



NEW HANOVER COUNTY

DEPARTMENT OF PLANNING & LAND USE
 230 Government Center Drive, Suite 110
 Wilmington, North Carolina 28403
 Telephone (910) 798-7165
 FAX (910) 798-7053
planningdevelopment.nhcgov.com

ZONING & SUBDIVISION VARIANCE APPLICATION

This application form must be completed as part of a request for a zoning and/or subdivision variance. The application submitted through the county's online COAST portal. The main procedural steps in the submittal and review of applications for a variance are outlined in the flowchart below. More specific submittal and review requirements, as well as the standards to be applied in reviewing the application, are set out in Section 10.3.11 of the Unified Development Ordinance.



1. Applicant and Property Owner Information

Applicant/Agent Name Bradley Wivell	Owner Name (if different from Applicant/Agent) Same as Applicant
Company	Company/Owner Name 2
Address 1017 S. Seabreeze Rd.	Address
City, State, Zip Wilmington, NC 28409	City, State, Zip
Phone (910)-547-7524	Phone
Email capt.brad89@yahoo.com	Email

2. Subject Property Information

Address/Location 1112 Elm Street	Parcel Identification Number(s) R08518-003-004-000
Total Parcel(s) Acreage 0.09 acres	Existing Zoning and Use(s) B-2 - Recreational Vehicle and Boat Trailer Storage

3. Proposed Variance Narrative

Subject Zoning Regulation, Chapter and Section	11.4 and 11.6; and, 3.4.5.D
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In the space below, please provide a narrative of the application (attach additional pages if necessary).

Please see attached Exhibit "A".

CRITERIA REQUIRED FOR APPROVAL OF A VARIANCE

The Board of Adjustment may grant a variance if it finds that strict application of the ordinance results in an unnecessary hardship for the applicant, and if the variance is consistent with the spirit, purpose, and intent of the ordinance. The applicant must explain, with reference to attached plans (where applicable), how the proposed use meets these required findings (attach additional pages if necessary).

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

Please see attached Exhibit "A".

2. **The hardship results from conditions that are peculiar to the property, such as location, size or topography.** Hardship resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public, may not be the basis for granting a variance.

Please see attached Exhibit "A".

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

Please see attached Exhibit "A".

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

Please see attached Exhibit "A".

Staff will use the following checklist to determine the completeness of your application. Please verify all of the listed items are included and confirm by initialing under "Applicant Initial". Applications determined to be incomplete must be corrected in order to be processed for further review.

Application Checklist

Applicant Initial

- This application form, completed and signed
- Application fee: \$400 per application
- Site plan or sketch illustrating the requested variance
- One (1) hard copy of ALL documents
- One (1) PDF copy of ALL documents

BW

BW

BW

BW


BW

Acknowledgement and Signatures

By my signature below, I understand and accept all of the conditions, limitations, and obligations of the variance application for which I am applying. I understand that I have the burden of proving why this application meets the required findings necessary for granting a variance. I certify that this application is complete and that all information presented in this application is accurate to the best of my knowledge, information, and belief.

If applicable, I also appoint the applicant/agent as listed on this application to represent me and make decisions on my behalf regarding this application during the review process. The applicant/agent is hereby authorized on my behalf to:


1. Submit an application including all required supplemental information and materials;
2. Appear at public hearings to give representation and comments; and
3. Act on my behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of this application.



Signature of Property Owner(s)

Bradley Wivell

Print Name(s)



Signature of Applicant/Agent

Bradley Wivell

Print Name

Note: This form must be signed by the owner(s) of record. If there are multiple property owners, a signature is required for each owner of record.

- **The land owner or their attorney must be present for the case at the public hearing**

**Exhibit A
To
Application for Variance
(1112 Elm Street)**

Project Narrative:

The Applicant/Property Owner is requesting a variance from Sections 11.4 and 11.6 of the Unified Development Ordinance (UDO) for his property located at 1112 Elm Street in the Seabreeze community for the purposes of allowing a new single-family residential structure to be placed back on the subject property. The property is zoned Regional Business (B-2) Business District, as are the adjacent and surrounding properties in this vicinity. As illustrated by the previous survey dated July 15, 2002, attached hereto as Exhibit "B", a house was previously located on the subject property, which apparently became dilapidated and was removed some time ago and years prior to Applicant's purchase of the subject property in October 2017. A copy of the Applicant's deed to the subject property, recorded on 10/30/17 in Book 6099 at Page 324 of the New Hanover County Registry, is attached hereto as Exhibit "C".

Because of the unusually small size of the buildable area of this B-2 zoned lot (approximately 0.09 acres, or approximately 3,917 square feet) (not including Seabreeze Road right-of-way area), there are significant limitations on what the Applicant can reasonably do with the subject property. The lot is currently being used as auxiliary boat and boat trailer storage for the Applicant's nearby business, which is also boat and boat trailer storage. The Applicant would like to restore the subject property to its previous residential use and build a single-family residence on it, in close proximity to his existing business. The proposed single-family residence would enhance the subject property and would be in harmony with the surrounding area and uses, which include commercial and residential uses. The footprint and dimensions of the proposed new single-family home are shown on the site plan attached hereto as Exhibit "D". Also, to the extent that a front setback variance may be required for purposes of the footprint of the proposed single-family home (Exhibit "D" hereto), the Applicant respectfully requests a front setback variance from UDO § 3.4.5.D accordingly.

Criteria for Approval of Variance:

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

The lot dimensions and lack of sewer to the property make the construction of any commercial building and viable commercial use of the property under the B-2 Zoning

District very difficult. The B-2 Zoning District in this unique location creates practical difficulties and unnecessary hardships on this particular lot. The Applicant is seeking a variance to the nonconforming provisions in Article 11 of the County UDO, including specifically UDO §§ 11.4.9 and 11.6, in order to allow the Applicant to replace the nonconforming single-family house that was previously removed from the property with a new single-family home. It is significant to note that replacement of the previous nonconforming single-family home would be permitted under the current UDO provisions provided the applicable timing of the notice of intent to rebuild and reconstruction occurred within the timeframes specified in Article 11 of the UDO. These timeframes were not met, and the Applicant is respectfully seeking a variance of these specified timeframes to allow a residence to be reconstructed on the subject property. Again, reconstruction and/or replacement of the previous residence would be allowed in accordance with the current Article 11 UDO provision but for the lapse of time.

It is also significant to note that UDO § 11.4.9.C specifically states that “[t]he total amount of space devoted to a nonconforming use may not be increased, except that a larger, single family residential structure may be constructed in place of a smaller one and a larger mobile home intended for residential use may replace a smaller one.” (emphasis added). Also, the proposed new single-family home will not be more nonconforming with respect to dimensional restrictions (setback standards, height, or density) (see UDO § 11.4.9.D), and the proposed structure will provide a greater side setback (western lot line) than the previous dilapidated house shown on the July 15, 2002 survey (Exhibit “B” hereto). Also, to the extent that a front setback variance may be required for purposes of the footprint of the proposed single-family home (Exhibit “D” hereto), the Applicant respectfully requests a front setback variance from UDO § 3.4.5.D accordingly.

2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardship resulting from personal circumstances, as well as hardships resulting from conditions that area common to the neighborhood or general public, may not be the basis for granting a variance.

This variance request and the hardship presented are unique to this particular property and the previous use of this property as a residential use. The B-2 Zoning District regulations are affecting this small lot in a negative way, resulting in a hardship in terms of reasonable use of the property consistent with the purpose and intent of the B-2 District. The purpose of the B-2 District is set forth in the UDO as follows: “The intent of the Regional Business (B-2) District is to provide for the proper site layout and development of larger format or larger structure size business uses, including big box stores and automobile dealers. It is also designed to provide for the appropriate location and design of auto-oriented uses that meet the needs of the motoring public or that rely on pass-by traffic.” UDO Sec. 3.4.5(A). For example, it would be a difficult and unnecessary hardship

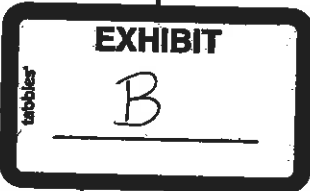
to meet the intent of the B-2 District on this particular site, as it would be very challenging to provide a "proper site layout and development of larger format or larger structure size business uses, including big box stores and automobile dealers" on the subject property. Furthermore, this is a very challenging site for purposes of developing and maintaining any "auto-oriented uses that meet the needs of the motoring public or that rely on pass-by traffic." Any possible rezoning of this site would present several significant challenges due to the small size of the lot. The Applicant respectfully contends that the requested variance will allow him to make reasonable use of the property consistent with its previous residential use.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The Applicant did not create the hardship. The Applicant did not acquire the subject property until 2017, after the previous house was demolished. The house previously located on the subject property became dilapidated and was torn down before the Applicant purchased the property. The strict application of the ordinance to this particular lot and circumstances results in the hardship for which the variance is sought. The property has been zoned B-2 for a number of years, and as stated above, the B-2 Zoning District creates significant development and use challenges for the subject property.

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

As stated above, the lot previously contained a house which became dilapidated and was removed. In addition to the foregoing, allowing the variance to permit the reconstruction and use of the property as residential is entirely consistent with the previous use of the subject property. There are numerous residential properties within the Seabreeze community. The proposed single-family residential use will be low impact and will complement the surrounding uses and enhance the subject property. The requested variance is also consistent and in harmony with the existing residential and commercial uses in the area, and the requested variance is consistent with the spirit, purpose and intent of the ordinance. There are no public safety issues or concerns presented by this variance request, and granting this variance will achieve substantial justice under the facts and circumstances in this particular matter.



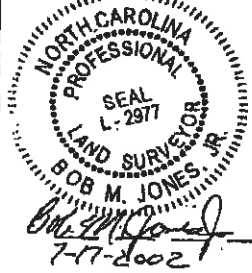
SUBDIVISION - SEABREEZE

LOT -

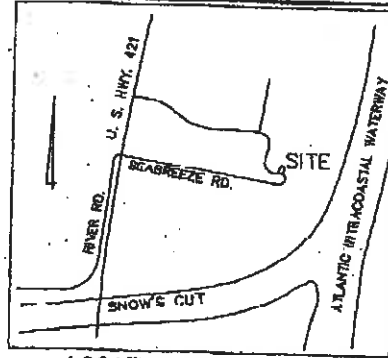
MAP BOOK - PAGE -
DEED BOOK - 953 PAGE - 150

NOTES:

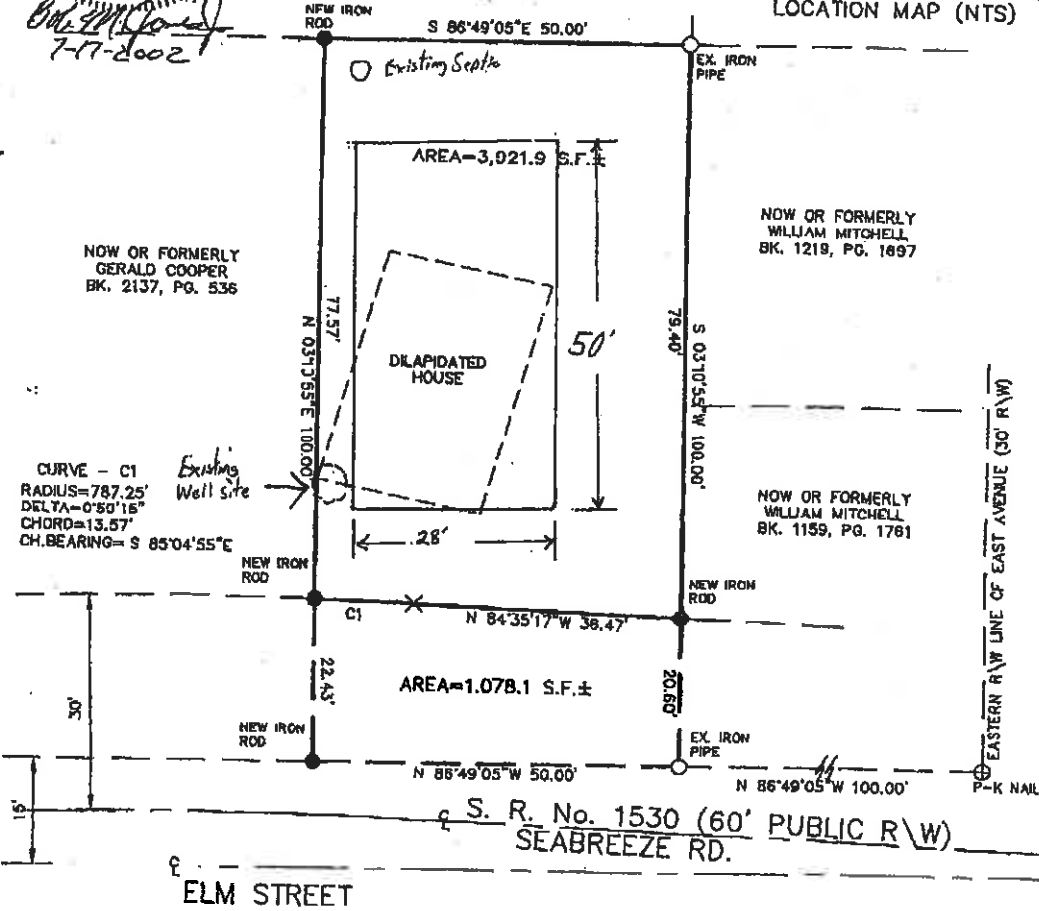
- 1. CORNERS MARKED AS NOTED.
- 2. NO ENCROACHMENTS.
- 3. THIS LOT DOES NOT APPEAR TO LIE WITHIN A 100 YEAR FLOOD HAZARD AREA.
- 4. AREA RECAP BY ELECTRONIC COMPUTATION:
5,000.0 S.F. TOTAL
1,078.1 S.F. WITHIN R/W OF S. R. No. 1530
3,921.9 S.F. NET AREA.



NOW OR FORMERLY
CORDEJA HINNANT



LOCATION MAP (NTS)



MAP OF
SURVEY FOR
MARY GUNN

FEDERAL POINT TWSP. - NEW HANOVER CO. - NORTH CAROLINA

ROBERT H. GOSLEE & ASSOCIATES, P.A.
LAND SURVEYORS - LAND PLANNERS
513 CHESTNUT ST.
WILMINGTON, NC 28401
(910) 763-1941
EMAIL: rhgilm@cape-learn.net

SCALE: 1"=20'
DATE: 7/15/2002
FILE #: 85180304

3
26
9002LS



BK: RB 6099

PG: 324-327

RECORDED:

10-30-2017

04:38:49 PM

BY: ANGELA ENGLISH

DEPUTY



2017035204

NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

NC FEE \$26.00

STATE OF NC

REAL ESTATE

EXTX \$90.00

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$90.00

Parcel Identifier No. R08518-003-004-000 Verified by _____ County on the _____ day of _____, 20____

By: _____

Mail/Box to: Jeffrey W. Porter, Law Office of Jeffrey W. Porter, PC, 711 Princess Street, Wilmington, NC 28401

This instrument was prepared by: Law Office of Jeffrey W. Porter, PC, 711 Princess Street, Wilmington, NC 28401

Brief description for the Index: LOT metes and bounds,

THIS DEED made this 30th day of October, 2017, by and between

GRANTOR

Carolyn Sue Jefferies, sole heir of
Kenneth Bentley Jefferies, NHC CSC 12E601 and sole heir of
Jesse Kenneth Jefferies, NHC CSC 12E685
414 Wayne Drive
Wilmington, NC 28403

GRANTEE

Bradley W. Wivell
222 Georgia Avenue
Carolina Beach, NC 28428

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, parcel of land or condominium unit situated in the City of Wilmington, _____ Township, New Hanover County, North Carolina and more particularly described as follows:

The property is commonly known as 1112 Elm Street, Wilmington, NC and is more completely described in the attached Exhibit "A".

The property hereinabove described was acquired by Grantor by instrument recorded in Book 5465 page 737.

All or a portion of the property herein conveyed includes or X does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book _____ page _____.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

Easements and Restrictions of Record.

Current year Ad Valorem Taxes.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

By: _____ (Entity Name) Carolyn Sue Jefferies (SEAL)
Print/Type Name: Carolyn Sue Jefferies

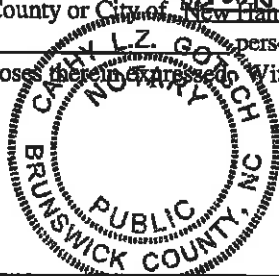
Print/Type Name & Title: _____ Print/Type Name: _____ (SEAL)

By: _____ (SEAL)
Print/Type Name & Title: _____ Print/Type Name: _____

By: _____ (SEAL)
Print/Type Name & Title: _____ Print/Type Name: _____

State of North Carolina - County or City of New Hanover

I, the undersigned Notary Public of the County or City of New Hanover and State aforesaid, certify that Carolyn Sue Jefferies personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 30th day of October, 2017.



Cathy L.Z. Gotch
Notary Public
Notary's Printed or Typed Name

My Commission Expires: 10-18-2026
(Affix Seal)

State of _____ - County or City of _____

I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this _____ day of _____, 20____.

My Commission Expires: _____
(Affix Seal) _____ Notary Public
Notary's Printed or Typed Name

State of _____ - County or City of _____

I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____ personally came before me this day and acknowledged that he is the _____ of _____, a North Carolina or _____ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this _____ day of _____, 20____.

My Commission Expires: _____
(Affix Seal) _____ Notary Public
Notary's Printed or Typed Name

EXHIBIT

BEGINNING at a stake in the northern line of Elm Street, which said stake is located North 86 degrees 0' West 100 feet from the intersection of the Northern line of Elm Street with the Western line of East Avenue (the said intersection being North 4 degrees 0' East 50 feet from the Northeast corner of Block "H" as shown in a recorded plan of the said Block "H" of Seabreeze), and running thence from the **BEGINNING** stake with the Northern line of Elm Street, North 86 degrees 0' West 50 feet to a stake; thence North 4 degrees 0' East 100 feet to a stake; thence South 86 degrees 0' East 50 feet to a stake; thence South 4 degrees 0' West 100 feet to the **BEGINNING**.

TAMMY THEUSCH
BEASLEY
Register of Deeds

New Hanover County Register of Deeds

320 CHESTNUT ST SUITE 102 • WILMINGTON, NORTH CAROLINA 28401
Telephone 910-798-4530 • Fax 910-798-7716



State of North Carolina, County of NEW HANOVER
Filed For Registration: 10/30/2017 04:38:49 PM
Book: RB 6099 Page: 324-327
4 PGS \$116.00
Real Property \$26.00
Excise Tax \$90.00
Recorder: ANGELA ENGLISH
Document No: 2017035204

DO NOT REMOVE!

This certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.

LEGEND:
 EIP=EXISTING IRON PIPE
 ERB=EXISTING REBAR
 RBS=REBAR SET
 R/W=RIGHT OF WAY

DEED NORTH DB 6098 PG 324

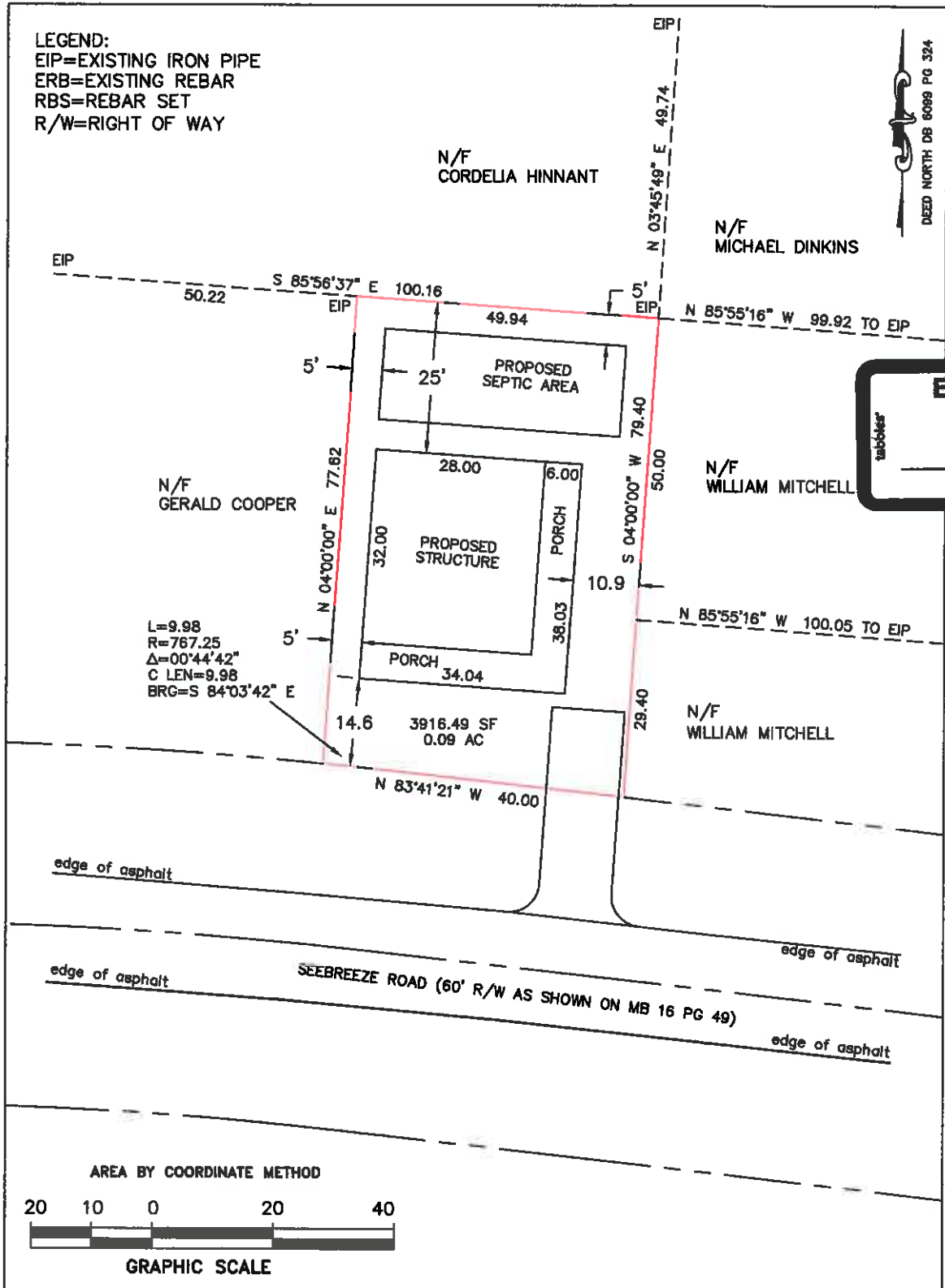
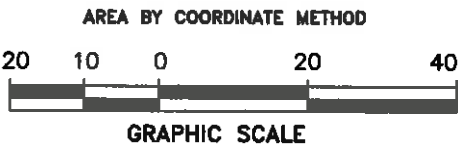


EXHIBIT
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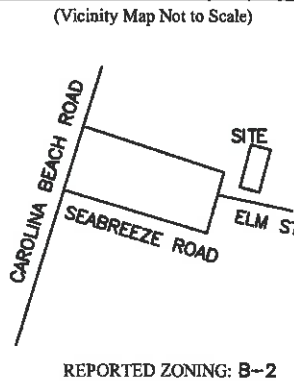


I, Gary W. Keyes, certify that this plat was drawn under my supervision from an actual survey made under my supervision or from deed description recorded in Book _____, Page _____; that the boundaries not surveyed are shown as broken lines plotted from Book _____, Page _____ or other source and that the closure error as calculated is _____/10,000.

Witness my signature, PLS #, and seal this 23 day of _____, A.D. 20 19.

GARY W. KEYES
 PROFESSIONAL SURVEYOR
 L-4381

Land _____ PLS # _____



TOWNSHIP		WILMINGTON	
COUNTY	NEW HANOVER	STATE	NC
DATE	10/07/19	SCALE	1"=10'
OWNER:			
PRELIMINARY SITE PLAN FOR:			
BRADLEY W WIVELL			
CAROLINA BEACH, NC 28428			
PARID: R0851B-003-004-000			



NEW HANOVER COUNTY
PLANNING & LAND USE
**AUTHORITY FOR
APPOINTMENT OF AGENT**

230 Government Center Drive
Suite 110
Wilmington, NC 28403
910-798-7165 phone
910-798-7053 fax
www.nhcgov.com

Please note that for quasi-judicial proceedings, either the land owner or an attorney must be present for the case at the public hearing.

The undersigned owner does hereby appoint an authorized the agent described herein as their exclusive agent for the purpose of petitioning New Hanover County for a variance, special use permit, rezoning request, and/or an appeal of Staff decisions applicable to the property described in the attached petition. The Agent is hereby authorized to, on behalf of the property owner:

1. Submit a proper petition and the required supplemental information and materials
2. Appeal at public meetings to give representation and commitments on behalf of the property owner
3. Act on the property owner's behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of any petition applicable to the New Hanover County Zoning Ordinance.

Agent Information	Property Owner(s)	Subject Property
Name Matthew A. Nichols	Owner Name Bradley Wivell	Address 1112 Elm St.
Company Law Office of Matthew A. Nichols	Owner Name 2	City, State, Zip Wilmington, NC 28409
Address 3205 Randall Parkway, Suite 104	Address 1017 S. Seabreeze Rd.	Parcel ID R08518-003-004-000
City, State, Zip Wilmington, NC 28403	City, State, Zip Wilmington, NC 28409	
Phone 910-508-7476	Phone 910-547-7524	
Email matt@mattnicholslaw.com	Email capt.brad89@yahoo.com	
Application Tracking Information (Staff Only)		
Case Number Reference: <i>ZBA-954</i>	Date/Time received: <i>1/5/21 1:30 pm</i>	Received by: <i>KV</i>

This document was willfully executed on the 4th day of Jan., 20 21.

Brad Wivell

Owner 1 Signature
Brad Wivell

Owner 2 Signature