERENCE: D.B. 2528 Pg. 0328, PC. 2, SL. 244
- \* PARCEL AREA: 12,110 Sq. Ft.
- \* SUBJECT PROPERTY ZONING: RS-2 (RESIDENTIAL DISTRICT)
- \* BUILDING SETBACKS: FRONT - 25'  
SIDE - 10'  
REAR - 20'
- \* PROPOSED LOT COVERAGE:
  - EXISTING BUILDING 1,733 SQ. FT.
  - OPEN DECK W/ IMPERVIOUS BELOW 497 SQ. FT.
  - CONCRETE VEHICULAR SURFACE 815 SQ. FT.
  - PAVER POOL DECKS 671 SQ. FT. X 0.60 = 403 SQ. FT.
  - CONCRETE POOL DECK AND SHOWER 466 SQ. FT.
  - FUTURE EZ TREAT 600 POD 30 SQ. FT.
  - TOTAL IMPERVIOUS COVERAGE = 3,944 SQ. FT.
  - PERCENT LOT COVERAGE = 32.57%
  - MAXIMUM LOT COVERAGE = 30%
- \* SURVEY DATA TAKEN FROM: STYON SURVEYING INC.



## LEGEND:

- EXISTING CONCRETE CIRCULATION AREA
- EXISTING DWELLING AREA
- EXISTING OPEN DECKS
- EXISTING COVERED DECKS
- EXISTING DECK WITH COVERAGE BELOW
- PROPOSED CONCRETE SURFACE
- EXISTING ASPHALT SURFACE
- EXISTING SPOT GRADE
- PROPOSED FINISH GRADE CONTOUR
- PROPOSED FINISH SPOT GRADE
- PROPOSED DIRECTIONAL DRAINAGE FLOW

BEFORE YOU DIG!  
North Carolina 811  
WWW.nc811.ORG



ENGINEER SEAL

**PRELIMINARY**

**Kwasny Engineering PLLC**  
Civil Engineering and Land Planning Consultants  
Firm Certification# P-2744  
198 Augusta Drive  
Grandy, NC. 27939  
CELL: 757-705-0585  
OFFICE: 757-435-4893  
E-Mail: Kwasny@kwasnyeng.com  
E-Mail: Dneff@kwasnyeng.com

**Land Disturbance Site Plan**  
For:  
**Kevin and Diane Knotts**  
Location:  
**115 Ocean Bay Blvd**  
Lot 88, Sound-Sea Village Section 3 Subdivision  
Duck Dare County North Carolina

**KE**  
Kwasny Engineering

APPROVALS	DATE	PROJECT NUMBER	SHEET NO.
Drawn: D. NEFF	04/25/25	250319	C1 OF 1
Checked: T. KWASNY	04/25/25		
Engineer: T. KWASNY	04/25/25		

250272

# Exhibit 8



(A) Any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on July 3, 2002, subject to the following provisions:

(1) Permits for the erection of a single-family dwelling on lots less than 7,500 square feet in area shall be reviewed by the Town Council in accordance with the requirements of town code § 156.155 – Special Use Permits.

(2) Special use permits for the erection of a single-family dwelling on lots 7,500 square feet in area or greater shall be reviewed administratively in accordance with the requirements of this chapter.

**(B) For lots of record as of November 20, 1975, the following dimensional requirements shall apply:**

(1) Lots with 10,000 square feet or less:

(a) Front yard setback: 25 feet;

(b) Side yard setback: 8 feet. For corner lots, the side yard setback is 10 feet on the side of the lot that abuts the street;

(c) Rear yard setback: 20 feet; and

(d) Lot coverage: 50%.

**(2) Lots with 10,001 to 14,999 square feet:**

(a) Front yard setback: 25 feet;

(b) Side yard setback: 8 feet. For corner lots, the side yard setback is 10 feet on the side of the lot that abuts the street;

(c) Rear yard setback: 20 feet; and

**(d) Lot coverage: 40%.**

(C) If two or more lots of record or portions of lots with continuous frontage have been physically combined for the purpose of development, and if one or more of the lots involved is less than 7,500 square feet, the lots shall be considered recombined for the purposes of future development.

(Ord. 04-21, passed 10-6-2004, § 31; Am. Ord. 13-06, passed 11-6-2013; Am. Ord. 21-01, passed 6-2-2021)

# Exhibit 10

**From:** [Sandy Cross](#)  
**To:** [Kevin Knotts](#)  
**Cc:** [Zoning](#)  
**Subject:** RE: 115 Ocean Bay - Set- Back  
**Date:** Wednesday, July 9, 2025 12:25:00 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image005.png](#)  
[image006.png](#)

---

Kevin,

Turf may be installed in the setback. We do not count turf as coverage provided the specifications are provided and verify the turf to be permeable. We also do require that you verify that the turf is installed as per manufacturers specifications and that you agree to maintain per those specifications. This will need to be documented and recorded with the register of deeds, so future owners are aware of the maintenance associated with this type of product.

Let me know if you have any further questions. Please also provide me with an estimated timeline for completion.



**Sandy Cross**

Senior Planner, CAMA LPO/CZO/CFM

252-254-5954 (Direct Dial)  
252-255-1234 (Town Office)  
252-255-1236 (Fax)

[scross@ducknc.gov](mailto:scross@ducknc.gov)

[ducknc.gov](http://ducknc.gov)



Sign up for the town E-news at <http://bit.ly/Ducknews>

*Please note that e-mail sent to and from this address is subject to North Carolina Public Records Law and may be disclosed to third parties.*

---

**From:** Kevin Knotts <kknotts@azimuthihg.com>

**Sent:** Wednesday, July 9, 2025 10:06 AM  
**To:** Sandy Cross <[scross@ducknc.gov](mailto:scross@ducknc.gov)>  
**Cc:** Zoning <[zoning@ducknc.gov](mailto:zoning@ducknc.gov)>  
**Subject:** RE: 115 Ocean Bay - Set- Back

Sandy

Thanks for getting back

I was waiting for a response from you in my note on the 10<sup>th</sup> of June. I wanted to have written approval that allowed astro turf in the set back area that we discussed. I could not find it in the Duck codes on line

I will ping David Neff on the heath department and on site review

Stay tuned

Kevin

---

**From:** Sandy Cross <[scross@ducknc.gov](mailto:scross@ducknc.gov)>  
**Sent:** Tuesday, July 8, 2025 12:37 PM  
**To:** Kevin Knotts <[kknotts@azimuthihg.com](mailto:kknotts@azimuthihg.com)>  
**Cc:** Zoning <[zoning@ducknc.gov](mailto:zoning@ducknc.gov)>  
**Subject:** RE: 115 Ocean Bay - Set- Back

Mr. Knotts,

Nearly a month has passed since I last emailed you and I do not see where I have received a response. It is important that you provide an update.



**Sandy Cross**

Senior Planner, CAMA LPO/CZO/CFM

252-254-5954 (Direct Dial)

252-255-1234 (Town Office)

252-255-1236 (Fax)

[scross@ducknc.gov](mailto:scross@ducknc.gov)

[ducknc.gov](http://ducknc.gov)



**SHARP, GRAHAM, BAKER AND VARNELL, L.L.P.  
ATTORNEYS AT LAW**

KITTY HAWK, NORTH CAROLINA  
TELEPHONE: (252) 261-2126  
FACSIMILE: (252) 261-1188

STARKEY SHARP  
RONALD G. BAKER  
CASEY C. VARNELL  
JAMIE G. VARNELL

Website Address  
[www.ncobxlaw.com](http://www.ncobxlaw.com)

MAILING ADDRESS:  
POST OFFICE DRAWER 1027  
KITTY HAWK, NC 27949-1027

*Retired:*  
JOHN C. GRAHAM, III

SENDER'S EXTENSION:  
245

STREET/SHIPPING ADDRESS:  
4417N. CROATANHIGHWAY  
KITTY HAWK, NC 27949-1027

SENDER'S DIRECT LINE:  
(252)573-7030

Sender's E-mail Address:  
varnell1@ncobxtaw.com

July 21, 2025

Connor Winstead  
*Development & Infrastructure Director, Town of Duck*  
Sandy Cross  
*Senior Planner, Town of Duck*  
P.O. Box 8369  
Duck, NC 27949  
*(sent via electronic mail to: [cwinstead@ducknc.gov](mailto:cwinstead@ducknc.gov); [scross@ducknc.gov](mailto:scross@ducknc.gov))*

**RE: 115 OCEAN BAY BOULEVARD/KNOTTS**

Dear Sandy:

As I previously mentioned to you, our office is assisting Kevin and Diane Knotts, owners of 115 Ocean Bay Boulevard, Duck, North Carolina (hereinafter "Property"), in resolving certain zoning issues the Town of Duck (hereinafter "Town") has presented with regard to improvements to the rear yard of their Property. Please accept this correspondence as a formal request for zoning interpretation by the Town.

As I understand the underlying situation, our clients commissioned the installation of pervious pavers and artificial turf in the rear yard of the Property (which does include a pool) as a result of the historical inability to grow natural grass in those areas. The Knotts contracted with Jason's Landscaping and Irrigation Services, which we understand is owned by Mr. Jason Emminizer, to design and perform the installation of the above-referenced permeable materials on their Property. At the time of entering the contract with Mr. Emminizer, it was our clients' understanding that he would take all measures necessary to ensure the scope of work was performed in an appropriate manner, to include acquiring any permits from the Town that may have been required prior to work being performed. The artificial turf and portions of the pervious pavers were installed within the twenty-foot (20-ft.) rear yard setback applicable to the Property, and Mr. Emminizer did not pull a permit with the Town at any point in time. This work was completed in November 2024. After work was completed, the Town, as a result of a citizen-issued complaint, inspected the foregoing work on our clients' Property.

and informed the Knotts that a permit was, indeed, required for the installation of the pavers and turf. This sparked on-going communications between our clients and the Town concerning: 1) the lack of a requisite permit for the work done in their rear yard; and 2) the compliance of said work with the Town's existing ordinance(s).

In an attempt to address the issues which are itemized directly above, our clients have taken necessary steps to develop a remedial plan that will satisfy Town Code requirements relative to the work performed in the rear yard of the Property, thereby allowing them to obtain a retroactive permit relative to the subject Property improvements. In so doing, they have requested confirmation from the Town that permeable materials are allowed to be installed within the Property's applicable setbacks in accordance with the existing Town ordinance(s). In reviewing responsive correspondence, the Town has stated that artificial turf can be installed within the rear yard setback on the Property. However, the Town has also stated that the pervious pavers installed within the same rear yard setback must be removed, as the installation techniques utilized by the contractor have created a "paver deck" within the setback area, which is in violation of the Town Code. It is our understanding that the classification of "paver deck" has been issued by the Town due to the appearance of the pavers being raised off the ground after being installed in accordance with the pervious paver factory installation requirements which included support by slatted boards.

It is our contention that the existing improvements on our clients' Property have been installed in compliance with the existing Town ordinance(s) applicable to entirely permeable materials used to improve lots in the subject zoning district. We base this opinion on our interpretation of the recently adopted Town of Duck Ordinance 24-04, as well as all other Town Code provisions applicable to our clients' subject site improvements. Based on our interpretation, the only conditions placed in the installation of artificial turf is that the turf be installed over an entirely pervious base. We have confirmed this to be the case and can confirm that future maintenance of the turf is guaranteed based on the lifetime warranty issued in conjunction with our clients' purchase of the artificial turf.

With regard to the pervious pavers installed on our clients' Property, to include those installed within the rear yard setback, we are attaching a licensed engineer's report commissioned by our clients which confirms that the pavers are entirely pervious for a two-hour storm event for at least 10 years and have been installed in accordance with all design requirements and specifications (*see Exhibit A*). Of course, our client will execute and have recorded any necessary document in the public record which certifies the foregoing, and which sets forth a maintenance plan prepared by their licensed engineer. It is our position that the report of the engineer acts to prove that our clients' pavers do not qualify as a "deck" but were merely installed in such a manner as to ensure the pervious nature of the pavers. The pavers were raised as part of the design requirements associated with the installation of the pavers, and this technique guarantees the lack of impact stormwater will have on properties adjacent to our clients' Property which is embedded in the intent of the Town ordinance(s) applicable to entirely pervious materials utilized in the construction of residential site improvements.

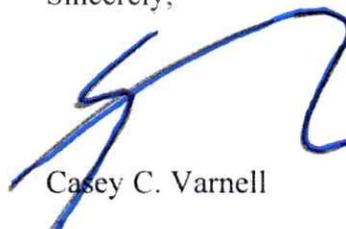
As a result of the foregoing, we believe our clients' rear yard improvements comply with any and all Town Code provisions related to lot coverage. Moreover, given we can locate no provision within any existing Town ordinance provision that distinguishes between installation of artificial turf and entirely pervious pavers within lot setback areas, coupled with the Town's confirmation that turf can be installed within the rear yard setback on our clients' Property, we

contend that the pavers installed within the setbacks on the Property do not amount to a "paver deck", but rather a system of entirely pervious pavers installed in the precise manner required by the Duck Town Code. Thus, we believe these pavers are allowed to remain in the rear yard setbacks pertinent to our clients' Property.

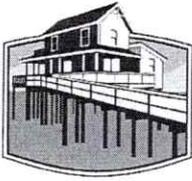
In responding to this formal request for a zoning interpretation, we respectfully ask that you confirm that our above-stated contentions are accurate, thus allowing our clients to obtain a retroactive permit approving the existing site improvements to our clients' Property. To the extent the Town disagrees with our contentions as stated herein, we ask that the Town respond by explaining, in explicit form, why our clients' existing site improvements do not comply with the Duck Town Code, including direct reference to all Code provisions which provide foundation for said position of the Town.

We look forward to hearing from you and appreciate your evaluation of the request(s) contained within this correspondence.

Sincerely,

A handwritten signature in blue ink, appearing to read "Casey C. Varnell". The signature is stylized with a large, sweeping initial "C" and a long horizontal stroke that curves upwards at the end.

Casey C. Varnell



# MICHAEL D. O'STEEN, P.E., P.L.L.C.

STRUCTURAL & CIVIL ENGINEERING SOLUTIONS

LICENSED WITH NCEES, NORTH CAROLINA & VIRGINIA

EXHIBIT     A    

June 26, 2025

Re: 115 Ocean Bay Blvd  
Lot 31 & portion of 32, Sound-Sea Village Second Plat  
Duck, Dare County, North Carolina

Dear Sir or Madam,

I was requested to verify the installation parameters of the existing Cambridge with Armortec permeable pavement. In particular the Ledgerstone Permeable 3-PC texture or smooth system. My observations are as follows:

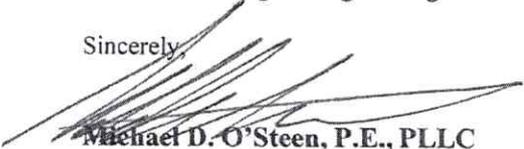
Parole information indicates the paver system was installed over non-compacted granular soils; #67 stone subbase; #8 stone base course; #9 stone bedding course and gap between stone sections. This is consistent with the recommended manufacturer's installation instructions.

Manufacturer documentation states the Site Average Surface I (in/hr)=720; based on the "Surface Infiltration Test Data in Accordance with ASTM C1781.

Additionally, the installed Permeable Interlocking Concrete Pavement (PICP) supports Low Impact Development (LID) principles and is eligible for LEED points where applicable.

Except as provided herein, it is the sole responsibility of the contractor and/or builder to conform to all standards, provisions, requirements, methods of construction, and uses of materials in buildings and/or structures provided by the North Carolina State Building Code: Residential Code (2015 IRC with North Carolina Amendments), any other local agencies, and in accordance with good engineering and construction practices.

Sincerely,

  
Michael D. O'Steen, P.E., PLLC  
Firm#P-2112  
Not Responsible for Existing Conditions



# Exhibit 12

## § 156.012 YARD REQUIREMENTS.

Unless otherwise provided in this chapter, no principal structure or principal use, structure intended for outdoor recreational use, such as pools and tennis courts, or other accessory buildings or structures shall be located within the front, side or rear yards (setback areas).

(Ord. 04-21, passed 10-6-2004, § 12)

# Exhibit 13

## § 156.051 BUILDING FEATURES EXEMPT FROM SETBACKS OR MINIMUM YARD REQUIREMENTS.

Building features that may be exempt from minimum yard requirements, setbacks or building restriction lines are described as follows:

(A) Sills, cornices and similar ornamental features as well as roof eaves and overhangs may project not exceeding 12 inches into any required front, side or rear yard or beyond any required front, side or rear setback or building restriction line;

(B) Bay windows, stoops, covered entryways, stairs and similar features of a principal structure may project not exceeding 3 feet into any required front yard or beyond any required front setback or building restriction line (plus an additional 12 inches for features as noted in this section); and

(C) No ornamental feature, bay window, stoop, stairs, eave, overhang or similar feature of an accessory structure shall project into any required front, rear or side setback or building restriction lines applicable to accessory structures;

(D) Community ocean and sound access walkway structures located within common property designated as such at the time of subdivision plat recordation, within an easement granted to a subdivision or community association for the purposes of providing community access to the ocean or sound, or within the right-of-way of a private street, are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2). Dune walkover structures subject to this exemption must still comply with all applicable standards found in § 156.124(C)(1);

(E) Private walkway structures less than 4 feet in width that directly connect to walkway structures listed in division (D) above are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2). This exemption shall also apply to private walkway structures constructed for the purpose of providing ocean or sound access that are shared between 2 adjoining property owners. Dune walkover structures subject to this exemption must still comply with all applicable standards found in § 156.124(C)(1);

(F) Private walkway structures less than 4 feet in width constructed less than 12 inches above grade are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2). Dune walkover structures and sound access walkways are not exempt from minimum yard requirements unless in compliance with the standards of § 156.051(E). Walkway structures are not exempt from minimum yard requirements if the walkway abuts a swimming pool deck or is located within 3 feet of a swimming pool; and

(G) Municipally owned walkways, boardwalks, multi-use paths and sidewalks are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2).

(Ord. 04-23, passed 10-6-2004, § 24; Am. Ord. 05-04, passed 4-6-2005; Am. Ord. 06-01, passed 4-5-2006; Am. Ord. 08-05, passed 11-5-2008; Am. Ord. 17-07, passed 8-2-2017; Am. Ord. 21-01, passed 6-2-2021; Am. Ord. 22-08, passed 9-7-2022)

§ 156.128 LAND DISTURBING ACTIVITIES.

(A) Mandatory standards for land disturbance activities.

(1) The provisions of this section shall apply to any land disturbance activity regardless of the size of the disturbed area. A land disturbance permit is required as provided in division (B)(1) below.

...

(B) Land disturbance permit required.

(1) A land disturbance permit shall be required for filling and/or grading a lot; any lot clearance, filling or grading activity prior to issuance of a building permit; any installation of gravel or pavers or accessory structures and similar site features whether or not subject to building permit requirements; and any removal or installation of site features such as septic systems, wells and drainage systems that disturb the land.

...

# Exhibit 15



Department of Community Development  
 PO Box 8369  
 1200 Duck Road  
 Town of Duck, North Carolina 27949  
 (252) 255-1234

Date Received: \_\_\_\_\_  
 Permit #: \_\_\_\_\_

## Development Permit Application

Project Address: \_\_\_\_\_ PIN #: \_\_\_\_\_

Description of Work \_\_\_\_\_

Property Owner: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address/Email: \_\_\_\_\_

Applicant: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address/Email: \_\_\_\_\_

### Project Summary: (check all that apply)

**Use:**  Single-Family  Commercial  Multi-Family  Motel/Hotel  Other:

Building Construction		Land Disturbing Activity	Trade (not associated w/ other development)
Structure Type	Work Classification		
<input type="checkbox"/> Primary Structure	<input type="checkbox"/> New <input type="checkbox"/> Expansion	<input type="checkbox"/> Parking <input type="checkbox"/> Grading/Filling	<input type="checkbox"/> Plumb. (# Fixtures _____)
<input type="checkbox"/> Accessory Building	<input type="checkbox"/> Remodel <input type="checkbox"/> Repair	<input type="checkbox"/> Driveway <input type="checkbox"/> Landscaping	<input type="checkbox"/> Elec. (Amps/Outlets _____)
<input type="checkbox"/> Pool/Hot Tub	<input type="checkbox"/> Demolition <input type="checkbox"/> Relocation	<input type="checkbox"/> Septic <input type="checkbox"/> Irrigation	<input type="checkbox"/> Mech. (# Units _____)
<input type="checkbox"/> Pier/Bulkhead	<input type="checkbox"/> Reface (Signs)	<input type="checkbox"/> Vegetation Removal	<input type="checkbox"/> Gas (# Outlets/Appl. _____)
<input type="checkbox"/> Deck <input type="checkbox"/> Sign			

**Proposed Area Schedule:** Heated Area \_\_\_\_\_ Sq. Ft. Unheated Area \_\_\_\_\_ Sq. Ft. Other \_\_\_\_\_ L.F.

Project	Building	Electrical	Mechanical	Plumbing	Gas	Other: _____	Total
<b>Cost Estimate:</b>	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

### Floodplain Development Information: (if applicable)

Flood Zone  VE  AE  X Base Flood Elevation (BFE) \_\_\_\_\_ Enclosed Area Below BFE:  Y  N

### Zoning Information: (Please complete all sections that apply to your project)

Sq. Ft. Ex. Prop. (Sq. Ft.) Ex. Prop. Ex. Prop.  
 Lot Area \_\_\_\_\_ Lot Coverage \_\_\_\_\_ / \_\_\_\_\_ # Occupants \_\_\_\_\_ / \_\_\_\_\_ # Bedrooms \_\_\_\_\_ / \_\_\_\_\_  
 Proposed Building Height \_\_\_\_\_ Measured from:  Slab  BFE  Finished Grade

If fill or grading will result in property elevation changes, please fill out all that apply:			Vegetation Management (For projects that will increase the developed area of the property and that will also remove vegetation; See Town of Duck Vegetation Planting Guidelines for More Information)	
	Current Elevation (Lowest Corner)	*Proposed Elevation		
House	_____	_____	A. Area of Primary Structure (i.e. house) Footprint	_____
Pool	_____	_____	B. Required Canopy Coverage (= Lot Area – A. x .15)	_____
Driveway	_____	_____	C. Area of Vegetation to be Preserved (provide sketch)	_____
Parking	_____	_____	D. Area of New Plantings Required* (= B. – C.)	_____
Other: _____	_____	_____	E. Summary of New Canopy Coverage (Type & Number of Plants)	_____
*Please show pre-disturbance elevations at four corners of proposed footprint on survey			*Large Tree = 400 sq. ft, Small Tree = 200 sq. ft, 10 Shrubs = 400 sq. ft	



Received  
8/29/25  
ck# 76959



TOWN OF DUCK  
STATE OF NORTH CAROLINA

ZONE RS-1

BOARD OF ADJUSTMENT  
APPLICATION FOR AN APPEAL

NOTICE IS HEREBY GIVEN the Board of Adjustment and the Town of Duck Zoning Administrator of an appeal from the ruling of the 30th day of July, 2025 which denied/granted that:

\*See attached Exhibit B

premises located at 115 Ocean Bay Boulevard

in an incorporated area of the Town of Duck, Dare County, North Carolina.

Title to this property is in the name of Kevin R. Knotts and Diane G. Knotts

The grounds for this appeal are as hereinafter set forth: \*See attached Exhibit A

8/28/25

Date

[Signature]  
Signature of Appellant(s)  
Casey C. Varnell, Attorney for Appellants

Signature of Appellant(s)

Address

Address

P.O. Box 1027, Kitty Hawk, NC 27949

Appeal must be accompanied by a small-scale vicinity map, showing exact location of property with respect to existing streets, size of lots, nature of adjacent property uses, and other important features within and contiguous to the property. The names of the owners of all lots within 300 feet in all directions from the property will be shown.

DO NOT WRITE BELOW THIS LINE

Advertised in \_\_\_\_\_

Date \_\_\_\_\_

Scheduled date of Board of Adjustment Hearing: \_\_\_\_\_

APPEAL PROCESSED BY: \_\_\_\_\_

**IDENTIFICATION AND AERIAL IMAGE OF APPELLANTS'**  
**PROPERTY**



# Dare County - Property Records

## Dare County - Property Records

009329000  
115 OCEAN BAY BLVD, DUCK, NC, 27949

KNOTTS, KEVIN R  
KNOTTS, DIANE G  
4807 PRESTWICK DR  
FAIRFAX, VA, 22030-4519, USA

Assessed Value  
\$1,452,800

### PARCEL INFORMATION

Parcel ID	009329000	PIN	995006487667
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	DUCK	Neighborhood	21060003
Zoning Code	RS-1	Zoning Desc.	SINGLE FAMILY RESIDENCE
Subdivision Code	S677	Subdivision	SOUND-SEA VILLAGE SECOND PLAT
Legal Desc.	LOT: 31 & 25 FT OF 32 BLK: SEC:		
Plat Cab Slide	PL: 2 SL: 244		
Last Recorded Document	07/21/2021	Book / Page	<u>2528 / 328</u>
Tax Status	Taxable		

### SECONDARY OWNERS

No data to display

### ASSESSMENT DETAILS

#### REAL ESTATE ASSESSED VALUE

Land Value	\$309,800
Building Value	\$1,143,000
Other Improvements	\$0
Total Assessed	\$1,452,800

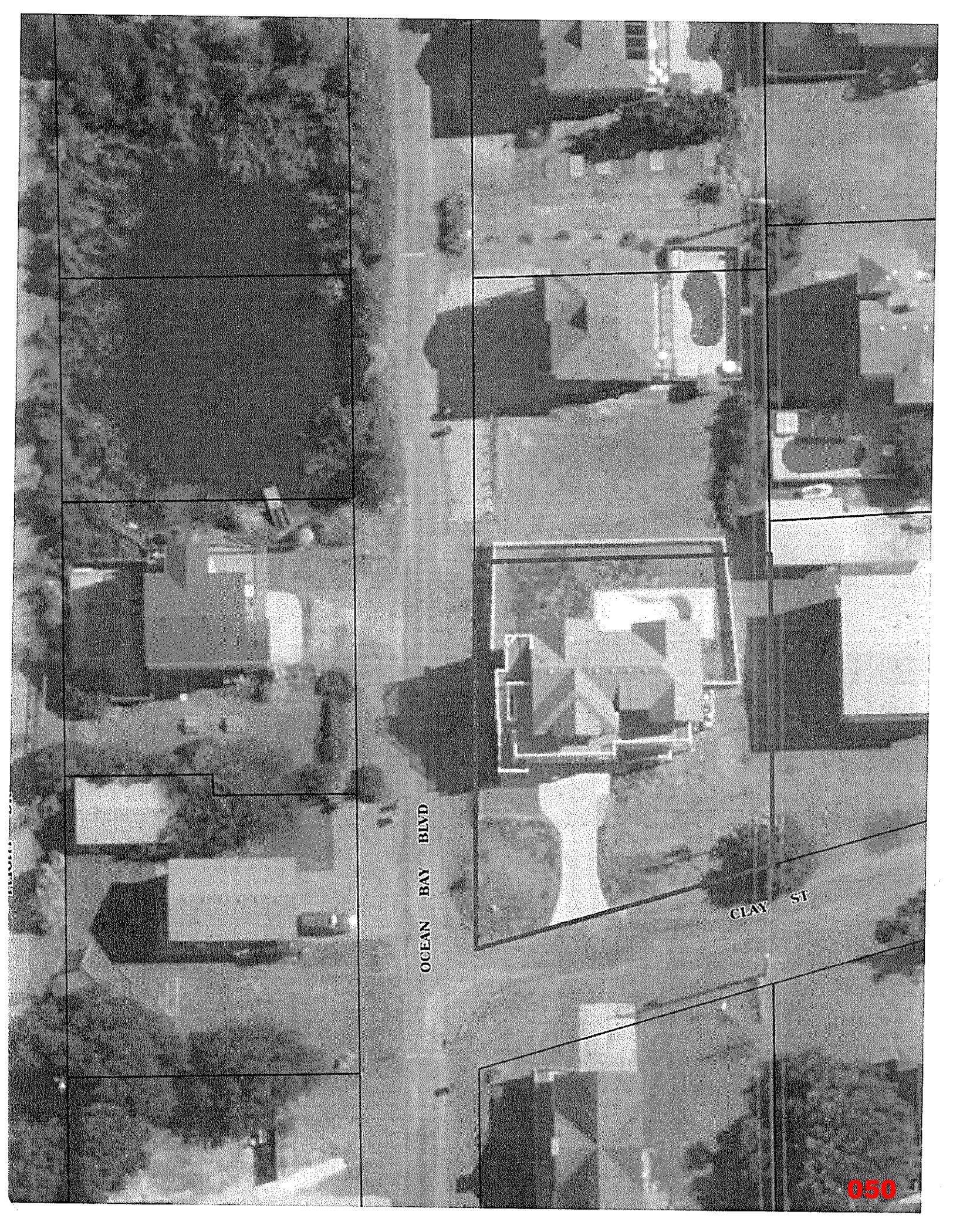
#### BILLING VALUE

Land Value	\$309,800
Building Value	\$1,143,000
Other Improvements	\$0
Total Value	\$1,452,800

### LAND

LAND DESCRIPTION	SQFT	ACRES
1 U06-21-Ocean Influence D	12,000	0.2755
Total	12,000	0.2755

### BUILDINGS



OCEAN BAY BLVD

CLAY ST

**IDENTIFICATION OF SURROUNDING PROPERTY OWNERS**



# Dare County - Property Records

## Dare County - Property Records

009351000  
113 OCEAN BAY BLVD, DUCK, NC, 27949

BRINK, CHESTER V  
BRINK, MARY D  
848 MORGAN TRL  
VIRGINIA BEACH, VA, 23464-2140, USA

Assessed Value  
\$562,300

### PARCEL INFORMATION

Parcel ID	009351000	PIN	995006486627
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	DUCK	Neighborhood	21070003
Zoning Code	RS-1	Zoning Desc.	SINGLE FAMILY RESIDENCE
Subdivision Code	S677	Subdivision	SOUND-SEA VILLAGE SECOND PLAT
Legal Desc.	LOT: 29 BLK: SEC:		
Plat Cab Slide	PL: 2 SL: 244		
Last Recorded Document	04/30/2021	Book / Page	<u>2499 / 897</u>
Tax Status	Taxable		

### SECONDARY OWNERS

No data to display

### ASSESSMENT DETAILS

#### REAL ESTATE ASSESSED VALUE

Land Value	\$282,800
Building Value	\$278,200
Other Improvements	\$1,300
Total Assessed	\$562,300

### BILLING VALUE

Land Value	\$282,800
Building Value	\$278,200
Other Improvements	\$1,300
Total Value	\$562,300

### LAND

LAND DESCRIPTION	SQFT	ACRES
1 U07-21-Ocean Influence E	9,000	0.2066
Total	9,000	0.2066

### BUILDINGS



# Dare County - Property Records

## Dare County - Property Records

009360000  
110 ACORN OAK AVE, DUCK, NC, 27949

RSPTI  
-  
5819 OAK TERRACE DR  
VIRGINIA BEACH, VA,23464, USA

Assessed Value  
\$568,100

### PARCEL INFORMATION

Parcel ID	009360000	PIN	995006486547
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	DUCK	Neighborhood	21070003
Zoning Code	RS-1	Zoning Desc.	SINGLE FAMILY RESIDENCE
Subdivision Code	S677	Subdivision	SOUND-SEA VILLAGE SECOND PLAT
Legal Desc.	LOT: 46 BLK: SEC:		
Plat Cab Slide	PL: 2 SL: 244		
Last Recorded Document	03/16/2016	Book / Page	2081 / 48
Tax Status	Taxable		

### SECONDARY OWNERS

No data to display

### ASSESSMENT DETAILS

#### REAL ESTATE ASSESSED VALUE

Land Value	\$300,900
Building Value	\$265,300
Other Improvements	\$1,900
Total Assessed	\$568,100

### BILLING VALUE

Land Value	\$300,900
Building Value	\$265,300
Other Improvements	\$1,900
Total Value	\$568,100

### LAND

LAND DESCRIPTION	SQFT	ACRES
1 U07-21-Ocean Influence E	11,500	0.264
Total	11,500	0.264

### BUILDINGS



# Dare County - Property Records

## Dare County - Property Records

009287000  
112 ACORN OAK AVE, DUCK, NC, 27949

WORLEY, LUCILLE A  
-  
112 ACORN OAK AVE  
DUCK, NC, 27949, USA

Assessed Value  
\$769,700

### PARCEL INFORMATION

Parcel ID	009287000	PIN	995006488508
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	DUCK	Neighborhood	21060003
Zoning Code	RS-1	Zoning Desc.	SINGLE FAMILY RESIDENCE
Subdivision Code	S680	Subdivision	SOUND-SEA VILLAGE SECTION 3
Legal Desc.	LOT: 63 BLK: SEC: 3		
Plat Cab Slide	PL: 3 SL: 100		
Last Recorded Document	01/27/2016	Book / Page	2072 / 86
Tax Status	Taxable		

### SECONDARY OWNERS

No data to display

### ASSESSMENT DETAILS

#### REAL ESTATE ASSESSED VALUE

Land Value	\$298,700
Building Value	\$462,800
Other Improvements	\$8,200
Total Assessed	\$769,700

#### BILLING VALUE

Land Value	\$298,700
Building Value	\$462,800
Other Improvements	\$8,200
Total Value	\$769,700

### LAND

LAND DESCRIPTION	SQFT	ACRES
1 U06-21-Ocean Influence D	10,500	0.241
Total	10,500	0.241

### BUILDINGS



# Dare County - Property Records

## Dare County - Property Records

009288000  
114 ACORN OAK AVE, DUCK, NC, 27949

KURFUERST, SHARON TTEE  
-  
55 ABELIA LN  
NEWARK, DE,19711, USA

Assessed Value  
\$703,600

### PARCEL INFORMATION

Parcel ID	009288000	PIN	995006489508
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	DUCK	Neighborhood	21060003
Zoning Code	RS-1	Zoning Desc.	SINGLE FAMILY RESIDENCE
Subdivision Code	S680	Subdivision	SOUND-SEA VILLAGE SECTION 3
Legal Desc.	LOT: 64 BLK: SEC: 3		
Plat Cab Slide	PL: 3 SL: 100		
Last Recorded Document	01/06/2023	Book / Page	2661 / 337
Tax Status	Taxable		

### SECONDARY OWNERS

No data to display

### ASSESSMENT DETAILS

#### REAL ESTATE ASSESSED VALUE

Land Value	\$295,000
Building Value	\$381,800
Other Improvements	\$26,800
Total Assessed	\$703,600

### BILLING VALUE

Land Value	\$295,000
Building Value	\$381,800
Other Improvements	\$26,800
Total Value	\$703,600

### LAND

LAND DESCRIPTION	SQFT	ACRES
1 U06-21-Ocean Influence D	10,000	0.2296
Total	10,000	0.2296

### BUILDINGS



# Dare County - Property Records

## Dare County - Property Records

009352002  
115 A OCEAN BAY BLVD, DUCK, NC, 27949

ROUKIS, DEAN J  
ROUKIS, MELANIE J  
26116 TALAMORE DR  
SOUTH RIDING, VA, 20152, USA

Assessed Value  
\$1,049,100

### PARCEL INFORMATION

Parcel ID	009352002	PIN	995006488689
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	DUCK	Neighborhood	21060003
Zoning Code	RS-1	Zoning Desc.	SINGLE FAMILY RESIDENCE
Subdivision Code	S677	Subdivision	SOUND-SEA VILLAGE SECOND PLAT
Legal Desc.	LOT: PARCEL C BLK: SEC:		
Plat Cab Slide	PL: D SL: 369		
Last Recorded Document	07/01/2010	Book / Page	1837 / 78
Tax Status	Taxable		

### SECONDARY OWNERS

No data to display

### ASSESSMENT DETAILS

#### REAL ESTATE ASSESSED VALUE

Land Value	\$295,000
Building Value	\$726,400
Other Improvements	\$27,700
Total Assessed	\$1,049,100

### BILLING VALUE

Land Value	\$295,000
Building Value	\$726,400
Other Improvements	\$27,700
Total Value	\$1,049,100

### LAND

LAND DESCRIPTION	SQFT	ACRES
1 U06-21-Ocean Influence D	10,000	0.2296
Total	10,000	0.2296

### BUILDINGS



# Dare County - Property Records

## Dare County - Property Records

009338000  
114 OCEAN BAY BLVD, DUCK, NC, 27949

DANIELS, LUCY R  
-  
PO BOX 61  
EDENTON, NC, 27932, USA

Assessed Value  
\$764,800

### PARCEL INFORMATION

Parcel ID	009338000	PIN	995006487892
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	DUCK	Neighborhood	21060003
Zoning Code	RS-1	Zoning Desc.	SINGLE FAMILY RESIDENCE
Subdivision Code	S677	Subdivision	SOUND-SEA VILLAGE SECOND PLAT
Legal Desc.	LOT: 11 & SM PT 10 BLK: SEC:		
Plat Cab Slide	PL: 2 SL: 244		
Last Recorded Document	03/12/2008	Book / Page	1760 / 223
Tax Status	Taxable		

### SECONDARY OWNERS

No data to display

### ASSESSMENT DETAILS

#### REAL ESTATE ASSESSED VALUE

Land Value	\$295,000
Building Value	\$444,400
Other Improvements	\$25,400
Total Assessed	\$764,800

### BILLING VALUE

Land Value	\$295,000
Building Value	\$444,400
Other Improvements	\$25,400
Total Value	\$764,800

### LAND

LAND DESCRIPTION	SQFT	ACRES
1 U06-21-Ocean Influence D	10,000	0.2296
Total	10,000	0.2296

### BUILDINGS



# Dare County - Property Records

Dare County - Property Records

009337000  
112 OCEAN BAY BLVD, DUCK, NC, 27949

FAISON, SHANE S  
-  
112 OCEAN BAY BLVD  
DUCK, NC,27949, USA

Assessed Value  
\$561,900

## PARCEL INFORMATION

Parcel ID	009337000	PIN	995006487802
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	DUCK	Neighborhood	21060003
Zoning Code	RS-1	Zoning Desc.	SINGLE FAMILY RESIDENCE
Subdivision Code	S677	Subdivision	SOUND-SEA VILLAGE SECOND PLAT
Legal Desc.	LOT: PTS OF 9 & 10 BLK: SEC:		
Plat Cab Slide	PL: 2 SL: 244		
Last Recorded Document	10/26/2004	Book / Page	1595 / 19
Tax Status	Taxable		

## SECONDARY OWNERS

No data to display

## ASSESSMENT DETAILS

### REAL ESTATE ASSESSED VALUE

Land Value	\$295,000
Building Value	\$253,300
Other Improvements	\$13,600
Total Assessed	\$561,900

## BILLING VALUE

Land Value	\$295,000
Building Value	\$253,300
Other Improvements	\$13,600
Total Value	\$561,900

## LAND

LAND DESCRIPTION	SQFT	ACRES
1 U06-21-Ocean Influence D	10,000	0.2296
Total	10,000	0.2296

## BUILDINGS



# Dare County - Property Records

## Dare County - Property Records

009336000  
110 OCEAN BAY BLVD, DUCK, NC, 27949

BARLOW, ALTON GLENN JR  
BARLOW, CAROL H  
21028 ROBINSONVILLE RD  
LEWES, DE, 19958, USA

Assessed Value  
\$928,500

### PARCEL INFORMATION

Parcel ID	009336000	PIN	995006485880
Land Use Code	0100	Land Use Description	SINGLE FAMILY RESIDENTIAL
District	DUCK	Neighborhood	21070003
Zoning Code	RS-1	Zoning Desc.	SINGLE FAMILY RESIDENCE
Subdivision Code	S677	Subdivision	SOUND-SEA VILLAGE SECOND PLAT
Legal Desc.	LOT: 8 & W 25 FT 9 BLK: SEC:		
Plat Cab Slide	PL: 2 SL: 244		
Last Recorded Document	08/11/2004	Book / Page	1582 / 10
Tax Status	Taxable		

### SECONDARY OWNERS

No data to display

### ASSESSMENT DETAILS

#### REAL ESTATE ASSESSED VALUE

Land Value	\$290,000
Building Value	\$610,500
Other Improvements	\$28,000
Total Assessed	\$928,500

### BILLING VALUE

Land Value	\$290,000
Building Value	\$610,500
Other Improvements	\$28,000
Total Value	\$928,500

### LAND

LAND DESCRIPTION	SQFT	ACRES
1 U07-21-Ocean Influence E	10,000	0.2296
Total	10,000	0.2296

### BUILDINGS

## **EXHIBIT A – KNOTTS/APPEAL OF DECISION(S) OF ZONING ADMINISTRATOR**

This appeal is being taken against two (2) specific items noted in the correspondence, dated July 30<sup>th</sup>, 2025 and entitled “NOTICE OF VIOLATION – 115 Ocean Bay Blvd – Chapter 156 – Zoning”, as issued by the Town of Duck Zoning Administrator. Said correspondence is attached hereto as **Exhibit B**.

The first item subject of this appeal is the portion of the decision and/or interpretation of the Town of Duck Code of Ordinances (hereinafter generally “Code”) issued by the Zoning Administrator which states that the pervious pavers installed in the rear yard setback of the Knotts’ Property are in violation of the following Code provisions: **§ 156.012 - YARD REQUIREMENTS AND § 156.051 - BUILDING FEATURES EXEMPT FROM SETBACKS OR MINIMUM YARD REQUIREMENTS**. It is the Appellants’ contention that pervious pavers are allowed to be placed in the rear yard setback of the Knotts’ Property pursuant to the Code.

(\*These Code provisions are, in pertinent part, found on the Appendix to **Exhibit A**.)

The second item subject of this appeal is the Notice of Violation issued by the Zoning Administrator based on the decision and/or interpretation of the Code as stated directly above. The Appellants are making notation of the appeal of these two (2) distinct items, as each are capable of appeal and were included in the correspondence attached hereto as **Exhibit B**. The remainder of this analysis shall apply to both items given the grounds for this appeal are equally applicable to both.

### **BACKGROUND INFORMATION**

The Appellants commissioned the installation of pervious pavers and artificial turf in the rear yard of the Property (which does include a pool) as a result of the historical inability to grow natural grass in those areas. The Knotts contracted with a local landscaping company to design and perform the installation of the above-referenced permeable materials on their Property (hereinafter “Site Improvements”). At the time of entering the contract with the landscaping company, it was the Appellants’ understanding that the landscaper would take all measures necessary to ensure the scope of work was performed in an appropriate manner, to include acquiring any permits from the Town that may have been required prior to work being performed. The artificial turf and portions of the pervious pavers were installed within the twenty-foot (20-ft.) rear yard setback applicable to the Property; however, the landscaping company failed to pull a permit with the Town prior to performing this work. After the Site Improvements were completed, the Town, as the result of a Town employee seeing the Site Improvements while traversing within the Knotts’ neighborhood, commenced with inspection the foregoing work on the Knotts’ Property. At that point, communications between the Town and the Appellants, as the same are mentioned in **Exhibit B**, ensued, leading to this appeal.

Of note, no appeal is being taken on the requirement that a land disturbance permit was required to be issued by the Town prior to commencement of the Site Improvements. The Appellants’ agree that § 156.128 - *LAND DISTURBING ACTIVITIES* of the Code requires such a permit, as §156.128(B)(1) specifically states that “any installation of gravel or pavers” on a

property located within the Town of Duck requires a land disturbance permit. The Appellants also agree that the same Code provision is applicable to the artificial turf installed in their rear yard due to the disturbance of the natural land that is required when installing this particular site feature. Further, this Code provision also states that it is applicable to “similar site features whether or not subject to building permit requirements” (*see* §156.128(B)(1)), which seems to encapsulate installation of artificial turf.

The Appellants’ have been and remain desirous of submitting a permit application to the Town, in retroactive form, to have these site improvements administratively approved as installed. And the Appellants’ have been steadfast in making efforts to ensure these site improvements have been installed in accordance with the Town’s Code of Ordinances. Along with this permit application, the Appellants will present all necessary supporting documentation, such as the report of a licensed engineer (*see* **Exhibit C**), which will act to confirm the pervious nature of the pavers and turf, identify future maintenance techniques, and show compliance with all other requirements stated within the Code. However, given the Town’s position set forth in **Exhibit B**, a decision on this appeal is necessary prior to submittal of the Appellants’ permit application.

### **ANALYSIS/GROUNDS FOR APPEAL**

As stated above, it is the Appellants’ position that pervious pavers are allowed to be placed in the rear yard setback pursuant to the Town Code of Ordinances. The basis for the Town’s determination that the Site Improvements existing on the Knotts’ Property are in violation of the above-referenced Code provisions is that the installed pavers constitute a “structure” as defined by the Town Code (*see* **Exhibit B**). Per §156.012, *accessory structures and/or structures intended for outdoor recreational use* cannot be installed within the front, side or rear setback areas of any given residential property located within the Town of Duck unless the Code provides for an exception. However, per §156.051(F), *walkway structures* are not exempt from minimum yard requirements if the *walkway* abuts a swimming pool deck or is located within 3 feet of a swimming pool. In reviewing the determination by the Zoning Administrator issued in **Exhibit B**, it becomes clear that the Town considers the Appellants’ pervious pavers to qualify as some form of structure, whether that be an accessory structure, a structure intended for outdoor recreational use, or a walkway structure. Further, it is evident that because the pervious pavers abut a swimming pool deck, the Town opines that the pavers do not meet the exception contained within §156.051(F). As a result, the Town has demanded that the pavers be removed from the Knotts’ rear yard setback area – further stating that the artificial turf can be expanded and installed within the rear yard setback as means of replacing the pervious pavers (*see* **Exhibit D+**).

The Appellants do not agree that the pervious pavers at issue constitute a “structure” pursuant to the Town’s Code of Ordinances. And, as a result, the pervious pavers should be allowed to remain within the Appellants’ rear yard setback area. In support of this contention, the Appellants point to the definition of “structure” contained within §156.002 of the Code:

“**STRUCTURE.** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.”

While the Appellants opine that pavers, due to the manner in which they are installed (i.e., simply laid atop pervious rock and/or sediment), do not rise to the level of the generally-accepted definitions of “constructed or erected”, the most paramount aspect of the Town’s definition of “structure” is “*the use of which requires location on the ground or attachment to something having location on the ground.*” In construing a definition contained within a municipality’s zoning code, extreme deference must be given to the manner in which the given municipality applies such a definition to other similar site improvements.

In this instance, the Town does not consider artificial turf to be a “structure” under its Code, as made evident by the Town’s allowance of the installation of artificial turf within the rear yard setback of the Appellants’ Property (*see Exhibit D*). However, artificial turf is regulated in nearly the same manner as pervious pavers within the Town’s Code of Ordinances, in that turf installation must be professionally certified to be pervious and installed pursuant to manufacturer’s specifications, and any owner wishing to install turf must provide assurances as to future maintenance through to the recordation of an instrument in the County’s public registry. Moreover, the installation of artificial turf requires pervious sediment to be placed on-site as a base layer, over which the turf and associated membrane(s) are laid. No different, the Appellants’ pervious pavers are simply laid atop a bed of pervious sediment, allowing water to penetrate through to the natural soil. Any other ancillary features associated within installation of the pavers are mandated by manufacturer’s specifications to ensure absolute permeability. Given the Town’s treatment of artificial turf and the extreme similarities between turf and the Appellants’ pervious pavers, it is patently inconsistent to classify said pavers as a “structure” pursuant to the Town Code.

Review of other provisions of the Code support the above rationale. §156.128(A)(2), being that Code section which regulates land disturbing activities, reads as follows:

“§156.128 LAND DISTURBING ACTIVITIES.

(A) *Mandatory standards for land disturbance activities.*

(2) *Land disturbing activities, excluding necessary clearing and grubbing shall not be permitted within 5 feet from any property line with the exception of drainage and storm water improvements and underground utilities. Landscaping and fences located within this area are permitted as long as they do not impede the flow of storm water.”*

Given the Town’s allowance of artificial turf within the rear setback areas of the Appellant’s Property, it must be assumed that artificial turf is viewed as either a stormwater improvement or a facet of landscaping. The Appellants agree that artificial turf qualifies as either of the foregoing items. A generally-accepted characteristic of pervious pavers in the spectrum of zoning is that, if installed correctly, such pavers are typically utilized as a form of stormwater management. This, much like artificial turf, is due to the fact stormwater is allowed to freely and naturally flow into the ground surface based on the manner in which the pavers are installed. As a result, the

Appellants' pervious pavers would be excepted from any setback requirements within the Code, based on the language in §156.128(A)(2).

Along those same lines, it is inherent that the meaning of *"the use of which requires location on the ground or attachment to something having location on the ground"* as used to define a "structure" goes far beyond merely laying a site improvement atop natural ground and/or pervious sediments. Such an interpretation would not only mean that artificial turf is a "structure", but the same would then apply to rock beds, gardens, playground sets, and many other natural-based or movable lot features. Rather, when reading the definition of "structure" as a whole, the more consistent interpretation is that a "structure" is anything that is constructed or erected which requires attachment to the ground in a, more or less, affixed fashion (or attachment to something which is affixed to the ground). And, as stated above, the Appellants' pervious pavers are not affixed to the ground in any manner, as is the case with traditional concrete and/or asphalt pool decks, nor are they even located or attached to something located on the ground. Thus, the pavers do not constitute a "structure" per the Code and should be allowed to remain within the rear yard setbacks on the Appellant's Property.

It should also be noted that the Town Code contains no definition of "accessory structure" or "walkway structure" – hence, why the above analysis is focused solely on the Code's definition of "structure". Also, §156.128(B)(1), which dictates that a land disturbance permit is required for the Appellants' Site Improvements, distinguishes "pavers" from "accessory structures" by explicitly and separately referencing each of the foregoing items within the language of this particular Code provision. Further, the definition of "Built-Upon Area" within the Code specifically exempts *"pervious.....paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material."* Each of the foregoing references to provisions within the Town Code are further indication that pervious pavers are not considered "structures" as per the Code.

Based on the foregoing analysis, the Appellants respectfully request that the Board of Adjustments issue a ruling which overturns the decision(s) of the Town Zoning Administrator, as the same are cited herein, thereby allowing the Appellants to submit a permit application for the approval of the existing Site Improvements.

**ORDINANCES SUBJECT OF THE NOTICE OF VIOLATION**

**§ 156.012 YARD REQUIREMENTS.**

Unless otherwise provided in this chapter, no principal structure or principal use, structure intended for outdoor recreational use, such as pools and tennis courts, or other accessory buildings or structures shall be located within the front, side or rear yards (setback areas).

**§ 156.051 BUILDING FEATURES EXEMPT FROM SETBACKS OR MINIMUM YARD REQUIREMENTS.**

Building features that may be exempt from minimum yard requirements, setbacks or building restriction lines are described as follows:

(F) Private walkway structures less than 4 feet in width constructed less than 12 inches above grade are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2). Walkway structures are not exempt from minimum yard requirements if the walkway abuts a swimming pool deck or is located within 3 feet of a swimming pool;

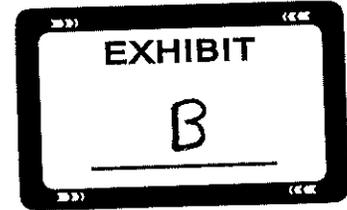
**§ 156.128 LAND DISTURBING ACTIVITIES.**

(A) *Mandatory standards for land disturbance activities.*

(1) The provisions of this section shall apply to any land disturbance activity regardless of the size of the disturbed area. A land disturbance permit is required as provided in division (B)(1) below.

(B) *Land disturbance permit required.*

(1) A land disturbance permit shall be required for filling and/or grading a lot; any lot clearance, filling or grading activity prior to issuance of a building permit; any installation of gravel or pavers or accessory structures and similar site features whether or not subject to building permit requirements; and any removal or installation of site features such as septic systems, wells and drainage systems that disturb the land.



July 30, 2025

**VIA CERTIFIED MAIL, U.S. MAIL AND ELECTRONIC MAIL:**

Kevin R. & Diane G. Knotts  
4807 Prestwick Drive  
Fairfax, VA 22030  
(571) 212-7014  
[knotts@zumuthihg.com](mailto:knotts@zumuthihg.com)

**RE: NOTICE OF VIOLATION – 115 Ocean Bay Blvd  
Chapter 156 - Zoning**

Dear Mr. and Mrs. Knotts,

I notified you via email correspondence on March 19, 2025 that I had reason to be in Sound Sea Village and discovered that a new paver patio/deck had been installed east of your permitted pool deck at your property located at 115 Ocean Bay Blvd, Duck, NC 27949 (the "Property"). I have attached evidence of your paver patio/deck as Exhibit 1. I researched your new construction permit B21-000361 issued on 1/24/2022. That site plan approval specifically stated that the pool deck may not encroach the rear setback. All inspections associated with this construction were completed, a final as-built survey was received, and a Certificate of Completion was issued on 5/30/2023. The issued permit and associated site plans, final as-built survey and Certificate of Occupancy are attached hereto as Exhibit 2, 3 and 4, respectively.

Following the March 19, 2025 correspondence, we communicated via email to arrange a meeting at your Property to discuss this matter. We met on site on April 16, 2025. At that time, I informed you that a permit was required for the installation of a paver patio/deck; that no permit was obtained by your contractor (Jason Emminizer); and that the paver patio/deck was not permissible in the rear setback. Following our meeting, you indicated that "we have much to consider, based on the coverage, the synthetic turf, pavers, and the need for a survey and permits. We will get back – in order of PERMITS first – once we sort out things" (*See Exhibit 5*).

On May 13, 2025, you advised that you hired David Neff, Kwasny Engineering, PLLC, to sort out your setback issue. You indicated that you would personally ensure you have a permit in place and comply with all of the DUCK ordinances (*See Exhibit 6*).

P. O. Box 8369 ● Duck, North Carolina 27949  
252-255-1234 ● 252-255-1236 (fax) ● [www.ducknc.gov](http://www.ducknc.gov)

On June 10, 2025, you provided a preliminary site plan prepared by David Neff, Kwasny Engineering, PLLC dated 4/25/25 (See Exhibit 7). I have reviewed this site plan and there are several items that are incorrect. Specifically, Mr. Neff has noted several areas of “approved permeable deck”. We have not issued approval for any permeable patio, deck, or other structure at this point. The site plan also reflects a gravel parking area. This has been converted to permeable pavement, based on my site visit of March 19, 2025, and as evidenced by a photo taken on 7/29/2025 (See Exhibit 8). Lastly, the site plan indicates a maximum lot coverage of 30%, where 40% is permissible consistent with Town Code Section 156.071 (B)(2)(d) (See Exhibit 9).

As you know, from my email dated July 9, 2025 and attached as Exhibit 10, we do not count artificial turf as coverage provided the turf is installed per manufacturer’s specifications and that you record a document confirming same and acknowledging that you will maintain the product according to those specifications.

On July 22, 2025, we received notice from attorney Casey Varnell indicating that he would be assisting you in this matter and requesting a formal request for zoning interpretation in this matter (See Exhibit 11). Mr. Varnell indicates that we have requested removal of the “paver deck” due to the appearance of the pavers being raised off the ground. This is incorrect. The paver patio/deck must be removed because “structures”, principal or accessory, are not permitted in the front, side, or rear yard setback areas under Section 156.012 of the Town Code, or unless specifically permitted. (See Exhibit 12). Furthermore, Town Code section 156.051(F) specifically exempts certain walkway features from setbacks or minimum yard requirements. However, walkway structures are not exempt from minimum yard requirements if the walkway abuts a swimming pool deck or is located within 3 feet of a swimming pool, which is the case with your paver patio/deck (See Exhibit 13).

To be clear, lot coverage is not the issue at hand with regard to the paver patio/deck. The paver patio/deck encroaches upon the rear setback and therefore must be removed. If it is to be relocated, you must submit a permit with a site plan reflecting the proposed new location of the paver patio/deck and obtain approval from Dare County Environmental Health Department.

As of today, five (5) months after you have been on notice of this issue, we have not received any permit request to remove the paver patio/deck encroachment from the rear setback or relocate same to an approvable location consistent with the Town Code.

As such, please accept this correspondence as the Town’s official Notice of Violation based on your violations of multiple provisions of Chapter 156 of the Town Code, including but not limited to:

- Section 156.012: Yard Requirements (See Exhibit 12)
- Section 156.051: Building Features Exempt From Setbacks of Minimum Yard Requirements (See Exhibit 13)
- Section 156.128 (B)(1): Land disturbance permit required (See Exhibit 14)

We ask that you remove your paver patio/deck encroachment from the rear setback or submit a development application consistent with Section 156.128(B)(1) to relocate the paver patio/deck to an

approvable location within 15 days of the date of this letter. A permit application is enclosed for your reference (See Exhibit 15).

Should you fail to initiate removal or submit a permit working towards with compliance by the stated deadline, the Town will impose Civil Citations in accordance with Section 10.99 of the Code (See Exhibit 16) in an amount ranging from \$50.00 to \$1,000.00 per day for each day the violations remain uncorrected.

This notice may be construed as a zoning interpretation in response to Mr. Varnell's July 9, 2025 letter attached as Exhibit 11.

If you have any questions or would like to schedule a meeting to discuss compliance options, please do not hesitate to contact our office.

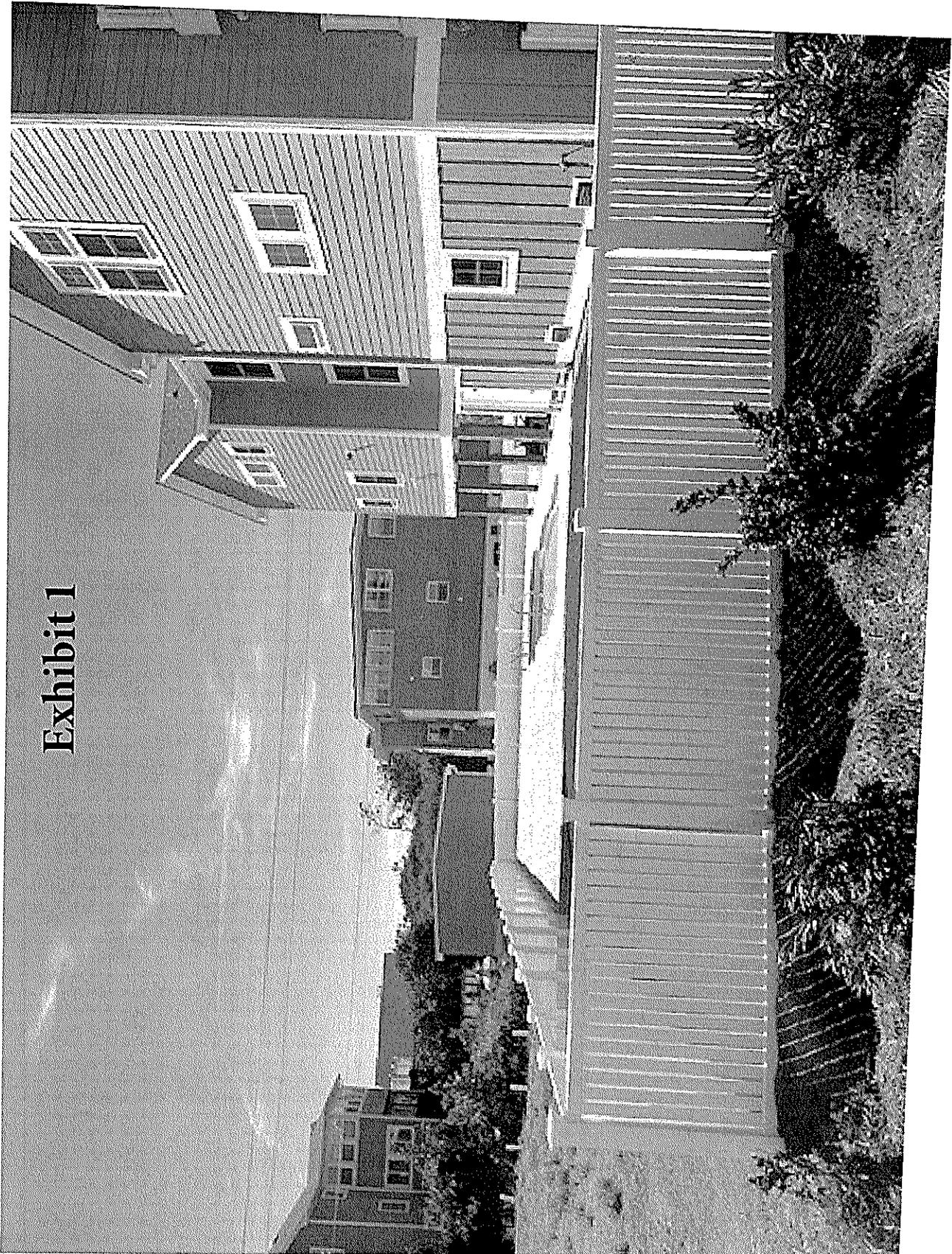
Sincerely,



Sandy Cross  
Planning and Permits Manager  
Certified Floodplain Manager/Floodplain Administrator/CZO

Enclosures

cc: Town Manager, Drew Havens  
Town Attorney, Robert Hobbs  
Town Attorney, Johny Hallow  
Attorney Representing Kevin & Diane Knotts, Casey Varnell



**Exhibit 1**



# Exhibit 2



Department of Community Development  
 PO Box 8369  
 1200 Duck Road  
 Town of Duck, North Carolina 27949  
 (252) 255-1234

Date Issued:  
 1/24/2022  
 Permit #:  
 B21-000361

## Building/Floodplain Development Permit

Project Address: 115 OCEAN BAY BLVD  
 Property Owner: KNOTTS, KEVIN

PIN #: 995006487667  
 Mailing Address: 4807 PRESTWICK DR  
 FAIRFAX, VA 22030

<b>Contractor:</b>		
Company Name: Jeffrey H. Haskett Homes, Inc.	Contact Name: Jeff Haskett	Classification:
Phone: (252) 261-8016	Address: 4711 Lindberg Avenue	NC State License #:
Email: jeffhaskett@earthlink.net	Kitty Hawk, NC 27949	Expiration Date:

<b>Description of Work:</b>	New 4 BR SFD with swimming pool and elevator		
<b>Use:</b>	<b>Structure/Work Type:</b>		
Single Family	Primary Structure: 1.New Construction		
	Pool/Hot Tub: Pool Only	Accessory Building:	
<b>Permit Amount:</b>	Deck: New	Bukhead (L.F.):	
\$3,388.30	Demo:	Pier (L.F.):	
		House Moving:	

<b>Proposed Area Schedule (Sq.Ft.):</b>	Heated: 3,453	Unheated: 1,311	Accessory Heated:	Accessory Unheated:
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<b>Proposed Finished Grade (ft.):</b>	N/A:	House: 8	Pool: 7.5	Driveway: 8	Parking: 8	Other:
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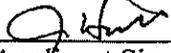
<b>Floodplain Development:</b>	Flood Zone: Unshaded X	Existing Elevation: 5	Structure Value:	Storage Below Existing Elevation:
	RFPE: 10			

<b>Vegetation Management (Sq.Ft.):</b>	N/A:	Required Coverage: 1482.6	Area Preserved: not provided	Required Plantings: 1482.6
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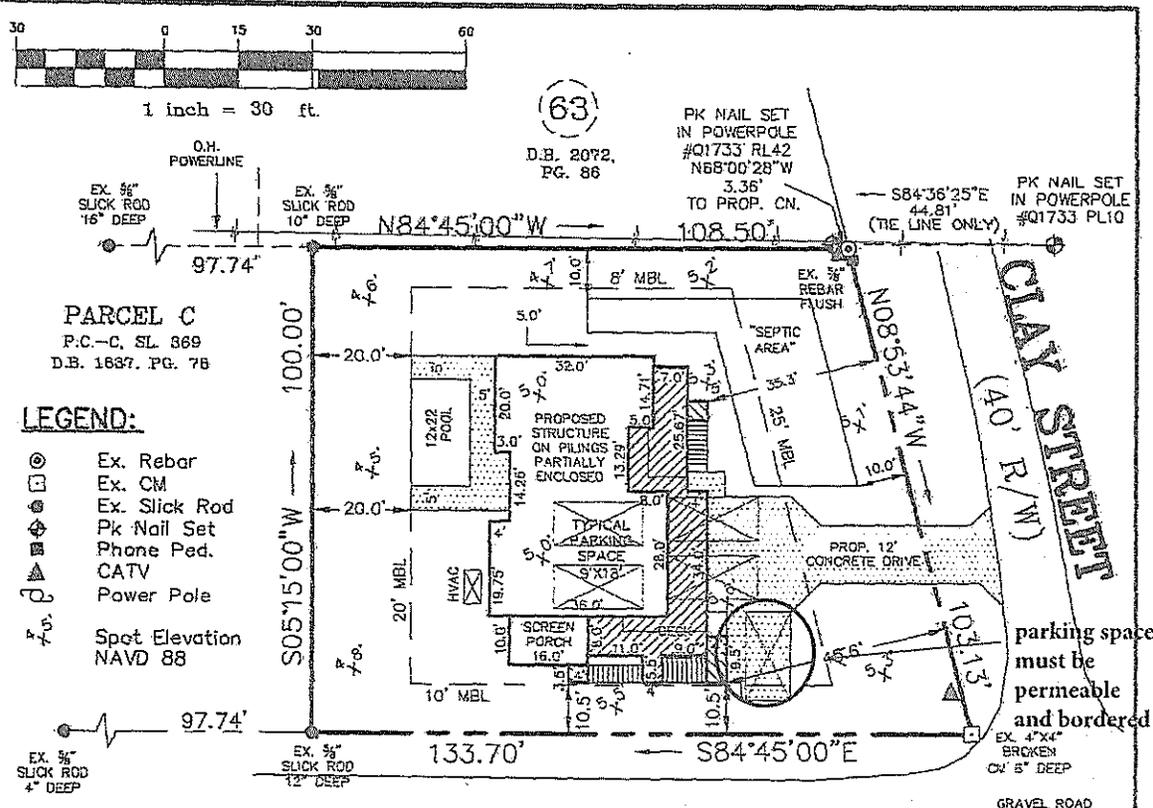
<b>Project Cost Estimate:</b>	<b>Building</b>	<b>Electrical</b>	<b>Mechanical</b>	<b>Plumbing</b>	<b>Gas</b>	<b>Other</b>	<b>Total</b>
	\$727,137.00	\$34,935.00	\$28,000.00	\$21,428.00	\$0.00	\$26,000.00	\$837,500.00

- Permit Conditions:**
- Any change or changes in the plans for development, construction or land use activities will require a re-evaluation and modification of this permit.
  - The erection (including excavation), demolition, alteration or repair of any building in a residential or business district other than between the hours of 7 am and 6 pm, Monday through Saturday is prohibited.
  - Install properly toed-in erosion control fencing around perimeter of development prior to commencing work; maintain at all times.
  - No areas of fill, including graded and leveled areas, may exceed 3 in depth. Slope of any fill areas from toes of the slope to the final ground elevations can be no greater than 3:1, and all fill slopes must be installed so that the toe of the slope matches the existing grade no closer than five feet to any lot line.
  - Stabilize all disturbed areas prior to CO.
  - Vegetation canopy at completion of development and prior to CO must be greater than or equal to 15% coverage of Net Lot Area. or 1,483 s.f.
  - Driveways and associated parking areas shall be located no closer than 5 feet to a lot line.
  - All parking outside of 20 feet wide drive aisle to be gravel or semi-permeable material shall be bordered in a manner which retains the stone in the driveway area.
  - Pool fence height limited to six (6) feet above adjacent grade.
  - All principal and accessory structures must meet MBL setbacks.
  - A Non-conversion agreement must be recorded with the register of deeds prior to the issuance of a Certificate of Completion
  - Provide final Elevation Certificate and As-Built Survey with Updated Coverage Breakdown prior to pre-final inspection.

This permit is issued on the expressed condition that all information is correct and all work will comply with the State Building Code and all other applicable State and Local laws, ordinances and regulations. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not.

 \_\_\_\_\_ 1.24.22 \_\_\_\_\_  
 Applicant Signature Date

I have read and understand the permit conditions listed above.



**PARCEL C**  
P.C.-C, SL 369  
D.B. 1637, PG. 78

**LEGEND:**

- ⊙ Ex. Rebar
- ⊕ Ex. CM
- ⊗ Ex. Slick Rod
- ⊙ PK Nail Set
- ⊕ Phone Ped.
- ⊗ CATV
- ⊙ Power Pole
- 7.5' Spot Elevation NAVD 88

**OCEAN BAY BOULEVARD (40' R/W)**

**NOTES:**

Address: 115 Ocean Bay Boulevard  
 Lot Area = 12,110 Sq. Ft.  
 Proposed Lot Coverage Information:  
 Structure Under Roof/  
 Over Concrete = 2,226.7 Sq. Ft.  
 Concrete Drive/Walks = 1,029.3 Sq. Ft.  
 Pool and Pool Patio = 580.2 Sq. Ft.  
 Proposed Lot Coverage = 3,836 Sq. Ft. (31.7%)  
 Flood Zones are subject to change

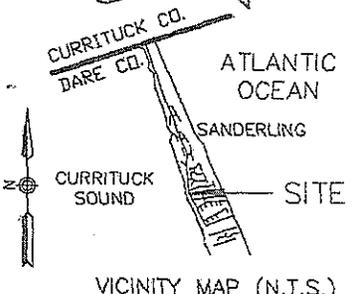
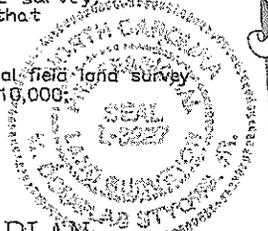
**APPROVED**  
By Joseph H. Heard at 2:58 pm, Jan 21, 2022

Setbacks shown are as per the Town of Duck Zoning; they do not reflect any Restrictive Covenants that may exist.  
 This survey was based on the existing property corners found in conjunction with the recorded reference given.  
 Certifier hereon is not responsible for utilities and/or features that are not visible at the time of the survey, nor any additional setbacks that are not shown.

I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plat was drawn from an actual field land survey that the error of closure as calculated by latitudes and departures is at least 1:10,000;

Witness my hand and seal this 5th day of January A.D. 2022

*[Signature]*  
P.L.S. L-3227



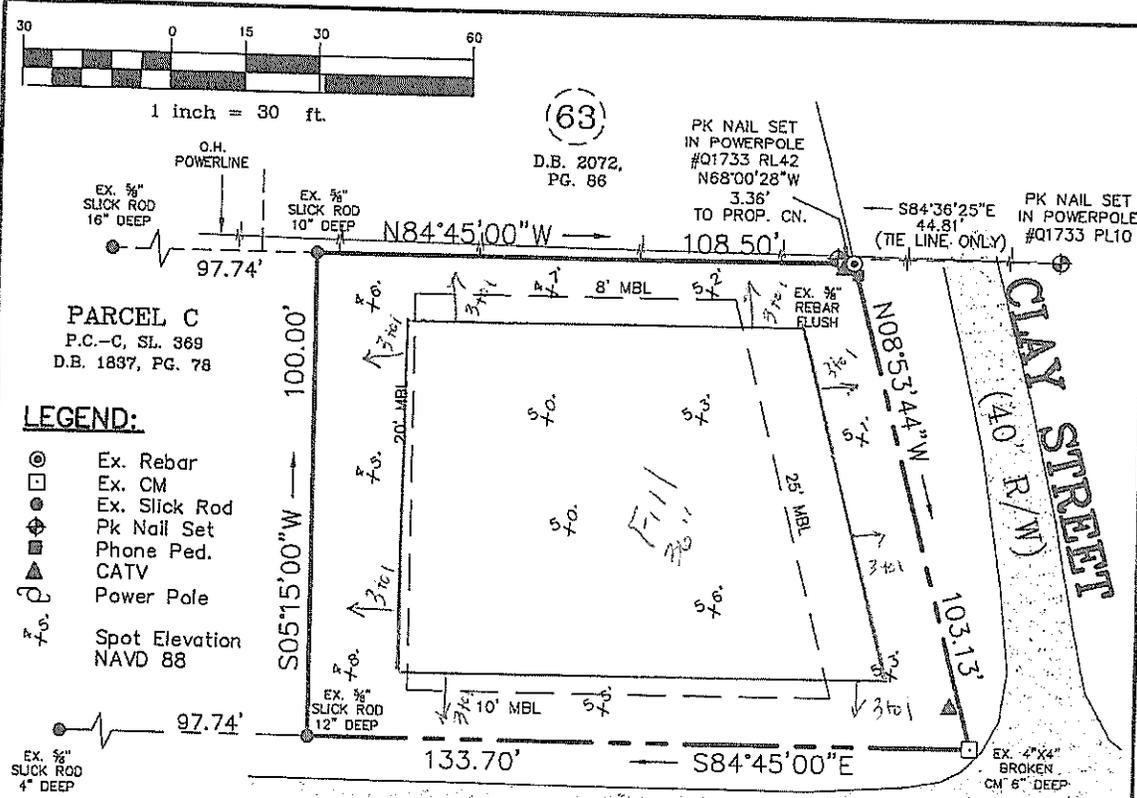
**REVISED SITE PLAN**

LOT 31 & 25' OF LOT 32,  
SECOND PLAT OF SOUND-SEA VILLAGE

SURVEYED FOR  
**KEVIN R. KNOTTS**  
and **DIANE G. KNOTTS**

ATLANTIC TOWNSHIP DUCK      DARE COUNTY NORTH CAROLINA

DATE SURVEYED: 12-1-21, 1-5-22	F.I.R.M.: 3720 9950 00 K F.I.R.M. DATE: 6-19-2020	<i>Styons Surveying Services</i>
REV.: REV. SITE PLAN	FLOOD ZONE: "X"	2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948
SCALE: 1" = 30'	REC. REF. M.B. 2, PG. 244	Phone: (252) 441-1415 Fax: (252) 480-1182
FILE NO.: 21-326	D.B. 2528, PG. 328	Any unauthorized use or alteration of this document is prohibited
DWG NO.: 21326SPR	PIN NO.: 21995006487667	A red seal must be present for this to be an original document



- LEGEND:**
- ⊙ Ex. Rebar
  - ⊠ Ex. CM
  - ⊕ Ex. Slick Rod
  - ⊙ PK Nail Set
  - ⊠ Phone Ped.
  - ⊕ CATV
  - ⊙ Power Pole
  - 7.0 Spot Elevation NAVD 88

**OCEAN BAY BOULEVARD (40' R/W)**

**APPROVED**

By Joseph H. Heard at 2:58 pm, Jan 21, 2022

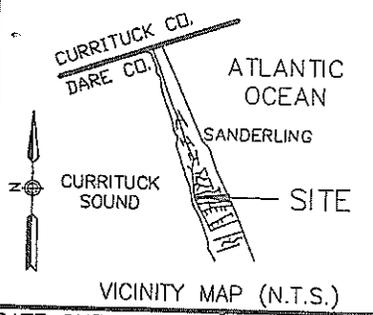
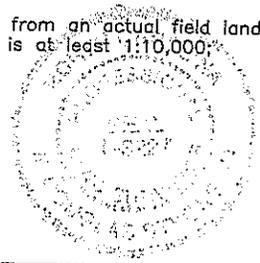
**NOTES:**  
 Address: 115 Ocean Bay  
 Lot Area = 12,110 Sq. Ft.  
 Flood Zones are subject to change  
 Building Setbacks shown are to be verified by the Town of Duck Planning Dept.

This survey was based on the existing property corners found in conjunction with the recorded reference given.  
 Certifier hereon is not responsible for utilities and/or features that are not visible at the time of the survey, nor any additional setbacks that are not shown.

I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plat was drawn from an actual field land survey that the error of closure as calculated by latitudes and departures is at least 1:10,000.

Witness my hand and seal this 20th day of December A.D. 2021

*[Signature]*  
 P.L.S. 3227



LOT 31 & 25' OF LOT 32,  
 SECOND PLAT OF SOUND-SEA VILLAGE

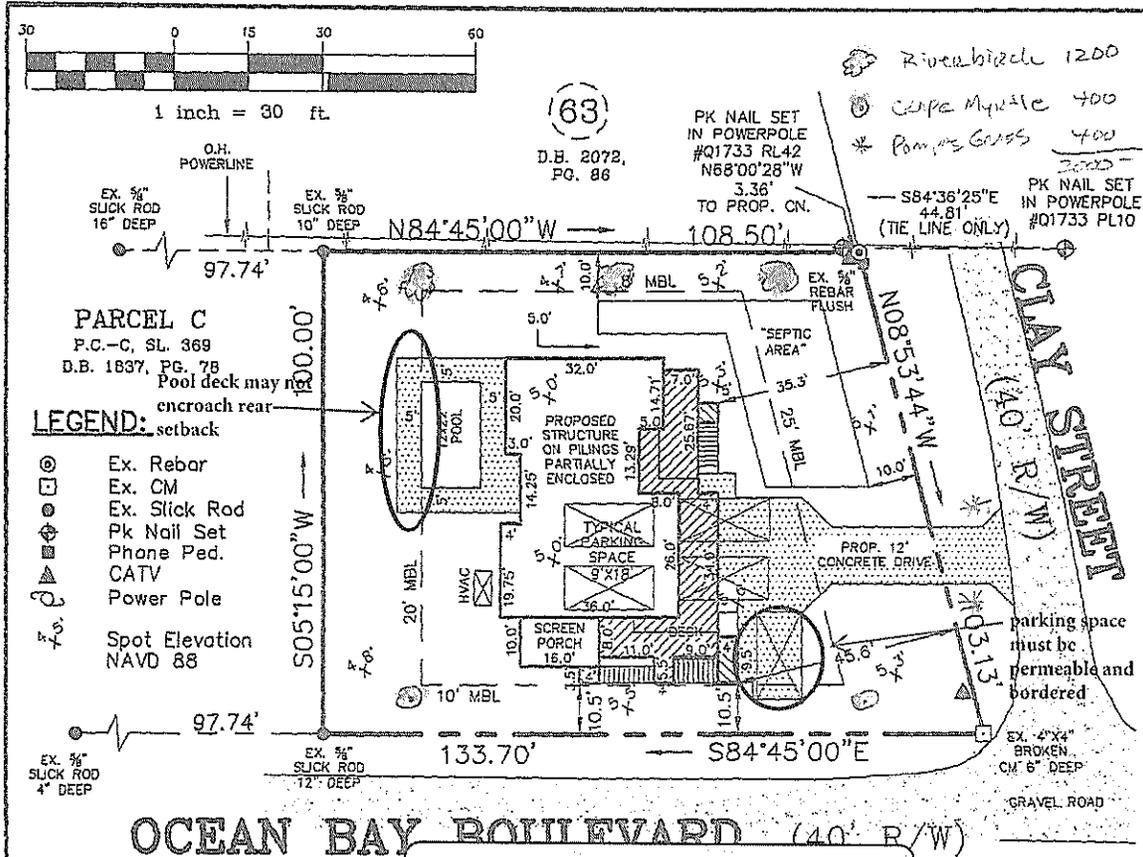
SURVEYED FOR  
**KEVIN R. KNOTTS  
 and DIANE G. KNOTTS**

ATLANTIC TOWNSHIP DUCK DARE COUNTY NORTH CAROLINA

DATE SURVEYED:  
 12-1-21  
 REV.:  
 SCALE: 1" = 30'  
 FILE NO.: 21-326  
 DWG NO.: 21326V

F.I.R.M.: 3720 9950 00 K  
 F.I.R.M. DATE: 6-19-2020  
 FLOOD ZONE: "X"  
 REC. REF. M.B. 2, PG. 244  
 D.B. 2528, PG. 328  
 PIN NO.: 21995006487667

*Styons Surveying Services*  
 C-1697  
 2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948  
 Phone: (252) 441-1415 Fax: (252) 480-1182  
 Any unauthorized use or alteration of this document is prohibited  
 A red seal must be present for this to be an original document



**PARCEL C**  
 P.C.-C, SL. 369  
 D.B. 1837, PG. 78  
 Pool deck may not encroach rear setback

- LEGEND:**
- ⊙ Ex. Rebar
  - ⊠ Ex. CM
  - ⊕ Ex. Slick Rod
  - ⊙ PK Nail Set
  - ⊙ Phone Ped.
  - ⊙ CATV
  - ⊙ Power Pole
  - ⊙ Spot Elevation NAVD 88

**NOTES:**

Address: 115 Ocean Bay Boulevard  
 Lot Area = 12,110 Sq. Ft.  
 Proposed Lot Coverage Information:  
 Structure Under Roof/  
 Over Concrete = 2,226.7 Sq. Ft.  
 Concrete Drive/Walks = 1,029.3 Sq. Ft.  
 Pool and Pool Patio = 740 Sq. Ft.  
 Proposed Lot Coverage = 3,996.0 Sq. Ft. (33.0%)  
 Flood Zones are subject to change

**APPROVED**  
 By Joseph H. Heard at 5:47 pm, Jan 20, 2022

Setbacks shown are as per the town of Duck Zoning; they do not reflect any Restrictive Covenants that may exist.

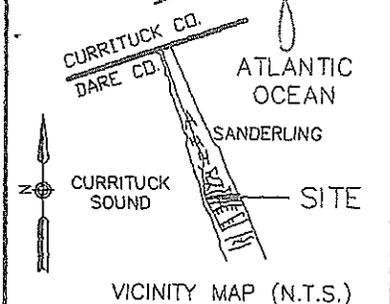
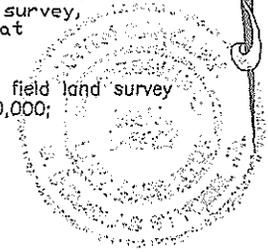
This survey was based on the existing property corners found in conjunction with the recorded reference given.

Certifier hereon is not responsible for utilities and/or features that are not visible at the time of the survey, nor any additional setbacks that are not shown.

I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plat was drawn from an actual field land survey that the error of closure as calculated by latitudes and departures is at least 1:10,000;

Witness my hand and seal this 14th day of December A.D. 2021

*[Signature]*  
 P.L.S. L-3227



**SITE PLAN**

LOT 31 & 25' OF LOT 32,  
 SECOND PLAT OF SOUND-SEA VILLAGE

SURVEYED FOR  
**KEVIN R. KNOTTS**  
 and **DIANE G. KNOTTS**

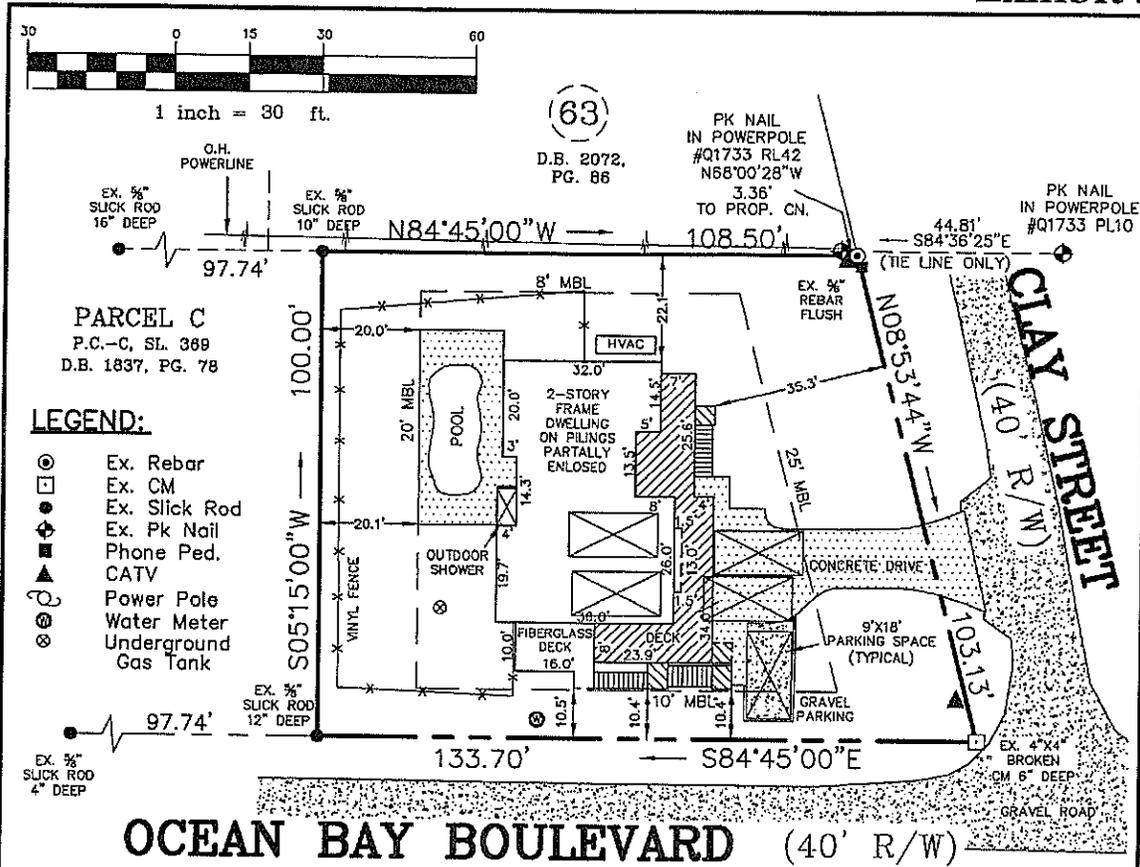
ATLANTIC TOWNSHIP                      DARE COUNTY  
 DUCK    NORTH CAROLINA

DATE SURVEYED: 12-1-21  
 REV.: 12-10-21 SITE PLAN  
 SCALE: 1" = 30'  
 FILE NO.: 21-326  
 DWG NO.: 21326SP

F.I.R.M.: 3720 9950 00 K  
 F.I.R.M. DATE: 6-19-2020  
 FLOOD ZONE: "X"  
 REC. REF. M.B. 2, PG. 244  
 D.B. 2528, PG. 328  
 PIN NO.: 21995006487667

*Styons Surveying Services*  
 C-1697  
 2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948  
 Phone: (252) 441-1415 Fax: (252) 480-1182

Any unauthorized use or alteration of this document is prohibited  
 A red seal must be present for this to be an original document



**LEGEND:**

- ⊙ Ex. Rebar
- Ex. CM
- Ex. Slick Rod
- ⊕ Ex. Pk Nail
- ⊕ Phone Ped.
- ▲ CATV
- ⊕ Power Pole
- ⊕ Water Meter
- ⊕ Underground Gas Tank

**NOTES:**

Address: 115 Ocean Bay Boulevard

Lot Area = 12,110 Sq. Ft.

Existing Lot Coverage:

Structure Under Roof/Over Concrete: 2,311 Sq. Ft.

Pool Area = 691 Sq. Ft.

Concrete Drive = 814 Sq. Ft.

Lot Coverage = 3,816 Sq. Ft. (31.5%)

Flood Zones are subject to change.

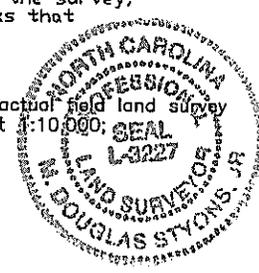
This survey was based on the existing property corners found in conjunction with the recorded reference given.

Certifier hereon is not responsible for utilities and/or features that are not visible at the time of the survey, nor any additional setbacks that are not shown.

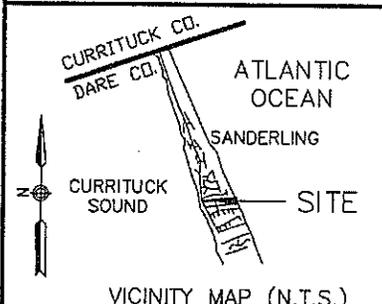
I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plot was drawn from an actual field land survey that the error of closure as calculated by latitudes and departures is at least 1:10,000.

Witness my hand and seal this 5th day of May A.D. 2023

*[Signature]*  
P.L.S. L-3227



**AS-BUILT SURVEY**



LOT 31 & 25' OF LOT 32,  
SECOND PLAT OF SOUND-SEA VILLAGE

SURVEYED FOR  
**KEVIN R. KNOTTS**  
and **DIANE G. KNOTTS**

ATLANTIC TOWNSHIP DUCK DARE COUNTY NORTH CAROLINA

DATE SURVEYED:  
5-3-2023  
REV.:  
SCALE: 1" = 30'  
FILE NO.: 21-326  
DWG NO.: 21326AB

F.I.R.M.: 3720 9950 00 K  
F.I.R.M. DATE: 6-19-2020  
FLOOD ZONE: "X"  
REC. REF. M.B. 2, PG. 244  
D.B. 2528, PG. 328  
PIN NO.: 21995006487667

*Styons Surveying Services*  
C-1687  
2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948  
Phone: (252) 441-1415 Fax: (252) 480-1182  
Any unauthorized use or alteration of this document is prohibited  
A red seal must be present for this to be an original document

# Exhibit 4



## Certificate of Occupancy/Compliance

This document is issued pursuant to NCGS 160A-423 and section 307.4 of the NC Administration and Enforcement Requirement Code. This certificate is issued after the completion of all work authorized under a permit is certified compliant with applicable building codes and any other laws, rules, and regulations that apply.

**115 OCEAN BAY BLVD  
DUCK NC, 27949**

Subdivision: Soundsea Village  
Zoning: RS-1 Single Family Residential  
Permit Number: B21-000361  
Structure Type: Single Family

Flood Zone: Unshaded X  
PIN Number: 995006487667  
Issue Date: 01/24/2022  
Number of Units/Bedrooms: 4  
Number of Occupants: 8

Approved Uses: New 4 BR SFD with swimming pool and elevator

### CONTRACTOR INFORMATION

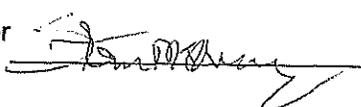
Name: Jeffrey H. Haskett Homes, Inc.  
Address: 4711 Lindberg Avenue  
Kitty Hawk, NC 27949

License: 46718

### OWNER INFORMATION

Name: KNOTTS, KEVIN  
Address: 4807 PRESTWICK DR  
FAIRFAX, VA 22030

Building Inspector

 5/30/23  
Date

CAMA LPOI/CFM

 5/30/23  
Date

Zoning  
Administrator

 5/30/23  
Date

# Exhibit 5

**From:** [Kevin Knotts](#)  
**To:** [Sandy Cross](#)  
**Cc:** [Diane Knotts](#)  
**Subject:** Thankyou for the meeting today  
**Date:** Wednesday, April 16, 2025 12:32:45 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

---

Sandy

We have much to consider, based on the coverage, the synthetic turf, pavers, and the need for a survey and permits.

We will get back – in order of PERMITS first – once we sort out things

Again Thanks

Kevin



**Kevin R. Knotts**

Azimuth Consulting Services, Inc. / DBOC Joint Venture

Mobile/SMS: 571-212-7017

Email: [kknotts@azimuthing.com](mailto:kknotts@azimuthing.com)

Contractor Support to JPEO A&A

---

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

**Caution:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender.

# Exhibit 6

**From:** [Kevin Knotts](#)  
**To:** [Sandy Cross](#)  
**Subject:** 115 Ocean Bay - Set- Back  
**Date:** Tuesday, May 13, 2025 3:16:39 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

---

Sandy

I hope this note finds you well and not floating away

We have had some rain today in Duck

I wanted to let you know that I have hired David Neff – Kwasny Engineering PLLC – to fix/sort out my set-back issue

I wanted to let you know we are going to do everything by the book. Once the engineering is done,

I will personally ensure we have a permit in place and comply with all of the DUCK ordinances.

Thank you for your patience

As always

Kevin



**Kevin R. Knotts**

Azimuth Consulting Services, Inc. / DBOC Joint Venture

Mobile/SMS: 571-212-7017

Email: [kknotts@azimuthihg.com](mailto:kknotts@azimuthihg.com)

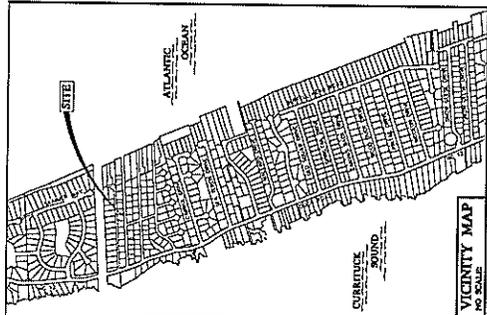
Contractor Support to JPEO A&A

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**Caution:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender.

# Exhibit 7

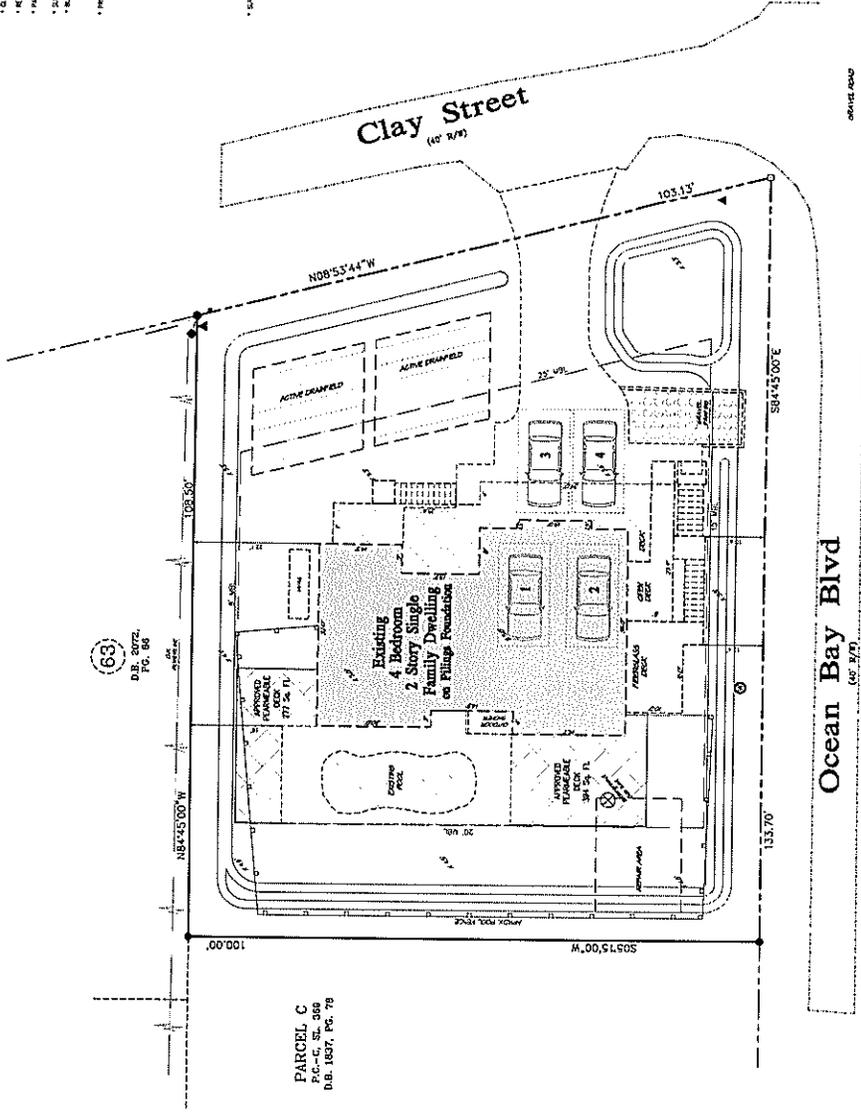


## GENERAL NOTES:

- 1. SUBJECT PROPERTY: 14 1/2 AC +/-, Formerly Mingo Subdivision, 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 2. SHEET ADDRESS: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 3. PROJECT: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 4. SHEET ADDRESS: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 5. PROJECT: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 6. SHEET ADDRESS: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 7. PROJECT: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 8. SHEET ADDRESS: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 9. PROJECT: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 10. SHEET ADDRESS: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 11. PROJECT: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 12. SHEET ADDRESS: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
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- 47. PROJECT: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 48. SHEET ADDRESS: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 49. PROJECT: 103 Ocean Bay Blvd, North Carolina, 27810, 250319
- 50. SHEET ADDRESS: 103 Ocean Bay Blvd, North Carolina, 27810, 250319

## LEGEND:

- EXISTING CONCRETE CIRCULATION AREA
- EXISTING DRILLING AREA
- EXISTING OPEN AREAS
- EXISTING COVERED DECKS
- EXISTING DECK WITH COVERAGE BELOW
- PROPOSED CONCRETE SURFACE
- EXISTING ASPHALT SURFACE
- EXISTING SPOT GRADE
- PROPOSED FINISH GRADE ON/TOUR
- PROPOSED FINISH SPOT GRADE
- PROPOSED DIRECTIONAL DRAINAGE FLOW



**Land Disturbance Site Plan**

For: **Kevin and Diane Knotts**

Location: **115 Ocean Bay Blvd**

Lot 88, Seaside Village Section 3 Subdivision, North Carolina

Project No: **250319**

Date: **02/27/25**

Scale: **AS SHOWN**

Sheet No: **CI of 1**

**Kwasny Engineering PLLC**

Civil Engineering and Land Planning Consultants

108 Augusta Drive

Grandville, NC 27939

TEL: 757-700-0000

FAX: 757-700-0000

www.kwasny.com

**PRELIMINARY**

OWNER SEAL

BEFORE YOU DIG!

**North Carolina**

WWW.NE811.ORG

Exhibit 8



(A) Any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on July 3, 2002, subject to the following provisions:

(1) Permits for the erection of a single-family dwelling on lots less than 7,500 square feet in area shall be reviewed by the Town Council in accordance with the requirements of town code § 156.155 – Special Use Permits.

(2) Special use permits for the erection of a single-family dwelling on lots 7,500 square feet in area or greater shall be reviewed administratively in accordance with the requirements of this chapter.

(B) For lots of record as of November 20, 1975, the following dimensional requirements shall apply:

(1) Lots with 10,000 square feet or less:

(a) Front yard setback: 25 feet;

(b) Side yard setback: 8 feet. For corner lots, the side yard setback is 10 feet on the side of the lot that abuts the street;

(c) Rear yard setback: 20 feet; and

(d) Lot coverage: 50%.

(2) Lots with 10,001 to 14,999 square feet:

(a) Front yard setback: 25 feet;

(b) Side yard setback: 8 feet. For corner lots, the side yard setback is 10 feet on the side of the lot that abuts the street;

(c) Rear yard setback: 20 feet; and

(d) Lot coverage: 40%.

(C) If two or more lots of record or portions of lots with continuous frontage have been physically combined for the purpose of development, and if one or more of the lots involved is less than 7,500 square feet, the lots shall be considered recombined for the purposes of future development.

(Ord. 04-21, passed 10-6-2004, § 31; Am. Ord. 13-06, passed 11-6-2013; Am. Ord. 21-01, passed 6-2-2021)

# Exhibit 10

**From:** Sandy Cross  
**To:** Kevin Knotts  
**Cc:** Zoning  
**Subject:** RE: 115 Ocean Bay - Set- Back  
**Date:** Wednesday, July 9, 2025 12:25:00 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image005.png](#)  
[image006.png](#)

---

Kevin,

Turf may be installed in the setback. We do not count turf as coverage provided the specifications are provided and verify the turf to be permeable. We also do require that you verify that the turf is installed as per manufacturers specifications and that you agree to maintain per those specifications. This will need to be documented and recorded with the register of deeds, so future owners are aware of the maintenance associated with this type of product.

Let me know if you have any further questions. Please also provide me with an estimated timeline for completion.



**Sandy Cross**

Senior Planner, CAMA LPO/CZO/CFM

252-254-5954 (Direct Dial)

252-255-1234 (Town Office)

252-255-1236 (Fax)

[scross@ducknc.gov](mailto:scross@ducknc.gov)

[ducknc.gov](http://ducknc.gov)



Sign up for the town E-news at <http://bit.ly/Ducknews>

Please note that e-mail sent to and from this address is subject to North Carolina Public Records Law and may be disclosed to third parties.

**From:** Kevin Knotts <kknotts@azimuthihg.com>

**Sent:** Wednesday, July 9, 2025 10:06 AM

**To:** Sandy Cross <[scross@ducknc.gov](mailto:scross@ducknc.gov)>

**Cc:** Zoning <[zoning@ducknc.gov](mailto:zoning@ducknc.gov)>

**Subject:** RE: 115 Ocean Bay - Set- Back

Sandy

Thanks for getting back

I was waiting for a response from you in my note on the 10<sup>th</sup> of June. I wanted to have written approval that allowed astro turf in the set back area that we discussed. I could not find it in the Duck codes on line

I will ping David Neff on the health department and on site review

Stay tuned

Kevin

**From:** Sandy Cross <[scross@ducknc.gov](mailto:scross@ducknc.gov)>

**Sent:** Tuesday, July 8, 2025 12:37 PM

**To:** Kevin Knotts <[kknotts@azimuthihg.com](mailto:kknotts@azimuthihg.com)>

**Cc:** Zoning <[zoning@ducknc.gov](mailto:zoning@ducknc.gov)>

**Subject:** RE: 115 Ocean Bay - Set- Back

Mr. Knotts,

Nearly a month has passed since I last emailed you and I do not see where I have received a response. It is important that you provide an update.



**Sandy Cross**

Senior Planner, CAMA LPO/CZO/CFM

252-254-5954 (Direct Dial)

252-255-1234 (Town Office)

252-255-1236 (Fax)

[scross@ducknc.gov](mailto:scross@ducknc.gov)

[ducknc.gov](http://ducknc.gov)



# Exhibit 11

## SHARP, GRAHAM, BAKER AND VARNELL, L.L.P. ATTORNEYS AT LAW

KITTY HAWK, NORTH CAROLINA  
TELEPHONE: (252) 261-2126  
FACSIMILE: (252) 261-1188

STARKEY SHARP  
RONALD G. BAKER  
CASEY C. VARNELL  
JAMIE G. VARNELL

*Retired:*  
JOHN C. GRAHAM, III

Website Address  
[www.ncobxlaw.com](http://www.ncobxlaw.com)

SENDER'S EXTENSION:  
245

SENDER'S DIRECT LINE:  
(252)573-7030

MAILING ADDRESS:  
POST OFFICE DRAWER 1027  
KITTY HAWK, NC 27949-1027

STREET/SHIPPING ADDRESS:  
4417N. CROATANHIGHWAY  
KITTY HAWK, NC 27949-1027

Sender's E-mail Address:  
[varnell1@ncobxtaw.com](mailto:varnell1@ncobxtaw.com)

July 21, 2025

Connor Winstead  
*Development & Infrastructure Director, Town of Duck*  
Sandy Cross  
*Senior Planner, Town of Duck*  
P.O. Box 8369  
Duck, NC 27949  
*(sent via electronic mail to: [cwinstead@ducknc.gov](mailto:cwinstead@ducknc.gov); [scross@ducknc.gov](mailto:scross@ducknc.gov))*

**RE: 115 OCEAN BAY BOULEVARD/KNOTTS**

Dear Sandy:

As I previously mentioned to you, our office is assisting Kevin and Diane Knotts, owners of 115 Ocean Bay Boulevard, Duck, North Carolina (hereinafter "Property"), in resolving certain zoning issues the Town of Duck (hereinafter "Town") has presented with regard to improvements to the rear yard of their Property. Please accept this correspondence as a formal request for zoning interpretation by the Town.

As I understand the underlying situation, our clients commissioned the installation of pervious pavers and artificial turf in the rear yard of the Property (which does include a pool) as a result of the historical inability to grow natural grass in those areas. The Knotts contracted with Jason's Landscaping and Irrigation Services, which we understand is owned by Mr. Jason Emminizer, to design and perform the installation of the above-referenced permeable materials on their Property. At the time of entering the contract with Mr. Emminizer, it was our clients' understanding that he would take all measures necessary to ensure the scope of work was performed in an appropriate manner, to include acquiring any permits from the Town that may have been required prior to work being performed. The artificial turf and portions of the pervious pavers were installed within the twenty-foot (20-ft.) rear yard setback applicable to the Property, and Mr. Emminizer did not pull a permit with the Town at any point in time. This work was completed in November 2024. After work was completed, the Town, as a result of a citizen-issued complaint, inspected the foregoing work on our clients' Property.

and informed the Knotts that a permit was, indeed, required for the installation of the pavers and turf. This sparked on-going communications between our clients and the Town concerning: 1) the lack of a requisite permit for the work done in their rear yard; and 2) the compliance of said work with the Town's existing ordinance(s).

In an attempt to address the issues which are itemized directly above, our clients have taken necessary steps to develop a remedial plan that will satisfy Town Code requirements relative to the work performed in the rear yard of the Property, thereby allowing them to obtain a retroactive permit relative to the subject Property improvements. In so doing, they have requested confirmation from the Town that permeable materials are allowed to be installed within the Property's applicable setbacks in accordance with the existing Town ordinance(s). In reviewing responsive correspondence, the Town has stated that artificial turf can be installed within the rear yard setback on the Property. However, the Town has also stated that the pervious pavers installed within the same rear yard setback must be removed, as the installation techniques utilized by the contractor have created a "paver deck" within the setback area, which is in violation of the Town Code. It is our understanding that the classification of "paver deck" has been issued by the Town due to the appearance of the pavers being raised off the ground after being installed in accordance with the pervious paver factory installation requirements which included support by slatted boards.

It is our contention that the existing improvements on our clients' Property have been installed in compliance with the existing Town ordinance(s) applicable to entirely permeable materials used to improve lots in the subject zoning district. We base this opinion on our interpretation of the recently adopted Town of Duck Ordinance 24-04, as well as all other Town Code provisions applicable to our clients' subject site improvements. Based on our interpretation, the only conditions placed in the installation of artificial turf is that the turf be installed over an entirely pervious base. We have confirmed this to be the case and can confirm that future maintenance of the turf is guaranteed based on the lifetime warranty issued in conjunction with our clients' purchase of the artificial turf.

With regard to the pervious pavers installed on our clients' Property, to include those installed within the rear yard setback, we are attaching a licensed engineer's report commissioned by our clients which confirms that the pavers are entirely pervious for a two-hour storm event for at least 10 years and have been installed in accordance with all design requirements and specifications (*see Exhibit A*). Of course, our client will execute and have recorded any necessary document in the public record which certifies the foregoing, and which sets forth a maintenance plan prepared by their licensed engineer. It is our position that the report of the engineer acts to prove that our clients' pavers do not qualify as a "deck" but were merely installed in such a manner as to ensure the pervious nature of the pavers. The pavers were raised as part of the design requirements associated with the installation of the pavers, and this technique guarantees the lack of impact stormwater will have on properties adjacent to our clients' Property which is embedded in the intent of the Town ordinance(s) applicable to entirely pervious materials utilized in the construction of residential site improvements.

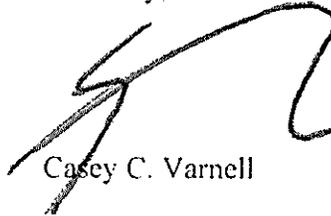
As a result of the foregoing, we believe our clients' rear yard improvements comply with any and all Town Code provisions related to lot coverage. Moreover, given we can locate no provision within any existing Town ordinance provision that distinguishes between installation of artificial turf and entirely pervious pavers within lot setback areas, coupled with the Town's confirmation that turf can be installed within the rear yard setback on our clients' Property, we

contend that the pavers installed within the setbacks on the Property do not amount to a "paver deck", but rather a system of entirely pervious pavers installed in the precise manner required by the Duck Town Code. Thus, we believe these pavers are allowed to remain in the rear yard setbacks pertinent to our clients' Property.

In responding to this formal request for a zoning interpretation, we respectfully ask that you confirm that our above-stated contentions are accurate, thus allowing our clients to obtain a retroactive permit approving the existing site improvements to our clients' Property. To the extent the Town disagrees with our contentions as stated herein, we ask that the Town respond by explaining, in explicit form, why our clients' existing site improvements do not comply with the Duck Town Code, including direct reference to all Code provisions which provide foundation for said position of the Town.

We look forward to hearing from you and appreciate your evaluation of the request(s) contained within this correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "Casey C. Varnell". The signature is stylized with a large, sweeping initial "C" and a long, horizontal stroke extending to the right.

Casey C. Varnell



# MICHAEL D. O'STEEN, P.E., P.L.L.C.

STRUCTURAL & CIVIL ENGINEERING SOLUTIONS

LICENSED WITH NCEES, NORTH CAROLINA & VIRGINIA

June 26, 2025

EXHIBIT     A    

Re: 115 Ocean Bay Blvd  
Lot 31 & portion of 32, Sound-Sea Village Second Plat  
Duck, Dare County, North Carolina

Dear Sir or Madam,

I was requested to verify the installation parameters of the existing Cambridge with Armortec permeable pavement. In particular the Ledgerstone Permeable 3-PC texture or smooth system. My observations are as follows:

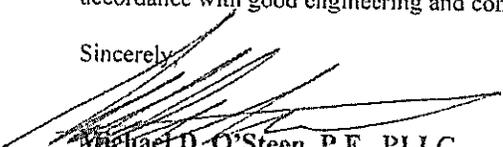
Parole information indicates the paver system was installed over non-compacted granular soils; #67 stone subbase; #8 stone base course; #9 stone bedding course and gap between stone sections. This is consistent with the recommended manufacturer's installation instructions.

Manufacturer documentation states the Site Average Surface I (in/hr)=720; based on the "Surface Infiltration Test Data in Accordance with ASTM C1781.

Additionally, the installed Permeable Interlocking Concrete Pavement (PICP) supports Low Impact Development (LID) principles and is eligible for LEED points where applicable.

Except as provided herein, it is the sole responsibility of the contractor and/or builder to conform to all standards, provisions, requirements, methods of construction, and uses of materials in buildings and/or structures provided by the North Carolina State Building Code: Residential Code (2015 IRC with North Carolina Amendments), any other local agencies, and in accordance with good engineering and construction practices.

Sincerely,

  
Michael D. O'Steen, P.E., PLLC  
Firm#P-2112  
Not Responsible for Existing Conditions



# Exhibit 12

## § 156.012 YARD REQUIREMENTS.

Unless otherwise provided in this chapter, no principal structure or principal use, structure intended for outdoor recreational use, such as pools and tennis courts, or other accessory buildings or structures shall be located within the front, side or rear yards (setback areas).

(Ord. 04-21, passed 10-6-2004, § 12)

# Exhibit 13

## § 156.051 BUILDING FEATURES EXEMPT FROM SETBACKS OR MINIMUM YARD REQUIREMENTS.

Building features that may be exempt from minimum yard requirements, setbacks or building restriction lines are described as follows:

(A) Sills, cornices and similar ornamental features as well as roof eaves and overhangs may project not exceeding 12 inches into any required front, side or rear yard or beyond any required front, side or rear setback or building restriction line;

(B) Bay windows, stoops, covered entryways, stairs and similar features of a principal structure may project not exceeding 3 feet into any required front yard or beyond any required front setback or building restriction line (plus an additional 12 inches for features as noted in this section); and

(C) No ornamental feature, bay window, stoop, stairs, eave, overhang or similar feature of an accessory structure shall project into any required front, rear or side setback or building restriction lines applicable to accessory structures;

(D) Community ocean and sound access walkway structures located within common property designated as such at the time of subdivision plat recordation, within an easement granted to a subdivision or community association for the purposes of providing community access to the ocean or sound, or within the right-of-way of a private street, are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2). Dune walkover structures subject to this exemption must still comply with all applicable standards found in § 156.124(C)(1);

(E) Private walkway structures less than 4 feet in width that directly connect to walkway structures listed in division (D) above are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2). This exemption shall also apply to private walkway structures constructed for the purpose of providing ocean or sound access that are shared between 2 adjoining property owners. Dune walkover structures subject to this exemption must still comply with all applicable standards found in § 156.124(C)(1);

(F) Private walkway structures less than 4 feet in width constructed less than 12 inches above grade are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2). Dune walkover structures and sound access walkways are not exempt from minimum yard requirements unless in compliance with the standards of § 156.051(E). Walkway structures are not exempt from minimum yard requirements if the walkway abuts a swimming pool deck or is located within 3 feet of a swimming pool; and

(G) Municipally owned walkways, boardwalks, multi-use paths and sidewalks are exempt from the minimum yard requirements of this chapter as well as the applicable provisions of § 156.128(A)(2).

(Ord. 04-23, passed 10-6-2004, § 24; Am. Ord. 05-04, passed 4-6-2005; Am. Ord. 06-01, passed 4-5-2006; Am. Ord. 08-05, passed 11-5-2008; Am. Ord. 17-07, passed 8-2-2017; Am. Ord. 21-01, passed 6-2-2021; Am. Ord. 22-08, passed 9-7-2022)

# Exhibit 14

## § 156.128 LAND DISTURBING ACTIVITIES.

### (A) Mandatory standards for land disturbance activities.

(1) The provisions of this section shall apply to any land disturbance activity regardless of the size of the disturbed area. A land disturbance permit is required as provided in division (B)(1) below.

...

### (B) Land disturbance permit required.

(1) A land disturbance permit shall be required for filling and/or grading a lot; any lot clearance, filling or grading activity prior to issuance of a building permit; any installation of gravel or pavers or accessory structures and similar site features whether or not subject to building permit requirements; and any removal or installation of site features such as septic systems, wells and drainage systems that disturb the land.

...

# Exhibit 15



Department of Community Development  
 PO Box 8369  
 1200 Duck Road  
 Town of Duck, North Carolina 27949  
 (252) 255-1234

Date Received: \_\_\_\_\_  
 Permit #: \_\_\_\_\_

## Development Permit Application

Project Address: \_\_\_\_\_ PIN #: \_\_\_\_\_

Description of Work \_\_\_\_\_

Property Owner: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address/Email: \_\_\_\_\_

Applicant: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address/Email: \_\_\_\_\_

### Project Summary: (check all that apply)

Use:  Single-Family  Commercial  Multi-Family  Motel/Hotel  Other:

Building Construction		Land Disturbing Activity	Trade (not associated w/ other development)
Structure Type	Work Classification		
<input type="checkbox"/> Primary Structure	<input type="checkbox"/> New <input type="checkbox"/> Expansion	<input type="checkbox"/> Parking <input type="checkbox"/> Grading/Filling	<input type="checkbox"/> Plumb. (# Fixtures _____)
<input type="checkbox"/> Accessory Building	<input type="checkbox"/> Remodel <input type="checkbox"/> Repair	<input type="checkbox"/> Driveway <input type="checkbox"/> Landscaping	<input type="checkbox"/> Elec. (Amps/Outlets _____)
<input type="checkbox"/> Pool/Hot Tub	<input type="checkbox"/> Demolition <input type="checkbox"/> Relocation	<input type="checkbox"/> Septic <input type="checkbox"/> Irrigation	<input type="checkbox"/> Mech. (# Units _____)
<input type="checkbox"/> Pier/Bulkhead	<input type="checkbox"/> Reface (Signs)	<input type="checkbox"/> Vegetation Removal	<input type="checkbox"/> Gas (# Outlets/Appl. _____)
<input type="checkbox"/> Deck <input type="checkbox"/> Sign			

Proposed Area Schedule: Heated Area \_\_\_\_\_ Sq. Ft. Unheated Area \_\_\_\_\_ Sq. Ft. Other \_\_\_\_\_ L.F.

Project	Building	Electrical	Mechanical	Plumbing	Gas	Other: _____	Total
Cost Estimate: \$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

### Floodplain Development Information: (if applicable)

Flood Zone  VE  AE  X Base Flood Elevation (BFE) \_\_\_\_\_ Enclosed Area Below BFE:  Y  N

### Zoning Information: (Please complete all sections that apply to your project)

Sq. Ft. Ex. Prop. (Sq. Ft.) Ex. Prop. Ex. Prop.  
 Lot Area \_\_\_\_\_ Lot Coverage \_\_\_\_\_ / \_\_\_\_\_ # Occupants \_\_\_\_\_ / \_\_\_\_\_ # Bedrooms \_\_\_\_\_ / \_\_\_\_\_  
 Proposed Building Height \_\_\_\_\_ Measured from:  Slab  BFE  Finished Grade

If fill or grading will result in property elevation changes, please fill out all that apply:		Vegetation Management (For projects that will increase the developed area of the property and that will also remove vegetation; See Town of Duck Vegetation Planting Guidelines for More Information)	
	Current Elevation (Lowest Corner)	*Proposed Elevation	
House	_____	_____	A. Area of Primary Structure (i.e. house) Footprint _____
Pool	_____	_____	B. Required Canopy Coverage (= Lot Area - A. x .15) _____
Driveway	_____	_____	C. Area of Vegetation to be Preserved (provide sketch) _____
Parking	_____	_____	D. Area of New Plantings Required* (= B. - C.) _____
Other: _____	_____	_____	E. Summary of New Canopy Coverage (Type & Number of Plants) _____ _____

\*Please show pre-disturbance elevations at four corners of proposed footprint on survey

\*Large Tree = 400 sq. ft, Small Tree = 200 sq. ft, 10 Shrubs = 400 sq. ft

**House Moving:** (if applicable)

House being moved from (start point): \_\_\_\_\_

Going to (end destination): \_\_\_\_\_

Date move is to occur: \_\_\_\_\_ NCDOT Mover License: \_\_\_\_\_

*I hereby certify that all NCDOT permits and/or regulations have been obtained in accordance with State law. Additionally, I understand that any house moving within, in or through the Town of Duck must be coordinated with both the local Police and Fire departments.*

**Authorized Signature:** \_\_\_\_\_

**General Contractor**

Company Name: \_\_\_\_\_ Contact (please print): \_\_\_\_\_

Phone: \_\_\_\_\_ Mailing Address: \_\_\_\_\_

Email: \_\_\_\_\_ NC State License#: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Classification:  Residential  Building  Specialty  Unclassified  Limited  Intermediate  Unlimited

Workers' Compensation#: \_\_\_\_\_ Expiration date: \_\_\_\_\_ (PROVIDE COPY OF CERTIFICATE)

**Contractor/Authorized Agent Signature:** \_\_\_\_\_

**Electrical Contractor**

Company Name: \_\_\_\_\_ Contact (please print): \_\_\_\_\_

Phone: \_\_\_\_\_ Mailing Address: \_\_\_\_\_

Email: \_\_\_\_\_ NC State License#: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Classification:  Limited  Intermediate  Unlimited  Owner  Other: \_\_\_\_\_

**Contractor/Authorized Agent Signature:** \_\_\_\_\_

**Plumbing/Gas/Fire Sprinkler Contractor**

Company Name: \_\_\_\_\_ Contact (please print): \_\_\_\_\_

Phone: \_\_\_\_\_ Mailing Address: \_\_\_\_\_

Email: \_\_\_\_\_ NC State License#: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Classification:  Class I  Class II  Owner

**Contractor/Authorized Agent Signature:** \_\_\_\_\_

**Mechanical Contractor**

Company Name: \_\_\_\_\_ Contact (please print): \_\_\_\_\_

Phone: \_\_\_\_\_ Mailing Address: \_\_\_\_\_

Email: \_\_\_\_\_ NC State License#: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Classification:  H-1  H-2  H-3  Owner

**Contractor/Authorized Agent Signature:** \_\_\_\_\_

*You are strongly urged to obtain approval from the appropriate homeowner association before you begin any project. Failure to do so could result in legal action by the association to enforce the covenants. Your signature on this application indicates that you understand that the Town of Duck does not enforce or consider the effect of neighborhood covenants when reviewing permits and that building plans may be affected by and subject to subdivision covenants and community architectural control review.*

*I hereby certify that all information is correct and all work will comply with the State Building Code and all other applicable State and Local laws, ordinances and regulations. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not.*

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Owner Signature  
(if different from applicant)

\_\_\_\_\_  
Date



# MICHAEL D. O'STEEN, P.E., P.L.L.C.

STRUCTURAL & CIVIL ENGINEERING SOLUTIONS

LICENSED WITH NCEES, NORTH CAROLINA & VIRGINIA



June 26, 2025

Re: 115 Ocean Bay Blvd  
Lot 31 & portion of 32, Sound-Sea Village Second Plat  
Duck, Dare County, North Carolina

Dear Sir or Madam,

I was requested to verify the installation parameters of the existing Cambridge with Armortec permeable pavement. In particular the Ledgerstone Permeable 3-PC texture or smooth system. My observations are as follows:

Parole information indicates the paver system was installed over non-compacted granular soils; #67 stone subbase; #8 stone base course; #9 stone bedding course and gap between stone sections. This is consistent with the recommended manufacturer's installation instructions.

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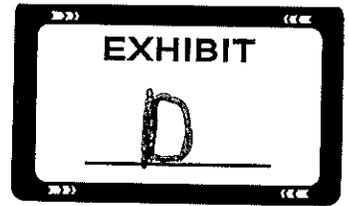
Except as provided herein, it is the sole responsibility of the contractor and/or builder to conform to all standards, provisions, requirements, methods of construction, and uses of materials in buildings and/or structures provided by the North Carolina State Building Code: Residential Code (2015 IRC with North Carolina Amendments), any other local agencies, and in accordance with good engineering and construction practices.

Sincerely,

  
Michael D. O'Steen, P.E., PLLC  
Firm#P-2112  
Not Responsible for Existing Conditions



**From:** Sandy Cross <[scross@ducknc.gov](mailto:scross@ducknc.gov)>  
**Sent:** Wednesday, July 9, 2025 12:25 PM  
**To:** Kevin Knotts <[kknotts@azimuthihg.com](mailto:kknotts@azimuthihg.com)>  
**Cc:** Zoning <[zoning@ducknc.gov](mailto:zoning@ducknc.gov)>  
**Subject:** RE: 115 Ocean Bay - Set- Back



Kevin,

Turf may be installed in the setback. We do not count turf as coverage provided the specifications are provided and verify the turf to be permeable. We also do require that you verify that the turf is installed as per manufacturers specifications and that you agree to maintain per those specifications. This will need to be documented and recorded with the register of deeds, so future owners are aware of the maintenance associated with this type of product.

Let me know if you have any further questions. Please also provide me with an estimated timeline for completion.

**TOWN OF DUCK  
BOARD OF ADJUSTMENT MEETING  
WEDNESDAY, APRIL 12, 2023  
MINUTES**

The Board of Adjustment for the Town of Duck convened at the Paul F. Keller Meeting Hall at 2:00 p.m. on Wednesday, April 12, 2023.

BOARD OF ADJUSTMENT MEMBERS PRESENT: Chair Olin Finch, Tom O'Brien, Carol Powell, Ed Sadler, Robert Wetzel, Alternate David Flowers, and Alternate John Pucciano.

STAFF PRESENT: Attorney Ben Gallop, Attorney Lauren Womble, Director of Community Development Joe Heard, Board of Adjustment Clerk Sandy Cross and Deputy Town Clerk Melissa Felthousen.

MEMBERS ABSENT: None.

OTHERS PRESENT: Attorney Jeff Roether, Property Owner Jay Brooks, and commercial property owner, Jim Braithwaite

**CALL TO ORDER**

Chair Finch called the meeting to order at 2:00 p.m.

**OPENING COMMENTS**

Finch recused himself due to financial interest in the outcome of the appeal as the contractor for the appellant and turned the meeting over to Vice-Chair Tom O'Brien.

**OVERVIEW OF APPEAL DECISION-MAKING PROCESS**

Attorney Ben Gallop was recognized to speak. Attorney Gallop noted that the public hearing is a quasi-judicial one which is sort of like a court, but with lesser rules of evidence. He reminded the Board that they will be acting on the competent sworn testimony that has to be shown to meet the standards of a variance to enact it. Attorney Gallop noted that there are six standards and each one must be passed with a 4/5 vote. If any of the standards fail, then the variance cannot be granted. He stated that the Board can place reasonable conditions when granting the variance. He stated that after Director Joe Heard and the appellant give their presentations, the Board will have a chance to ask questions. He added that Heard and the appellant can ask questions of each other as well. He stated that if any members of the public wish to speak to the application, they will have to be sworn in and can speak after the appellant's presentation. He stated that after that, there may be a brief summary by Director and/or the appellant, the public hearing will be closed, and the Board will deliberate and decide to grant or deny the appeal application.

## **PUBLIC HEARING**

*Appeal BOA-2023-001: An application submitted by Edward J. Brooks, III, on behalf of Wright Ventures, LLC property owners of 1242 Duck Road, aka Tommy's Market, Duck, NC 27949 appealing the zoning administrator's determination that the recent repainting of the structure at 1242 Duck Road was inconsistent with Town code section 156.111(c) Design Standards for Buildings.*

O'Brien requested Attorney Ben Gallop facilitate the meeting. Gallop outlined the duties of the Board of Adjustment as they relate to its procedures and decision-making process.

Attorney Lauren Womble acknowledged her representation of Staff.

Deputy Town Clerk Melissa Felthousen proceeded to swear in the applicants and staff for public hearing. The following persons were sworn to provide testimony during the hearing: Joe Heard, Jeff Roether, Jay Brooks, and Jim Braithwaite.

Attorney Gallop called for staff to proceed with evidence.

### **Staff Presentation**

Heard noted the meeting was properly advertised and posted with signs in the appropriate legal time frame. He acknowledged the inquiries received from the community about the color of the recently painted building at Tommy's Market, 1242 Duck Road. He indicated Community Development staff investigated whether the color met the defined parameters found in Town Code Section 156.111(c), Design Standards for Buildings – "Paint colors shall be of low reflectance, subtle, neutral or earth tone colors or shall relate to natural material colors found within the town generally." He stated on February 17, 2023, Senior Planner Sandy Cross, acting under the direction and approval of him, her supervisor, informed the new business owners and property owners of the staff's decision that the recently painted color was inconsistent with the Design Standards for Buildings.

Heard explained a permit is not required to paint a structure in the Town of Duck. However, he outlined the standards that must be complied with for paint colors on commercial buildings. He stated that, over the years, Community Development staff have worked with dozens of commercial property and business owners to approve a variety of paint colors consistent with the stated standards and intent of Subsection 156.111(c) noted above. A notable example involved the denial of the initial bright yellow proposed by Super Wings, which resulted in a lighter, more muted yellow color for the building in Duck compared to other Super Wings locations throughout the Outer Banks. While understanding that evaluating paint colors involves some subjectivity, staff has tried to interpret these standards consistently over the years. Typically, commercial paint colors are approved prior to commencement of the painting. In this instance, the property owner engaged a contractor to paint the building without first checking with staff about appropriate paint colors.

Heard noted that after receiving comments from the community, observing the resulting paint color, and comparing it with the Town's adopted design standards, staff did not find the bright, vibrant blue color to be subtle, neutral, or earth tone color or a color generally found on buildings elsewhere in Town. Therefore, staff determined that the paint color of the building at 1242 Duck Road was/is in violation of Town Code Subsection 156.111(c), Design Standards for Buildings. Based on experience working with other property and business owners in the past, staff is hesitant to set a precedent for allowing brighter, bolder colors to be considered consistent with the design standards as we see many buildings in attention-grabbing colors throughout the community. This result would be inconsistent with the stated intent of the design standards and could change the character of Duck Village.

### **Addressing the Appellant's Comments**

Heard stated that the appellant's application makes several claims and comments outlining the basis for their appeal:

#### **1. The color matches the original "Tommy's Blue" color of the market building.**

**Staff Response:** While interesting if true, this point is irrelevant as the Town standards do not allow a property owner to repaint a building any color that it might have been in the past. The Tommy's Market building was constructed in 1986 when the Duck community was part of unincorporated Dare County. There were no commercial color standards at that time. However, the Town of Duck subsequently incorporated in 2002 and established the commercial color standards in 2004. While there were not similar standards in the past under Dare County, these adopted standards apply to all commercial buildings now in the Town of Duck. In addition, staff has found no evidence and the appellant has provided no evidence that the subject building was ever painted in this or a similar color. In fact, documentary photographs found by staff appear to show the subject building painted with a blue-gray color similar to the current color of the adjoining Waterfront Shops.

#### **2. The color will naturally soften with the summer sun.**

**Staff Response:** While that might be a possible outcome, neither staff nor the appellant know the result that any "softening" might have or how long such a process might take. Fading or softening of the color might or might not occur, and if it does, the resulting color might still be inconsistent with the standards of Subsection 156.111(c) of the Town Code. In the meantime, while we wait for possible softening of the color to occur, the building's color would still be violation.

#### **3. The property owner will incur significant expense if the building is required to be repainted.**

**Staff Response:** While there would most certainly be an expense associated with repainting the building, this expense could have been avoided had the appellant or their contractor checked with the Town before proceeding with the project.

#### **4. The color is a neutral blue with low reflectance.**

**Staff Response:** While understanding that the interpretation of color is somewhat subjective and can be viewed differently by different people, staff did not find the painted blue color to be of a neutral or natural hue. Rather, in staff's opinion, the color appears to be a bold and vibrant blue inconsistent with the standards of Subsection 156.111(c) of the Town Code.

**5. The blue color matches the color of an existing sign on the adjoining Waterfront Shops property, therefore is found generally within the Town.**

**Staff Response:** Staff has looked at other buildings throughout the Town and not found any other building painted in a similar shade of blue. While the appellant located a sign with a similarly colored-background, signs are much smaller than buildings and are not subject to the same color requirements as buildings. In addition, finding one example on a sign out of over one hundred businesses in Duck Village does not make this bright blue a color found generally within the Town

Gallop asked if anyone had questions. Attorney Womble noted the Agenda Packet as Staff Exhibit 1 and the attachments that are referenced in Heard's report. Gallop recommended approval of Womble's request. There were no objections.

Womble clarified exhibit photos and their definitions. She notified the board that alternate Flowers was present. Gallop directed Flowers to sit with the board.

Flowers acknowledged that he was present for the entirety of Staff's presentation.

Attorney for the appellant, Jeff Roether, remarked that he believes the zoning administration is incorrect in their findings and the Town code is open to interpretation. Property owner, Jay Brooks, noted that he followed up with contractors on re painting to blue from tan prior and was told no permit needed, however, was unable to achieve the same color as prior due to local stores not carrying it. The goal was to repaint the building as close to the original Tommy's blue that was previously displayed.

Upon discussion between the Board and Attorneys Womble and Roether, it was determined that the applicable ordinance governing exterior colors was adopted in 2004. The staff reviewed the ordinance requirements and confirmed that the existing exterior color, identified as sapphire blue, is not a permitted color under the current Town Code. The ordinance is intended to promote the use of more natural color tones. The property owners stated that sapphire blue was the closest available color they could identify aligned with this intent, and they further noted that the color is expected to fade over time. It was further noted that the business owners had previously been informed of noncompliance and were granted a period to bring the property into conformity with the ordinance.

Attorney Gallop allowed the public an opportunity to speak. Jim Braithwaite, property owner, was around prior to the Town incorporation and the color used to be a blue. Braithwaite believes that the color is not unappealing. It fits in the natural coloring of the Town and it should remain. Beverly Perkins, 107 Ships Watch Dr, noticed the colors of the Tomato Patch and was curious if they as well had the same process for their bright colors and could Tommy's market be grandfathered in because it was previously blue and is in support of the color. Heard clarified there are only regulations and aesthetics on commercial properties only.

Attorney Roether closed his argument reminding the Board of their job to take the evidence provided against the ordinance and the vagueness. Continuing that there is a state law that prevents Town's to regulate aesthetics unless it is a public safety issue or it devalues surrounding properties, in which neither are an issue in this case. The interpretation of what constitutes as a

natural hue, as well as the perception and reflectivity of the color, was noted to be subjective by staff. The property owners contended that the word “relate,” as used in the ordinance, is defined as standing in some relation to or corresponding with. They further stated that the paint color has a natural association with the ocean, possesses low reflectivity, and is consistent with natural materials. Accordingly, they maintained that the color is compliant with the Town Code and requested reversal of the Zoning Administrator’s determination.

Attorney Womble presented a rebuttal addressing the remaining conditions related to the paint color, specifically referencing Section C4 of the ordinance, which requires exterior colors to be of low reflectivity and permits contrasting colors for use as accents. She emphasized that the section must be read in its entirety, noting that it provides clear guidance to staff and the Board regarding interpretation and application. Attorney Womble stated that while certain provisions use the term “or,” the overall design standard cannot be selectively applied, and individual elements cannot be taken out of context. She asserted that the ordinance language is clear and unambiguous, particularly in defining acceptable exterior color standards, including the allowance of contrasting accent colors.

Attorney Womble further addressed the argument that the color could “relate” to natural elements such as the sea, noting that such reasoning could extend to other colors, including yellow or orange associated with the sun. She cited North Carolina General Statute 160D, which authorizes local governments to adopt zoning regulations, including building design elements such as color, type, style, porches, ornamentation, and overall architectural styling. She clarified that while certain design standards may not apply to residential development, it is not improper for the Town to regulate aesthetics in this context. Based on these points, Attorney Womble requested that the Board affirm the staff’s position that the blue color does not meet the ordinance standards.

Attorney Roether presented a rebuttal, stating that there had been no misrepresentation of the ordinance. He referenced the second sentence addressing contrasting colors used for accent purposes, noting that the ordinance does not include limiting language such as “only” and that additional words should not be inserted into the text. He stated that the provisions address different aspects of the design standards and must be read as written.

Attorney Roether further discussed the Town’s authority to regulate residential development, citing North Carolina General Statute 160D-701, which requires zoning regulations to be adopted in accordance with a comprehensive plan. He asserted that the ordinance should be interpreted consistently with that statutory framework. Attorney Womble stated that they would have to agree to disagree.

Attorney Gallop let Board know that they were to discuss the presentations made and reach a conclusion on whether they will agree with staff or with the applicant.

Powell believed that the blue hue was part of the natural coloration of the ocean and saw no issue also pointing out that there were no complaints from the public, only inquiries. Wetzel believed that this was somewhat of a pandoras box situation and didn’t believe they should overrule Heard’s decision. Sadler commented that originally, he didn’t see an issue with the coloring until further noticing it and believed it is too bright and supported staff’s decision. Flowers

believed that blue is a matter of interpretation and was curious if there is an option of compromise. Powell also believed it was a hardship for the new owners to have to repaint. Attorney Gallop reminded the Board that this is an appeal and not a variance.

Flowers motioned to affirm the Town in their standings.

Sadler seconded the motion.

Powell and Wetzal voted No. Flowers, Sadler and O'Brian voted yes.

Attorney Gallop asked the Board if they believed the findings the staff presented were correct. Facts need to be agreed upon by the Board to adopt their findings or if there needs to be a change to be presented. Attorney Gallop stated that if no recommendations are needed to adopt the findings in support of the staff's findings to allow Attorney Womble to prepare an order.

Board agreed 5-0.

### **APPROVAL OF MINUTES**

Finch opened the approval of minutes from the September 28, 2022, and October 12, 2022, Board meetings.

Powell moved to approve the minutes as presented. Wetzal seconded.

Motion carried 6-0 with alternates in vote process.

### **BOARD COMMENTS**

Senior Planner Sandy Cross thanked members who attended training.

### **ADJOURNMENT**

Finch adjourned the meeting. There was no second or vote.

The time was 3:55 p.m.

Approved: \_\_\_\_\_  
/s/ Secretary