



## **Town of Beaufort, NC**

701 Front St. - P.O. Box 390 - Beaufort, N.C. 28516  
252-728-2141 - 252-728-3982 fax - [www.beaufortnc.org](http://www.beaufortnc.org)

### **Town of Beaufort Board of Adjustment Regular Meeting 6:00 PM Monday, September 27, 2021 - Virtual Via Zoom Monthly Meeting**

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**Call to Order**

**Roll Call**

**Agenda Approval**

**Minutes Approval**

- [1.](#) BOA Minutes for 04.27.2021

**Administration of Oaths**

**Items for Discussion and Consideration**

- [1.](#) Variance Request for 1107 Front Street

**Commission / Board Comments**

**Public Comment**

**Staff Comments**

**Adjourn**



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**Town of Beaufort Board of Adjustment Special Meeting**  
**6:00 PM Tuesday, April 27, 2021 - Held via Zoom due to the COVID-19 Pandemic**  
**Minutes**

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**Call to Order**

Chair Terwilliger called the April 27, 2021 Special Meeting of the Board of Adjustment to order at 6:00pm.

**Roll Call**

A roll call vote was conducted by Secretary Winn. Present for the meeting were Robert Terwilliger, Wendy Oliver, Cathy Reeve and Barry Evans. Secretary Winn declared a quorum.

Allison Long notified staff on April 27, 2021 by email that she would not be present due to a family emergency. Chuck Davis and Virginia Cuthrell were not present due to having a conflict with this matter.

Vice Chair Terwilliger introduced Derek Taylor, Attorney who will be representing the Board of Adjustment, Kyle Garner, Planning Director, Denice Winn, Secretary for the Board of Adjustment and Jill Quattlebaum, Attorney for the Town of Beaufort.

Also present for the meeting were Commissioner John Hagle and Commissioner Marianna Hollinshed.

**Agenda Approval**

Chair Terwilliger asked for a motion to approve the Agenda for the meeting. Board Member Oliver made the motion to approve the Agenda. Board Member Evans made the second. A roll call vote was conducted with the members who were present, and the motion passed unanimously to approve the Agenda as it was presented.

**Minutes Approval**

1. Board Member Oliver made the motion to approve the February 16, 2021 Minutes. Board Member Evans made the second. A roll call vote was conducted with the members who were present, and the motion passed unanimously to approve the Minutes from the February 16, 2021 meeting as they were presented.

**New Business**

Chair Terwilliger had a few opening remarks before commencing the meeting. He gave information on the meeting and who it will be conducted through the quasi-judicial process. Chair Terwilliger stated that anyone giving testimony would be administered an oath or affirmation.

Secretary Winn administered the oath to Kyle Garner, Planning and Inspections Director for the Town of Beaufort. Secretary Winn also administered the oath to the Appellant witnesses, Thomas Bullock, 209 George Street, Beaufort, Michael Ricks, 112 Willow Street, Beaufort, Korey Bernaeur, 104 Olga Road, Beaufort and Eason Wooten, 1407 Live Oak Street, Beaufort.

1. Appeal of Staff's decision for 119 Willow Street.

Chair Terwilliger opened the Appeal of 119 Willow Street filed by Mr. Thomas Bullock, in regards to the Town's decision that a landscaping business is operating unlawfully in an R8 residential zoning district and that such operation should stop immediately and that the property should only be used as allowed by the Town's Ordinances as permitted use by right or a special use permit in the R8 residential zoning district.

Chair Terwilliger asked Mr. Rob Wheatly to give his opening statement. Mr. Wheatly gave a history of the structure as to when it was built, the operation and use of the property. He stated that the building was being used for storage and that Mr. Bernaeur runs his business out of his home on Olga Road. He said prior to that Mr. Wooten ran his diesel business out of the property. Mr. Wheatly referred to the witness Affidavits that had been provided in the packet. He also referred to the videos that were provided by the complainants. Mr. Wheatly stated when Mr. Wooten took over the lease in 2010 the electricity had been cut off so he went to see Mr. Garner and Mr. Eason told him what he wanted to do there. A permit was issued, Exhibit #3, to allow power to be turned on. Mr. Wheatly stated that Mr. Wooten worked on Town trucks. He said that Mr. Bernaeur does not run his business out of the building, employees come to pick up equipment around 7:00am and leave around 3:30pm. Mr. Wheatly said that they were going to argue "laches and estoppel" on behalf of the Town of Beaufort to come in at this time to contend that this activity is illegal and improper. He stated they will present evidence in accordance to his outline to the Board.

Chair Terwilliger asked if the Town had an opening statement. Ms. Quattlebaum stated that she had a couple of items for housekeeping purposes first. She said that the Town would object to the determination that 3 out of 4 votes are necessary. Out of the current Land Development Ordinance (hereinafter LDO), it is 4 out of 4 and to also take judicial notice of the current Zoning Map for the Town of Beaufort in the LDO. Ms. Quattlebaum presented her opening statement on behalf of the Town of Beaufort. She stated that this a fairly straight forward case. This is from the Notice of Violation (hereinafter NOV) from August 6, 2020 and that it was properly issued. It was issued by the Town Planner, Kyle Garner and it was upheld on Appeal by John Day, Town Manager on October 20, 2020. She stated that the extent of any complaints is not relevant. Complaints are only relevant as to when the Town became aware of the commercial use of this property. The only issue that is relevant in this case is, whether or not a commercial use is at this property. Ms. Quattlebaum stated that testimony would be given that this is an R8 District and that will not be disputed. She said the issues at this point are pretty simple. She referred to the Affidavits and the opening statement, this isn't just a commercial storage business, which would also be a violation of the R8 standards, this is a functioning business with employees reporting for work there daily and this evidence is on the record. She said the current business is not lawful and this zoning has been the same since 1977. Ms. Quattlebaum said that Mr. Bullock bought this property in 1995 and since then he has leased the property commercially several times. She said there are no zoning permits for any of these businesses. His first lease was to a diving business for storage, next to someone named David for unknown reasons, he then leased to Mystery Tour Boats for storage in 2001 to 2010, then to Eason Wooten from 2010 to 2017 for his diesel business and in 2017 Mr. Bernaeur he leased the building when Mr. Wooten moved out. She said 4 out of the 5 uses have been unlawful and the lease to David is unknown but the Town would contend that was an unlawful use as well. Ms. Quattlebaum stated that no zoning permits had been issued and even though Mr. Wooten contends he spoke with Mr. Garner concerning this, Mr. Garner has no recollection of that conversation. She said the Town's contention is all uses have been unlawful since Mr. Bullock owned the property. Ms. Quattlebaum said the Town became aware of the

commercial use in 2020 because of the complaint and those complaints are irrelevant to this matter because the use is not permitted for the property. Ms. Quattlebaum addressed the "laches and estoppel" argument that Mr. Wheatly referred to. She stated the Board will probably hear testimony that the Town knew or should have known what the property was being used for at 119 Willow. She said the Town did not know and that Mr. Garner does not recall the conversation with Mr. Wooten. Ms. Quattlebaum stated that the permit that was issued was actually issued to an electrical contractor for minor repairs to an existing electrical service and that it is the Town's practice that the contractor and not the leasee get the permit and having electricity at that building would not be inconsistent with the uses in that R8 District. Ms. Quattlebaum stated that there was nothing about that that would have put the Town on notice as to the use at this property being unlawful. She said that prior to 2017 all uses were commercial service but also unlawful. Ms. Quattlebaum said that if the use had been for personal storage there would not have been a violation but the lease of the property for commercial storage makes this a violation. She stated that the property is at the end of a dead end street surrounded by vegetation and it is hard to see from the road, so there was nothing that would have put the Town on alert. She stated this a simple case of unlawful use since Mr. Bullock has owned this property at 119 Willow in clear violation of the Town's zoning laws, there is no reason the Town should have known, no zoning permits and the Town in fact did not have knowledge of this property until the complaints in 2020, at which time the Town took action as appropriate under the LDO and issued the notice of violation, which we contend should be upheld.

Chair Terwilliger moved to the appellant team to present their evidence. Mr. Wheatly stated that they would like to call as their first witness Mr. Kyle Garner. Mr. Wheatly asked Mr. Garner if he was in person in charge of keeping up with the zoning ordinances for the Town of Beaufort and Mr. Garner stated yes. He also asked Mr. Garner if he was familiar with those ordinances and Mr. Garner stated yes. Mr. Wheatly asked Mr. Garner if had checked to see if there was a building permit for the structure at Willow Street. Mr. Garner stated that staff did look for that and that staff did not find one. Mr. Wheatley asked Mr. Garner what type of use this building would be and Mr. Garner stated an accessory use. Mr. Wheatly then asked if a primary residence was needed for it to be an accessory use and Mr. Garner stated yes. Mr. Wheatly then stated that didn't in occur in 1982 did it and Mr. Garner said he could not speak to what happened in 1982 but based on what was found, no. Mr. Wheatly asked Mr. Garner if it was then an illegal structure. Mr. Garner stated based on 1982 and unless it was used for the property owner's storage, the answer would be yes. Mr. Wheatly posed the question to Mr. Garner that at the time of issuance of the permit there must have been some question as to whether this property was zoned or not. Ms. Quattlebaum objected stating that Mr. Garner had testified that they had not found a permit. Chair Terwilliger asked Mr. Taylor what needed to be done. Mr. Taylor stated that the Board would need listen to the objection and rule on it as a Board and it could either be sustained or override the objection and allow it to go forward. Mr. Wheatly asked what office the electrical permit would go through. Mr. Garner stated through the Inspections office. Mr. Wheatly asked Mr. Garner about Mr. Wooten applying for a permit. Mr. Garner stated that he didn't know if Mr. Wooten had but Doug Lewis, an electrical contractor did, because State Law requires that the contractor apply and sign. Mr. Garner explained that the only thing that he would check would be the zoning and if it said minor repair they would typically sign off on it. Mr. Wheatly asked Mr. Garner if he has seen Exhibit 3 Permit Detail and Mr. Garner stated yes. Mr. Wheatly said at the bottom of it there is an inspector listed, Mike Mor, Mr. Garner stated that the inspector was Mr. Mike Morris. Mr. Wheatly asked Mr. Garner if Mr. Morris worked for the Town and Mr. Garner stated yes and that Mr. Morris went out and did an inspection. Mr. Wheatly stated that Mr. Morris went out there by a request from someone, Mr. Garner stated for the electrical work. Mr. Wheatly then stated to Mr. Garner that he would have been involved in that process to find out was was going on in the building and Mr. Garner stated no, not in the typical process. Mr. Wheatly asked Mr. Garner if he had any memory of talking to Mr. Wooten and Mr. Garner said he did not. Mr. Wheatly said as a result of Mr. Morris going out to inspect the property would he have not seen what was

going on and Mr. Garner said he could not speak to what Mr. Morris saw, he said all he could speak to was the electrical inspection. Mr. Wheatly said the building was full of diesel equipment wouldn't he have seen it. Ms. Quattlebaum objected based on it being speculation. Mr. Garner said he could not speak to what Mr. Morris saw or did not see 11 years ago. Mr. Wheatly asked Mr. Garner if he was aware that the Town was sending equipment to Mr. Wooten and Mr. Garner stated no, that was new to him tonight. Mr. Wheatly asked if that would have put Mr. Garner on notice. Ms. Quattlebaum objected on the basis of speculation. Mr. Wheatly restated his statement, that if the Town was taking equipment out there to be serviced by Mr. Wooten and Town people are out there, wouldn't it put you on notice? Ms. Quattlebaum stated same objection. Mr. Garner stated that he can say he did not know Town vehicles were being repaired by Mr. Wooten. Mr. Wheatly proposed to Mr. Garner the question that if his law office rented from Mr. Bullock to store files would it be illegal. Mr. Garner stated that Mr. Wheatly's office is in a business district. Mr. Wheatly wanted to clarify that if he wanted to store files on Willow Street it wouldn't be illegal? Ms. Quattlebaum objected on the grounds of relevance to this hearing. Mr. Wheatly stated he felt it was relevant. Mr. Taylor explained what the Boards charge was at this point. Chair Terwilliger polled the members to see where they stood, Board Member Reeves, Board Member Oliver, Board Member Evans and Chair Terwilliger all found it to be irrelevant to the hearing. Mr. Taylor said with this the objection was sustained. Mr. Wheatly asked Mr. Garner if any storage that is there by a business is illegal and Mr. Garner answered yes. Mr. Garner said the owner could store personal stuff in the building and the owner could rent to someone to store their stuff so long as it was not a commercial activity. Mr. Wheatly asked was would rise to "activity". Mr. Garner said employees, vehicles and anything of that nature. Mr. Wheatly asked what would be the level of activity that would raise it to be illegal. Ms. Quattlebaum objected on the basis to the form of the question not being clear. Mr. Wheatly restated the question and asked what would be the degree of activity that would make it illegal. Mr. Garner stated that the traffic could be looked at, commercial businesses usually generate more traffic but there is no clear cut rule.

Ms. Quattlebaum had a few questions for Mr. Garner. She asked Mr. Garner if in his opinion the commercial landscaping business at 119 Willow was illegal and Mr. Garner stated it is his factual opinion that it is an illegal operation. Mr. Garner said the facts are based on 119 Willow is an R8 Zoning District, has been since 1977 and going back into the Ordinance prior to the one that is used today, those commercial uses were not allowed for that including the landscape business that is operating there. Ms. Quattlebaum asked Mr. Garner if he had reviewed every ordinance and zoning map to come to this conclusion that the property has been zoned R8 since 1977 and Mr. Garner stated he could only say as far back as 1977 but he could not say what was prior to then. Ms. Quattlebaum asked Mr. Garner if it was his understanding that the commercial landscaping business started in 2017 and that is first came to the attention of the Town in 2020 and he stated yes. Ms. Quattlebaum stated at that time the current ordinance applied and Mr. Garner stated yes. Ms. Quattlebaum asked Mr. Garner if he had reviewed the record of the appeal in this case and he stated yes. She then asked if he had found any evidence that there had been a lawful commercial use at 119 Willow since it has been owned by Mr. Bullock and Mr. Garner said no. She asked Mr. Garner if in his opinion there was issue of a prior nonconforming use in this case and he stated no. Ms. Quattlebaum asked him why and he said that none of them had zoning permits and they were not lawful or allowed in the R8 zoning district. Ms. Quattlebaum asked Mr. Garner if there were any prior ordinances that had been repealed that would have allowed it to be legal at one time and Mr. Garner stated no, not in this area. Ms. Quattlebaum asked Mr. Garner about Mr. Morris and his inspection of the property. Mr. Garner stated he is not an electrical inspector and not qualified to answer any questions on that. Ms. Quattlebaum clarified that Mr. Garner did not recall a conversation with Mr. Wooten and Mr. Garner stated that he did not. Ms. Quattlebaum asked Mr. Garner the typical practice for someone asking about a "use" of a property. Mr. Garner said usually through email now, by replying what uses are allowed and zoning compliance. He said they look at what is permitted as well as special uses. Mr. Garner stated he did not remember giving Mr. Wooten

or anyone verbal permission to run a commercial business. Ms. Quattlebaum asked Mr. Garner when he first became aware that the building existed. Mr. Garner stated about five years ago. She asked Mr. Garner if he had thoughts that the property had been subdivided and he stated he did feel the property had been subdivided. Ms. Quattlebaum asked Mr. Garner if his department had any zoning permits for this property, he stated no. She asked him if his department received any complaints on the use of this property prior to 2020 and he stated no. Ms. Quattlebaum asked Mr. Garner about any signage on the property announcing commercial property, past or present, to his knowledge, and he stated no. Mr. Garner stated personal storage would be permitted in R8 and commercial storage would be acceptable if the owner of the property owned what was being stored. Mr. Garner stated that as part of his determination he used past ordinances but he also used the County's GIS system to look back at the property to determine when the structure appeared on the property.

Mr. Wheatly stated he wanted to ask Mr. Garner a few more questions. Ms. Quattlebaum objected and asked that any questioning be limited to matters raised in the cross-examination and not any new matters. Mr. Taylor stated that if there was additional evidence that the Board felt they needed to hear they could. Chair Terwilliger said to proceed. Mr. Wheatly asked Mr. Garner about Exhibit #3 not having a signature and Mr. Garner stated that was correct. Mr. Wheatly said that information was received at his request. Mr. Garner said yes, that a copy was generated from the Town's computer system and sent to Mr. Wheatly. Mr. Garner stated that additional information was looked for in the Town's computer software program. Mr. Wheatly stated to Mr. Garner that there was not a signed copy and that he was assuming that Doug Lewis had signed it. Mr. Garner said it would be more than just assuming because on a routine basis, in order to get power restored an electrician has to do the work and they have to put their license number on it. Mr. Wheatly asked Mr. Garner to clarify that if Mr. Bernaeur owned the property he would be able to do what he is doing now. Mr. Garner stated no, he could store personal property but he could not operate a business out of it.

Ms. Quattlebaum asked Mr. Garner if he or his department had any knowledge of commercial use prior to 2020 or any complaints and he stated no.

Chair Terwilliger asked Mr. Taylor if it was appropriate to ask questions of the appellate and Mr. Taylor stated they could ask questions of the witness. Chair Terwilliger polled each member to see if there were any questions for Mr. Garner. There were no questions for Mr. Garner.

Chair Terwilliger asked Mr. Wheatly who he wanted to call next. Mr. Wheatly called Mr. Eason Wooten. Mr. Wheatly wanted to verify that the Affidavits were part of the official record. Chair Terwilliger stated they were part of the official record that he received from the Town. Mr. Wheatly proceeded with his questions of Mr. Wooten. Mr. Wheatly asked Mr. Wooten his address and Mr. Wooten stated 1407 Live Oak Street. Mr. Wheatly asked Mr. Wooten if he was familiar with the property at 119 Willow Street and when he first learned of this property. Mr. Wooten stated he was and he became aware of the property in the winter of 2010. Mr. Wheatly asked Mr. Wooten to describe the property. Mr. Wooten said it was an empty garage with vegetation around it. Mr. Wheatly asked Mr. Wooten to tell the Board what his business is. Mr. Wooten stated that he does diesel, heavy equipment and hydraulic repair and he stated that the majority of the business is at the customer's job site. Mr. Wooten stated he made arrangements to rent the property from Mr. Bullock. Mr. Wheatly asked Mr. Wooten what efforts he made to get electricity restored to the building. Mr. Wooten stated he went to the Town of Beaufort and asked what he needed to do. He stated he was directed to Mr. Garner and he went to Mr. Garner's office and had a conversation with him about what he intended to do. Mr. Wheatly asked Mr. Wooten what he told Mr. Garner. Mr. Wooten said he told Mr. Garner that he had a diesel repair business and that the majority of the work was on the customer's job site but he would be storing stuff on the site and occasionally working there if it was raining or bad weather. Mr. Wheatly asked Mr. Wooten how Mr. Garner responded. Mr. Wooten stated that Mr. Garner said he felt it would

be no problem and that if he needed more in the future to come back to see him. Mr. Wooten said that Mr. Garner would “help me find somewhere else to work”. Ms. Quattlebaum stated she was going to enter a running objection to this line of questioning as this is hearsay. Mr. Wooten stated this was not hearsay, this is under oath. Mr. Wheatly asked Mr. Wooten what he talked with Mr. Garner about concerning the electrical permit. Mr. Wooten stated he asked Mr. Garner what he needed to do to get power turned on. Mr. Wooten stated that Mr. Garner told him he needed to get an electrical contractor to get a permit. To do the work and the the power company would not turn on the power without it. Mr. Wooten stated he then asked Mr. Garner for a permit and that he asked Mr. Bullock who he used to do electrical repairs. Mr. Wooten said the Town sent the inspector to the building to tell him what needed to be done, the contractor went to the Town of Beaufort once the repairs were done and the inspector came back to sign off on the permit to be sent to the power company. Mr. Wheatly asked Mr. Wooten if he sent it to the power company and Mr. Wooten stated he did not remember but the power was turned on in the name of Eason Wooten. Mr. Wooten stated that when the inspector came out he already had equipment in the building because they had been there for a little while before they got power. He said when the inspector came they basically had the building full of engines and parts. Mr. Wheatly asked Mr. Wooten if he had ever repaired any of the Town of Beaufort's equipment and Mr. Wooten stated that he had many times, 10 to 15 times. He stated that he dealt with Mark Eakes from the Town. Mr. Wheatly asked Mr. Wooten if anyone from the Town ever said anything to him about running an illegal operation at the property he was renting from Mr. Bullock and Mr. Wooten stated no. Mr. Wooten said he left the property in the spring of 2017 but he was completely out in June or July of 2017. Mr. Wooten stated that Mr. Bernaeur come by the building when his equipment was still in the building because it took him a couple of months to get everything moved to his shop in Morehead.

Ms. Quattlebaum had questions for Mr. Wooten. She asked him if he did most of his work for customers on site and he stated he did. She then asked him if he did any repair work at 119 Willow and he said he did. Ms. Quattlebaum asked Mr. Wooten where he worked on the Town's vehicles. Mr. Wooten stated he worked on them in his shop and at the Town of Beaufort's shop. Ms. Quattlebaum asked Mr. Wooten how many times the Town brought equipment to his shop and he said about half of the time. Ms. Quattlebaum asked Mr. Wooten if he had any record of those repairs and Mr. Wooten stated that he is sure he has the invoices because the Town of Beaufort paid him. Ms. Quattlebaum asked Mr. Wooten if he had provided those at any point during this proceeding and Mr. Wooten stated no. Ms. Quattlebaum asked Mr. Wooten if there was any reason that he didn't mention this in the Affidavit that he gave. He stated he was never asked the question until tonight. Ms. Quattlebaum asked him if there was anyone, besides Mark Eakes, from the Town of Beaufort that he worked with. Mr. Eason said the lead mechanic who works at the State Port now. Mr. Wooten stated that he started his move to Morehead in January 2017. Mr. Wooten stated that Doug Lewis is the contractor that did the electrical work. Mr. Wooten testified that the information pertaining to working on Town equipment should be on his computer at his shop. Mr. Wooten stated he did not apply for a zoning permit for the property.

Chair Terwilliger stated he was going to poll the Board members to see if they had any questions for Mr. Wooten and there were not questions from the members nor Mr. Taylor.

Mr. Wheatly called Corey Bernaeur as a witness. Mr. Bernaeur provided his address 104 Olga Road and stated that he owns a landscaping business. Mr. Wheatly asked Mr. Bernaeur to describe his business especially his office and main operations. Mr. Bernaeur stated his office is at his home at 104 Olga Road and that he stores his equipment at 119 Willow Street. Mr. Bernaeur stated that he does not receive customers nor does he have a sign at 119 Willow Street. Mr. Wheatly asked Mr. Bernaeur if he gets deliveries from anyone at 119 Willow Street and Mr. Bernaeur stated he did not. Mr. Wheatly asked Mr. Bernaeur if he gets his deliveries and talk to his customers at Olga Road. Mr. Bernaeur stated that he gets deliveries to his house and his contact with his customers is on the phone or at their home. Mr. Wheatly asked Mr. Bernaeur who is primary customer is at this time and Mr.

Bernaer stated it is the new Beau Coast Subdivision on Lennoxville Road. Mr. Wheatly asked Mr. Bernaer the route he would take to get to Beau Coast from 119 Willow Street. Mr. Bernaer stated he would go west on Willow Street and south on Carteret Avenue and head east on Lennoxville Road. Mr. Wheatly asked Mr. Bernaer about the videos and he asked him if any of the vehicles belonged to him. Mr. Bernaer stated that he did own a vehicle that was in front of the Tillett house approximately 5 to 6 seconds. Mr. Bernaer stated he provided an Affidavit and everything in it is true and correct. Mr. Bernaer stated he knew of the property before 2017 because a friend of his worked for Mystery Tour Boats and he had been there previously but as far as him renting the building it was 2017. Mr. Bernaer stated when he went to lease the property he went to look at it and Mr. Wooten's equipment was still in the building and the power was on. Mr. Wheatly asked Mr. Bernaer if he had any reason to think that Mr. Wooten was running an illegal business out of the building. Ms. Quattlebaum objected due to this being out of the witness's scope of knowledge. Mr. Taylor explained the objection and Mr. Wheatly rephrased the question. Mr. Wheatly then asked Mr. Bernaer if he saw anything on the property that would lead him to believe that there was some type of illegal activity. Ms. Quattlebaum objected again stating relevance and that it is outside of the witness's scope of knowledge. Mr. Taylor said the objection has come forward as to whether you need to hear the answer to this or do you move forward. Chair Terwilliger polled the members and it was unanimous that the answer to the question was not necessary to proceed so the objection was upheld. Mr. Wheatly asked Mr. Bernaer if the activity he observed was a commercial or business activity and Mr. Bernaer stated it was. Mr. Wheatly asked Mr. Bernaer if he knew how long the business existed at 119 Willow Street. Ms. Quattlebaum objected as to relevance, she stated what the witness knew is not relevant to this proceeding. Chair Terwilliger asked Mr. Wheatly if he wanted to rephrase or if he wanted the Board to be polled. Mr. Wheatly stated he wanted to be heard. Mr. Wheatly stated that one of the issues that is going to have to be determined by you and the other board members is whether or not at the time Mr. Bernaer went there at the time and saw this activity before he leased the business, if there was anything that would put him on notice that a business or commercial activity was not allowed. Mr. Wheatly stated that is the purpose of the point he is trying to get across. Ms. Quattlebaum responded that whether or not Mr. Bernaer knew or not the previous purpose for the property is unlawful has no relevance to this proceeding. Mr. Wheatly said it is important to him with the theories he is putting forth and he said he would like to have the answer in the record, if you don't wish to consider it that would be up to you. Chair Terwilliger polled the members of the Board and no one felt it was necessary to hear the answer to the question and the objection was upheld as stated. Mr. Wheatly asked Chair Terwilliger to ask Mr. Taylor if it would be permissible to put the answer on the record. Mr. Taylor said it could be in the record but you do not have to give consideration to it if you feel it is irrelevant. Chair Terwilliger polled the members to see what they think. Board Member Reeves, in the record without consideration, Board Member Oliver, in the record, Board Member Evans, in the record, and Chair Terwilliger, in the record without consideration. Mr. Wheatly stated to Mr. Bernaer that he could answer the question if anything put him on notice that this was an illegal operation and he stated there was not. Mr. Bernaer stated there are no signs, a bathroom or a telephone at 119 Willow. Mr. Bernaer arrived between 6:45 and 7:00 in the morning. He stated he has three employees and that the number of employees fluctuates between the season between two and five. Mr. Bernaer stated they clock out promptly at 3:30 everyday and they vary rarely work on Saturdays, maybe 5 times a day and they don't work on Sundays. Mr. Bernaer stated that the email that is in the record concerning Sunday activity is false. Mr. Bernaer stated that he has looked at other places he could move his business and that he has not been able to find anything. He stated if he had known there was a zoning issue he would have never rented it. Mr. Bernaer said it would be a hardship to have to leave and go somewhere else. He stated he has nowhere else to go and that he has been looking. Mr. Wheatly asked Mr. Bernaer if the rent at other places was cost prohibitive. Ms. Quattlebaum objected as to relevance. Mr. Taylor stated the objection is to the testimony and does it have anything to do with the Board making a determination and if the Board says no then that ends this line of testimony. Chair Terwilliger polled the Board members. All of

the members voted that it was not relevant. Mr. Bernaeur stated he was not aware of any place available for his business.

Ms. Quattlebaum had a few questions for Mr. Bernaeur. Ms. Quattlebaum asked Mr. Bernaeur about his testimony concerning if he knew that a business couldn't be run from the property that he would not rent it and he said that was correct. Ms. Quattlebaum asked him if he had checked on the zoning. Mr. Bernaeur stated he did not because he felt he didn't need to due to a business operating there. Ms. Quattlebaum asked Mr. Bernaeur if he called Planning and Inspections at the Town of Beaufort and ask any questions and he said he did not. She asked him if he applied for a zoning permit for his business and he stated he did not. Ms. Quattlebaum asked Mr. Bernaeur if his employees ever report to 104 Olga Road for work. Mr. Bernaeur said they come there to work but not to report to work. She clarified that the report to 119 Willow to start work and Mr. Bernaeur stated most of the time. Ms. Quattlebaum clarified that the employees report to no other place to work, that they work Monday through Friday and some Saturdays, the company has four vehicles and a dump truck that is rarely at 119 Willow and Mr. Bernaeur stated that is correct. Chair Terwilliger polled the Board to see if they had any questions. Board Member Reeve asked Mr. Bernaeur what his principle office address was. Mr. Bernaeur stated it was 104 Olga Road. She asked him if he was a registered business with the State of North Carolina and he said yes. She asked Mr. Bernaeur what addresses he provided to the State. He said he also has a PO Box. She asked him what he listed for his principle office and regular office. Mr. Bernaeur said it was originally 106D Professional Park Drive. She asked him what his most recent filing was with the Secretary of the State for his principle office and his regular office and he stated that he would have to look at it. She asked him if it differs from the one that was given previously and he stated he didn't think so. Board Member Reeves stated that the point she has been hearing that he is not operating a business out of there, he uses his home address but public information that is readily available does give his principle and regular office address as 119 Willow. Mr. Bernaeur stated he does not get any mail or deliveries there. Board Member Reeves stated she was not disputing that but this is how you are registered with the Secretary of the State for your business so that leaves them to believe that is where you operate from. Mr. Taylor stated that the questioned has been asked and answered and you have discussed the matter in cam with the Board. Board Member Oliver, Board Member Evans and Chair Terwilliger did not have any questions. Chair Terwilliger asked Mr. Taylor if he had any questions for Mr. Bernaeur and he did not.

Mr. Wheatly called Michael Ricks. Mr. Ricks stated that he lives at 112 Willow Street and it is directly across from 119 Willow Street. Mr. Ricks stated he has lived at this address since 1974. Mr. Taylor asked Mr. Ricks to speak up. Mr. Ricks stated he grew up on Third Street. Mr. Wheatly asked Mr. Ricks if his sister and brother-in-law purchased the property at 119 Willow and he stated yes, around 1982. Mr. Wheatly asked Mr. Ricks if he built the garage structure that is currently at issue. Mr. Ricks stated he did in 1982. Mr. Wheatly asked him if he got a building permit for it and Mr. Ricks said his brother-in-law got it and he built the building. Mr. Wheatly asked Mr. Ricks what his brother-in-law did in that structure. Ms. Quattlebaum objected based on relevance. Chair Terwilliger stated there was an objection due to relevance. He asked Mr. Wheatly if he would like to rephrase or did he want the Board to be polled. Mr. Wheatly stated he thinks he can short cut it. Mr. Wheatly stated to Mr. Ricks that he had before him Exhibit #4. He asked Mr. Ricks if that Affidavit was true to the best of his knowledge. Mr. Ricks stated it was and the only thing that had changed was he was now 76 years old but the rest is true to his knowledge. Mr. Wheatly asked that the Affidavit be accepted into the record. Chair Terwilliger stated that it is already part of the record that they had received.

Ms. Quattlebaum had a few questions for Mr. Ricks. She asked Mr. Ricks if he lived across the street and he said he did. Mr. Ricks agreed that the property is pretty hidden. He stated he has seen the activity of Mr. Bernaeur's business.

Chair Terwilliger polled the Board to see if they had any questions and there were no questions from the Board.

Mr. Wheatly stated he had Mr. Thomas Bullock. Mr. Bullock stated his address as 209 George Street. Mr. Wheatly asked Mr. Bullock if he had signed an Affidavit and Mr. Bullock stated he had. Mr. Wheatly asked that the Affidavit be considered as part of the record and Chair Terwilliger stated so accepted.

Ms. Quattlebaum had a few questions for Mr. Bullock. Ms. Quattlebaum asked Mr. Bullock if he received payment for all of the leases that were stated in his Affidavit and he stated that he did. Ms. Quattlebaum referred to paragraph 8 in Mr. Bullock's Affidavit concerning a conversation between Mr. Wooten and Mr. Garner and if he had first hand knowledge of this conversation and Mr. Bullock stated that he didn't. She also asked Mr. Bullock if he had a conversation with Mr. Garner concerning the zoning or appropriate zoning and he stated that he had not. Ms. Quattlebaum asked Mr. Bullock about the heavy vegetation around the property and he said that was correct. Ms. Quattlebaum asked Mr. Bullock if he was aware of any signs ever at the property and he stated he wasn't and she also asked him if he had ever applied for a zoning permit and he said he had not. Chair Terwilliger polled the members of the Board and they did not have any questions for Mr. Bullock. Mr. Taylor did not have any questions for Mr. Bullock.

Chair Terwilliger asked Mr. Wheatly if there were anymore evidence or witnesses on behalf of the appellant. Mr. Wheatly stated no but he wanted to make sure that everything previously submitted is part of the record and stated that they rest their case.

Mr. Nelson said that since Mr. Wheatly is trying to admit everything that just happened he wanted to know if there was any objection from the Town. Ms. Quattlebaum stated that the Town did not object to the Affidavits that have been verified but she wanted to reserve the right, should the matter go to appeal, to argue anything regarding hearsay in the Affidavits.

Chair Terwilliger turned to the Town to present. Ms. Quattlebaum stated the only witness was Mr. Garner and we have already had the opportunity to speak with him along with Mr. Bullock's witnesses.

Chair Terwilliger opened for closing arguments. Mr. Wheatly waived to let the Town go first and then do a rebuttal.

Ms. Quattlebaum stated that a lot of issues had been discussed that are just not relevant to this matter. She stated that the issue at hand is whether or not this property is being used for commercial which is not permitted in an R8 District. She said that testimony had been that employees show up for work everyday, come back for lunch and return at the end of the day, clearly it is being used as a business. She stated that what Mr. Bernaeur knew or didn't know about it has no relevance. Ms. Quattlebaum said this matter for issue is whether or not this use in an R8 is inappropriate, it's illegal and it is unlawful rather. The testimony clearly shows that a commercial landscaping business is being run out of there and there is no other location for the business so it is clearly being used outside of the scope that is permissible. Ms. Quattlebaum stated regarding the other matters made in opening by Mr. Wheatly, latches and estoppel that has to do with what the Town knew. She stated that she anticipates that Mr. Wheatly will make the argument that the Town knew the property was being used for commercial purposes prior to Mr. Bernaeur. She said that as soon as the Town was aware of Mr. Bernaeur's use, based on the complaints received, the Town issued a Notice of Violation, so the Town took action as soon as the Town knew. She stated that it was not relevant what any of the witnesses knew what it was being used for, that it was not relevant to the determination that needs to be made by the Board. Ms. Quattlebaum said that Mr. Wooten had stated that he had done maintenance for Town vehicles but that did not impute knowledge on behalf of the Town but even if it did, it was a prior use and not the reason for this hearing and why they are here now. She said that even if that was an issue it wasn't in the Affidavit he gave, give any records or mention it before this hearing tonight and he stated that the majority of the work was done elsewhere and not on site, so we contend that did not put the Town on notice. Ms. Quattlebaum said it is not disputed that the property is heavily vegetated and it is hard to see the building on the property. She said that as soon as the Town was put on notice, they issued a Notice of Violation. Ms. Quattlebaum

stated there is no issue of pre-existing non-conforming use. None of the uses were lawful or approved at any time and none of the uses were sanctioned by the Ordinance that was in existence at the time use. She stated that Mr. Garner's testimony was that this had been R8 since 1977, consistently. She said that the Town feels this is straight forward and the use is unlawful according to the Town's Zoning Regulations and that the Town had no knowledge until 2020 when it did take appropriate action and that the request is to uphold the Notice of Violation in this case.

Mr. Wheatly stated that he had prefaced his earlier remarks with "latches and estoppel". Mr. Wheatly stated that latches was appropriate due to the property being used as a business of sorts over the years. He stated that that "Notice to the Town", Plaintiffs Exhibit 3, which is the permit. Mr. Wheatly said they had talked about a Zoning Permit and that this was the best thing you could get. He said that this is the permit that Kyle Garner initiated and got. Mr. Wheatly said that although Mr. Garner could not remember what was said to Mr. Wooten, Mr. Wooten gave testimony of the conversation. Mr. Wheatly stated that this permit was issued, the property was inspected and the Town did nothing. He said as Mr. Wooten testified, equipment was there and Town trucks were being worked on at this site. Mr. Wheatly stated that the Town was on notice because of this. Mr. Wheatly said that Mr. Bernaeur went there for a place to rent, saw an ongoing business and thought that it was okay. He said that Mr. Bernaeur has been hurt by this as he has no where to go. Mr. Wheatly stated that under the doctrine of latches and estoppel the Town has no right to proceed. Mr. Wheatly asked if Mr. John Day was present for the hearing. Vice Chair Terwilliger stated that he did not believe that he was present. Mr. Wheatly stated he felt there was a requirement that he should be present and if not it is a breach of protocol that we would like to point out. He said that they would like to ask the Board to find this as not an illegal activity and that after all this time to allow this to continue.

Chair Terwilliger had a question for Mr. Taylor concerning Mr. Day being present. Mr. Taylor stated that the person making the decision or the person currently occupying that position. He stated that the original decision was made by Mr. Garner and that the decision was appealed to Mr. Day. Mr. Taylor said if the decision you are working on is the one made by Mr. Garner there is no problem but if the decision you are working on is the one that was made by Mr. Day he should be here for the hearing. Ms. Quattlebaum agreed that this is an appeal of the original Notice of Violation and Mr. Garner is here. Mr. Taylor stated that Mr. Wheatly thinks that Mr. Day should be here but that is up to the Board. Chair Terwilliger polled the members to see if they felt Mr. Day should be present and four of four members present stated they did not feel his presence was necessary and that Mr. Garner being present was sufficient and met the Statute and the Law.

Chair Terwilliger stated that before he closed the hearing he wanted to ask one more time if there was any relevant comments or questions from the parties, witnesses, town staff, board attorney or the Board. There were none and the public hearing was closed.

Chair Terwilliger stated that he was going to open Board discussion but before he did he wanted to make sure what the Board was being asked to do. He stated from his perspective the Board was being asked to look at the order that was issued by Mr. Garner back in 2020 and then reaffirmed by Mr. Day. He questioned the Boards actions on this as to, 1) agree the order was legal and that it should stand, 2) agree that the order should be overturned, or 3) agree that there should be modifications made to the order. Mr. Taylor agreed that those are the three options for the Board to consider.

Vice Chair Terwilliger polled the members individually starting with Board Member Reeves. Board Member Reeves stated that she upheld the positions of Mr. Garner and Mr. Day. She said the facts support the zoning and the proper land use of that area. She also said that she was sensitive to Mr. Bernaeur's situation but felt they needed to move forward and make sure the zoning in that area is consistent and contiguous with how it is planned. Board Member Reeves stated she felt that giving Mr. Bernaeur time to find another place would be good because she believed that he leased the property in good faith. Vice

Chair Terwilliger stated that the option of giving time to move could be addressed in the motion.

Board Member Oliver agreed with Board Member Reeves but she also had a few things to add. She stated that Mr. Bullock also needed to be considered as he is out as well with not being able to lease the property. Board Member Oliver stated that she felt there are things that need to be discussed concerning permitting, zoning or special use permits for Mr. Bullock to be able to continue the use of the building as he has for the last 26 years.

Board Member Evans stated that he agreed with the statements of the other Board Members and that he feels it reflects what Mr. Garner said in his testimony.

Mr. Taylor interjected and said that there had been three opinions on what needed to be done but no one has pointed to anything in the record and that needs to be done to support the outcome.

Vice Chair Terwilliger stated that he also agreed with the statements that were made but he had a few things to add. He stated that the Board was being asked to rule on the order from 2020 based on the then prevalent conditions on the property and the then prevalent uses. He said that during the hearing it was confirmed that the property is being used for a business. He also pointed out that a business can have more than one address, such as an address for the administration and an address for equipment and employees using that equipment check in and out of daily. With that he felt this supported the fact that a business is being run from that area. Vice Chair Terwilliger stated that those facts along with the fact the property is zoned R8 Residential and has been since 1977, makes it clear that the property should not be used for commercial purposes. He said those facts clearly support the order issued by Mr. Garner and that was supported by Mr. Day. Vice Chair Terwilliger stated that what happened prior to Mr. Bernaeur taking over the property in 2017 has no bearing on this matter because the Town had no knowledge if anything. He said that if someone was going to put their property up for commercial use it is the owner's responsibility to research and find out what can and cannot go there. He said the other point that was made was concerning Mr. Garner potentially having conversations with people about this property. Vice Chair Terwilliger stated that the problem with this was it was basically hearsay because there is no documented evidence to support it and none was put forth into evidence during the hearing. Vice Chair Terwilliger stated that based on the testimony heard that it was clear the property was being used for a commercial purpose, there were periodic comings and goings by employees that was stated by the owner of the business and the zoning that is on the record. He stated that he believes the order is reasonable and should stand as is and has been supported by John Day. Vice Chair Terwilliger said that was his opinion based on the presentation, evidence submitted and the arguments made.

Vice Chair Terwilliger asked the Board Members if they had anything to add. He said that one thing he does agree with is the hardship placed on Mr. Bernaeur if he has to relocate due to facilities being hard to find. He said that one of the ways they could construct this would be to uphold the order of Mr. Garner and give Mr. Bernaeur a time frame to find another location. Mr. Taylor stated that instead of the "conditions" they are used to setting the order would be modified to say it is effective as of and give a date. He said the Board would do a motion to uphold the determination of the Town and that it would become effective on a date that the Board would determine as reasonable.

Vice Chair Terwilliger polled the members. Board Member Reeves stated that she was thinking 90 days. Board Member Oliver agreed with time frames such as 60/90/120 days but wanted to know if something could be put in that would allow Mr. Bullock to get a special use permit. Mr. Taylor stated that Mr. Bullock would have to do that on his own.

Board Member Evans said that he feels that it should stand as is and that the only consideration would be to modify it to give him until the end of the month or 30 days.

Vice Chair Terwilliger stated that he felt that Mr. Bullock also needed some time for the transition due to the real-estate market for commercial and residential being crazy these

days. His thoughts were it needed to be more than 30 days and his thoughts were 90 to 120 days. He said after reading everything and hearing the testimony he feels that the onus is on the property owner to make themselves aware of the rules and regulations if they are going to rent it and he feels that the time is for Mr. Bernaeur to transition his business to a suitable location.

Vice Chair Terwilliger made the following motion, based upon the testimony heard by both parties, and the evidence, the Board move and approve upholding the order that was issued by the Town for the owner of the property to conform to the zoning as currently stated with them having the ability to have a 120 day grace period to convert the property back to the proper use. Mr. Taylor stated he was going to simply this, the Board upholds the determination of the Town, confirms the Notice of Violation, and modifies the order to the extent that there will be 120 days for them to come into full compliance with the Notice of Violation and the Order. Boar Member Evans made the second. Secretary Winn conducted a roll call vote and it was a four out of four unanimous vote to approve the motion of upholding the Notice of Violation and modifying the Order. Mr. Taylor stated that this will suspend any fees or fines until the 120 days are up.

Vice Chair Terwilliger stated that it is the order of the Board that the Towns Order in this matter is upheld with the stated modification. He said the parties will be provided a written order within 10 days of the hearing that will reflect the determination and findings of the Board.

Vice Chair Terwilliger closed the matter.

**Public Comment**

There was no public comments.

**Commission / Board Comments**

Vice Chair Terwilliger and Board Member Oliver welcomed new members Reeves and Evans. Board Members Reeves and Evans both stated thanked them and stated they both looked forward to working with the Board.

**Staff Comments**

There were no staff comments.

**Adjourn**

Board Member Reeve made the motion to Adjourn the April 27, 2021 Special Meeting of the Board of Adjustment. Board Member Evans made the second. A roll call vote was conducted with the members who were present, and the motion passed unanimously to adjourn the meeting.

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**Robert Terwilliger, Vice Chair**

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**Board Secretary**



**Town of Beaufort, NC**

701 Front St. - P.O. Box 390 - Beaufort, N.C. 28516  
252-728-2141 - 252-728-3982 fax - www.beaufortnc.org

**Town of Beaufort Board of Adjustment Regular Meeting  
6:00 P.M. September 27, 2021 – Via Zoom**

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**AGENDA CATEGORY:** New Business  
**SUBJECT:** Variance Request for 1107 Front Street

**BRIEF SUMMARY:**

Applicant is requesting a variance to allow for:

A reduction of side setback from 8’ feet to 2.7 feet (for a 5.3 foot encroachment) at a distance of 22 feet of length to the existing southwestern portion of the structure for a total area of approximately 116 sq. ft.

**REQUESTED ACTION:**

Conduct Evidentiary Hearing  
Decision on Request

**EXPECTED LENGTH OF PRESENTATION:**

15 Minutes (Presentation From Staff)

**SUBMITTED BY:**

Kyle Garner, AICP Planning Director

**BUDGET AMENDMENT REQUIRED:**

N/A

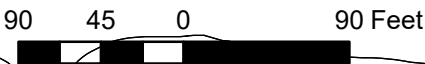
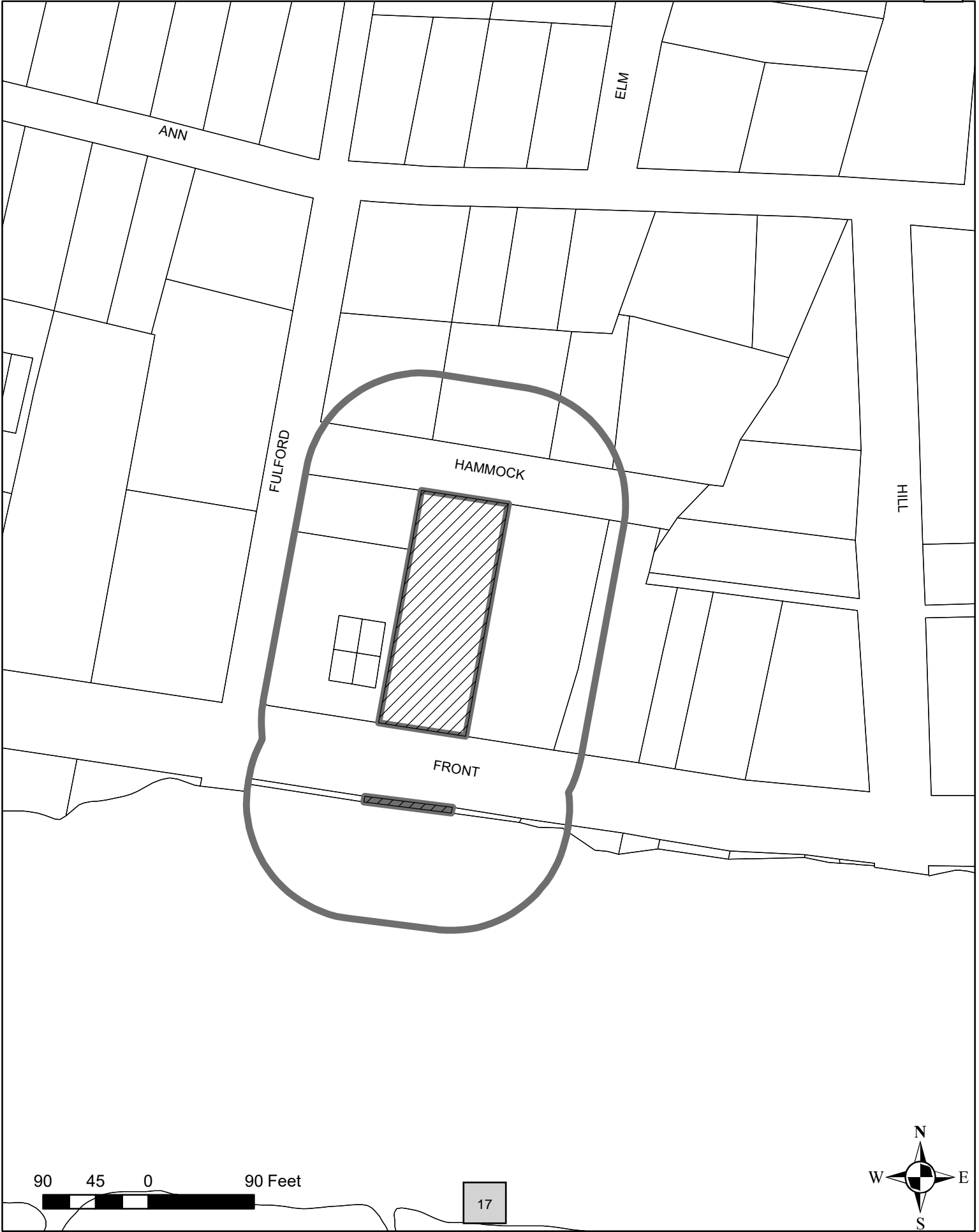


**SECTION 8. TABLE OF AREA, YARD, AND HEIGHT REQUIREMENTS**

District and Use	Minimum Lot Area (sq.ft.)	Minimum Lot Width (ft.)	Minimum Yards (ft.) Including Corner Lots			Maximum Building Height (ft)
			Front	Side	Rear	
R-8	8,000 sq. ft.	60 ft.	25ft. 20ft.	8ft.	25ft.	35ft.

**Facts:**

- The property is zoned R-8 (Residential 8).
- The property and structure have been in existence prior to adoption of any zoning standards.
- The existing structure is non-conforming encroaching 5.3 feet into the required side yard setback.



<u>OWNER</u>	<u>AIL_HOU</u>	<u>MAIL_ST</u>	<u>MAIL_CITY</u>	<u>L_S</u>	<u>MAIL_ZI</u>	<u>MAIL_ZI</u>	<u>MAIL_ADD2</u>
BEAUFORT B LLC	15	HALIDON ROAD	GREENVILLE	SC		29607	
BROWN,NORMAN S ETUX JOSEPHINE	2102	CANAL DR NW	WILSON	NC	1318	27893	
CLOUTIER,GILLES ETUX ELIZABETH	100	CHESTNUT ROAD	CHAPEL HILL	NC		27514	
FRONT STREET ESCAPE ETAL LLC	2030	WINDMILL DRIVE	SANFORD	NC		27330	
HAGLE,JOHN E ETUX PAULINE	1111	HAMMOCK LN	BEAUFORT	NC		28516	
HOFFMAN,WILLIAM H ETUX JOANN S	1034	VENTNOR PLACE	CARY	NC		27519	
HOLLAR,LARRY A JR ETUX CARLIN	2710	BITTING ROAD	WINSTON SALEM	NC		27104	
PUCKETT,STEVEN W ETUX RUTH B	104	FULFORD STREET	BEAUFORT	NC		28516	
ROSEBERRY,WILLIAM R ETUX ETAL	348	BUNCOMBE STREET	RALEIGH	NC		27609	
RUMFELT,JAMES M			SNOW CAMP	NC		27349	PO BOX 520
SASSER,STEVEN R	208	GLENDALE AVE	LA GRANGE	NC		28551	
TULLA BELLE LLC	1111	FRONT STREET	BEAUFORT	NC		28516	

**SECTION 21 Board of Adjustment**

The Board of Adjustment (BOA) is a “quasi-judicial” administrative body whose purpose is (i) to hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of this Ordinance; (ii) to issue variances as authorized by this section and state law; and, (iii) to issue special use permits when required by this Ordinance. The responsibilities of the BOA are authorized and set forth by N.C.G.S. 160A, Article 19 (3).

**A) Organization of the Board of Adjustment.**

1) Board Membership.

The BOA shall consist of five regular and two alternate members. Three regular and one alternate member shall reside within the corporate limits of the Town of Beaufort and be appointed by the Town’s Board of Commissioners (BOC). Two regular and one alternate member shall be appointed by the Carteret County Board of Commissioners (CC BOC) and shall reside within the Town’s extraterritorial jurisdiction (ETJ). If despite good faith efforts, enough residents of the ETJ cannot be found to fill the seats reserved for such residents, the CC BOC may appoint other residents of the county to fill these seats. If the CC BOC fails to appoint ETJ members needed within ninety days after receiving a resolution requesting such action from the Town, the BOC may make the necessary appointments.

2) Term Limits.

BOA regular members and alternate members shall be appointed to serve a three-year staggered term and members may continue to serve until their successors have been appointed. Members may be reappointed to successive terms without limitation. Vacant seats and unexpired terms shall be filled by the BOC or the CC BOC as necessary.

3) Removal from Board.

a) Regular BOA members may be removed by the BOC at any time for failure to attend three consecutive meetings or for failure to attend seventy-five percent (75%) of the meetings within any twelve month period or for any other good cause related to performance of duties. Such failure will constitute a voluntary resignation of the member. Upon the request of the member proposed for removal, the BOC shall hold a hearing on the removal before it becomes effective.

b) Alternate members may also be removed for repeated failure to attend or participate in meetings when requested to do so in accordance with BOA established procedures. Upon request of the alternate member proposed for removal, the Town’s BOC shall hold a hearing on the removal before it becomes effective.

c) If a regular member or alternate member moves outside their particular planning jurisdiction within the Town it shall constitute a resignation of the member from the BOA.

d) If for reasons other than mentioned herein a member resigns from the board, a written notice shall be delivered to the Town Clerk at the member’s earliest convenience.

4) ETJ Members Rights.

ETJ regular members shall have equal rights, privileges, and duties as town members and may vote on all matters considered by the board regardless of whether or not the property affected lies within their planning jurisdiction.

5) Notification of Absences.

Regular members shall promptly notify the board secretary if they are unable to attend or participate in an upcoming meeting. The secretary shall notify an alternate member to attend when necessary. Assignments shall be rotated among the alternate members. When seated, any alternate member in attendance shall have the same powers and duties as the regular member they replace, including the ability to constitute a quorum for the purpose of the meeting regardless of whether the alternate is a regular or ETJ member.

B) ***Meetings of the Board of Adjustment.***

- 1) The BOA shall establish a regular meeting schedule and shall meet frequently enough so the board can take action on the issues for which they are appointed.
- 2) All meetings of the board shall be open to the public and whenever feasible, the agenda for each board meeting shall be made available to the public at least three business days in advance of the meeting.
- 3) The minutes of all meetings and hearings of the BOA shall be retained by the board secretary or his/her designee and all minutes shall be a public record once adopted by the BOA. This shall include all findings of fact and decisions of the board.
- 4) The Chairman of the BOA will have the authority to cancel a meeting of the BOA when notified by the Planning and Inspections Department there is no business to be considered at the meeting.

C) ***Quorum.***

1) Quorum Requirements.

- a) A majority of the members of the BOA board in attendance shall constitute a quorum at all meetings of the BOA. A quorum for the Board of Adjustment shall consist of a minimum of four members of the board qualified to vote.
- b) All actions of the BOA shall be taken by majority vote, a quorum being present.

2) Withdrawal from Meeting.

Any member who has withdrawn from the meeting without being excused shall be counted as present for the purposes of determining whether a quorum is present.

D) ***Deciding Cases.***

1) Voting.

- a) The concurring vote of four-fifths of the board shall be necessary to grant a variance.
- b) A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.
- c) For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

2) Failure to Vote.

Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection D-3 of this section or has been allowed to withdraw from the meeting in accordance with subsection D-4 of this section.

3) Conflicts.

A member of the board shall not participate in or vote on any quasi-judicial matter in a manner which would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include but are not limited to the following:

- a) A member having a fixed opinion prior to hearing the matter which is not susceptible to change;
- b) A member having undisclosed ex-parte communications;
- c) A member having a close familial business, or other associational relationship with an affected person;
- d) A member having direct or indirect financial interest in the outcome of the matter.

4) Voting Procedures Due to Conflict.

If an objection is raised to a member's participation and the member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

5) Roll Call Vote.

A roll call vote shall be taken upon request of any member.

E) **Board of Adjustment Officers.**

1) Election of Officers.

- a) Officers will be elected during the first February meeting of the year of the BOA and by majority vote of its entire membership (excluding vacant seats).
- b) The board shall elect one of its members to serve as chairperson (chair) and preside over the board's meetings. The chair should always be one of the regular members. No chair may succeed them self for more than two consecutive terms.
- c) The board shall elect one member to serve as vice-chairperson (vice-chair). The vice-chair shall serve as acting chair in the chair's absence and at such times, he/she shall have the same powers and duties as the chair.
- d) A secretary will be appointed by majority vote of the members either from within its membership or outside. The secretary shall produce all necessary clerical items for the board including public notices, minutes, correspondence, etc. as directed by the chair.
- e) The persons so designated to fill these positions shall serve in these capacities for a term of one year. The officers may be eligible for reappointment.
- f) Vacancies may be filled for the unexpired terms of the chair and vice-chair only by majority vote of the board membership (excluding vacant seats).

2) Rules of Order.

The chair shall decide on all points of order and procedure consistent with the *The Zoning Board of Adjustment*, by Michael B. Brough and Philip P. Green, Jr., as updated; and the modified version of *Roberts Rules of Order*, as updated.

3) Chairpersons Rights.

- a) The chair or any member temporarily acting or appointed by the chair may administer oaths to witnesses coming before the board.
- b) The chair and vice-chair may take part in all deliberations and vote on all issues.

F) **Powers and Duties of Board of Adjustment.**

1) The BOA shall hear and decide:

*Land Development Ordinance for the Town of Beaufort*

- a) Appeals from and review of any order, decision, requirement, or determination made by the administrative official charged with the enforcement of this Ordinance, as provided in subsection H of this section.
  - b) Applications for variances, as provided in subsection I of this section.
  - c) Questions involving interpretations of the location boundary lines on the Official Zoning Map or ordinance text requirements as provided in subsection J of this section.
  - d) Any other matter the board is required to act upon by any other Town Ordinance or state law.
- 2) The board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this chapter.

**G) Public Notice of Hearings of the Board.**

- 1) Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property which is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land which is the subject of the hearing, and to all owners of parcels within 100 feet of such land, and to any other persons entitled to receive notice as provided by this section. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within the same time period, the planning staff shall also prominently post a notice of the hearing sign on the site which is the subject of the hearing or on an adjacent street or highway right-of-way. Such sign(s) shall be at least eighteen inches by twenty-four inches (18"x24") in dimension. The sign shall contain the following message:

**NOTICE**

This property is subject to a Zoning Hearing.

Contact Town Hall for more information at 252-728-2141.

Such sign may include additional information deemed relevant by the administrator of this Ordinance. If more than one contiguous lot or parcels of land are included in the variance application proposal, the Town may nonetheless post only one sign.

- 2) A public hearing shall be held by the BOA for an appeal, a variance, or an interpretation as described in subsection F of this section. A notice of the public hearing shall be given once a week for two successive calendar weeks and published in a newspaper having general circulation in Town. The notice shall be published the first time not less than ten days or not more than twenty-five days before the date affixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.
- 3) The person or persons mailing the notice of hearing pursuant to this section shall certify to the BOA the proper notice has been provided and such certificate shall be deemed conclusive in the absence of fraud.

**H) Appeals.**

1) Appeal Procedures.

- a) An appeal from any final order, decision, requirement, or determination of a Town official charged with the enforcement of this Ordinance may be taken to the BOA

*Land Development Ordinance for the Town of Beaufort*

by any person aggrieved. An appeal is taken by filing a written notice of appeal specifying the grounds thereof to the Town and the BOA. A notice of appeal shall be considered filed with the Town and the BOA when delivered to the Town’s Planning and Inspections Department, and the date and time of filing shall be entered on the notice of appeal by staff.

- b) An appeal must be made within thirty days after the date of the decision or order appealed from.
- c) Whenever an appeal is filed, Town staff shall forthwith transmit to the BOA all papers constituting the record relating to the action of the appeal.

2) Stay of the Appeal.

An appeal stays all actions by the Town official seeking enforcement of or compliance with the order or decision appealed from, unless the official certifies to the BOA, because of the facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the BOA or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the official.

3) Modifications to Appeals.

The BOA may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination which in its opinion should be made in the case before it. To this end, the board shall have all the powers of the officer from whom the appeal was taken.

D) ***Variances.***

The power of variances is to be sparingly exercised and only in rare instances and under exceptional circumstances and with due regard to the main purpose of this Ordinance: to preserve the property rights of others. No change in permitted uses may be authorized by variance.

1) Application Submittal.

An application for a variance shall be submitted to the BOA by filing a copy of the application with the Town.

2) Findings for the Variance.

When practical difficulties or unnecessary hardships would result from carrying out the strict letter of this Ordinance, the BOA shall have the power to vary or modify any of the regulations or provisions of the Ordinance so the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. A variance may be granted only upon an affirmative finding of the following:

- a) Unnecessary hardship would result from the strict application of this Chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
- b) 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;
- c) 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

*Land Development Ordinance for the Town of Beaufort*

may justify the granting of a variance shall not be regarded as a self-created hardship; and,

- d) The requested variance is consistent with the spirit, purpose, and intent of this Chapter, such that public safety is secured, and substantial justice is achieved.

**J) Interpretations.**

- 1) The BOA is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the zoning official, they shall be handled as provided in subsection H of this section.
- 2) An application for a map interpretation shall be submitted to the BOA by filing a copy of the application with the Town. The application shall contain sufficient information to enable the board to make the necessary interpretation.
- 3) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:
  - a) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines;
  - b) Boundaries indicated as approximately following lot lines in the Town or ETJ limits shall be construed as following such lines, limits, or boundaries;
  - c) Boundaries indicated as following shorelines shall be construed to follow such shorelines and in the event of a change in the shoreline shall be construed as continuing to follow such shorelines;
  - d) Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement using the scale of the Official Zoning Map; and,
  - e) Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply only to the portion of such streets or alleys added thereto by virtue of such vacation or abandonment.

**K) Burden of Proof in Appeals, Interpretations, and Variances.**

- 1) When an appeal is taken to the BOA in accordance with subsection H of this section, the appellant has the burden of proof and persuasion.
- 2) The applicant for a variance shall have the burden of proof and persuasion.

**L) Board Action on Appeals and Variances.**

1) Appeals.

With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include insofar as practicable, a statement of the specific reasons or findings of fact which support the motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption, a motion to uphold the decision appealed from shall be in order. This motion is adopted as the board's decision if supported by more than one-fifth of the board's voting membership in attendance. (excluding vacant seats)

2) Granting a Variance.

Before granting a variance, the BOA must take a separate vote and vote affirmatively by a four-fifths majority, on each of the four required findings stated in subsection I-2

*Land Development Ordinance for the Town of Beaufort*

of this section. A motion to make an affirmative finding on each of the requirements set forth in subsection I-2 of this section shall include a statement of the specific reasons or findings of fact supporting such motion.

3) Denying a Variance.

A motion to deny a variance shall be made if any one or more of the four required findings set forth in subsection I-2 of this section are not satisfied or if the application is incomplete. A motion to deny a variance shall include a statement of the specific reasons or findings of fact which were not met and therefore caused the denial of the variance. This motion is adopted as the board's decision if supported by more than one-fifth of the board's voting membership in attendance (excluding vacant seats).

M) ***Review of Board's Decisions.***

Every decision of the board shall be subject to review by the Superior Court by proceedings in the nature of certiorari. Any petition for review by the Court shall be filed with the Clerk of Superior Court within thirty days after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or the chairperson of the board at the time of its hearing of the case, whichever is later. The decision of the board should be delivered to the aggrieved party either by personal service, or by registered or certified mail.

N) ***Deadlines for Applications to the Board.***

All applications and supporting materials shall be submitted to the Town's Planning and Inspections Department fifteen business days prior to the next regularly scheduled BOA meeting. Informational packets shall be delivered to board members seven days prior to the scheduled meeting.

**SECTION 11 Nonconformities**

**A) Intent.**

Nonconforming situations may continue subject to certain limitations, until they are removed, discontinued, or made conforming. Nonconforming situations shall not be enlarged, expanded, extended, enhanced, or used as grounds for adding other prohibited structures or prohibited uses. Nonconforming uses are declared to be incompatible with permitted uses within the various zoning districts.

**B) Application.**

This Ordinance shall affect all land, structures, and uses of land and structures and shall apply as follows:

1) New Uses and Construction.

After the effective date of this Ordinance, all new uses, structures, and development shall comply with this Ordinance, including their specific zoning district regulations.

2) Conforming Uses and Structures.

Land, structures, and uses of land or structures which comply with this Ordinance including the zoning district regulations, may be continued provided any structural changes, additions, or changes in use must conform fully to this Ordinance.

3) Nonconforming Uses and Structures.

Nonconforming situations may be continued only subject to the limitations stated herein, and should eventually be discontinued under the provisions of this Ordinance.

**C) Continued Use of Nonconforming Property.**

Nonconforming properties may be continued in use as set forth below:

1) Nonconforming Lots of Record.

In any zoning district permitting residential dwellings by right, a residential dwelling and customary accessory building may be erected on any single nonconforming lot lawfully recorded before the adoption of this Ordinance or amendment hereto provided this single lot is not adjacent to another lot of record under the same ownership and, if combined, would allow for the meeting of all area and setback requirements established within this Ordinance. This provision shall apply if the single lot fails to meet the minimum lot size or width requirement of the zoning district. Yard space and other dimensional requirements of the zoning district shall continue to apply, however, variances of such requirements shall be obtained by action of the Board of Adjustment (BOA) except no petition for a variance is necessary if other yard spaces are met and the following setbacks are met:

**Table 11-1 Minimum Nonconforming Lot Requirements**

<i>Width – Lot of Record</i>	<i>Side Setback</i>	<i>Front Setback</i>
30-49 feet	5 feet	15 feet
50-59 feet	6 feet	15 feet
60-69 feet	7 feet	20 feet

2) Adjoining Lots.

When two or more lots with continuous frontage are in single ownership at any time after the adoption of this Ordinance and such lots are individually less than the

*Land Development Ordinance for the Town of Beaufort*

minimum area or width required in a district, such lots shall be considered as a single lot or several lots of required area and width (if sufficient land exists) and shall be combined to the extent necessary to achieve a lot or lots of the area and width required in the district. Such lots shall comply with all yard space and other dimensional requirements of the district.

**D) *Nonconforming Structure.***

A lawful structure which existed at the time of adoption or amendment of this Ordinance, or was grandfathered under the previous zoning ordinance, but which does not comply with this Ordinance by other restrictions relating to the structure, may be continued so long as it remains otherwise lawful, subject to the following limitations:

1) Enlargements, Alterations.

Nonconforming structures shall not be enlarged and shall not be altered in any way which increases their nonconformity, but may be altered to minimize their nonconformity.

2) Moving.

If nonconforming structures are moved off the lot or moved within the lot for any reason, they shall thereafter conform to the regulations of the Ordinance.

3) Repairs and Maintenance.

Ordinary maintenance, repairs, and alterations of a nonconforming structure are permitted provided they do not increase the area or the nonconformity. Normal maintenance, repairs, and alterations shall be considered work not exceeding fifty percent (50%) of the structure's replacement cost within any twelve-month consecutive period.

4) Deteriorated and Dilapidated Structures.

If any nonconforming structure becomes physically unsafe or unlawful due to lack of repairs or maintenance and is declared by an authorized official to be unsafe or unlawful by reason of its physical condition, the structure shall not be restored, repaired, or rebuilt except in conformity with this Ordinance. This shall not prevent strengthening or restoring to a basically safe condition of any unsafe building or part thereof directed by the authorized official charged with protecting public health or safety.

5) Substantially Damaged Structures.

If a nonconforming structure or nonconforming portion of a structure is damaged or destroyed by any means to an extent greater than fifty percent (50%) of its replacement cost at the time of the damage, it may be reconstructed only in conformity with this Ordinance.

6) Residential Exception.

When a single-family residential nonconforming structure is damaged by fire, flood, wind, or act of God, the structure may be repaired and restored to its pre-event dimensions on the pre-event footprint provided the structure meets all applicable building codes.

**E) *Nonconforming Uses.***

A use of land and/or structure which was lawful prior to the adoption of this Ordinance but which does not comply with the use regulations of this Ordinance, may be continued so long as it remains otherwise subject to the following provisions:

*Land Development Ordinance for the Town of Beaufort*

1) Extensions, Enlargements.

No nonconforming use of land or structures shall be enlarged, expanded, increased, or extended beyond the floor space and land area occupied or be carried on in a more intensive manner than existed at the time of the adoption of this Ordinance, except a nonconforming use may be extended within a structure to any parts already clearly arranged and designed for such use.

2) Relocation on Lot.

No nonconforming use of land shall be relocated or significantly rearranged in whole or in part on the same lot unless it thereafter conforms to this Ordinance.

3) Discontinuance.

If active operation of a nonconforming use is discontinued for any reason for a continuous period of one hundred eighty days or superseded at any time by a permitted use, any subsequent use of the land shall conform fully to this Ordinance.

4) Changes of Use.

A nonconforming use of land (only) shall not be changed to any use other than a use permitted in the zoning district. A nonconforming use of a structure and premises may be changed to another nonconforming use if:

- a) No significant structural alterations are made; and,
- b) The approved new use is more in character with the uses normally permitted in the zoning district than the previous nonconforming use.

5) Deteriorated and Dilapidated Structures.

If a structure or part thereof occupied by a nonconforming use is damaged, destroyed, or becomes deteriorated to an extent greater than fifty percent (50%) of its replacement cost at the time of damage or discovery of deterioration, the structure may not be repaired for or to a nonconforming use.

6) Uses Permitted as Special Exceptions.

Any use which is permitted as a special exception in a district shall not be considered a nonconforming use but shall, without the necessity of further action, be considered a conforming use. This provision shall not diminish the right of the Board of Commissioners (BOC) to impose conditions on such use in a proceeding initiated by any interested part and considered in the manner of a special exception.

7) Residential Exceptions.

Nonconforming single-family detached residential uses shall comply with all requirements of this section. However, an existing nonconforming single-family detached residential use may be enlarged, expanded, and/or altered provided no enlargement, expansion, or alteration will:

- a) Result in the structure exceeding building height limits in the zoning district;
- b) Reduce the building site area required in the zoning district; and,
- c) Encroach into any required front yard, side yard, and rear yard setback areas. If approved, such use shall be considered a special exception and may be accompanied by appropriate conditions and safeguards as required by this Ordinance.



**APPLICATION FOR A VARIANCE OF LAND DEVELOPMENT  
STANDARDS FOR THE TOWN OF BEAUFORT**

**Instructions:**

Please complete the application below, include all the required attachments, and the **application fee of \$300.00** and return to the Beaufort Town Hall, 701 Front Street or P.O. Box 390, Beaufort, N.C., 28516. Incomplete applications will not be processed but **will be** returned to the applicant. Please contact Planning and Inspections at 252-728-2142 with any questions.

**APPLICANT INFORMATION**

Applicant Name: Carter and Susan Keller  
Applicant Address: 2030 Windmill Drive, Sanford, NC 27330  
Phone Number: (919) 708-8987 Email: carter.keller@carolinacommercialnc.com

Property Owner Name: William C. Keller & Susan W. Keller  
Address of Property Owner: 2030 Windmill Drive, Sanford, NC 27330  
Phone Number: (919) 708-8987 Email: carter.keller@carolinacommercialnc.com

**PROPERTY INFORMATION**

Property Address: 1107 Front Street, Beaufort, NC 28516  
15-Digit PIN: 730506484757000 Lot/Block Number: L3 8 Part L4 9 Hammock  
Size of Property (in square feet or acres): 0.361 Acres  
**Current Zoning:** R8 Is the property in the **Historic District?** No  
Current Use of Property:  Residential  Vacant  Commercial  Other: \_\_\_\_\_

[Signature] 9/6/2021  
Applicant Signature Date of Signature  
[Signature] 9/6/2021  
Property Owner Signature (if different than above) Date of Signature

An application fee of \$300.00, is to be paid by either cash, money order, or check made payable to the "Town of Beaufort" and must accompany this application. The complete application, payment, and supporting material must be received by Town Staff at least 15 working days prior to a regularly scheduled Board of Adjustment meeting date.

Please refer to the Town's **Land Development Ordinance, Section 3** and all other pertinent sections, for the information required to accompany this application.  
The Town's website address is [www.beaufortnc.com](http://www.beaufortnc.com).

**OFFICE USE ONLY** Revised 8/2020

Received by: \_\_\_\_\_ Reviewed for Completeness By: \_\_\_\_\_  
Date: \_\_\_\_\_ Date Deemed Complete and Accepted: \_\_\_\_\_

**REQUIRED ATTACHMENTS FOR A VARIANCE TO THE BEAUFORT ZONING REGULATIONS**

Please provide the following as attachments to the variance request form:

1. A statement explaining the following:
  - The **specific requirements** of the Town of Beaufort that the applicant is asking to be varied (for example: the number of required parking spaces, any yard setbacks, height of a structure etc.) Please reference the exact chapter and section of the Land Development Ordinance (LDO) in question.
  - The **EXACT amount** of variance that is being requested. For example, the reduction of a placement of a structure by 5 feet within a setback area; a reduction of parking spaces by 7; or an increase in the amount of permitted signage by 16 square feet, etc.
  - The **reason for requesting the Variance**, including an explanation of why the Variance should be considered based on the criteria outlined in Section 21-I (1) of the LDO and any other relevant Sections of the Ordinance that may specifically pertain to the project (see attached excerpts of the code).
  
2. A site plan of the property drawn to scale and includes:
  - A North Arrow;
  - All property lines and accurate property line dimensions;
  - The adjacent streets and names;
  - The location of all easements (if applicable);
  - The location of all existing structures (if applicable);
  - The proposed location of new or expanded structures;
  - The current and proposed building setbacks from all property lines; and,
  - All parking areas, landscaping, and any other requirements of the zoning regulations.
  
3. A TYPED list all property owners (with addresses) within 100 feet of the boundary lines of all properties requesting the variance (notification of adjacent property owners by the Town is required by North Carolina law).
  
4. Any additional materials such as photographs of the surrounding properties, elevations of proposed structures or information that the applicant would like to present to the Board of Adjustment relevant to the requested variance.
  
5. Plans or other documents submitted for the Variance should be in an electronic/digital method as well as one paper copy.

**APPLICATIONS ARE DUE 15 WORKING DAYS BEFORE A REGULAR BOARD MEETING.**

I) *Variances.*

The power of variances is to be sparingly exercised and only in rare instances and under exceptional circumstances and with due regard to the main purpose of the *Land Development Ordinance* (herein known as *the LDO* or *the Ordinance*): to preserve the property rights of others. No change in permitted uses may be authorized by variance.

1) Application Submittal.

An application for a variance shall be submitted to the Board of Adjustment (BOA) by filing a copy of the application with the Town.

2) Findings for the Variance.

When practical difficulties or unnecessary hardships would result from carrying out the strict letter of the LDO, the BOA shall have the power to vary or modify any of the regulations or provisions of the Ordinance so the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. A variance may be granted only upon affirmative finding of the following:

- a) Unnecessary hardship would result from the strict application of this Chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
- b) 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;
- c) 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; and,
- d) The requested variance is consistent with the spirit, purpose, and intent of this Chapter, such that public safety is secured and substantial justice is achieved.

K) *Burden of Proof for Variances.*

2) The applicant for a variance (request) shall have the burden of proof and persuasion.

L) *Board Action on Variances.*

2) Granting a Variance.

Before granting a variance, the BOA must take a separate vote and vote affirmatively by a four-fifths majority, on each of the four required findings stated in subsection I-2 of this Section. A motion to make an affirmative finding on each of the requirements set forth in subsection I-2 (see above reference) of this Section shall include a statement of the specific reasons or findings of fact supporting such motion.

3) Denying a Variance.

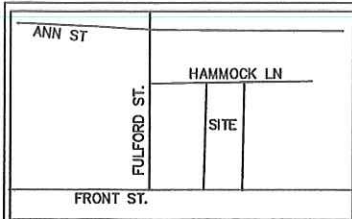
A motion to deny a variance shall be made if any one or more of the four required findings set forth in subsection I-2 (see above reference) of this Section are not satisfied or if the application is incomplete. A motion to deny a variance shall include a statement of the specific reasons or findings of fact which were not met and therefore caused the denial of the variance. The motion is adopted as the board's decision if supported by more than one-fifth of the board's voting membership in attendance (excluding vacant seats).

9/6/2021  
1107 Front Street  
W. Carter and Susan Keller – Property Owners  
Statement of Variance Request:

We are requesting a building setback variance for a second floor addition over the existing footprint on the West side of our home at 1107 Front Street. 1107 is an existing non-conforming structure.

We are requesting a variance to Section 7 Residential Zoning Districts , C) *R-8 Residential Medium Density District*, 3) Building Setback and Building Height Requirements and Limitations of the Beaufort Land Development Ordinance. The variance requested is highlighted and shown on the survey submitted. It amounts to 22 feet x the 5.3 foot variance we are asking for, or **116.6 square feet of variance** on the second floor addition.

The hardships incurred by adhering to the existing setback for the second floor addition are related to aesthetics and the goal of retaining the same look of this Front Street home, originally built in the 1950's. Without being allowed to build on the existing footprint, a second floor addition would result in significant changes to the exterior style of the home. Our goal is to not have to completely tear down the home, but work with the existing structure to do much needed structural renovations, repairs and floor plan changes. A close look at the home reveals cracks in brick, etc that indicate needed repairs for structural integrity.



VICINITY MAP NOT TO SCALE

Existing Conditions

# HAMMOCK LANE 40' R/W (PUBLIC)

N/F  
OWNER: PUCKETT, STEVEN  
DEED BOOK: 1438  
DEED PAGE: 321

N/F  
HOLLAR, LARRY  
DEED BOOK: 915  
DEED PAGE: 69

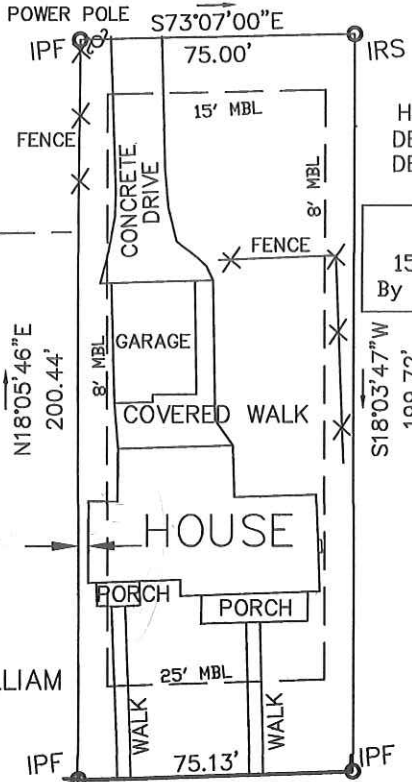
AREA =  
15,014 sq.ft.  
By Coordinates

### LEGEND

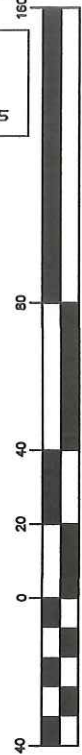
- IPF IRON PIPE FOUND
- N/F NOW OR FORMERLY
- DB DEED BOOK
- MB MAP BOOK
- PG PAGE
- R/W RIGHT OF WAY
- MBL MINIMUM BUILDING LINE
- OE OVERHEAD ELECTRIC LINE
- IRS IRON ROD SET

N/F  
OWNER: ROSEBERRY, WILLIAM  
DEED BOOK: 943  
DEED PAGE: 617

TIE TO NAIL FOUND  
AT CENTERLINE INTERSECTION  
OF FULFORD ST. &  
FRONT ST



GRAPHIC SCALE

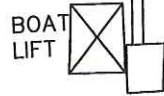


DB 812 PG 202

# FRONT STREET 66' R/W (PUBLIC)

AREA =  
300 sq.ft.  
By Coordinates

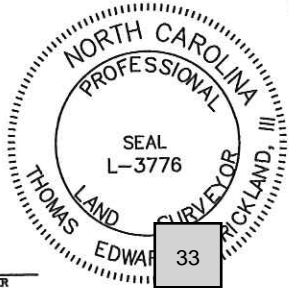
# TAYLORS CREEK



I, THOMAS EDWARD STRICKLAND, III, P.L.S. L-3776 CERTIFY THAT THIS SURVEY IS OF AN EXISTING PARCEL OF LAND.  
Thomas Edward Strickland, III 1/2/15  
THOMAS EDWARD STRICKLAND, III L-3776  
L-3776

REGISTRATION NUMBER  
CERTIFICATE OF SURVEY & ACCURACY:  
I, THOMAS EDWARD STRICKLAND, III, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK PAGE 812 OR OTHER REFERENCE SOURCE) THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM INFORMATION IN BOOK PAGE OR OTHER REFERENCE SOURCE; THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY IS 1:10,000+ AND THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (N.C. AC 68.1600). THIS DAY OF 1/2/15

Thomas Edward Strickland, III 1/2/15 L-3776  
PROFESSIONAL LAND SURVEYOR REGISTRATION NUMBER

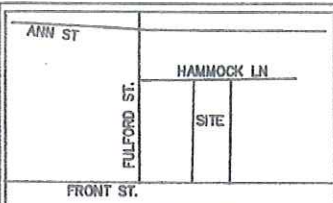


REFERENCE:  
DB 812 PG 202  
DB 28 PG 417

OWNER:  
GENE M. LOGEL

PHYSICAL SURVEY FOR CARTER KELLER	
THE HAMMOCKS LOTS 3, 8, 25 & 26 & WESTERN 1/2 LOTS 4 & 9	
BEAUFORT TWP., CARTERET COUNTY, N.C.	
STRICKLAND SURVEYING, P.A.	SURVEYED 1/2/15
P.O. BOX 331 MOREHEAD CITY, N.C. 28557 (252) 727-1970	INV# / FB# 4683
(C-1496)	DATE 1/2/15
THOMAS EDWARD STRICKLAND III P.L.S.	SCALE 1" = 40'

Existing Survey  
Showing Requested Variance Area



VICINITY MAP NOT TO SCALE

HAMMOCK LANE  
40' R/W (PUBLIC)

N/F  
OWNER: PUCKETT, STEVEN  
DEED BOOK: 1438  
DEED PAGE: 321

N/F  
HOLLAR, LARRY  
DEED BOOK: 915  
DEED PAGE: 69

AREA =  
15,014 sq.ft.  
By Coordinates

LEGEND

- IPF IRON PIPE FOUND
- N/F NOW OR FORMERLY
- DB DEED BOOK
- MB MAP BOOK
- PG PAGE
- R/W RIGHT OF WAY
- MBL MINIMUM BUILDING LINE
- OE OVERHEAD ELECTRIC
- IRS IRON ROD SET

N/F  
OWNER: ROSEBERRY, WILLIAM  
DEED BOOK: 943  
DEED PAGE: 617

TIE TO NAIL FOUND  
AT CENTERLINE INTERSECTION  
OF FULFORD ST. &  
FRONT ST

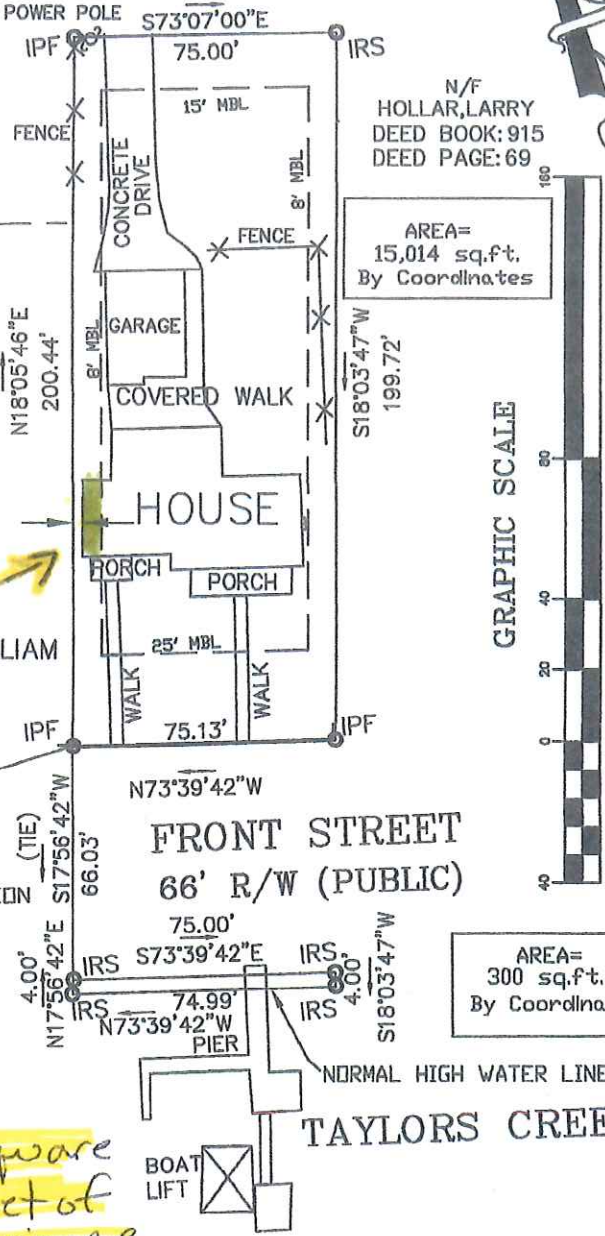
S88°46'46"E  
124.25'

FRONT STREET  
66' R/W (PUBLIC)

GRAPHIC SCALE  
( IN FEET )  
1 inch = 40 ft.

AREA =  
300 sq.ft.  
By Coordinates

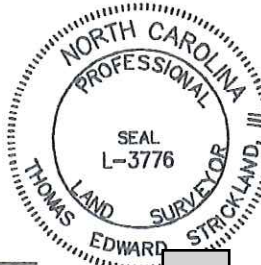
Requested  
22 x 5.3 =  
116.6 square feet of Variance



I, THOMAS EDWARD STRICKLAND III, P.L.S. L-3776 CERTIFY THAT THIS SURVEY IS OF AN EXISTING PARCEL OF LAND.  
Thomas Edward Strickland, III 1/2/15  
THOMAS EDWARD STRICKLAND, III L-3776  
L-3776

REFERENCE:  
DB 812 PG 202 OWNER:  
DB 28 PG 417 GENE M. LOGEL

REGISTRATION NUMBER  
CERTIFICATE OF SURVEY & ACCURACY:  
I, THOMAS EDWARD STRICKLAND III, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 812 PAGE 202 OR OTHER REFERENCE SOURCE THAT THE REASONABLE NOT SURVEYED ARE INDICATED AS DRAWN FROM INFORMATION IN BOOK PAGE OR OTHER REFERENCE SOURCE; THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY IS 1:10,000+ AND THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING BY NORTH CAROLINA (N.C. REG. 68.1600).  
THIS DAY OF 1/2/15



PHYSICAL SURVEY FOR CARTER KELLER	
THE HAMMOCKS	
LOTS 3, 8, 25 & 26 & WESTERN 1/2 LOTS 4 & 9	
BEAUFORT TWSP., CARTERET COUNTY, N.C.	
STRICKLAND SURVEYING, P.A.	SURVEYED 1/2/15
P.O. BOX 331	INVEST FBR 4683
MOREHEAD CITY, N.C. 28557	DATE 1/2/15
(252) 727-1970	SCALE 1" = 40'
(C-1496)	
THOMAS EDWARD STRICKLAND III P.L.S.	





TOWN OF BEAUFORT, NC  
ORDER GRANTING/DENYING A VARIANCE

The Board of Adjustment for the Town Of Beaufort, NC having held a public hearing on September 27, 2021, to consider an application submitted by William & Susan Keller, a request for a variance of the Town of Beaufort Zoning Ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's CONCLUSION that, the proposed change will/will not constitute an unnecessary hardship which would result from the strict application of this Chapter. This conclusion is based on the following FINDINGS OF FACT:
2. It is the Board's CONCLUSION that the proposed change is/is not a hardship that results from conditions that are peculiar to the property, such as location, size, or topography. This conclusion is based on the following FINDINGS OF FACT:
3. It is the Board's CONCLUSION that the proposed change is/is not a hardship resulting from actions taken by the applicant or the property owner. This conclusion is based on the following FINDINGS OF FACT:
4. It is the Board's CONCLUSION that the proposed variance is/is not is consistent with the spirit, purpose, and intent of this Chapter, such that public safety is secured, and substantial justice is achieved. This conclusion is based on all of the FINDINGS OF FACT listed above, as well as the following:

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be (**Approved/DENIED**), subject to the following conditions

Ordered this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

Chairman\_\_\_\_\_

Secretary\_\_\_\_\_

NOTE: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Carteret County within 30 days after the date this order is served on you.

**WORKSHEET FOR VARIANCE REQUEST**

Applicant: William & Susan Keller

Property Location: 1107 Front Street.

**1. FINDINGS OF FACT**

a.	Unnecessary hardship would result from the strict application of this Chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;	Yes	No
b.	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;	Yes	No
c.	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; and,	Yes	No
d.	The requested variance is consistent with the spirit, purpose, and intent of this Chapter, such that public safety is secured, and substantial justice is achieved.	Yes	No

**2. GRANTING OF A VARIANCE REQUEST**

Motion to grant the Variance request based on items (a) through (d) found to be affirmative.

\_\_\_ The Variance Request is granted, subject to the following conditions:

\_\_\_\_\_  
\_\_\_\_\_

**3. DENYING OF A VARIANCE REQUEST**

Motion to deny based on:

\_\_\_ The Application is denied because, if completed as proposed, the development more probably than not:

\_\_\_ Will not be in conformity with the City’s land use plan and other comprehensive plan elements for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ Will substantially injure the value of adjoining or abutting properties for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ Will not be compatible and not be in harmony with adjoining land uses and the development pattern of the immediate area for the following reasons: