



Board of Adjustment Agenda

Town of Swansboro

Wednesday, April 17, 2024

I. Call to Order

II. Minutes

- a. April 19, 2023 Special Meeting Minutes

III. Business

- a. **Appeal of an Administrative Decision**
Presenter: Andrea Correll, Planner-AICP

John P. Swart, attorney for the appellant, Kirby Lee Everette, Jr. filed an appeal from the enforcement and interpretation set forth in the violation notice that the property located at the corner of Walnut Street and Spring Street further identified as tax pin number 536410369140 was being used as a boat storage yard.

Recommended Action: In accordance with section 152.045 Appeals. (F): The Board of Adjustment 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 that in its opinion ought to be made in the case before it. To this end, the board shall have all the powers of the officer from whom the appeal is taken.

IV. Chairman/Board Thoughts/Staff Comments

V. Adjournment

**Town of Swansboro
Board Of Adjustments
Special Meeting Minutes
April 19, 2023**

Call to Order

The meeting was called to order at 5:34 pm. Board members in attendance Elaine Justice, Ralph Kohlmann, Wayne Mixon, Thomas Pieratti, and Tom Cariker. Two vacancies one Town, and one ETJ.

Election of Chair and Vice Chair

On a motion by Mr. Mixon, seconded by Mr. Pieratti a nomination was made for Ralph Kohlmann as chair. All members were in favor.

On a motion by Mr. Kohlmann, seconded by Mr. Pieratti a nomination was made for Tom Cariker as vice chair. All members were in favor.

Minutes

On a motion by Mr. Kohlmann, seconded by Mr. Cariker, the minutes for the April 15, 2021, Special Meeting were approved unanimously.

Business

Quasi-Judicial Development Decisions

Planner Correll reviewed 160D-406 and Presented Quasi-Judicial Development Decisions training power point attached herein.

In response to inquiries from the board the following was clarified by Planner Correll.

- Currently there are no alternates on the board.
- The Board of Adjustments will be handling all minor special use.


Adjournment


On a motion by Mr. Mixon, seconded by Mr. Pieratti, the meeting adjourned at 6:51 pm

Quasi-Judicial Development Decisions

for Boards of Adjustment
and Other Boards Making Planning and Zoning Decisions

Remote Workshop
October 2022



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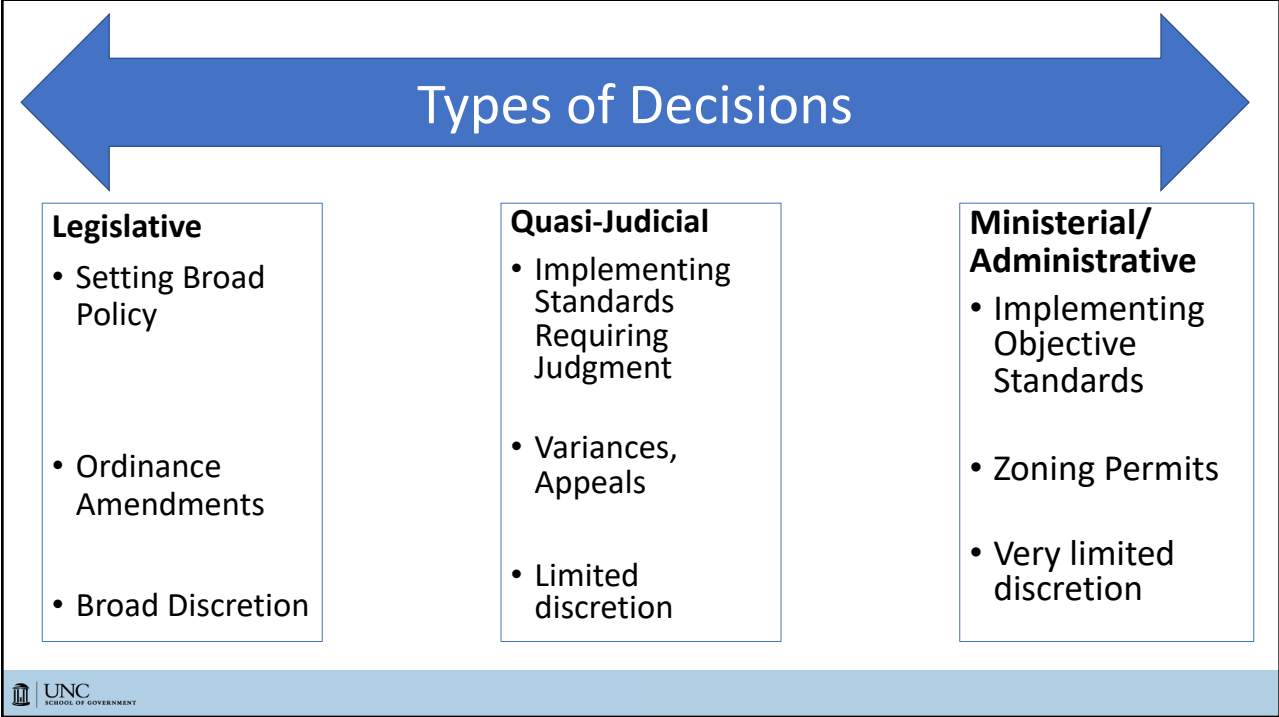
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What is Quasi-Judicial? Procedures Evidence Decision



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Quasi-Judicial Decision

Process of adjudicating how the general law applies to a particular situation based on an evidentiary record – G.S. 160D-406

Two key responsibilities:

- 1) Determine contested facts
- 2) Apply standards that require judgment and discretion

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The board of adjustment acts *kind of* like a court...

Quasi-Judicial Decision

What it is not

Opportunity to decide what standards should be applied
Must apply only the standards already in ordinance

Based on public opinion

Must be based on competent, substantial, material evidence properly in the record

Variance (set by statute)

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
3. The hardship did not result from actions taken by the applicant or the property owner.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Special Use Permit (set by ordinance)

1. Does not materially endanger the public health or safety;
2. Meets all required conditions and specifications;
3. Would not substantially injure the value of adjoining property or be a public necessity, and
4. Will be in harmony with the area in which it is located and be in general conformity with the comprehensive plan.

Certificate of Appropriateness


- Not incongruous with the special character of the landmark or district, as identified in:
 - The report describing the significance of the buildings, structures, features, sites or surroundings
 - The principles and guidelines for new construction, alterations, additions, moving and demolition.

Appeals of Staff Decisions

- Based on the facts and the law, what is the correct application of the ordinance to this case?

Due Process

- Clear guiding standards
- Notice
- Opportunity to be heard
- Impartial decision-makers
- Decision based on the evidentiary record
- Right to appeal



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What is Quasi-Judicial? Procedures Evidence Decision



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Steps in the Process

1. Notice of Hearing
2. Hearing Preliminaries (including recusal of members with conflicts)
3. Evidentiary Hearing (including swearing in of witnesses)
4. Voting and Final Decision
5. Appeals

Statutory reference: G.S. 160D-406

Notice

- Mailed Notice
- Posted Notice (Sign)
- Any Additional Ordinance Requirements

Bias

Board member cannot participate if member has a fixed opinion that is not susceptible to change

Conflicts of Interest

- A board member must recuse himself or herself if:
 1. [*Financial*] The outcome would have a direct, substantial, and readily identifiable financial impact
 2. [*Relationship*] The board member has a close family, business, or associational relationship with an affected person
 3. [*Neutrality*]: The board member has undisclosed ex parte communications or is biased

Ex Parte Communication

- Contacts with a party outside of the hearing
- Should be avoided
- Must be disclosed

Evidentiary Hearing: Common Order

- Opening
- Introduction of the case (staff or chair)
- Applicant presents
- Other parties present
- Non-party witnesses present
- Rebuttal from applicant and other parties
- Deliberation
- Decision

Open Meetings and Public Records

Public Meeting

- Anytime a majority of the board gathers, in person or electronically, to conduct public business
- Open to the public; standard notice requirements
- Full and accurate minutes
- Limited allowance for closed session
- At social occasions avoid discussion of public business

Public Records

- Any record made or received in the transaction of public business
- Letter, email, photographs
- Subject to disclosure

Discussion 1 – Who Can Participate?

The board of adjustment is considering a variance request for a major development downtown. Any recusals?

- 1) Board member **Russell** went to high school with the applicant. His brother-in-law is a business partner with the applicant.
- 2) Board member **Sara** currently serves on the Board of Adjustment and is campaigning for a seat on Town Council. Last week during a campaign event Sara proclaimed “There’s just too much development. I’m gonna shut it ALL down. Especially that monstrosity proposed for downtown.”
- 3) Board member **Tameka** didn’t do a thing. She heard those lawyers from the School of Government talk about bias and ex parte communications so she did not visit the site, nor did she review the application materials or staff report. She arrived with a clear mind and a clean conscience.



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Building the Record

“Every quasi-judicial decision shall be based upon **competent, material,** and **substantial** evidence in the record.”

- Trustworthy and reliable
- Related to the standards
- Sufficient to support a conclusion

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Initial Evidence

- Application
- Staff Analysis
- Site Visits

Presentation of Evidence

Anyone may be allowed to present relevant evidence, but only parties may cross-examine, object, make legal arguments, or act as a party

Rules are different from court rules of evidence



Witness Testimony

Should be:

- Sworn or affirmed
- Factual
- Focused on standards and land use impacts
- Supported by first-hand knowledge or by documentary evidence

Should not be:

- Unsworn
- Personal opinion
- Focused on owner or residents
- Supported by
 - Mere speculation
 - Vague assertions
 - Unsubstantiated fears

Expert Opinion

Expert witness is required to rely on opinion testimony regarding:

- 1) Property Values
- 2) Projected Traffic Impacts
- 3) Other technical matters

Expert must have proper foundation for any opinion offered – appropriate study required

Documentary Evidence

- Written materials can be submitted and distributed prior to hearing (application, staff reports, documents)
- Documents (including photos, maps, studies, letters, etc.) submitted become part of record
- Clearly label each
- All objections made at hearing

Outside Evidence

Generally, all evidence must be presented at hearing

Ex parte evidence – site visits permissible, but must avoid discussing substance and must disclose site visit at hearing, along with any key information observed

Hearsay Testimony – can accept, but cannot use as basis for key findings

Application – Can accept and use documents that are part of application

“In quasi-judicial proceedings, no board or council member should appear to be an advocate for nor adopt an adversarial position to a party, bring in extraneous or incompetent evidence, or rely upon ex parte communications when making their decision.”

PHG Asheville, LLC v. City of Asheville

Discussion 2 – Is it good evidence?

- A. A petition signed by 25 neighbors opposing the project and outlining the ways in which it is out-of-character for the neighborhood.
- B. A sworn statement from the minister at Joe Developer’s church stating that Joe is an upstanding member of the community and volunteers at the homeless shelter.
- C. Testimony from a neighbor and salon owner that the apartments will injure her property value.
- D. A letter from Joe Developer’s traffic engineer about why, in her professional opinion, any traffic impacts will be reasonably accommodated by the proposed street improvements.

What is Quasi-Judicial? Procedures Evidence Decision



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Deliberation

- In open session
- Focused on the applicable standards
- Based on the evidence in the record

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Burden

- Generally, applicant bears the burden to produce sufficient evidence to show standards are met
- Burden shifts to opponents if applicant provides sufficient evidence to support his or her case



Determine Contested Facts

For example...

- (For a variance) What makes the situation peculiar to the site?
- (For a certificate of appropriateness) What about the property is in keeping with the character of the district?



Apply the Standards

For example . . .

- (For a variance) Given the facts, is there unnecessary hardship?
- (For appeal of staff determination) Given the facts, was the administrative decision correct?



Motion(s)

- Findings of Fact (sometimes separate)
- Approve, approve with conditions, or deny
- Include reasoning based on the evidence and standards



Voting

- Simple majority for appeals and most other matters
- 4/5 majority for a variance
- Absent members still count toward number of members “of the board”
- Exclude vacant seats and those with conflict of interest



Written Decision

- May prepare draft prior to hearing
- Final document may be prepared after the meeting (usually by staff or attorney)
- Must accurately reflect action and reasoning of the board
- Approved by board
- Signed by chair or authorized member



Notice and Delivery of Decision

- Email, first class mail, or personal delivery
- Staff certifies delivery for the record (i.e., clerk affidavit)
- Decision is effective when filed with clerk

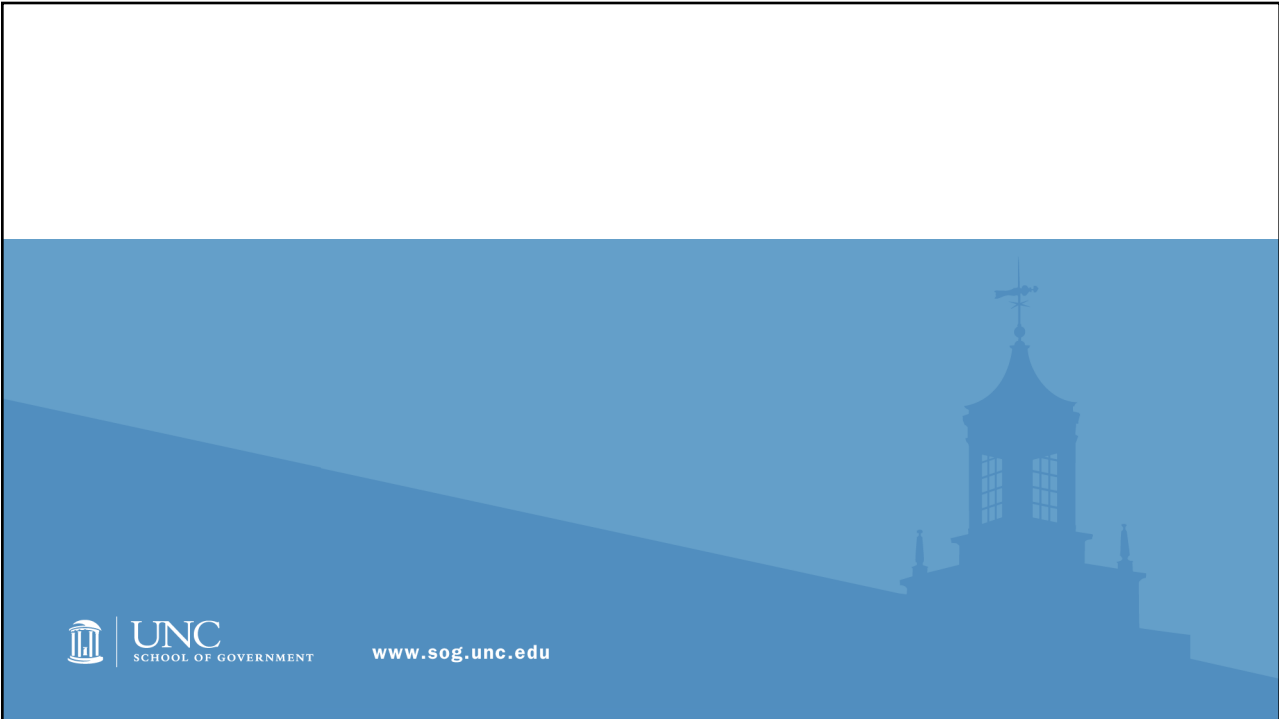




Appeals

- 30 days from later of effective date or date of decision
- To Superior Court
- On the record

The Record

- Application and supporting materials
- Record of the hearing itself
 - Detailed minutes or transcript required
 - Audio or video tape advisable, not required
 - If verbatim transcript requested, cost can be assigned to party requesting it
- Any other documents submitted



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Board of Adjustment Meeting Agenda Item Submittal

Item To Be Considered: **Appeal of an Administrative Decision**

Board Meeting Date: **April 17, 2024**

Prepared By: **Andrea Correll, Planner-AICP**

Overview: John P. Swart, attorney for the appellant, Kirby Lee Everette, Jr. filed an appeal from the enforcement and interpretation set forth in the violation notice that the property located at the corner of Walnut Street and Spring Street further identified as tax pin number 536410369140 was being used as a boat storage yard.

An anonymous complaint was received on September 6, 2023, in regard to boat and trailer storage at the corner of Walnut Street and Spring Street. Mr. Everette was notified by phone on September 17, 2023, to discuss the violation and mailed a notice of violation on September 18, 2023, and it was received and signed for on September 26, 2023.

Background Attachment(s):

1. Applicable sections of the UDO and NCGS 160D
2. Violation file
3. Section 152.212 Use Standards (V) Use-Storage of the UDO
4. Appeal documents
5. Pictures of the site

Recommended Action: In accordance with section 152.045 Appeals. (F): The Board of Adjustment 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 that in its opinion ought to be made in the case before it. To this end, the board shall have all the powers of the officer from whom the appeal is taken.

Action: _____

§ 152.045 APPEALS.

(A) This subchapter does not apply to §§152.400 through 152.462, Flood Damage Prevention.

(B) Appeals from the enforcement and interpretation of this chapter, may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the administrator and the Board of Adjustment a written notice of appeal specifying the grounds therefor. A notice of appeal shall be filed with the Town Clerk or Town Deputy Clerk. The notice of appeal must state the grounds for the appeal and the date and time of filing.

(C) An appeal must be taken within 30 days after the interested party or parties receive written notice of an order, requirement, decision, or determination .

(D) Whenever an appeal is filed, the administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record relating to the action appealed from. A copy of the record shall also be provided to the appellant and to the owner of the property that is subject to the appeal if the appellant is not the owner .

(E) After receipt of notice of appeal, the Chairman of the Board of Adjustment shall fix a reasonable time, not to exceed 60 days, for the hearing of the appeal. All applications must be accompanied by an application fee as set by Town staff to help defray costs in advertising and administration.

(F) An appeal stays all actions by the administrator seeking enforcement of or compliance with the order or decision appealed from, unless the administrator certifies to the Board of Adjustment that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, proceedings shall not be stayed except by a restraining order which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. All appeals to the Superior Court and all applications to the Superior Court for a stay shall be made within 30 days of a party's receipt of notice of the decision of the Board of Adjustment . The official who made the decision being appealed shall be present at the hearing as a witness. The Board of Adjustment 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 that in its opinion ought to be made in the case before it. To this end, the board shall have all the powers of the officer from whom the appeal is taken.

(Ord. 2005-O3, passed 3-15-2005; Am. Ord. passed 6-16-2009; Am. Ord. passed 1-21-2014; Am. Ord. 2021-O3, passed 5-24-2021)

§ 152.065 QUASI-JUDICIAL DECISIONS.

(A) Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision .

(B) The hearing shall be open to the public and all persons interested in the outcome of the application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

(C) Boards may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.

(D) The Board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the Board is not then present, the hearing shall be continued until the next regular Board meeting without further advertisement.

(Ord. 2005-O3, passed 3-15-2005; Am. Ord. 2021-O3, passed 5-24-2021)

§ 152.066 NOTICE OF HEARING.

The Administrator shall give notice of any hearing required by §152.065 as follows:

(A) Notice 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 that 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 that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation . 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;

(B) The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing;

(C) Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way; and

(D) The notice required by this section shall state the date, time, and place of the hearing, reasonably identify the property that is the subject of the application, and indicate the action requested or proposed.

(Ord. 2005-O3, passed 3-15-2005; Am. Ord. passed 6-16-2009; Am. Ord. passed 1-21-2014; Am. Ord. 2021-O3, passed 5-24-2021)

§ 152.067 EVIDENCE.

(A) The provisions of this section apply to all hearings for which a notice is required by §152.065.

(B) The applicant, the local government, and any person who would have standing to appeal the decision shall have the right to participate as a party at the evidentiary hearing . Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Board.

(C) The Chair of the Board or any member acting as Chair and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

(D) The Board making a quasi-judicial decision under this chapter through the Chair or, in the Chair's absence, anyone acting as Chair may subpoena witnesses and compel the production of evidence.

(Ord. 2005-O3, passed 3-15-2005; Am. Ord. 2021-O3, passed 5-24-2021)

§ 152.068 MODIFICATION OF APPLICATION AT HEARING.

(A) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the board, the applicant may agree to modify his application, including the plans and specifications submitted.

(B) Unless such modifications are so substantial or extensive that the board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the planning staff.

(Ord. 2005-O3, passed 3-15-2005; Am. Ord. 2021-O3, passed 5-24-2021)

§ 152.069 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 section, vacant positions on the board and members who are disqualified from voting on a

quasi-judicial matter under G.S. § 160D-109(d) shall not be considered members of the board for calculation of the majority if there are no qualified alternates available to take the place of such members.

(Ord. 2021-O3, passed 5-24-2021)

§ 152.070 WRITTEN DECISION.

(A) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.

(B) Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board.

(C) A quasi-judicial decision is effective upon filing, the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. Special use permits will be recorded in the office of the Onslow County Register of Deeds.

(D) The Administrator shall certify that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

(Ord. 2005-O3, passed 3-15-2005; Am. Ord. 2014-O9, passed 4-15-2014; Am. Ord. 2021-O3, passed 5-24-2021)

§ 152.071 JUDICIAL REVIEW.

Every quasi-judicial decision shall be subject to review by the Superior Court by proceedings in the nature of certiorari pursuant to G.S. § 160D-1402. Appeals shall be filed within the time specified in G.S. § 160D-1405(d).

(Ord. 2021-O3, passed 5-24-2021)

§ 160D-405. Appeals of administrative decisions.

(a) Appeals. – Except as provided in G.S. 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter. If this function of the board of adjustment is assigned to any other board pursuant to G.S. 160D-302(b), that board shall comply with all of the procedures and processes applicable to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the board of adjustment unless required by a local government ordinance or code provision. Appeals of administrative decisions on subdivision plats shall be made as provided in G.S. 160D-1403.

(b) Standing. – Any person who has standing under G.S. 160D-1402(c) or the local government may appeal an administrative decision to the board. An appeal is taken by filing a notice of appeal with the local government clerk or a local government official designated by ordinance. The notice of appeal shall state the grounds for the appeal.

(c) Repealed by Session Laws 2020-25, s. 10, effective June 19, 2020.

(d) Time to Appeal. – The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(e) Record of Decision. – The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(f) Stays. – An appeal of a notice of violation or other enforcement order to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal or during the pendency of any civil proceeding authorized by law or related appeal. If, however, the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation, then enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed.

Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

(g) Alternative Dispute Resolution. – The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The development regulation may set standards and procedures to facilitate and manage voluntary alternative dispute resolution.

(h) No Estoppel. – G.S. 160D-1403.2, limiting a local government's use of the defense of estoppel, applies to proceedings under this section. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 10, 50(b), 51(a), (b), (d); 2022-62, s. 59(a).)

§ 160D-406. Quasi-judicial procedure.

(a) **Process Required.** – Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.

(b) **Notice of Hearing.** – Notice of evidentiary hearings conducted pursuant to this Chapter 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 that 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 that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the local government 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 that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

(c) **Administrative Materials.** – The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

(d) **Presentation of Evidence.** – The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

(e) **Appearance of Official New Issues.** – The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

(f) **Oaths.** – The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

(g) **Subpoenas.** – The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request

to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(h) Appeals in Nature of Certiorari. – When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).

(i) Voting. – The concurring vote of four-fifths of the board shall be necessary to grant a variance. 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. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) 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.

(j) Decisions. – The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

(k) Judicial Review. – Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). The governing board of the local government that is a party to the judicial review of the quasi-judicial decision shall have the authority to settle the litigation, subject to Article 33C of Chapter 143 of the General Statutes. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d); 2021-168, s. 3(a).)

§ 160D-1402. Appeals in the nature of certiorari.

(a) **Applicability.** – This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is in the nature of certiorari as required by this Chapter.

(b) **Filing the Petition.** – An appeal in the nature of certiorari shall be initiated by filing a petition for writ of certiorari with the superior court. The petition shall do all of the following:

- (1) State the facts that demonstrate that the petitioner has standing to seek review.
- (2) Set forth allegations sufficient to give the court and parties notice of the grounds upon which the petitioner contends that an error was made.
- (3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of an impermissible conflict as described in G.S. 160D-109, or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.
- (4) Set forth the relief the petitioner seeks.

(c) **Standing.** – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons have standing to file a petition under this section:

- (1) Any person possessing any of the following criteria:
 - a. An ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.
 - b. An option or contract to purchase the property that is the subject of the decision being appealed.
 - c. An applicant before the decision-making board whose decision is being appealed.
- (2) Any other person who will suffer special damages as the result of the decision being appealed.
- (3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.
- (4) A local government whose decision-making board has made a decision that the governing board believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of a development regulation adopted by the governing board.

(d) **Respondent.** – The respondent named in the petition shall be the local government whose decision-making board made the decision that is being appealed, except that if the petitioner is a local government that has filed a petition pursuant to subdivision (4) of subsection (c) of this section, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing, or was an applicant, before the decision-making board.

(e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of superior court of the county in which the matter arose. The writ shall direct the respondent local government or the respondent decision-making board, if the petitioner is a local government that has filed a petition pursuant to subdivision (4) of subsection (c) of this section, to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct the petitioner to serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a decision-making board, the petition and the writ shall be served upon the chair of that decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure applies in the event the chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

Upon the filing of a petition for writ of certiorari, a party may request a stay of the execution or enforcement of the decision of the quasi-judicial board pending superior court review. The court may grant a stay in its discretion and on conditions that properly provide for the security of the adverse party. A stay granted in favor of a city or county shall not require a bond or other security.

(f) Response to the Petition. – The respondent may, but need not, file a response to the petition, except that, if the respondent contends for the first time that any petitioner lacks standing to bring the appeal, that contention must be set forth in a response served on all petitioners at least 30 days prior to the hearing on the petition. If it is not served within that time period, the matter may be continued to allow the petitioners time to respond.

(g) Intervention. – Rule 24 of the Rules of Civil Procedure governs motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

- (1) Any person described in subdivision (1) of subsection (c) of this section has standing to intervene and shall be allowed to intervene as a matter of right.
- (2) Any person, other than one described in subdivision (1) of subsection (c) of this section, who seeks to intervene as a petitioner must demonstrate that the person would have had standing to challenge the decision being appealed in accordance with subdivisions (2) through (4) of subsection (c) of this section.
- (3) Any person, other than one described in subdivision (1) of subsection (c) of this section, who seeks to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subdivisions (2) through (4) of subsection (c) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner.

(h) The Record. – The record shall consist of the decision and all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the local government respondent, or the respondent decision-making board, upon all petitioners within three days after it is filed with the court.

(i) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. The court shall allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the petition raises any of the following issues, in which case the rules of discovery set forth in the North Carolina Rules of Civil Procedure apply to the supplementation of the record of these issues:

- (1) Whether a petitioner or intervenor has standing.
- (2) Whether, as a result of impermissible conflict as described in G.S. 160D-109 or locally adopted conflict rules, the decision-making board was not sufficiently impartial to comply with due process principles. A failure to object at a hearing by a person with standing under subsection (c) of this section shall not constitute a waiver of a right to assert impermissible conflict involving a member of the decision-making board.
- (3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

(j) Scope of Review. –

- (1) When reviewing the decision under the provisions of this section, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:
 - a. In violation of constitutional provisions, including those protecting procedural due process rights.
 - b. In excess of the statutory authority conferred upon the local government, including preemption, or the authority conferred upon the decision-making board by ordinance.
 - c. Inconsistent with applicable procedures specified by statute or ordinance.
 - d. Affected by other error of law.
 - e. Unsupported by competent, material, and substantial evidence in view of the entire record.
 - f. Arbitrary or capricious.
- (2) When the issue before the court is one set forth in sub-subdivisions a. through d. of subdivision (1) of this subsection, including whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate. Whether the record contains competent, material, and substantial evidence is a conclusion of law, reviewable de novo.
- (3) The term "competent evidence," as used in this subsection, does not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) except for the items noted in sub-subdivisions a., b., and c. of this subdivision that are conclusively incompetent, the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall, regardless of the lack of a timely objection, not be deemed to include the opinion testimony of lay witnesses as to any of the following:
 - a. The use of property in a particular way affects the value of other property.

- b. The increase in vehicular traffic resulting from a proposed development poses a danger to the public safety.
- c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(j1) Action Not Rendered Moot by Loss of Property. – Subject to the limitations in the State and federal constitutions and State and federal case law, an action filed under this section is not rendered moot, if during the pendency of the action, the aggrieved person loses the applicable property interest as a result of the local government action being challenged and exhaustion of an appeal described herein is required for purposes of preserving a claim for damages under G.S. 160D-1403.1.

(k) Decision of the Court. – Following its review of the decision-making board in accordance with subsection (j) of this section, the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall determine what relief should be granted to the petitioners:

- (1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.
- (2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.
- (3) If the court concludes that the decision by the decision-making board is not supported by competent, material, and substantial evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:
 - a. If the court concludes that a permit was wrongfully denied because the denial was not based on competent, material, and substantial evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued, subject to any conditions expressly consented to by the permit applicant as part of the application or during the board of adjustment appeal or writ of certiorari appeal.
 - b. If the court concludes that a permit was wrongfully issued because the issuance was not based on competent, material, and substantial evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be revoked.
 - c. If the court concludes that a zoning board decision upholding a zoning enforcement action was not supported by substantial competent evidence or was otherwise based on an error of law, the court shall reverse the decision.

(l) Effect of Appeal and Ancillary Injunctive Relief. –

- (1) If a development approval is appealed, the applicant shall have the right to commence work while the appeal is pending. However, if the development

approval is reversed by a final decision of any court of competent jurisdiction, the applicant shall not be deemed to have gained any vested rights on the basis of actions taken prior to or during the pendency of the appeal and must proceed as if no development approval had been granted.

- (2) Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal.

(1) **Effect of Appeal of Quasi-Judicial Relief.** – If a special use permit is issued by the applicable decision-making board after remand from an order of the court of competent jurisdiction and no injunction prevents the issuance of a special use permit, any appeal of the court's remand order or the subsequently issued special use permit is rendered moot.

(m) **Joinder.** – A declaratory judgment brought under G.S. 160D-1401 or other civil action relating to the decision at issue may be joined with the petition for writ of certiorari and decided in the same proceeding.

(n) **Stays.** – An appeal under this section is stayed as provided in G.S. 160D-405. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 45, 50(b), 51(a), (b), (d); 2021-168, s. 4.)

Sept 3, 2023

Received
9/6/23

To whom it may concern:

Complaint.

There is a trailer storage lot being operated at the corner of Spring St and Walnut St. I don't think this is allowed and would like the city to take steps to remedy,

Thank you.

The owner of this property resides at 404 Water Street



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Larry Philpott
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Jeffrey Conaway
Commissioner

Town Manager

Paula W. Webb, MMC-NCCMC
pwebb@ci.swansboro.nc.us

Town Clerk

Alissa A. Fender, CMC
afender@ci.swansboro.nc.us

September 18, 2023

Notice of Violation

Everette Kirby Lee Jr.
974 Bellamy Lake Rd.
Whitakers NC 27891

Re: Property being used as a boat storage yard located at the corner of Walnut Street and Spring Street further identified as tax pin number 536410369140.

The purpose of this letter is to document our phone discussion yesterday afternoon September 14, 2023, and to formally notify you of your violation. I received a complaint on September 6, 2023. Your vacant lot is intended for single family residential uses. Boat storage is allowed in a marina, on a dock, or as part of a storage facility.

- **Section 152.170 Establishment Of Zoning Districts, And The Purpose Thereof (D) R-6SF-Residential. The purpose of this district shall be that only single-family structures shall be permitted in this district.**
- **Section 152.179 Table of Permitted and Special Uses lists docks, (not commercially operated, with or without launching facilities) have a permitted use in R6-SF.**
- **Section 152.016 Definitions of Basic Terms defines Docks, Piers (not commercially operated, with or without launching facilities), A fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels and which does not produce income and does not serve as an inducement to renting, purchasing, or using accompanying facilities.**
- **Section 152.179 Table of Permitted and Special Uses lists marinas as not a permitted use in R6-SF single family zoning district.**
- **Section 152.016 Definitions of Basic Terms defines Marina, A facility for the docking, mooring, berthing, or storage of marine vessels that also include, but are not limited to, a wide variety of accessory uses such as boat fuel sales, sales of boating supplies and equipment, boating related services, laundries, boat repair and rental, storage racks and dry storage of boats.**

You have thirty days from receipt of this letter to move your boat trailers off this property.

You have thirty days to resolve this violation or to file an appeal of my decision to the Town Board of Adjustment.

Sincerely,

Andrea Correll, AICP
Town Planner
attachments

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Everette Kirby Lee Jr.
 974 Ballamy Lake Rd.
 WhiteKars NC 27891



9590 9402 7469 2055 5644 41

2. Article Number (Transfer from service label)

7022 0410 0000 4762 6168

PS Form 3811, July 2009

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Handwritten Signature]
 B. Received by (Printed Name)
 Kirby Everette

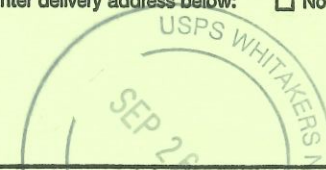
Item III - a.

Addressee

C. Date of Delivery

9-26-23

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No



3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Mail Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
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7022 0410 0000 4762 6168

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OFFICIAL USE

Certified Mail Fee

\$ 4.35

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$ 3.55
- Return Receipt (electronic) \$
- Certified Mail Restricted Delivery \$
- Adult Signature Required \$
- Adult Signature Restricted Delivery \$

Postage

\$.63

Total Postage and Fees

\$ 8.53

Sent To

Everette Kirby Lee Jr. 28584-0998
 Street and Apt. No., or PO Box No.
 974 Ballamy Lake Rd
 City, State, ZIP+4®
 WhiteKars, NC 27891



PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Return Receipt

TOWN OF SWANSBORO
FRIENDLY CITY BY THE SEA * Established 1783
601 W. Corbett Avenue Swansboro, NC 28584 910-326-4428

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW
TOWN OF SWANSBORO

APPLICATION # _____

BEFORE THE
BOARD OF ADJUSTMENT

IN THE MATTER OF THE REQUEST FOR:

APPEAL _____

APPLICANT'S NAME _____

MAILING ADDRESS _____ Phone # _____

OWNER'S NAME _____

OWNER'S ADDRESS _____ Phone # _____

TAKE NOTICE THAT THE UNDERSIGNED HEREBY PETITIONS THE BOARD OF ADJUSTMENT OF THE TOWN OF SWANSBORO FOR AN APPEAL FROM THE ENFORCEMENT AND INTERPRETATION OF THIS ORDINANCE AN/OR APPEAL FOR A VARIANCE OR SPECIAL USE AS DESCRIBED BELOW:

ON THE PREMISES LOCATED AT: _____

_____ LOT _____ BLOCK _____ MAP _____

THE PROPERTY IS ZONED: _____

THIS _____ DAY OF _____, 20_____.

APPLICANT'S SIGNATURE _____

DATE FILED _____

RECIPIENT SIGNATURE _____

ZONING ADMINISTRATOR _____

NOTE: APPLICANT OR APPLICANT REPRESENTATIVE MUST BY PRESENT FOR AN APPLICATION TO BE HEARD IF SOMEONE OTHER THAN THE APPLICANT WILL BE THE REPRESENTATIVE, A LETTER OF PERMISSION FROM THE APPLICANT IS REQUIRED.



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November 20, 2023

I certify that on November 20, 2023, at 2:13 pm I posted the Appeal sign for the Board of Adjustment at the corner of Walnut and Spring St further identified as tax pin number 536410369140 for the December 13, 2023, Board of Adjustment Appeal Public Hearing. I then mailed the metered first-class letters that are required to be sent to the abutting and adjacent property owners as well as the property owners. They were dropped in the inside letter drop box at the Swansboro post office by my hand today.



Andrea Correll, Planner AICP
Town of Swansboro

Board of Commissioners

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Mayor

Frank Tursi
Mayor Pro Tem

Patricia Turner
Commissioner

Harry Pugliese
Commissioner

Larry Philpott
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Jeffrey Conaway
Commissioner

Town Manager

Paula W. Webb, MMC-NCCMC
pwebb@ci.swansboro.nc.us

Town Clerk

Alissa A. Fender, CMC
afender@ci.swansboro.nc.us





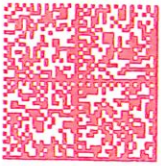
Town of Swansboro

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601 W. Corbett Ave. • Swansboro, NC 28584

GALATI GREGORY & CAROLYN
5944 ROUNDER LN
HOLLY SPRINGS, NC 27540-9683

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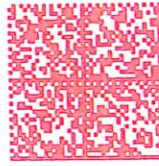
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DURHAM, NC 27707

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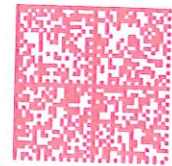
Town of Swansboro

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KENDALL SWAIN
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306 SOUNDVIEW CT
CAPE CARTERET, NC 28584-9743



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SCHNEIDER STEPHEN C
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KENDALL SWAIN
209 LINTON BANK PL
CARY, NC 27513-2053

SCHNEIDER STEPHEN C
PO BOX 1582
SWANSBORO, NC 28584

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3801 ST MARK RD
DURHAM, NC 27707

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5944 ROUNDER LN
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WHITAKERS, NC 27891

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Labels*

Item III - a.



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Larry Philpott
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Town Manager

Paula W. Webb, MMC-NCCMC
pwebb@ci.swansboro.nc.us

Town Clerk

Alissa A. Fender, CMC
afender@ci.swansboro.nc.us

November 20, 2023

Galati Gregory & Carolyn
5944 Rounder Ln.
Holly Springs, NC 27540-9683

The Board of Adjustment will hold a special meeting and Public Hearing on Thursday – December 13, 2023, at 5:30 pm in the Community Room located at 601 W. Corbett Avenue regarding an appeal of an administrative decision that the property owner is in violation of the Unified Development Ordinance using the property as a boat storage yard. The property is located at intersection of Walnut and Spring St further identified as tax pin number 536410369140 in Swansboro.

If you have any questions, please contact me.

Sincerely,

Andrea Correll, Planner-AICP



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pwebb@ci.swansboro.nc.us

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Alissa A. Fender, CMC
afender@ci.swansboro.nc.us

November 20, 2023

Rogers Doug F & Holly M
406 Elm St.
Swansboro, NC 28584

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Town Manager

Paula W. Webb, MMC-NCCMC
pwebb@ci.swansboro.nc.us

Town Clerk

Alissa A. Fender, CMC
afender@ci.swansboro.nc.us

November 20, 2023

Rogers Doug F & Holly M
3801 ST Mark Rd.
Durham, NC 27707

The Board of Adjustment will hold a special meeting and Public Hearing on Thursday – December 13, 2023, at 5:30 pm in the Community Room located at 601 W. Corbett Avenue regarding an appeal of an administrative decision that the property owner is in violation of the Unified Development Ordinance using the property as a boat storage yard. The property is located at intersection of Walnut and Spring St further identified as tax pin number 536410369140 in Swansboro.

If you have any questions, please contact me.

Sincerely,

Andrea Correll, Planner-AICP



• Friendly City by the Sea •
Established 1783

www.swansboro-nc.org

Board of Commissioners

John Davis
Mayor

Frank Tursi
Mayor Pro Tem

Patricia Turner
Commissioner

Harry Pugliese
Commissioner

Larry Philpott
Commissioner

Jeffrey Conaway
Commissioner

Town Manager

Paula W. Webb, MMC-NCCMC
pwebb@ci.swansboro.nc.us

Town Clerk

Alissa A. Fender, CMC
afender@ci.swansboro.nc.us

November 20, 2023

C&M Jordan LLC
306 Soundview Ct
Cape Carteret, NC 28584-9743

The Board of Adjustment will hold a special meeting and Public Hearing on Thursday – December 13, 2023, at 5:30 pm in the Community Room located at 601 W. Corbett Avenue regarding an appeal of an administrative decision that the property owner is in violation of the Unified Development Ordinance using the property as a boat storage yard. The property is located at intersection of Walnut and Spring St further identified as tax pin number 536410369140 in Swansboro.

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pwebb@ci.swansboro.nc.us

Town Clerk

Alissa A. Fender, CMC
afender@ci.swansboro.nc.us

November 20, 2023

Ogren Timothy Jerome & Kendall Swain
209 Linton Bank Pl.
Cary, NC 27513-2053

The Board of Adjustment will hold a special meeting and Public Hearing on Thursday – December 13, 2023, at 5:30 pm in the Community Room located at 601 W. Corbett Avenue regarding an appeal of an administrative decision that the property owner is in violation of the Unified Development Ordinance using the property as a boat storage yard. The property is located at intersection of Walnut and Spring St further identified as tax pin number 536410369140 in Swansboro.

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Sincerely,

Andrea Correll, Planner-AICP



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pwebb@ci.swansboro.nc.us

Town Clerk

Alissa A. Fender, CMC
afender@ci.swansboro.nc.us

November 20, 2023

Oaks Sandra W.
310 S Walnut St.
Swansboro, NC 28584

The Board of Adjustment will hold a special meeting and Public Hearing on Thursday – December 13, 2023, at 5:30 pm in the Community Room located at 601 W. Corbett Avenue regarding an appeal of an administrative decision that the property owner is in violation of the Unified Development Ordinance using the property as a boat storage yard. The property is located at intersection of Walnut and Spring St further identified as tax pin number 536410369140 in Swansboro.

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Sincerely,

Andrea Correll, Planner-AICP



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November 20, 2023

Schneider Stephen C.
PO Box 1582
Swansboro, NC 28584

The Board of Adjustment will hold a special meeting and Public Hearing on Thursday – December 13, 2023, at 5:30 pm in the Community Room located at 601 W. Corbett Avenue regarding an appeal of an administrative decision that the property owner is in violation of the Unified Development Ordinance using the property as a boat storage yard. The property is located at intersection of Walnut and Spring St further identified as tax pin number 536410369140 in Swansboro.

If you have any questions, please contact me.

Board of Commissioners

John Davis
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Mayor Pro Tem

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Harry Pugliese
Commissioner

Larry Philpott
Commissioner

Jeffrey Conaway
Commissioner

Sincerely,

Andrea Correll, Planner-AICP

Town Manager
Paula W. Webb, MMC-NCCMC
pwebb@ci.swansboro.nc.us

Town Clerk
Alissa A. Fender, CMC
afender@ci.swansboro.nc.us



• Friendly City by the Sea •
Established 1783

www.swansboro-nc.org

November 20, 2023

Everette Kirby Lee Jr.
974 Bellamy Lake Rd.
Whitakers, NC 27891

The Board of Adjustment will hold a special meeting and Public Hearing on Thursday – December 13, 2023, at 5:30 pm in the Community Room located at 601 W. Corbett Avenue regarding an appeal of an administrative decision that the property owner is in violation of the Unified Development Ordinance using the property as a boat storage yard. The property is located at intersection of Walnut and Spring St further identified as tax pin number 536410369140 in Swansboro.

If you have any questions, please contact me.

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John Davis
Mayor

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Patricia Turner
Commissioner

Harry Pugliese
Commissioner

Larry Philpott
Commissioner

Jeffrey Conaway
Commissioner

Sincerely,

Andrea Correll, Planner-AICP

Town Manager

Paula W. Webb, MMC-NCCMC
pwebb@ci.swansboro.nc.us

Town Clerk

Alissa A. Fender, CMC
afender@ci.swansboro.nc.us

Parcel ID: 023700
Luc: Residential

Map #: 1405-75
Class: Vacant

NBHD: Item III - a.
WALNUT ST

Parcel

Parcel 023700
Tax Year 2023
Property Address WALNUT ST
Unit Desc
Unit #
NBHD 4350 - EDGEWATER
Class Vacant
Land Use Code 01 - Residential
Living Units
Mapping Acres .13
CAMA Acres .13
Location
Fronting
Zoning R-6 SF-R-6 SF
Map # 1405-75
PIN Number 536410369140
Total Cards 0
Record Type R

Legal

Legal Description L8 BF EDGEWATER
Township 113 - SWANSBORO
City Code 22 - SWANSBORO
Jurisdiction 1322 - SWANSBORO CITY
Plat Book-Page/Subd # 01-122
Fire District SB - SWANSBORO

Public Comments

Line #	Dept	Comment
1	CONV	SIZE ADJ

Sales

Sale Date	Sale Price	Grantor	Grantee
14-FEB-12	80,000	BEST BEN & STEPHEN C SCHNEIDER	EVERETTE KIRBY LEE JR
29-OCT-10	68,000	WU MARY MARGARET	BEST BEN & STEPHEN C SCHNEIDER
15-MAY-03	0	LUCAS MARY MARGARET S	WU MARY MARGARET

Sale Details

1 of 3

Deed Date 14-FEB-12
Book 3725
Page 156
LT #
Instrument Type DEED
Grantor BEST BEN & STEPHEN C SCHNEIDER
Grantee EVERETTE KIRBY LEE JR
Sale Date 14-FEB-12
Sale Type
Sale Validity 00-Valid Sale
Sale Source 4-STAMPS
Sale Price 80,000
Adjustment Amount
Adjusted Price 80,000
Adjustment Reason
Note 1
Note 2

Land Summary

Item III - a.

Line Number	Land Type	Land Code	Square Feet	Acres
1	G-Gross Value	01-RESIDENTIAL	5,663	0.13

Land

Line Number	1
Land Type	G-Gross Value
Land Code	01-RESIDENTIAL
Square Feet	5,663
Acres	0.13
Units	
Lot Front Footage	
Lot Depth	
Override Rate	
Base Size	
Base Rate	150000
Influence Code 1	
Influence Code 2	
Influence Factor	0
Zoning	
NBHD Model	4350
Land Value	150,000
Use Value Flag	N
Land Change Reason	
Note	
Note 2	

Legal Description

Township	113 - SWANSBORO
City Code	22 - SWANSBORO
Jurisdiction	1322 - SWANSBORO CITY
Property Address	WALNUT ST
Unit Desc	
Unit #	
Legal Desc 1	L8 BF EDGEWATER
Legal Desc 2	
Legal Desc 3	
Note 1	
Note 2	WALNUT ST
Fire District	SB
Deeded Acres	
Sq Ft	
Plat Book-Page/Subd #	01-122
Subdivision Name	EDGEWATER HEIGHTS
Subd Block	
Subd Lot	
Condo Bldg #	
Condo Unit #	
Subd Code	

Values

Spec Proc Flag	
Appraised Land	150,000
Appraised Building	0
Appraised Total	150,000
Cost Land Value	150,000
Cost Building Value	0
Cost Total Value	150,000
Market Value	
Income Value	0
GRM Value	0
Total Residential Living Area	

Total Commercial Living Area

Note 1

Note 2

Solid Waste Fee Units

Land Use Value

Land Deferred Value

Final Land Value 150,000

Final OBY Value 0

Final Building Value 0

Senior Exclusion 0

100% Exemption 0

Partial Exemption 0

VET Exclusion 0

=====

Taxable Total 150,000



Sorry, no sketch available
for this record

Item	Area



-----Original Message-----

From: Andrea Correll <acorrell@ci.swansboro.nc.us>

Sent: Wednesday, June 1, 2016 9:44 AM

To: Brittany Shipp <bshipp@ci.swansboro.nc.us>

Subject: Re: 6/1 - end of Walnut St

Well Brianna and I are working on the big boat.

Thanks

Andrea

> On Jun 1, 2016, at 9:41 AM, Brittany Shipp <bshipp@ci.swansboro.nc.us> wrote:

>

> And the whopper boat is still in the street as well. On Spring.

>

> Sent from my iPhone - please excuse typos.

>

>> On Jun 1, 2016, at 9:40 AM, Andrea Correll <acorrell@ci.swansboro.nc.us> wrote:

>>

>> I had this discussion with Chief Ken this week near the intersection of Spring and Chestnut.

>> I will discuss it with Scott when I get a chance. It is our property and we need to preserve it.

>> Thanks

>> Andrea

>>

>> -----Original Message-----

>> From: Brittany Shipp

>> Sent: Wednesday, June 01, 2016 9:37 AM

>> To: Andrea Correll <acorrell@ci.swansboro.nc.us>

>> Subject: 6/1 - end of Walnut St

>>

Kirby Everette
974 Bellamy Lake Rd.
Whitakers, NC 27891

BOARD OF COMMISSIONERS

Scott Chadwick, Mayor
Jim Allen, Mayor Pro-Tem
John Lister, Commissioner
Roy Herrick, Commissioner
Pat Turner, Commissioner
Frank Tursi, Commissioner



**OFFICE OF THE TOWN
MANAGER**

Scott Chase, Town Manager
Paula W. Webb, Town Clerk

TOWN OF SWANSBORO

The Friendly City by the Sea • Established 1783

February 16, 2017

Kirby Everette
974 Bellamy Lake Rd.
Whitakers, NC 27891

Re: Resolution of violation

Location: Intersection of Spring and Walnut.

The boat reference in the previous notices was not your boat but a neighbors. They have agreed to move the boat out of the public right of way.

I appreciated Ms. Brown's call on the notification, so I could contact the correct person.

Thank you for your assistance and cooperation.

Sincerely,

Andrea Correll
Town of Swansboro
Code Enforcement
910-326-4428
910-326-3101 fax
acorrell@ci.swansboro.nc.us

§ 152.016 DEFINITIONS OF BASIC TERMS.

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this chapter.

DOCKS, PIERS (Not commercially operated, with or without launching facilities). A fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels and which does not produce income, and does not serve as an inducement to renting, purchasing, or using accompanying facilities.

MARINA. A facility for the docking, mooring, berthing, or storage of marine vessels that also include, but are not limited to, a wide variety of accessory uses such as boat fuel sales, sales of boating supplies and equipment, boating related services, laundries, boat repair and rental, storage racks and dry storage of boats.

§ 152.170 ESTABLISHMENT OF ZONING DISTRICTS, AND THE PURPOSE THEREOF.

For the purpose of this chapter, the Town of Swansboro and its extraterritorial jurisdiction is divided into the following classes of zones:

(D) R6SF - Residential. The purpose of this district shall be that only single-family structures shall be permitted in this district.

§ 152.049 BURDEN OF PROOF IN APPEALS AND VARIANCES.

- (A) When an appeal is taken to the Board of Adjustment in accordance with § 152.030(C), the administrator shall have the initial burden of presenting to the board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- (B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in § 152.046, as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

(Ord. 2005-03, passed 3-15-2005)

§ 152.179 TABLE OF PERMITTED/SPECIAL USES.

- (A) Districts in which particular uses are a permitted use-by-right are indicated by “P.” Uses with certain conditions may include a reference to a footnote to this table.
- (B) Districts in which particular uses are a special use upon approval of the Town Board of Commissioners are indicated by “S”. See the Table of Regulations for Special Uses , § 152.211, for details of each special use .
- (C) Districts in which particular uses are reviewed for compliance by the Town Planner are indicated by “US”. See § 152.212 Use Standards for details of each Use Standard.
- (D) Districts in which particular uses are a minor special use upon approval of the Town Board of Adjustments are indicated by “MS”. See the Table of Regulations for Special Uses , § 152.211, for details of each minor special use.
- (E) Districts in which particular uses are prohibited are indicated by not being listed or by a blank.
- (F) Any land use listed in the Table of Permitted Uses that incorporates or utilizes a drive-in facility must have its site design plan and proposed traffic circulation and parking plan approved by the Town of Swansboro. Those plans must be approved prior to construction of the drive-in facility.

PERMITTED/ SPECIAL USES	CON	RA	R6	R6SF	R8SF	R10SF	R15SF	R20SF	R40SF	PUD	MHP	MHS	MHS-O	O/I	G/E	B1	B2	B3	B2HDO	MI
Docks, piers (government operated with or without launching facilities)	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	
Marinas (greater than 10 boat slips)																MS	MS	MS	MS	
Storage, warehouse, including mini storage																US				P

§ **152.212 USE STANDARDS**

(V) **Use- Storage**, warehouse, including mini storage - permitted as a use standard in B1

- (1) Requirements for open storage of recreational and dry storage of pleasure boats of the type customarily maintained by persons for their personal use shall be permitted within the Storage, Self-Service use, provided that the following standards are met:
- (a) The storage shall occur only within a designated area. Th designated area shall be clearly delineated.
 - (b) The storage area shall not exceed twenty-five percent (25%) of the buildable area of the site.
 - (c) No dry stacking of boats shall be permitted on the site.
 - (d) Boats shall be stored in a manner so as to prevent the collection of rainwater.
 - (e) The storage area shall be entirely screened from view from adjacent residential areas and public roads by a building and/or opaque fencing or fencing with landscaping along the fence's exterior side.
 - (f) Storage shall not occur within the area set aside for minimum building setbacks.
 - (g) If separate structures are constructed, there shall be a minimum separation of ten (10) feet between the buildings within the facility.
 - (h) Interior parking shall be provided in the form of aisles adjacent to the storage bays. These aisles shall be used both for circulation and temporary customer parking while using storage bays. The minimum width of these aisles shall be thirty (30) feet.
- (2) Plans are required and must show:
- (a) Size and location of all outdoor areas used for principal use.
 - (b) Topography: on new construction, well drained site with adequate storm drainage facilities (including retention pond facilities, when applicable).
 - (c) Structures: location of signs, entrance, and buildings must be shown on the plan.
 - (d) Circulation: proposed points for access and egress and a parking layout.
 - (e) Buffering: as specified in §§ 152.528 of this chapter, unless the property abuts residentially used or zoned property in which case a Type C buffer is required.
 - (f) Sign size and location as specified §§ 152.265-152.277 of this chapter.
 - (g) Lighting plan which must include wattage and illumination. The use of full cut-off luminaries is required.
 - (h) List of all services to be provided.
 - (i) Security/management plan.
 - (j) Hours of operation (refer to Town noise ordinance §§92.01- 92.06).
 - (k) Landscaping Requirements, §§152.525- 152.544.
 - (l) Parking: shall conform to §§ 152.290 through 152.296, Off-Street Parking and Loading Requirements.

Law Offices of John Drew Warlick, P.A.

Attorneys at Law
313 New Bridge Street
Jacksonville, North Carolina 28540

John Drew Warlick, Jr.
Robert A. Warlick
John P. Swart
Davidson S. Myers
Jaime D. Campbell

Mailing Address
P.O. Drawer 1006
Jacksonville, NC 28541-1006

E-Mail: jps@warlicklaw.com

October 23, 2023

Via Hand Delivery:

Town of Swansboro, Board of Adjustment

Elaine Justice
Ralph Kohlman
Wayne Mixon
Thomas Pieratti
John Fitzgerald
Tom Carriker

Paula Webb – Town Manager, Town of Swansboro
Andrea Correll – Town Planner, Town of Swansboro

c/o Alissa Fender
Town Clerk, Town of Swansboro
Town Hall
601 W. Corbett Avenue
Swansboro, NC 28584

Re: Appeal Notice of Violation issued to Kirby Lee Everette, Jr. (copy attached as Exhibit A to enclosed Appeal Documents)

To Whom It May Concern:

I have been retained by Kirby Lee Everette, Jr. to appeal on his behalf that certain Notice of Violation dated September 18, 2023 (which he first received on September 26, 2023).

This appeal is brought pursuant to § 152.045 of the Town of Swansboro Unified Development Ordinance.

Pursuant to § 152.045(D) please provide me with “all papers constituting the record relating to the action appealed from” (the Notice of Violation attached hereto as Exhibit A).

Also, pursuant to N.C.G.S. § 136-6, I am requesting copies of all public records as defined and set forth in N.C.G.S. Chapter 132, that relate to or pertain in any way to the Notice of Violation that is the subject of this appeal, including but not limited to all documents, correspondence (including e-mails, text messages), memoranda, photographs, videos, and notes relating to any and all complaints, investigations, or actions taken concerning (i) the complaint(s) received that prompted the September 18, 2023 investigation and Notice of Violation; (ii) any other complaints previously received relating to or pertaining to the same or similar alleged violations by Mr. Everette as set forth in the September 18, 2023 Notice of Violation; and (iii) any other investigation and/or action undertaken concerning the alleged violations of the nature set forth in the Notice of Violation that is the subject of this appeal.

Please let me know the charges for providing these copies and I will see that such charges are promptly paid.

If there are records, documents or other items that are not in a format that will allow providing copies, please let me know a date and time when I can view or listen to said items.

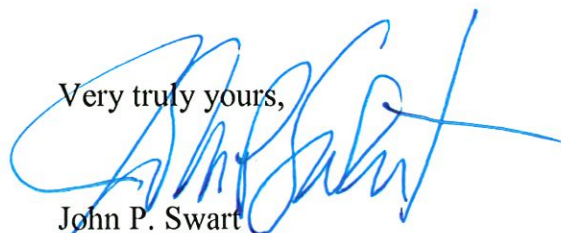
Attached please find a check in the sum of \$400.00 which I understand to be the fee for initiating this appeal.

I am attaching the original and ten (10) copies of this letter and attachments to facilitate transmission of these appeal documents to the administrator and to members of the Board of Adjustment.

Please let me know at your earliest convenience if you have any questions, suggestions or comments concerning this matter.

With warmest personal regards, I remain

Very truly yours,



John P. Swart
Attorney for Apellant
NC Bar # 9646
Street Address: 313 New Bridge St.
Jacksonville, NC 28540
Mailing Address: P.O. Drawer
1006
Jacksonville, NC 28541
Telephone: (910) 455-7700
Facsimile: (910) 455-4068
E-mail: jps@warlicklaw.com

JPS/sjm
enclosures

TOWN OF SWANSBORO
FRIENDLY CITY BY THE SEA * Established 1783

601 W. Corbett Avenue Swansboro, NC 28584 910-326-4428

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW
TOWN OF SWANSBORO

APPLICATION # _____

BEFORE THE
BOARD OF ADJUSTMENT

IN THE MATTER OF THE REQUEST FOR:

APPEAL of Notice of Violation
(copy attached hereto)

APPLICANT'S NAME _____

MAILING ADDRESS _____ Phone # _____

OWNER'S NAME Kirby Lee Everette, Jr.

404 S. Water Street

OWNER'S ADDRESS Swansboro, NC 28584 Phone # (252) 883-0226

TAKE NOTICE THAT THE UNDERSIGNED HEREBY PETITIONS THE BOARD OF ADJUSTMENT OF THE TOWN OF SWANSBORO FOR AN APPEAL FROM THE ENFORCEMENT AND INTERPRETATION OF THIS ORDINANCE AN/OR APPEAL FOR A VARIANCE OR SPECIAL USE AS DESCRIBED BELOW:

This is an appeal from the enforcement and interpretation set forth in that certain Notice of Violation, attached hereto as Exhibit A. The grounds for said appeal are set forth in attached Exhibit B. An authorization allowing John P. Swart to represent me is attached as Exhibit C.

ON THE PREMISES LOCATED AT: see Deed attached as Exhibit D.

Edgewater Heights LOT 8 BLOCK F MAP BOOK 1 page 122

THE PROPERTY IS ZONED: R U S F

THIS 23rd DAY OF October, 2023.

APPLICANT'S SIGNATURE John P. Swart (attorney for Kirby Lee Everette, Jr.)

DATE FILED Oct. 23, 2023

RECIPIENT SIGNATURE Anna Under

ZONING ADMINISTRATOR Candice Lamm

NOTE: APPLICANT OR APPLICANT REPRESENTATIVE MUST BE PRESENT FOR AN APPLICATION TO BE HEARD IF SOMEONE OTHER THAN THE APPLICANT WILL BE THE REPRESENTATIVE, A LETTER OF PERMISSION FROM THE APPLICANT IS REQUIRED.



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Established 1783

www.swansboro-nc.org

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Mayor Pro Tem

Patricia Turner
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Town Manager

Paula W. Webb, MMC-NCCMC
pwebb@ci.swansboro.nc.us

Town Clerk

Alissa A. Fender, CMC
afender@ci.swansboro.nc.us

Exhibit A
Copy
Item III - a.

September 18, 2023

Notice of Violation

Everette Kirby Lee Jr.
974 Bellamy Lake Rd.
Whitakers NC 27891

Re: Property being used as a boat storage yard located at the corner of Walnut Street and Spring Street further identified as tax pin number 536410369140.

The purpose of this letter is to document our phone discussion yesterday afternoon September 14, 2023, and to formally notify you of your violation. I received a complaint on September 6, 2023. Your vacant lot is intended for single family residential uses. Boat storage is allowed in a marina, on a dock, or as part of a storage facility.

- Section 152.170 Establishment Of Zoning Districts, And The Purpose Thereof (D) R-6SF-Residential. The purpose of this district shall be that only single-family structures shall be permitted in this district.
- Section 152.179 Table of Permitted and Special Uses lists docks, (not commercially operated, with or without launching facilities) have a permitted use in R6-SF.
- Section 152.016 Definitions of Basic Terms defines Docks, Piers (not commercially operated, with or without launching facilities), A fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels and which does not produce income and does not serve as an inducement to renting, purchasing, or using accompanying facilities.
- Section 152.179 Table of Permitted and Special Uses lists marinas as not a permitted use in R6-SF single family zoning district.
- Section 152.016 Definitions of Basic Terms defines Marina, A facility for the docking, mooring, berthing, or storage of marine vessels that also include, but are not limited to, a wide variety of accessory uses such as boat fuel sales, sales of boating supplies and equipment, boating related services, laundries, boat repair and rental, storage racks and dry storage of boats.

You have thirty days from receipt of this letter to move your boat trailers off this property.

You have thirty days to resolve this violation or to file an appeal of my decision to the Town Board of Adjustment.

Sincerely,

Andrea Correll
Andrea Correll, AICP
Town Planner
attachments

Exhibit B

Grounds for Appeal

1. This appeal is brought in response to a written Notice of Violation (attached as Exhibit A, and hereinafter referred to as the Notice) that was first received by Mr. Everette via US Postal Service Certified Mail on September 26, 2023 as evidenced by the return receipt, a copy of which is attached hereto as Exhibit E.
2. Mr. Everette purchased the subject vacant lot (hereinafter the Lot) on February 14, 2012 (see deed attached as Exhibit D) and since that time has continuously parked and placed thereon at various times a variety of his personally owned boat trailers, boats on trailers, and utility trailers for more than 11 years without any complaint from any source, including but not limited to complaints from the Town of Swansboro.
3. The Lot is zoned R6FS
4. At all times since he has owned the Lot Mr. Everette has maintained it by planting grass, keeping it neat, neatly mowed and free of any rubbish, trash, junk or salvage trailers/boats.
5. The Notice fails to set forth and describe with particularity any use Mr. Everette has made with respect to the subject property that violates in any way or is prohibited by the provisions of the Swansboro Unified Development Ordinance (hereinafter the SUDO)
6. The SUDO does not set forth any prohibition against use by an owner of a lot zoned R6SF from parking or placing boat trailers, utility trailers or boats on trailers that he owns for his personal use and enjoyment on said Lot or allowing relatives to temporarily park and place their boat trailers or boats on trailers at no charge or rent on said Lot.
7. Mr. Everette has not used the subject Lot as a Marina (greater than 10 boat slips).
8. Mr. Everette has never engaged in any commercial operation or business on the subject Lot.
9. The SUDO constitutes zoning ordinances that are in derogation of Mr. Everette's common law rights as a private property owner and he is entitled to the free use of his property unless lawfully enacted and enforced explicit prohibitions prevent him from exercising those rights. The SUDO contains no such prohibition.
10. The Appellant reserves the right to set forth at hearing additional grounds for this appeal as investigation continues and additional information is received and discovered.

9/17/23

Exhibit C

Item III - a.

The undersigned Kirby Lee Everett, Jr. hereby retains John P. Swart of the Law Office of John Drew Warlick, PA. to represent me and act as my attorney with respect to an appeal from that certain Notice of Violation dated September 18, 2023 pertaining to usage of my lot at the corner of Walnut Street and Spring Street, Swansboro, NC, further identified as tax pin number 536410369140.

This the 17th day of October, 2023



Kirby Lee Everett, Jr.

74

Exhibit D

Item III - a.

This certifies that there are no delinquent ad valorem taxes, or other taxes which the Onslow County Tax Collector is charged with collecting, that are a lien on:

Parcel Identification Number: 023700

This is not a certification that the Onslow County Parcel Identification Number matches this deed description.

Tax Collections Staff: [Signature] Date: 2/14/12

Doc ID: 009553460003 Type: CRP
 Recorded: 02/14/2012 at 11:01:13 AM
 Fee Amt: \$186.00 Page 1 of 3
 Revenue Tax: \$160.00
 Onslow County, NC
 Rebecca L. Pollard Reg. of Deeds

BK **3725** PG **156-158**

This deed presented to
 The Onslow Co. Tax Office
 Date 2/14/2012 [Signature]

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$ 160.00

Parcel Identifier No. 023700 Verified by _____ County on the ____ day of _____, 20__
 By: _____

Mail/Box to: Tantum & Humphrey, PA, 604-C Cedar Point Blvd, Cedar Point, NC 28584

This instrument was prepared by: Tantum & Humphrey, PA, 604-C Cedar Point Blvd, Cedar Point, NC 28584

Brief description for the Index: LOT 8 EDGEWATER BF,

THIS DEED made this 2nd day of February, 2012 by and between

GRANTOR	GRANTEE
BEN G. BEST and wife PATRICIA L. BEST STEPHEN C. SCHNEIDER unmarried PO BOX 1582 SWANSBORO, NC 28584	KIRBY LEE EVERETTE JR. 974 BELLAMAY LAKE RD WHITAKERS, NC 27891

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

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

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

BEING all of Lot 8 Block F known numbered and designated on plat of Edgewater Heights, dated July 1940, R. E. Koonce, C. E. and recorded in Map Book 1, Page 122 Onslow County Registry.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 3496 page 485.

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

A map showing the above described property is recorded in Plat Book 1 page 122.

NC Bar Association Form No. 3 © 1976. Revised © 1/1/2010
 Printed by Agreement with the NC Bar Association

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

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

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

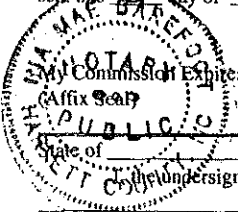
By: _____ (Entity Name) Ben G. Best (SEAL)
 Print/Type Name: BEN G. BEST

By: _____ Patricia L. Best (SEAL)
 Print/Type Name: PATRICIA L. BEST

By: _____ Stephen C. Schneider (SEAL)
 Print/Type Name: STEPHEN C. SCHNEIDER

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

State of North Carolina - County or City of HARNETT
 I, the undersigned Notary Public of the County or City of HARNETT and State aforesaid, certify that BEN G. BEST and wife PATRICIA L. BEST personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 2 day of Feb, 2012.



Ina Mae Barefoot
INA MAE BAREFOOT Notary Public
 Notary's Printed or Typed Name

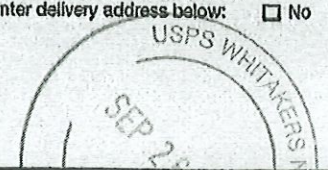
State of _____ - County or City of _____
 I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____ personally came before me this day and acknowledged that he is the _____ of _____, a North Carolina or _____ corporation/limited liability company/general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

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

State of _____ - County or City of _____
 I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____
 Witness my hand and Notarial stamp or seal, this _____ day of _____, 20____.

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

Exhibit
E

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>Item III - a.</p> <p>A. Signature <i>Kirby Eveck</i></p> <p>B. Received by (Printed Name) <i>Kirby Eveck</i></p> <p>C. Date of Delivery <i>9-26-23</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to:</p> <p><i>Everette Kirby Lee Jr. 974 Ballamy Lake Rd. Whitakers NC 27891</i></p>		
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p>	<p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>2. Article Number (Transfer from service label)</p> <p><i>7022 0410 0000 4762 6168</i></p>	<p>9590 9402 7469 2055 5644 41</p>	


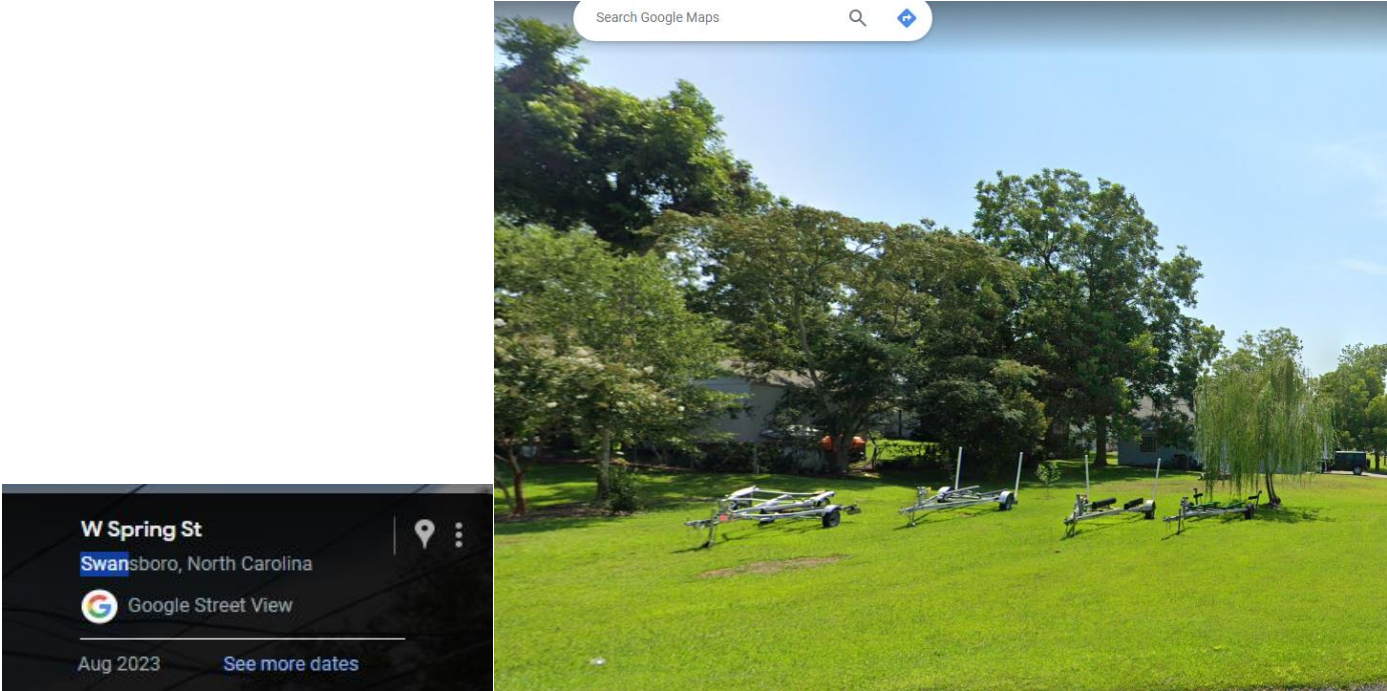
U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only		Return Receipt
For delivery information, visit our website at www.usps.com ®.		
OFFICIAL USE		
Certified Mail Fee \$ <i>4.35</i>		
Extra Services & Fees (check box, and fee as appropriate)		
<input checked="" type="checkbox"/> Return Receipt (hardcopy) \$ <i>3.55</i>		
<input type="checkbox"/> Return Receipt (electronic) \$		
<input type="checkbox"/> Certified Mail Restricted Delivery \$		
<input type="checkbox"/> Adult Signature Required \$	Postmark Here	
<input type="checkbox"/> Adult Signature Restricted Delivery \$	SEP 18 2023	
Postage \$ <i>0.63</i>		
Total Postage and Fees \$ <i>8.53</i>		
Sent To	<i>28584 0930</i>	
Street and Apt. No., or PO Box No.	<i>974 Ballamy Lake Rd</i>	
City, State, ZIP+4®	<i>Whitakers, NC 27891</i>	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions		



Photo taken in mid September

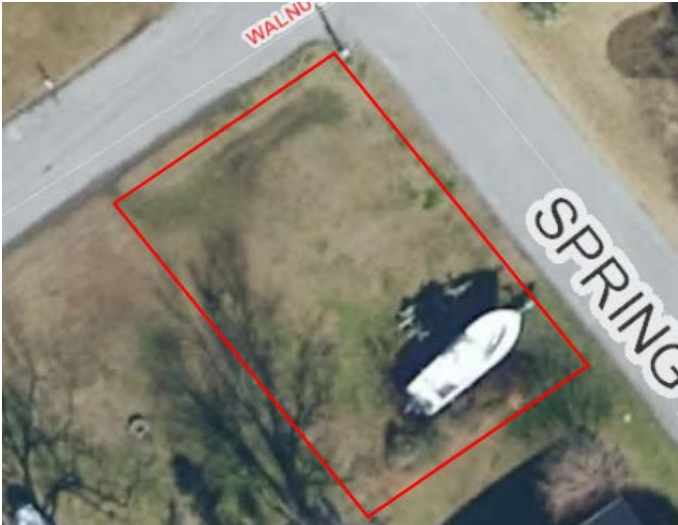


Source of Aerial Photographs - <https://maps.onslowcountync.gov/#>

2022



2020



2016



2012

