



NEW HANOVER COUNTY

BOARD OF ADJUSTMENT

230 GOVERNMENT CENTER DRIVE, LUCIE HARRELL CONFERENCE ROOM
WILMINGTON, NORTH CAROLINA 28403

MEMBERS OF THE BOARD

Cameron Moore, Chairman Henry "Hank" Adams
Kristin Freeman Maverick Pate Luke Wadell

BOARD ALTERNATES

Pete DeVita Michael Keenan, Sr. Richard Kern

January 26, 2021, 5:30 PM

I. Call Meeting to Order (Chairman Cameron Moore)

II. Election of 2021 Officers

III. Approval of November Minutes (*currently in draft status*)

November Member Attendees: Cameron Moore, Mark Nabell, Kristin Freeman, Pete DeVita, Michael Keenan

III. Regular Items of Business

Case ZBA-954 - Bradley Wivell, applicant and property owner, is requesting a variance from the discontinuance of a non-conforming use duration per Sections 11.4 and 11.6; and a variance of 20.4' from the 35' minimum required front yard setback in the B-2, Regional Business District per Section 3.4.5.D of the New Hanover County Unified Development Ordinance. The property is located at 1112 Elm Street.

IV. Other Business

V. Adjourn

MINUTES
BOARD OF ADJUSTMENT
DRAFT

The New Hanover County Board of Adjustment held a regular and duly advertised meeting at 5:30 P.M. at the New Hanover County Government Center Complex, 230 Government Center Drive, in the Lucie Harrell Conference Room, Wilmington, NC, on Tuesday, **November 10, 2020**.

Members Present

Cameron Moore, Chairman
Mark Nabell, Vice-Chairman
Kristin Freeman
Michael Keenan
Pete DeVita

Members Absent

Hank Adams
Ray Bray
Richard Kern

Ex Officio Members Present

Ken Vafier, Executive Secretary
Sharon Huffman, Deputy County Attorney
Sheighla Temple, Zoning Compliance Official

The meeting was called to order at 5:30 P.M. by the Chairman, Mr. Cameron Moore.

Mr. Moore explained that the Board is a quasi-judicial board appointed by the Board of Commissioners to consider ordinance variances from residents in New Hanover County where special conditions would create unnecessary hardships. He said the Board also hears appeals of the County's interpretation in enforcement of the Unified Development Ordinance. The appellants have thirty days in which to appeal any decision made by the Board to Superior Court.

FIRST ORDER OF BUSINESS

APPROVAL OF OCTOBER 27, 2020 MINUTES

Following a motion by Vice-Chair Nabell and seconded by Mr. DeVita, the minutes from the October 27, 2020 meeting were unanimously approved with no edits. All ayes to approve the minutes by board members present.

SECOND ORDER OF BUSINESS

CASE ZBA-951

Chairman Moore informed Board members that the applicant is present to request a variance for the one case on the agenda. Today's case is a continuance from the October 27, 2020 meeting.

Chairman Moore swore in Ken Vafier, Cindee Wolfe and Curtis Westbrook.

Design Solutions, on behalf of CWEST, LLC, property owner, is requesting a variance of a 10' from the 20' minimum transitional buffer width requirement per Section 5.4.4.C of the New Hanover County Unified Development Ordinance. The property is located at 9515 River Road and zoned R-15, Residential District.

The subject site is 4.2 acres and is intended to be developed as an expansion of the existing Snows Cut RV Park. Mr. Vafier stated a Special Use Permit has been submitted for the November 5th Planning Board meeting to review.

The applicant is proposing this variance on the far southwestern boundary of the property, in an area where a proposed access road from the proposed RV park to River Road would be aligned.

Mr. Vafier stated the applicant requested additional time at the October meeting to prepare revisions to the site plan for the expansion and site improvements such as the access drive, RV spaces, and septic fields on a portion of the tract located east to west on the site which is limited in width and contains soil characteristics which require the septic fields to be placed in specific locations.

Mr. Vafier stated should the Special Use Permit be granted, transitional buffers would be required on the western and southwestern boundaries per Section 5.4.4.C of the UDO.

Mr. Vafier presented aerial photos of the Snows Cut RV park and adjacent undeveloped areas to the west to the park.

Mr. Vafier stated that transitional buffers are required where a non-residential use abuts vacant, residentially zoned property. Two of the sides at the subject site are undeveloped and require buffers. There are different options for transitional buffers that can be utilized on a site and these are outlined in the UDO.

Mr. Vafier concluded that the transitional buffer would include an 8 ft. screening fence with 3 ft. planting shrubs. The applicant is requesting a variance to the width.

Mr. Curtis Westbrook Sr., 701 East Chatham Street, Cary, NC 27511. Mr. Westbrook introduced Ms. Wolfe and requested that she make the presentation for the variance request.

Ms. Cindee Wolfe stated she has worked with Mr. Westbrook in the past on the subject site. She is presently working with Mr. Westbrook to expand the Snows Cut RV to accommodate more spaces and site improvements. Ms. Wolfe states she is presenting a simplified, conceptual site plan tonight which outlines the septic fields at the subject site.

Ms. Wolfe stated the site was challenging in terms of meeting all current design requirements, as the site has been utilized in the past as a camp ground. There has been additional gravel and soil disturbance in the past at the location.

Ms. Wolfe stated the shape of the site and some of the existing conditions, such as location of certain soils, limits the availability in where septic systems can be located presents a hardship. Ms. Wolfe stated in order to fully utilize the area to expand, the buffer would need to be reduced.

Ms. Wolfe presented photos of the undeveloped and heavily wooded area where the reduced buffer would apply. Ms. Wolfe stated there are two areas for the buffer reduction request. The proposal of a fence would start 20 ft. back due to site triangles location of fence would be set appropriately to meet regulation.

The buffer reduction requested is 10 ft. rather than the required 20 ft. which would incorporate a fence and landscaping to the site. Ms. Wolfe stated this request is consistent with what may soon become a county regulation to buffer yards.

Ms. Wolfe stated that based on timing they are pursuing variance in order to plan appropriately for further processing the expansion proposal.

Mr. DeVita inquired to the amount of septic tanks at the park. Mr. DeVita also inquired of rental time frame.

Ms. Wolfe stated that there are multiple septic fields at the site and repairs, some of them will be shared.

Ms. Wolfe stated the rentals would be similar to the KOA parks, which is a transient lodging site.

Chairman Moore inquired of sewer availability at the subject site park.

Ms. Wolfe stated sewer was available during the first stage of the park's development.

Mr. West stated that for the first phase, a central septic system was available for 19 units. A field was available to pump the effluent and a repair system is located as well to adequately service these units.

Mr. West stated during phase 3 section additional usable soils were located and under the recommendation of a licensed soil scientist a different method was implemented for the septic fields. Mr. West stated CFPUA does not service the area.

Mr. West stated AQUA offers sewer services but is located 1,356 ft. from phase 1. However, this would require an extensive financial burden to the expansion project.

Ms. Freeman asked what is the standard fence requirement.

Mr. Vafier stated the fence requirement is between 6-10 ft. if this transition buffer option is elected by the applicant.

Mr. West stated the fence would be raised to meet a 6 ft. fence requirement with enough room to have a shadow box, large post with all screws in hopes to sustain future weather impacts.

Mr. DeVita inquired of any opposition to the project by adjacent neighbors.

Ms. Wolfe stated Ms. Weaver is aware of what is going on to the expansion and no objections has been relayed.

Ms. Wolfe stated fencing is not on the property line. Plantings will be installed.

Ms. Huffman stated the applicant did provide findings to hardship for the variance request in the application.

PUBLIC HEARING CLOSED

BOARD DELIBERATION

Mr. Nabell stated the site is limited due to the septic system fields. Chairman Moore stated the driveway location is limited and the narrow width limits the use of this section of the tract.

Ms. Freeman stated the applicant is limited with servicing the entire park with AQUA due to finance and CFUPA does not offer sewer to the park due to its location is not within 500 ft.

Mr. DeVita made a motion to approve the variance based on the applicant's proposed findings of fact. Mr. Nabell second the motion. All ayes to approve the variance as requested of a 10' from the 20' minimum buffer width requirement.

PRELIMINARY FINDINGS OF FACT:

- 1. It is the Board's conclusion that, if the applicant complies with the literal terms of the ordinance, specifically the 20' minimum transitional buffer width requirement in Section 5.4.4.C of the New Hanover County Unified Development Ordinance, that an unnecessary hardship would result/would not result. This conclusion is based on the following FINDINGS OF FACT:**
 - Offsetting the access drive a full 20' from the property boundary severely limits the usability of this section of the tract for the intended use.
 - Due to the need for septic fields to serve the proposed use, the dimensional and setback requirements for each creates limitations.
- 2. It is the Board's conclusion that the hardship of which the applicant complains results/does not result from unique circumstances related to the subject property, such as location, size, or topography. This conclusion is based on the following FINDINGS OF FACT:**
 - The tract is unusually shaped, and the access drive needs to extend through the narrow section to the frontage along River Road. However, that severely limits the resulting usability of that entire section of the tract. The development area is further constrained by an existing structure and septic system fields, which must be specifically located based on soil characteristics.
 - The hardship is a result of the requirement for multiple septic fields due to the location and the lack of access to sewer.
- 3. It is the Board's conclusion that the hardship did/did not result from actions taken by the applicant or the property owner. This conclusion is based on the following FINDINGS OF FACT:**
 - The buffer requirement is a basic regulation of the UDO to mitigate impacts and provide transition between dissimilar uses. The owner simply seeks to modify the width of the buffer in exchange for a combination of plantings and a solid wooden fence that will provide the intended visual screening.
- 4. It is the Board's conclusion that, if granted, the variance will be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:**
 - The use of the combination of a fence and plantings is already an option of the buffer yard types, but currently still requires a 20' width. That distance is unnecessary for the installation of the fence and required plantings. There is currently a draft of Code amendments that includes reducing the buffer width to 10' when using the fence/ plantings alternative. This request would pose no safety issue to the public, or the adjacent property owner. The spirit, purpose, and intent of the buffer regulations will still be preserved in providing both transition and visual screening of the RV park.

There being no further business before the Board, it was properly moved by Vice-Chair Nabell and seconded by Mr. DeVita to adjourn the meeting. All ayes.

Please note the minutes are not a verbatim record of the proceedings.

Executive Secretary

Chairman

Date _____

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
January 26, 2020**

CASE: ZBA-954

PETITIONER: Bradley Wivell, applicant and property owner.

REQUEST: Variance from the 180-day discontinuance of a non-conforming use duration per Sections 11.4 and 11.6; and a variance of 20.4' from the 35' minimum required front yard setback in the B-2, Regional Business District per Section 3.4.5.D of the New Hanover County Unified Development Ordinance.

LOCATION: 1112 Elm Street
PID: R08518-003-004-000

ZONING: B-2, Regional Business District

ACREAGE: .09 acres (approximately 3,920 square feet)

BACKGROUND AND ORDINANCE CONSIDERATIONS:

Bradley Wivell, applicant and property owner, is requesting a variance from three ordinance provisions governing non-conforming situations and required front yard setbacks within the New Hanover County Unified Development Ordinance (UDO) in order to construct a single-family dwelling within the B-2 District. The subject parcel is located in the Seabreeze community in southern New Hanover County and consists of approximately 3,920 square feet. The parcel is one of several lots in this area that comprise approximately 10 acres which were zoned B-2 in 1971 due to their historic use as waterfront business and recreation destinations.

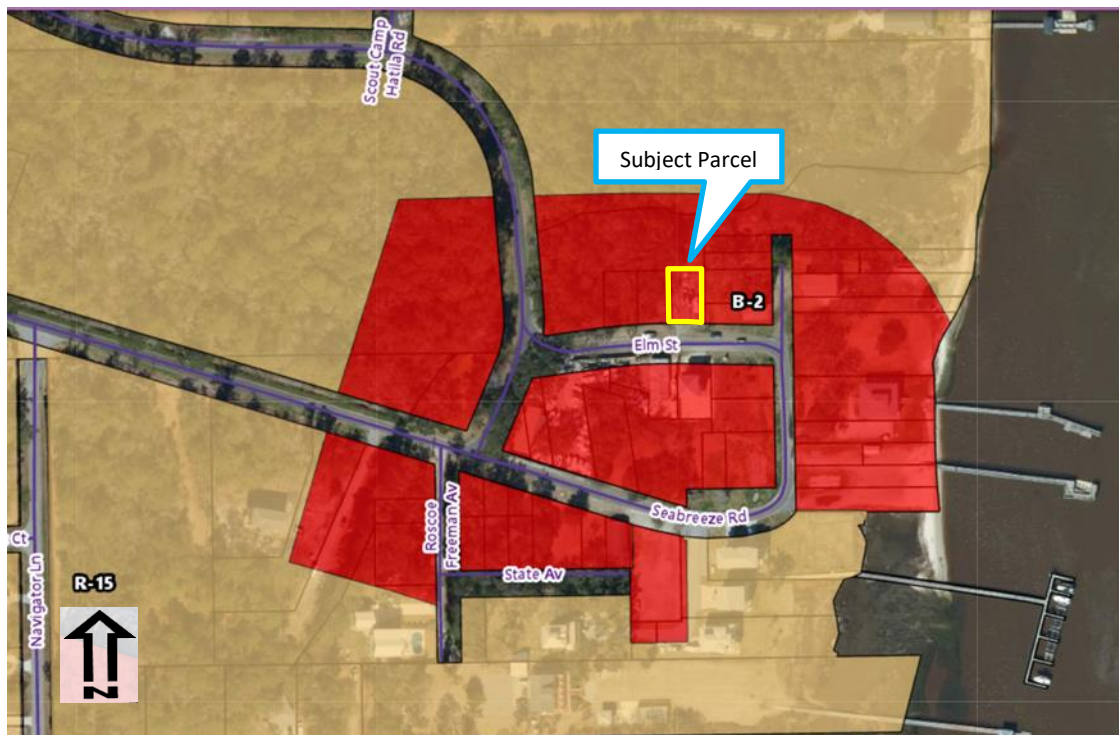


Figure 1: Seabreeze Community with B-2, Regional Business District Boundary

Currently, the site is operating as a boat trailer storage lot which is affiliated with the applicant's boat storage business located across Elm Street to the southwest of the subject parcel. The applicant was notified in November of 2020 that the expansion of the business onto the subject parcel would require the approval of a minor site plan through the county's development review process. At that time, the applicant indicated the intention to construct a single-family residence on the parcel. Single Family Dwellings are not permitted uses within the B-2 district, however, there are some legal non-conforming situations within this district as its development predates the application of its current zoning designation.

In general, legal non-conforming situations occur when a land use, structure, lot of record, sign, or site feature was lawfully established before a regulation was adopted or amended and does not conform to the UDO's current terms and requirements. The ordinance allows legal non-conformities to remain until they are removed, but their continual use is not encouraged. Once a legal non-conforming use is discontinued, the ordinance establishes a 180-day duration after which the property may only be used for conforming uses.

A potential rezoning request for the property to a district that would allow a single-family residence was not a preferred option due to the minimum lot size requirements of districts that would be most in line with the 2016 Comprehensive Plan, thus the applicant elected to apply for a variance seeking relief of the 180-day discontinuance duration.

The applicant has provided a survey from 2002 showing that a single-family dwelling was located on the subject parcel at that time but was not present when the applicant purchased the property in 2017.

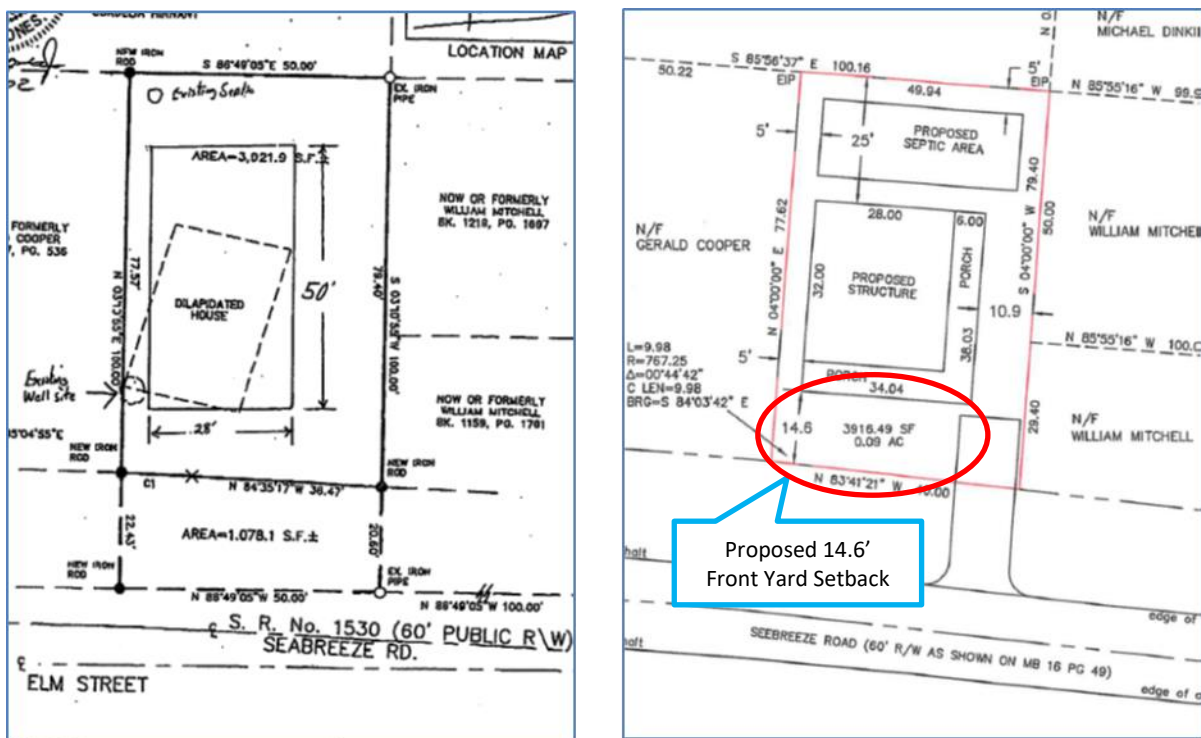


Figure 2: Survey from July 15, 2002 showing home on subject parcel, which was removed prior to the applicant purchasing the property, and proposed site plan with variance request of 20.4' from the 35' front yard setback in the B-2 District.

Section 11.6 of the UDO provides the duration on the discontinuance of a non-conforming use:

Section 11.6 Abandonment and Discontinuance of Nonconforming Situations

11.6.1 *When a nonconforming use is discontinued for a consecutive period of 180 days, only a conforming use may be located on the property.*

As the previously existing structure has been removed from the site as recently as October 2017, a new residence would not be able to be located on the parcel with the application of Section 11.6.1. The applicant contends that the variance is necessary in order to allow a new single-family residential structure to be placed back on the subject property and that the property owner would have been allowed to do so if not for the passage of the 180-day duration

In addition, the applicant notes that Section 11.4.9 of the UDO states that, under certain parameters, a larger, single family residential structure may be constructed in place of a smaller one:

11.4.9 *A structure that is nonconforming in any respect, or a structure that is used in a nonconforming manner may be reconstructed or replaced if partially or totally destroyed, if:*

- A.*** *A letter of intent is received by the Planning Director within six months from the time of such destruction.*
- B.*** *A building permit is obtained from the Building Safety Department within one year from the time the damage or destruction took place.*
- C.*** *The 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.*

The applicant contends that the ordinance does allow for a structure outside that of the original structure's footprint to be rebuilt on a lot where the non-conformity is preserved if these parameters are met, and thus is requesting relief of provisions (A) and (B) above.

If the Board were to grant a variance from the aforementioned non-conforming provisions, the applicant is also requesting a variance from the 35' front yard setback requirement in the B-2 district in order to accommodate construction of a residence on the lot due to its area. The front yard setback in the B-2 district is generally based on the type of road frontage adjacent to a parcel. The subject site is adjacent to Elm Street, which is an NCDOT maintained road, thus making it subject to a 35' front yard setback per the dimensional standards for the B-2 district set forth in section 3.4.5 D of the UDO:

3.4.5. REGIONAL BUSINESS (B-2) DISTRICT

A. Purpose

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.

B. Concept



C. Use Standards

Allowed uses and use-specific standards for principal, accessory, and temporary uses are established in Article 4: Uses and Use-Specific Standards.

D. District Dimensional Standards

Standard	All Uses
Lot area, minimum (square feet)	None
Lot width, minimum (feet)	None
1 Front setback (feet)	50 along highways and major thoroughfares; 35 along all other public highways or streets
2 Side setback, street (feet)	50 along highways and major thoroughfares; 35 along all other public highways or streets
Side setback, interior	*
Rear setback	*
Building height, maximum (feet)	40**

In summary, the applicant is requesting a variance from the 180-day discontinuance of a non-conforming use duration per Sections 11.4 and 11.6; and a variance of 20.4' from the 35' minimum required front yard setback in the B-2, Regional Business District per Section 3.4.5.D of the UDO in order to allow construction of a single-family residence on the subject parcel.

BOARD OF ADJUSTMENT POWER AND DUTY:

The Board of Adjustment has the authority to authorize variances from the terms of the Unified Development Ordinance where, due to special conditions, a literal enforcement of the regulations would result in unnecessary hardship. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the Unified Development Ordinance. A concurring vote of four-fifths (4/5) of the voting members of the Board shall be necessary to grant a variance. A variance shall not be granted by the Board unless and until the following findings are made:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
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.
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.

ACTION NEEDED (Choose one):

1. **Motion to approve the variance request based on the findings of fact (with or without conditions)**
2. **Motion to table the item in order to receive additional information or documentation (Specify).**
3. **Motion to deny the variance request based on specific negative findings in any of the 4 categories above.**



Case: ZBA-954

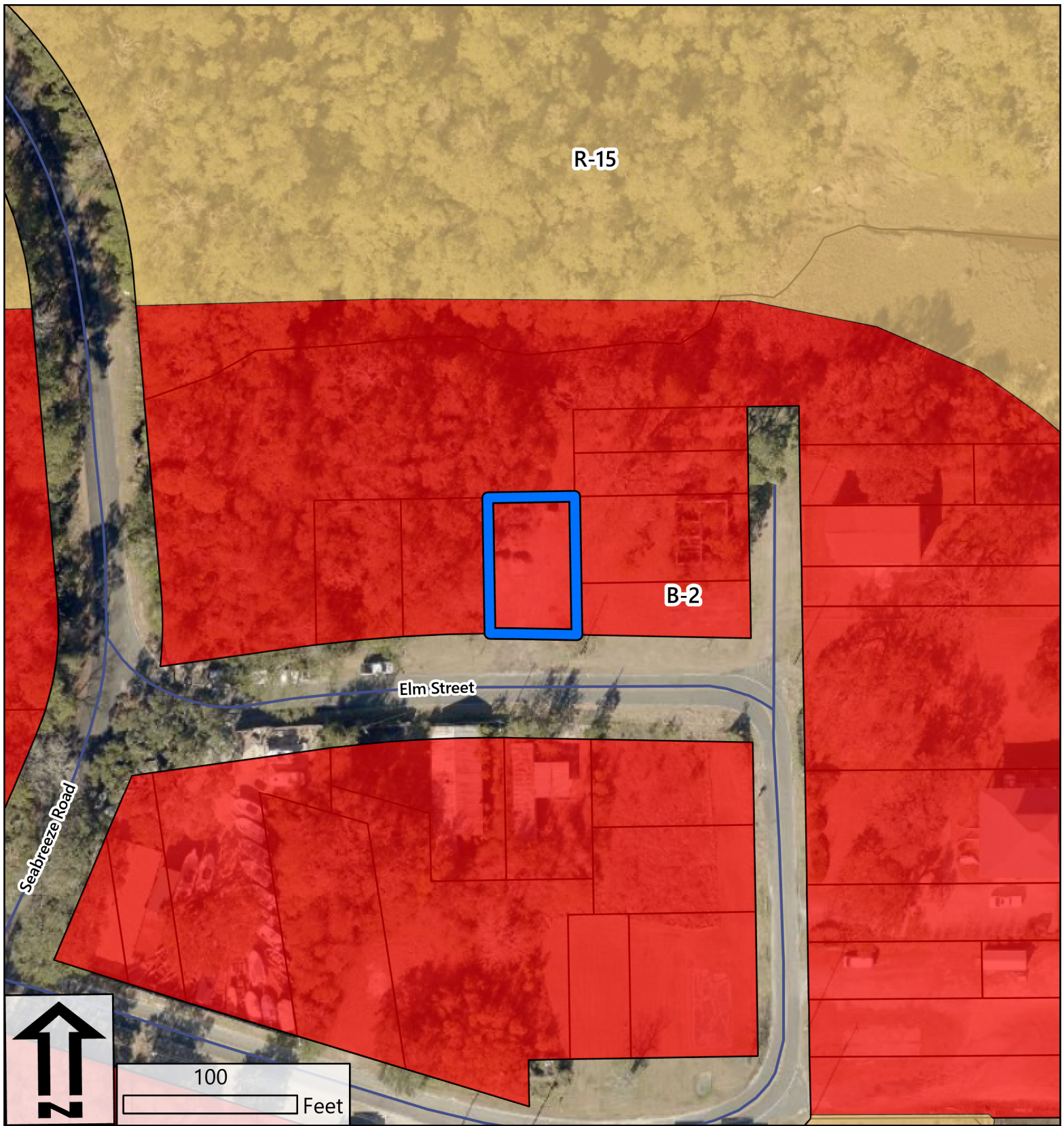
Address: 1112 Elm St

Variance from Sections 3.4.5 D, 11.4 and 11.6 of the UDO

Applicant: Bradley Wivell

Owner: Bradley Wivell

Vicinity Map



Case: ZBA-954

Address: 1112 Elm St

Variance from Sections 3.4.5 D, 11.4 and 11.6 of the UDO

Applicant: Bradley Wivell

Owner: Bradley Wivell

Zoning Map



Case: ZBA-954

Address: 1112 Elm St

Variance from Sections 3.4.5 D, 11.4 and 11.6 of the UDO

Applicant: Bradley Wivell

Owner: Bradley Wivell

Aerial Map



NEW HANOVER COUNTY

BOARD OF ADJUSTMENT

230 GOVERNMENT CENTER DRIVE, LUCIE HARRELL CONFERENCE ROOM
WILMINGTON, NORTH CAROLINA 28403

MEMBERS OF THE BOARD

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BOARD ALTERNATES

Pete DeVita Michael Keenan, Sr. Richard Kern

ORDER TO GRANT A VARIANCE – Case ZBA-954

The Zoning Board of Adjustment for New Hanover County, having held a public hearing on January 26, 2021 to consider application number ZBA-954, submitted by Bradley Wivell, applicant and property owner, a request for a variance from the discontinuance of a non-conforming use duration per Sections 11.4 and 11.6; and a variance of 20.4' from the 35' minimum required front yard setback in the B-2, Regional Business District per Section 3.4.5.D to use the property located at 1112 Elm Street in a manner not permissible under the literal terms of the ordinance and having heard all the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's conclusion that, if the applicant complies with the literal terms of the ordinance, specifically the discontinuance of a non-conforming use duration per Sections 11.4 and 11.6; and the 35' minimum required front yard setback in the B-2, Regional Business District per Section 3.4.5.D of the New Hanover County Unified Development Ordinance, that an unnecessary hardship would/would not result. *(It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)* This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

2. It is the Board's conclusion that the hardship of which the applicant complains results/does not result from unique circumstances related to the subject property, such as location, size, or topography. *(Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)* This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.

- _____.

3. It is the Board's conclusion that the hardship did/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.)* This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

4. It is the Board's conclusion that, if granted, the variance will/will not be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE from New Hanover County Unified Development Ordinance to allow a variance from the discontinuance of a non-conforming use duration per Sections 11.4 and 11.6; and a variance of 20.4' from the 35' minimum required front yard setback in the B-2, Regional Business District per Section 3.4.5.D of the UDO be GRANTED/DENIED, subject to the following conditions, if any:

ORDERED this 26th day of January, 2021.

Cameron Moore, Chairman

Attest:

Kenneth Vafier, Executive Secretary to the Board



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
<p>In the space below, please provide a narrative of the application (attach additional pages if necessary).</p> <p>Please see attached Exhibit "A".</p>	

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.

Bradley Wivell

Signature of Property Owner(s)

Bradley Wivell

Print Name(s)

Bradley Wivell

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.

EXHIBIT

B

SUBDIVISION - SEABREEZE

LOT -

MAP BOOK -

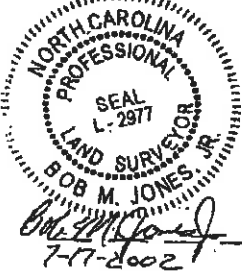
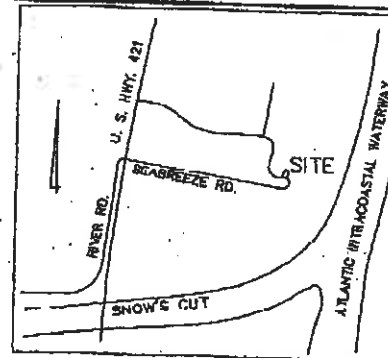
PAGE -

DEED BOOK - 953

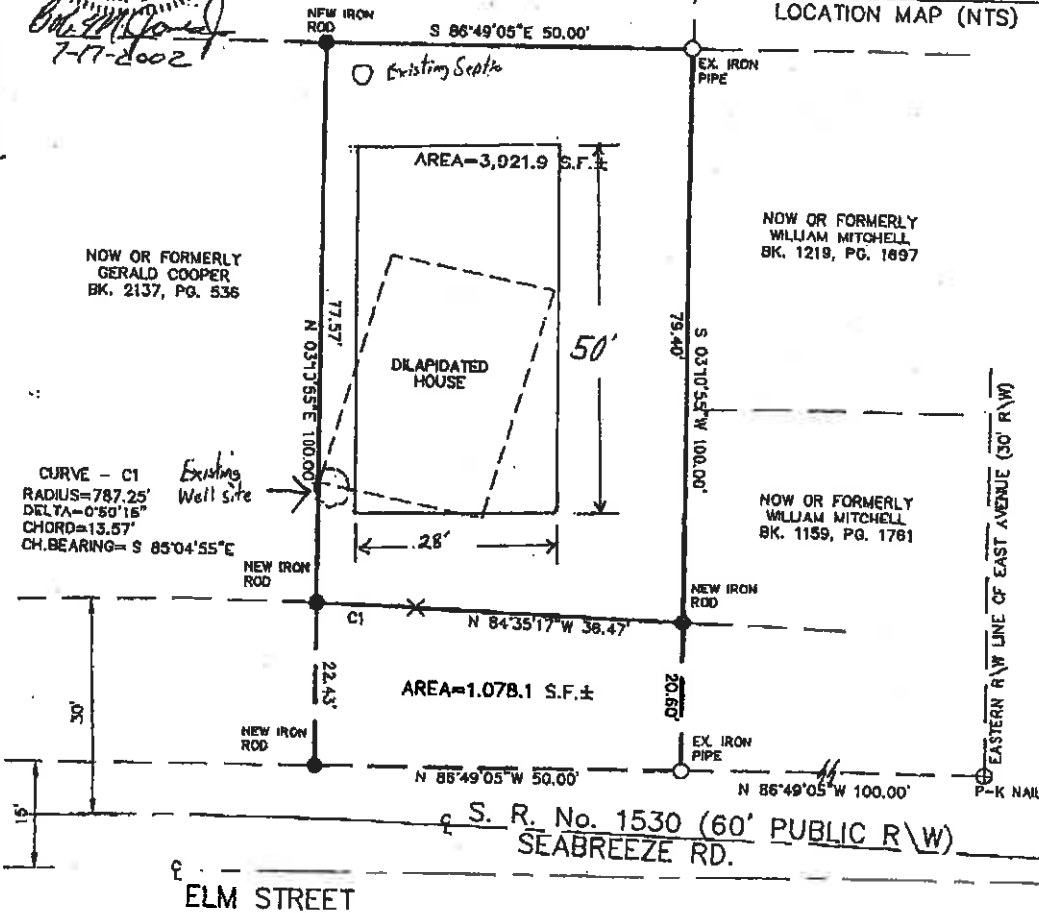
PAGE - 150

NOTES:

1. CORNERS MARKED AS NOTED.
2. NO ENCROACHMENTS.
3. THIS LOT DOES NOT APPEAR TO BE 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
CORDELLA 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-fear.net

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

EXHIBIT

tabbier

C

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

(Entity Name)

Carolyn Sue Jefferies (SEAL)
Print/Type Name: Carolyn Sue Jefferies

By: _____

Print/Type Name & Title: _____

(SEAL)
Print/Type Name: _____

By: _____

Print/Type Name & Title: _____

(SEAL)
Print/Type Name: _____

By: _____

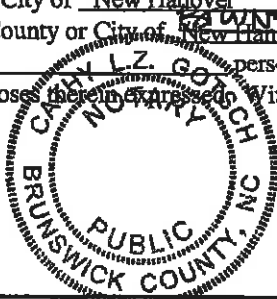
Print/Type Name & Title: _____

(SEAL)
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.

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



Carolyn L. Z. Gotch
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 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

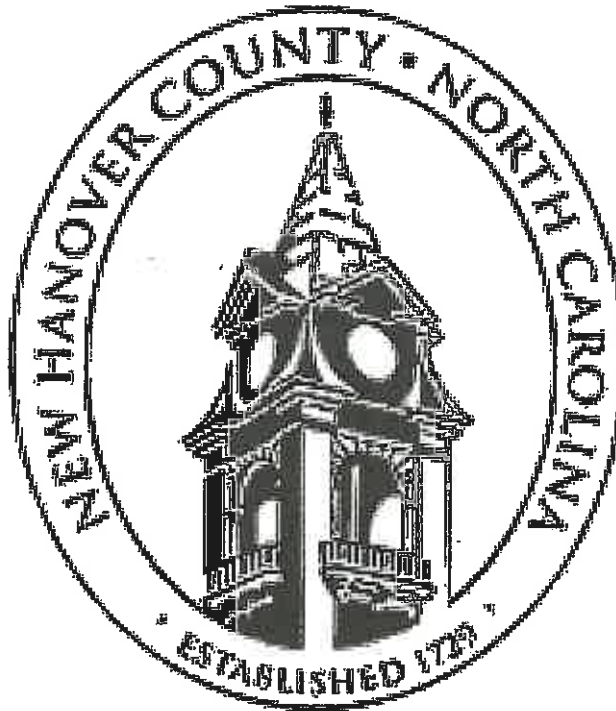
EXHIBIT

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

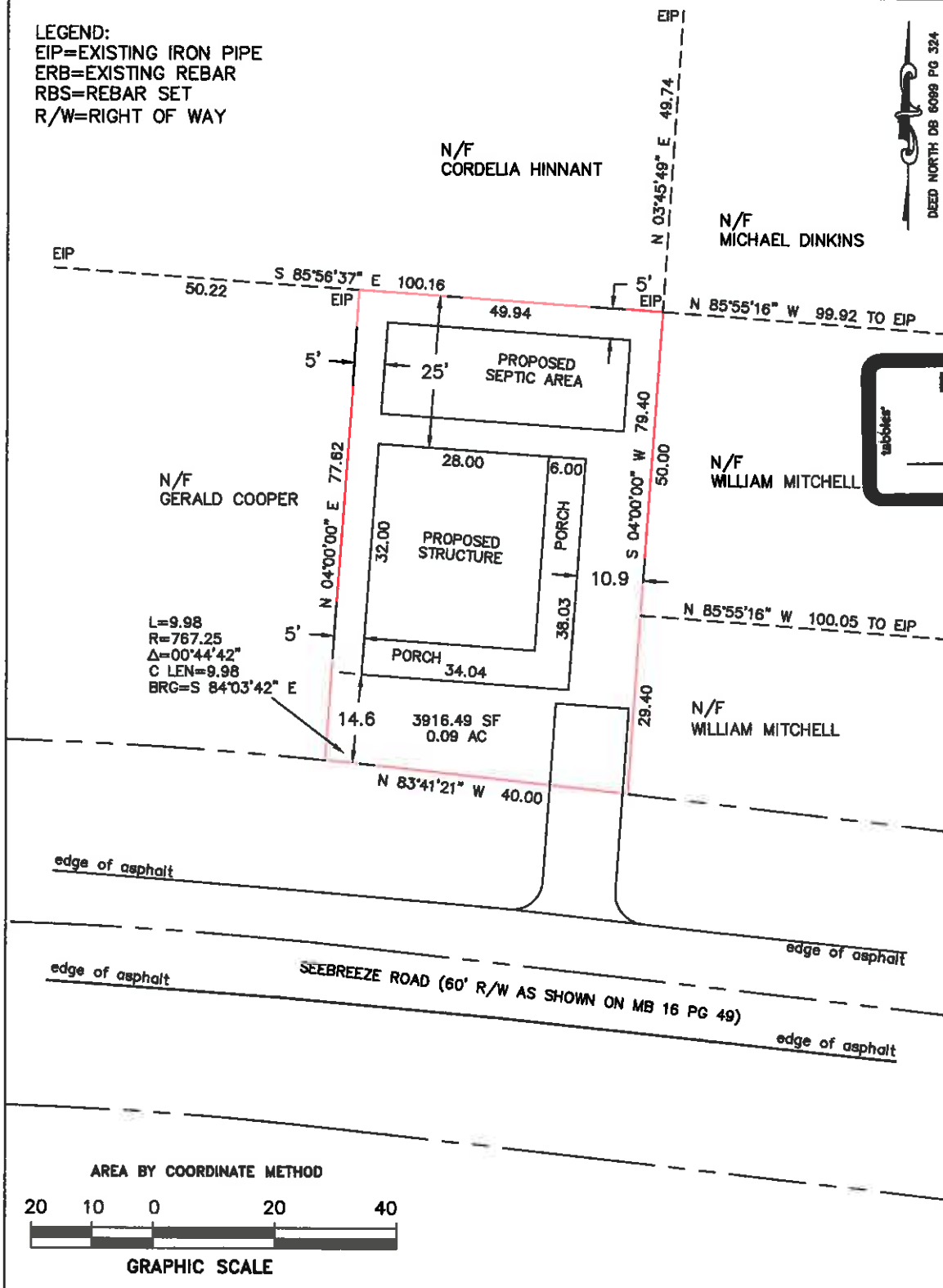
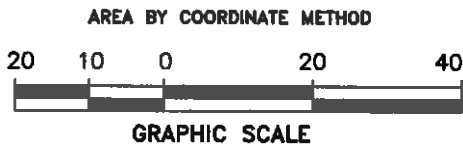
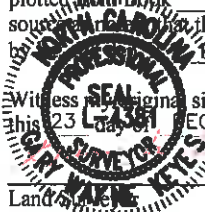


EXHIBIT
 D



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 original signature, PLS #, and seal this 23 day of _____, A.D. 2019.



Land

PLS #

(Vicinity Map Not to Scale)



REPORTED ZONING: B-2

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

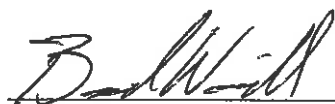
Please note that for quasi-judicial proceedings, either the land owner or an attorney must be present for the case at the public hearing.

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: ZBA-954	Date/Time received: 1/5/21 1:30 pm	Received by: KW

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



Owner 1 Signature

Brad Wivell

Owner 2 Signature