



# TOWN OF SOUTHERN SHORES

5375 N Virginia Dare Trl, Southern Shores, NC 27949  
(252) 261-2394 tel (252) 255-0876 fax  
[www.southernshores-nc.gov](http://www.southernshores-nc.gov)

Application No. APA-16-01 Date April 15, 2016  
Application Fee \$350.00 Receipt No. 373807

THIS FORM IS A NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT. THE BOARD OF ADJUSTMENT MAY HEAR AND DECIDE APPEALS OF ADMINISTRATIVE DECISIONS OF ADMINISTRATIVE OFFICIALS CHARGED WITH ENFORCEMENT OF THE TOWN'S ZONING ORDINANCE OR ANY OTHER ORDINANCE THAT REGULATES LAND USE OR DEVELOPMENT AS PROVIDED UNDER THE TOWN CODE OF ORDINANCES. ADDITIONAL PAGES MAY BE ATTACHED TO ANSWER ANY QUESTIONS IN THE APPLICATION OR TO PROVIDE ANY SUPPLEMENTAL INFORMATION.

## **SUPPLEMENTAL NOTICE OF APPEAL**

**\*\*NOTE:** This Supplemental Notice of Appeal is being filed in addition to, and not in lieu of, the Motion to Stay and Notice of Appeal filed with the Town Clerk by letter from the undersigned, dated April 13, 2016 in that the undersigned had no notice (online or otherwise) that this form may be required as a part of an appeal process for the Town of Southern Shores. It was only provided, yesterday, when inquiry was made to Mr. Wes Haskett as to whether or not the Town utilizes a form for an appeal. It is therefore completed, signed and filed under objection for the failure of the Town to properly disclose all requirements involved in its process for appeal.

1. Applicant Name: Charlie Aycock, Attorney at Law

Mailing Address: P.O. Box 117

City: Nags Head State: N.C. Zip Code: 27959

Telephone: (252) 441- 2071

2. Property Owner #1 Name (If different from Applicant): Gordon P. Stone, Jr. and Kay S. Stone\*

Mailing Address: P.O. Box 16155

City: Chesapeake State: Virginia Zip Code: 23328

Telephone: (757) 482-3787

Property Owner #2 Name: James L. Giordano and Janice L. Giordano\*

Mailing Address: 6212 Greenwich Drive

City: Glen Allen State: Virginia Zip Code: 23060

Telephone \_\_\_\_\_

**\*NOTE:** Property Owner #1 and Property Owner #2 are hereinafter collectively referred to as the "Property Owners".

3. Property (If decision being appealed is specific to a particular property):

Street Address 0 Ocean Boulevard

Tax Parcel Identification Number: 031203000\*\*; PIN Number: 986712950388\*\*

Subdivision Name: Southern Shores Section# 1 Lot# N/A

Zoning District Classification: RS1 (Single Family Residential District)

Current Use of Property: Vacant

**\*\*NOTE:** This (the subject) property is hereinafter referred to as the "Property".

4. Date of decision being appealed: March 14, 2016, duly received by the undersigned via USPS on March 16, 2016.

5. Attach a copy of the administrative order, requirement, decision or determination being appealed. Copy attached.

6. Describe the specific provisions or portions of the decision being appealed.

**Paragraph 1 of Property Owners Notice of Appeal duly filed on April 13, 2016 is incorporated by reference.**

7. Specify the grounds for your appeal. Fully explain how the administrative official inaccurately interpreted and/or applied the terms of the zoning ordinance. What do you believe to be the correct answer, and why?

**Paragraph 2 of Property Owners Notice of Appeal duly filed on April 13, 2016 is incorporated by reference.**

8. If you are not the property owner, or if the decision was not issued to you, explain how you are a person aggrieved by the decision.

Property Owners are the owners of property contiguous to, and adjoining, the Property, and thus own easement and appurtenant rights in and to the Property. By virtue of their ownership interests, Property Owners have the right to have the Property kept open and free of obstruction

for their use. The Town's decision is adverse to these rights and interests, and thus Property Owners are aggrieved parties.

9. List the names and addresses of all abutting property owners and the owners of property immediately across the street from the property affected. The list shall be current according to the most recent tax listing abstract as filed in the office of the Dare County Tax Supervisor.

- a. Abutting property owners to the north: James L. Giordano and Janice L. Giordano (Property Owner #2 hereinabove).
- b. Abutting property owners to the south: Gordon P. Stone, Jr. and Kay S. Stone (Property Owner #1 hereinabove).
- c. Abutting property owner to the west: Chicahawk Property Owners Association, Inc. Address: 5377 N. Virginia Dare Trail, Southern Shores, NC 27949
- d. Owner of property immediately across the street from the subject property: Southern Shores Civic Association, Inc. Address: 5377 N. Virginia Dare Trail, Kitty Hawk, NC 27949

10. Are any attachments being submitted with this application? Yes  No

If yes, please identify attachments and number of pages.

- a. Formal Zoning Ordinance Interpretation, dated March 14, 2016, by Wes Haskett, Town Planner/Code Enforcement Officer, which consists of 11 pages, and is the decision being appealed hereby.
- b. Complaint for Declaratory Judgment (hereinafter referred to as the "Complaint"), which was filed by Applicant on behalf of Property Owners on March 3, 2016, in the General Court of Justice, Superior Court Division, in Dare County File No: 16-CVS-117, which consists of 6 pages. (NOTE: Copy attached to the undersigned's letter dated April 13, 2016 (which is supplemented by this Notice).)
- c. Notice of Lis Pendens, file on March 14, 2016, also in File No: 16-CVS-117, and which consists of 2 pages. (NOTE: Copy attached to the undersigned's letter dated April 13, 2016 (which is supplemented by this Notice).)

**FILING OF APPLICATION**

Variance applications are filed with the Town of Southern Shores Planning and Code Enforcement Department at Town Hall located at 5375 N. Virginia Dare Trail, Southern Shores, NC. Applications may be filed in person Monday through Friday during normal office hours or may be mailed to the previously listed address. In order for an application to be considered complete all questions and information requested in the application must be answered and provided. Applications must have original notarized signatures of the applicant and must be accompanied by the required application fee. Applications found to be incomplete will not be accepted and will be returned to the applicant.

**SCHEDULING OF APPLICATION**

Applications submitted will be placed on the following month's Board agenda. The monthly filing deadline and Board meeting dates for the year are listed on the Town's website at [www.southernshores-nc.gov](http://www.southernshores-nc.gov) under Planning and Code Enforcement Department or you may receive a copy by contacting the Department at (252) 261-2394.

**HEARING OF APPLICATION**

The Planning Board serves as the Board of Adjustment which is a quasi-judicial body governed by the North Carolina General Statutes and Chapter 36, Article XII of the Southern Shores Town Code. Meetings are held in the Pitts Center located at the Town of Southern Shores Municipal Complex. At the meeting, the Board will hear testimony and receive evidence from the applicant, Town Staff and other interested parties. Board members cannot discuss any case with any interested parties or persons prior to the public hearing of the case. Any person who testifies at the hearing must be sworn in and any written or physical evidence presented to the Board will be retained by the Board.

**BOARD DECISION**

The concurring vote of a four-fifths majority of the board shall be necessary to grant a variance. The Board's decision will be made, reduced to writing, filed, served and subject to appeal in the manner provided by Section 36-368 of the Southern Shores Town Code. Decisions of the Board may be appealed by any aggrieved party to Superior Court within 30 days from the effective date of the Board's decision.

**ADDITIONAL INFORMATION**

Persons seeking additional information or assistance concerning variance applications should contact the Zoning Administrator at the Planning and Code Enforcement Department at (252) 261-2394.

**CERTIFICATION BY APPLICANT OTHER THAN PROPERTY OWNER**

I, Charlie Aycock, file this application on behalf of Property Owners identified above.

I am the Attorney for the appealing Property Owners in this matter and file this application with the full knowledge and consent of the property owner. I certify that the information filed by me in this application is accurate to the best of my knowledge, information, and belief.

  
Signature

4-15-16  
Date



STATE OF NORTH CAROLINA, COUNTY OF DARE

On this the 15<sup>th</sup> day of April, 2016, Charlie Aycock  
personally appeared before me and is known to me to be the person who signed the foregoing  
instrument and he/she acknowledged that he/she signed the same and being duly sworn by me,  
made oath that the statements in the foregoing instrument are true to the best of his knowledge.

Signature of Notary Public Denise A. Wells

My Commission expires October 16, 2019





## Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

info@southernshores-nc.gov

www.southernshores-nc.gov

March 14, 2016

Wyatt M. Booth  
Williams Mullen  
P.O. Box 1000  
Raleigh, NC 27602

Re: Boddie-Noell Enterprises  
Three Parcels in the Town of Southern Shores, NC

### **THIS IS A FORMAL ZONING ORDINANCE INTERPRETATION**

Dear Mr. Booth:

By letters dated October 2, 2015 and January 19, 2016 (the "BNE Letters"), addressed to Robert B. Hobbs, Jr., of Hornthal, Riley, Ellis & Maland, LLP, representing the Town of Southern Shores ("Town"), you requested on behalf of your client Boddie-Noell Enterprises ("BNE") a determination whether the following properties are nonconforming lots of record pursuant to Town Code Sections 136-132 and 36-57:

Tax Office Parcel # 03201000; PIN 986716946272 ("Parcel 1")

Tax Office Parcel # 03203000; PIN 986712950388 ("Parcel 2")

Tax Office parcel # 03207000; PIN 986707782801 ("Parcel 3")

(collectively the BNE Parcels")

Mr. Hobbs also received email messages from attorney Starkey Sharp on August 14, 2015 and November 9, 2015. These messages from Mr. Sharp indicated he represented Grey Berryman and Forrest Seal, both of whom were under contract to purchase from BNE two of the seven parcels described in your letter dated October 2, 2015. Mr. Sharp's email message of November 9, 2015 indicated he concurred with your analysis regarding the legal status of the BNE Parcels.

Wyatt M. Booth  
Vandeventer Black LLP  
March 14, 2016  
Page 2

In your letter to Mr. Hobbs dated January 19, 2016, you indicated BNE has conveyed four of the original seven parcels to the Chicahauk Property Owners Association. Therefore, as you have requested, this Formal Determination Letter will be limited to the three BNE parcels described above and in your January 19, 2016 letter.

The Town through attorney Robert Hobbs also received a letter from attorney Charlie Aycock dated August 14, 2015. In his letter, Mr. Aycock indicated that he and his law partner Betsy Butler represent Gordon P. Stone, Jr. and wife, Kay S. Stone, the owners of Lots 11 and 12, Block 14, Section 1, and James L. Giordano and wife, Janice L. Giordano, the owners of Lots 1 and 2, Block 15, Section 1, all as shown on the recorded plat of Southern Shores recorded in Map Book 1, Page 124, Dare County Registry. In his letter, Mr. Aycock further stated that between Blocks 14 and 15 is a parcel of property formerly labeled and known as part of 25th Street. The Town notes that the parcel to which Mr. Aycock was referring appears to be Parcel 2 described above. In his letter, Mr. Aycock advocated against an interpretation that the BNE Parcels were lots "of record" for the reasons stated in his letter.

#### APPLICABLE TOWN CODE PROVISIONS

The applicable Town Code provisions relating to this request are as follows:

1. The definition of "lot" contained in Code Section 36-57.
2. The definition of "lot of record" contained in Code Section 36-57.
3. Provisions concerning nonconforming lots of record as provided in Code Section 36-132(a).
4. Provisions concerning formal interpretations as provided in Code Section 36-366(a)(2).

#### SUMMARY OF THE TOWN'S FORMAL DETERMINATION

The Town makes the formal interpretation of the Town's zoning ordinance that the three BNE Parcels are nonconforming lots of record, as defined and provided in the applicable Town Code provisions listed above.

## ANALYSIS OF THE TOWN'S FORMAL DETERMINATION

### 1. Parcel 1.

Tax Office Parcel 031201000 was originally platted as a portion of 23rd Street and located between Lot 12, Block 12 and Lot 1, Block 13, Section 1, Southern Shores, as shown on plat recorded in Map Book 1, Page 124, Dare County Registry. With respect to the boundary lines of 23rd Street adjoining the entirety of the northern property line of Lot 12, Block 12, the entirety of the southern property line of Lot 1, Block 13, and the western right of way line of Ocean Boulevard (NC Highway 12), those three boundary lines of Parcel 1 are platted of record as shown on the plat recorded in Map Book 1, Page 124. The Town finds that these three boundary lines of Parcel 1 were established by the recordation of the plat recorded in Map Book 1, Page 124.

The Town further finds that a Declaration of Revocation dated March 18, 1974 and recorded in Book 210, Page 91, Dare County Registry, by the then-developer, Kitty Hawk Land Company, Inc., legally and validly withdrew all portions of 23rd Street.

Subsequently, Kitty Hawk Land Company, Inc. recorded a plat for Chicahawk Subdivision dated January, 1974 and recorded on March 18, 1974 in Map Book 7, Page 6, Dare County Registry (the "Chicahawk Plat"). Sheet 14 of the Chicahawk Plat established an eastern property line for the common element for Chicahawk Subdivision. The survey of Parcel 1 by Matthew R. Battey, P.L.S., surveyor's certificate dated January 8, 2016, a copy of which you submitted with your letter dated January 19, 2016, demonstrates to the Town's satisfaction that the eastern property line for the common element for Chicahawk Subdivision coincides with and is the same as the western property line of Lot 12, Block 12, and Lot 1, Block 13, Section 1, Southern Shores, referenced above. Consequently, since the eastern property line for the common element for Chicahawk Subdivision as shown on the Chicahawk Plat coincides with the western boundary line of Lot 12, Block 12 and Lot 1, Block 13, and since the Chicahawk Plat shows no break or change in the eastern property line of the Chicahawk Subdivision common element at the location of Parcel 1, the Town also finds that the eastern property line of the Chicahawk Subdivision common element is the same as the western property line of Parcel 1. The Town finds that the western property line of Parcel 1 was created on March 18, 1974 upon the recordation of the Chicahawk Plat. Therefore, by March 18, 1974, all recorded property lines for Parcel 1 had been legally established and recorded with the county register of deeds.

Wyatt M. Booth  
Vandevanter Black LLP  
March 14, 2016  
Page 4

Town Code Section 36-57 contains the definition of the term "lot." That definition provides as follows:

*Lot means any piece or parcel of land entirely within the town, the boundaries of which have been established by some legal instrument of record, which fronts on and has ingress and egress by means of a public right-of-way or a town approved private street and which is occupied or intended to be occupied by a building or group of buildings as provided herein with the customary accessories and open spaces. For the purposes of this chapter only that area within the town will be considered as a single lot.*

The Town finds that Parcel 1 to be a "lot" under the Town Code since all of the boundary lines of Parcel 1 were established by legal instruments of record, and Parcel 1 fronts on and has ingress and egress by means of Ocean Boulevard, also known as NC Highway 12, which is a public right-of-way, and Parcel 1 is located entirely within the Town.

Town Code Section 36-57 contains the definition of the term "lot of record." That definition provides as follows:

*Lot of record means a lot which is part of a subdivision recorded in the office of the county register of deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded.*

The Town finds Parcel 1 to be a "lot of record" under the Town Code because all boundary lines for Parcel 1 were established by the recordation with the county register of deeds of two subdivision plats along with the Declaration of Revocation discussed above.

Town Code Section 36-132(a)(1) pertains to nonconforming lots of record, and provides as follows:

*(1) Except as provided in subsection (a)(2) of this section, in any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on the effective date of adoption of the ordinance from which this chapter is derived, notwithstanding limitations (other than those contained in subsection (a)(2) of this section) imposed by other provisions of this chapter. These provisions shall apply even though such lot fails to meet the requirements for area or width, that are generally applicable in the district provided that yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of*

*yard requirements shall be obtained only through action of the board of adjustment as established in article XII of this chapter.*

The Town finds that subsection (a)(2) of Section 36-132 of the Town Code is inapplicable to Parcel 1. The Town further finds that Parcel 1 is located in a district in which single-family dwellings are permitted. The Town further finds that Parcel 1 was a "lot of record on the effective date of adoption of the ordinance from which this chapter is derived." All recorded instruments discussed above which created all of the boundary lines for Parcel 1 were recorded with the county register of deeds prior to the date of the Town's incorporation. Therefore, Parcel 1 was a lot of record existing before the effective date of the adoption of the zoning ordinance by the Town when the Town was incorporated in 1979.

2. Parcel 2.

Tax Office Parcel 031203000 was originally platted as a portion of 25th Street and located between Lot 12, Block 14 and Lot 1, Block 15, Section 1, Southern Shores, as shown on plat recorded in Map Book 1, Page 124, Dare County Registry. With respect to the boundary lines of 25th Street adjoining the entirety of the northern property line of Lot 12, Block 14, the entirety of the southern property line of Lot 1, Block 15, and the western right of way line of Ocean Boulevard (NC Highway 12), those three boundary lines of Parcel 2 are platted of record as shown on the plat recorded in Map Book 1, Page 124. The Town finds that these three boundary lines of Parcel 2 were established by the recordation of the plat recorded in Map Book 1, Page 124.

The Town further finds that a Declaration of Revocation dated March 18, 1974 and recorded in Book 210, Page 91, Dare County Registry, by the then-developer, Kitty Hawk Land Company, Inc., legally and validly withdrew all portions of 25th Street.

Subsequently, Kitty Hawk Land Company, Inc. recorded a plat for Chicahawk Subdivision dated January, 1974 and recorded on March 18, 1974 in Map Book 7, Page 6, Dare County Registry (the "Chicahawk Plat"). Sheet 14 of the Chicahawk Plat established an eastern property line for the common element for Chicahawk Subdivision. The survey of Parcel 2 by Matthew R. Battey, P.L.S., surveyor's certificate dated January 8, 2016, a copy of which you submitted with your letter dated January 19, 2016, demonstrates to the Town's satisfaction that the eastern property line for the common element for Chicahawk Subdivision coincides with and is the same as the western property line of Lot 12, Block 14, and Lot 1, Block 15, Section 1, Southern Shores, referenced above. Consequently, since the eastern property line for the common element for Chicahawk Subdivision as shown on the Chicahawk Plat coincides with the western boundary line of Lot 12, Block 14 and Lot 1, Block 15, and since the Chicahawk Plat shows no break or change in the eastern property line of the Chicahawk Subdivision common element at the location of

Wyatt M. Booth  
Vandevanter Black LLP  
March 14, 2016  
Page 6

Parcel 2, the Town also finds that the eastern property line of the Chicahauk Subdivision common element is the same as the western property line of Parcel 2. The Town finds that the western property line of Parcel 2 was created on March 18, 1974 upon the recordation of the Chicahauk Plat. Therefore, by March 18, 1974, all recorded property lines for Parcel 2 had been legally established and recorded with the county register of deeds.

Town Code Section 36-57 contains the definition of the term "lot." That definition provides as follows:

*Lot means any piece or parcel of land entirely within the town, the boundaries of which have been established by some legal instrument of record, which fronts on and has ingress and egress by means of a public right-of-way or a town approved private street and which is occupied or intended to be occupied by a building or group of buildings as provided herein with the customary accessories and open spaces. For the purposes of this chapter only that area within the town will be considered as a single lot.*

The Town finds that Parcel 2 to be a "lot" under the Town Code since all of the boundary lines of Parcel 2 were established by legal instruments of record, and Parcel 2 fronts on and has ingress and egress by means of Ocean Boulevard, also known as NC Highway 12, which is a public right-of-way, and Parcel 2 is located entirely within the Town.

Town Code Section 36-57 contains the definition of the term "lot of record." That definition provides as follows:

*Lot of record means a lot which is part of a subdivision recorded in the office of the county register of deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded.*

The Town finds Parcel 2 to be a "lot of record" under the Town Code because all boundary lines for Parcel 2 were established by the recordation with the county register of deeds of two subdivision plats along with the Declaration of Revocation discussed above.

Town Code Section 36-132(a)(1) pertains to nonconforming lots of record, and provides as follows:

*(1) Except as provided in subsection (a)(2) of this section, in any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on the effective date of adoption of the ordinance from which this chapter is derived,*

*notwithstanding limitations (other than those contained in subsection (a)(2) of this section) imposed by other provisions of this chapter. These provisions shall apply even though such lot fails to meet the requirements for area or width, that are generally applicable in the district provided that yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the board of adjustment as established in article XII of this chapter.*

The Town finds that subsection (a)(2) of Section 36-132 of the Town Code is inapplicable to Parcel 2. The Town further finds that Parcel 2 is located in a district in which single-family dwellings are permitted. The Town further finds that Parcel 2 was a "lot of record on the effective date of adoption of the ordinance from which this chapter is derived." All recorded instruments discussed above which created all of the boundary lines for Parcel 2 were recorded with the county register of deeds prior to the date of the Town's incorporation. Therefore, Parcel 2 was a lot of record existing before the effective date of the adoption of the zoning ordinance by the Town when the Town was incorporated in 1979.

3. Parcel 3.

Tax Office Parcel 031207000 was originally platted as a portion of 31st Street and located between Lot 12, Block 24, Section 2, and former Lot 1, Block 39, Section 3, Southern Shores, as shown on plat recorded in Map Book 1, Page 36, Dare County Registry. With respect to the boundary lines of 31st Street adjoining the entirety of the northern property line of Lot 12, Block 24, and the western right of way line of NC Highway 12, those two lines of Parcel 3 are platted of record as shown on the plat recorded in Map Book 1, Page 36. The Town finds that these two boundary lines of Parcel 3 were established by the recordation of the plat recorded in Map Book 1, Page 36.

The Town further finds that a Declaration of Revocation dated March 18, 1974 and recorded in Book 210, Page 91, Dare County Registry, by the then-developer, Kitty Hawk Land Company, Inc., legally and validly withdrew all portions of 31st Street.

Subsequently, Kitty Hawk Land Company, Inc. recorded a plat for Chicahawk Subdivision dated January, 1974 and recorded on March 18, 1974 in Map Book 7, Page 6, Dare County Registry (the "Chicahawk Plat"). Among other things, the Chicahawk Plat recombined former Lot 1, Block 39, Section 3 into part of the common element of Chicahawk Subdivision, as shown on Sheet 15 of the Chicahawk Plat, thereby reaffirming the existing platted and recorded northern property line of Parcel 3. Sheet 15 of the Chicahawk Plat also established an eastern property line for the common element for Chicahawk Subdivision. The survey of Parcel 3 by Matthew R.

Wyatt M. Booth  
Vandeventer Black LLP  
March 14, 2016  
Page 8

Batthey, P.L.S., surveyor's certificate dated January 8, 2016, a copy of which you submitted with your letter dated January 19, 2016, demonstrates to the Town's satisfaction that the eastern property line for the common element for Chicahawk Subdivision coincides with and is the same as the western property line of Lot 12, Block 24, Section 2, Southern Shores, referenced above.

Consequently, since the eastern property line for the common element for Chicahawk Subdivision as shown on the Chicahawk Plat coincides with the western boundary line of Lot 12, Block 24, and since the Chicahawk Plat shows no break or change in the eastern property line of the Chicahawk Subdivision common element at the location of Parcel 3, the Town also finds that the eastern property line of the Chicahawk Subdivision common element is the same as the western property line of Parcel 3. Further, the survey of Parcel 3 by Matthew R. Batthey also demonstrates to the Town's satisfaction that the southern property line for the common element for Chicahawk Subdivision as shown on the Chicahawk Plat coincides with and is the same as the northern property line of Parcel 3. Therefore, by March 18, 1974, all recorded property lines for Parcel 3 had been legally established and recorded with the county register of deeds.

Town Code Section 36-57 contains the definition of the term "lot." That definition provides as follows:

*Lot means any piece or parcel of land entirely within the town, the boundaries of which have been established by some legal instrument of record, which fronts on and has ingress and egress by means of a public right-of-way or a town approved private street and which is occupied or intended to be occupied by a building or group of buildings as provided herein with the customary accessories and open spaces. For the purposes of this chapter only that area within the town will be considered as a single lot.*

The Town finds that Parcel 3 to be a "lot" under the Town Code since all of the boundary lines of Parcel 3 were established by legal instruments of record, and Parcel 3 fronts on and has ingress and egress by means of NC Highway 12, which is a public right-of-way, and Parcel 3 is located entirely within the Town.

Town Code Section 36-57 contains the definition of the term "lot of record." That definition provides as follows:

*Lot of record means a lot which is part of a subdivision recorded in the office of the county register of deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded.*

Wyatt M. Booth  
Vandevanter Black LLP  
March 14, 2016  
Page 9

The Town finds Parcel 3 to be a "lot of record" under the Town Code because all boundary lines for Parcel 3 were established by the recordation with the county register of deeds of two subdivision plats along with the Declaration of Revocation discussed above.

Town Code Section 36-132(a)(1) pertains to nonconforming lots of record, and provides as follows:

*(1) Except as provided in subsection (a)(2) of this section, in any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on the effective date of adoption of the ordinance from which this chapter is derived, notwithstanding limitations (other than those contained in subsection (a)(2) of this section) imposed by other provisions of this chapter. These provisions shall apply even though such lot fails to meet the requirements for area or width, that are generally applicable in the district provided that yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the board of adjustment as established in article XII of this chapter.*

The Town finds that subsection (a)(2) of Section 36-132 of the Town Code is inapplicable to Parcel 3. The Town further finds that Parcel 3 is located in a district in which single-family dwellings are permitted. The Town further finds that Parcel 3 was a "lot of record on the effective date of adoption of the ordinance from which this chapter is derived." All recorded instruments discussed above which created all of the boundary lines for Parcel 3 were recorded with the county register of deeds prior to the date of the Town's incorporation. Therefore, Parcel 3 was a lot of record existing before the effective date of the adoption of the zoning ordinance by the Town when the Town was incorporated in 1979.

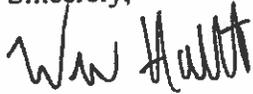
Feel free to contact me at (252) 261-2394 or [whaskett@southernshores-nc.gov](mailto:whaskett@southernshores-nc.gov) should you have any questions.

Wyatt M. Booth  
Vandeventer Black LLP  
March 14, 2016  
Page 10

Notice of Right to Appeal

Pursuant to Town Code Section 36-366(b), the owner or other party who has standing under G.S. § 160A-393(d), or the Town, shall have 30 days from receipt of the written notice of this Formal Zoning Ordinance Interpretation within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. The appeal requirements and procedures are set forth in Town Code Section 36-366(b).

Sincerely,



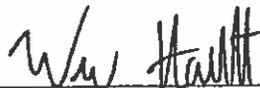
Wes Haskett  
Town Planner/Code Enforcement Officer  
Town of Southern Shores

cc: Peter Rascoe, Town Manager  
Benjamin M. Gallop, Town Attorney  
Starkey Sharp, Attorney for Grey Berryman and Forrest Seal  
Charlie Aycock, Attorney for Gordon P. Stone, Jr., Kay S. Stone, James L. Giordano and  
Janice L. Giordano  
E. Crouse Gray, Jr., Attorney for Chicahawk Property Owners Association

Wyatt M. Booth  
Vandevanter Black LLP  
March 14, 2016  
Page 11

**CERTIFICATE OF SERVICE**

I, Wes Haskett, Town Planner/Code Enforcement Officer of the Town of Southern Shores, do hereby certify that a copy of the FORMAL ZONING ORDINANCE INTERPRETATION hereto attached was mailed by First Class U.S. Mail to each of the persons listed below at the addresses indicated with the proper postage attached and deposited in an official depository of the United States Postal Service, on the 14<sup>th</sup> day of March, 2016.



Wes Haskett  
Town Planner/Code Enforcement Officer  
Town of Southern Shores  
5375 N. Virginia Dare Trail  
Southern Shores, NC 27949  
Phone 252-261-2394  
Fax 252-255-0876

**SERVED:**

Peter Rascoe  
Town Manager  
Town of Southern Shores  
5375 N. Virginia Dare Trail  
Southern Shores, NC 27949

E. Crouse Gray, Jr.  
Attorney for Chicahawk Property Owners  
Association  
Gray & Lloyd, L.L.P.  
3120 N. Croatan Hwy, Suite 101  
Kill Devil Hills, NC 27948

Wyatt M. Booth  
Attorney for Boddie-Noell Enterprises  
Williams Mullen  
P.O. Box 1000  
Raleigh, NC 27602

Starkey Sharp  
Attorney for Grey Berryman and Forrest Seal  
Sharp, Michael, Graham & Baker, LLP  
P.O. Drawer 1027  
Kitty Hawk, NC 27949

Charlie Aycock  
Attorney for Gordon P. Stone, Jr., Kay S.  
Stone, James L. Giordano and Janice L.  
Giordano  
Attorney at Law  
P.O. Box 117  
Nags Head, NC 27959