



Agenda

Town of Duck Board of Adjustment

Duck Town Meeting Hall

Wednesday, April 12, 2023 – 2:00 p.m.

1. Public Hearing

- a. **Appeal BOA-2023-001:** An application submitted by Edward J. Brooks, III, on behalf of Wright Ventures, LLC property owners of 1242 Duck Road, aka Tommy's Market, Duck, NC 27949 appealing the zoning administrator's determination that the recent repainting of the structure at 1242 Duck Road was inconsistent with Town code section 156.111(c) Design Standards for Buildings.

2. Approval of Minutes

- a. *Minutes from September 28, 2022 Meeting*
- b. *Minutes from October 12, 2022 Meeting*

3. Staff Comments

4. Board Comments

5. Adjournment



TO: Chairman Finch and Members of the Duck Board of Adjustment
FROM: Joe Heard, AICP, Director of Community Development
DATE: April 12, 2023
RE: Staff Report for BOA 2023-001, 1242 Duck Road

Application Information

Application #:	BOA 2023-001
Project Location:	1242 Duck Road
Dare County PIN:	985911762723
Zoning:	Village Commercial (V-C)
Property Owners:	Wright Ventures, LLC
Appellant/Contact:	Jay Brooks (property owner) Jeff Roether, Morningstar Law Group
Decision Rendered:	February 17, 2023 (staff notified owner of violation)
Appeal Application Submitted:	March 1, 2023
Public Hearing Advertised:	March 26 & April 2, 2023 (Coastland Times)
Public Hearing Notices Sent:	March 22, 2023
Public Hearing Sign Posted:	March 22, 2023
Public Hearing Town Website:	March 22, 2023
Public Hearing Town Hall Posted:	March 22, 2023

Requested Action

This appeal application was submitted by Edward J. Brooks, III, on behalf of Wright Ventures, LLC, property owners of 1242 Duck Road (Tommy's Market). The application appeals the zoning administrator's determination that the recent repainting of the building at 1242 Duck Road was inconsistent with Town Code Subsection 156.111(c), Design Standards for Buildings. The appellant states that the building's blue color is a natural material color and matches other colors in Town (citing a similar blue color on an adjoining sign). Therefore, the appellant asserts that the paint color on the building is in compliance with the standards of Subsection 156.111(c) and should be permitted. The appellant is asking the Board of Adjustment to overturn the staff's decision to declare the paint color in violation of Town Code Subsection 156.111(c).

Background Information

Subsection 156.111(c) of the Town Code, Design Standards for Buildings, reads:



(C) *Exterior materials.* In order to have buildings clad with a type, texture and color of material that relates to natural material elements found in the Town of Duck, the following standards shall apply to all building exteriors, unless otherwise noted.

(1) Additions and new construction shall use facing materials that are compatible in quality, color, texture, finish and dimension to those common in the village commercial area.

(2) Under no circumstances shall metal siding be used on any structure. This does not prohibit the use of durable metal accent pieces or columns on surfaces when they are made to mimic traditional detailing (cornices, trim pieces, moldings and the like).

(3) Large modular materials shall be avoided or used only as accent pieces on street fronting façades.

(4) Paint colors shall be of low reflectance, subtle, neutral or earth tone colors or shall relate to natural material colors found within the town generally. Contrasting colors of brighter hues, including pastels, may be used to accent architectural details and entrances.

(5) Roof and exterior wall colors shall be low-reflecting.

Staff Decision

After receiving inquiries from the community about the color of the recently painted building at Tommy's Market, 1242 Duck Road, Community Development staff investigated whether or not the color met the defined parameters found in Town Code Section 156.111(c), Design Standards for Buildings – "Paint colors shall be of low reflectance, subtle, neutral or earth tone colors or shall relate to natural material colors found within the town generally."

On February 17, 2023, Senior Planner Sandy Cross, acting under the direction and approval of her supervisor, Director of Community Development/Zoning & Subdivision Administrator Joe Heard, informed the new business owners and property owners of the staff's decision that the recently painted color was inconsistent with Town Code Subsection 156.111(c), Design Standards for Buildings.

Justification for Staff Decision

There is not a permit required to paint a structure in the Town of Duck. However, there are written standards (referenced above) that must be complied with for paint colors on commercial buildings. Over the years, Community Development staff have worked with dozens of commercial property and business owners to approve a variety of paint colors consistent with the stated standards and intent of Subsection 156.111(c) noted above. A notable example involved the denial of the initial bright yellow proposed by Super Wings, which resulted in a lighter, more muted yellow color for the building in Duck compared to other Super Wings locations throughout the Outer Banks. While understanding that evaluating paint colors involves some subjectivity, staff has tried to interpret these standards consistently over the years.

Typically, commercial paint colors are approved prior to commencement of the painting. In this instance, the property owner engaged a contractor to paint the building without first checking with



staff about appropriate paint colors. After receiving comments from the community, observing the resulting paint color, and comparing it with the Town's adopted design standards, staff did not find the bright, vibrant blue color to be a subtle, neutral, or earth tone color or a color generally found on buildings elsewhere in Town. Therefore, staff determined that the paint color of the building at 1242 Duck Road was/is in violation of Town Code Subsection 156.111(c), Design Standards for Buildings.

Based on our experience working with other property and business owners in the past, staff is hesitant to set a precedent for allowing brighter, bolder colors to be considered consistent with the design standards as we would eventually see many buildings in attention-grabbing colors throughout the community. This result would be inconsistent with the stated intent of the Design Standards for Buildings found in Subsection 156.111(c) of the Town Code and could change the character of Duck Village.

Addressing the Appellant's Comments

The appellant's application makes several claims and comments in outlining the basis for their appeal:

1. The color matches the original "Tommy's Blue" color of the market building.

Staff Response: While interesting if true, this point is irrelevant as the Town standards do not allow a property owner to repaint a building any color that it might have been in the past. The Tommy's Market building was constructed in 1986 when the Duck community was part of unincorporated Dare County. There were no commercial color standards at that time. However, the Town of Duck subsequently incorporated in 2002 and established the commercial color standards in 2004. While there were not similar standards in the past under Dare County, these adopted standards apply to all commercial buildings now in the Town of Duck.

In addition, staff has found no evidence and the appellant has provided no evidence that the subject building was ever painted in this or a similar color. In fact, documentary photographs found by staff appear to show the subject building painted with a blue-gray color similar to the current color of the adjoining Waterfront Shops.

2. The color will naturally soften with the summer sun.

Staff Response: While that might be a possible outcome, neither staff nor the appellant know the result that any "softening" might have or how long such a process might take. Fading or softening of the color might or might not occur, and if it does, the resulting color might still be inconsistent with the standards of Subsection 156.111(c) of the Town Code. In the meantime, while we wait for possible softening of the color to occur, the building's color would still be violation.



- 3. The property owner will incur significant expense if the building is required to be repainted.**

Staff Response: While there would most certainly be an expense associated with repainting the building, this expense could have been avoided had the appellant or their contractor checked with the Town before proceeding with the project.

- 4. The color is a neutral blue with low reflectance.**

Staff Response: While understanding that the interpretation of color is somewhat subjective and can be viewed differently by different people, staff did not find the painted blue color to be of a neutral or natural hue. Rather, in staff's opinion, the color appears to be a bold and vibrant blue inconsistent with the standards of Subsection 156.111(c) of the Town Code.

- 5. The blue color matches the color of an existing sign on the adjoining Waterfront Shops property, therefore is found generally within the Town.**

Staff Response: Staff has looked at other buildings throughout the Town and not found any other building painted in a similar shade of blue. While the appellant located a sign with a similarly colored-background, signs are much smaller than buildings and are not subject to the same color requirements as buildings. In addition, finding one example on a sign out of over one hundred businesses in Duck Village does not make this bright blue a color found generally within the Town.

Appellant Exhibits

The following attachments were submitted by the appellant in the appeal application packet:

- A. Appellant Appeal Application
- B. Email from adjoining property owner Jim Braithwaite (The Waterfront Shops) to Town Manager Drew Havens dated February 20, 2023

Staff Exhibits

1. Location Map
2. Email from Senior Planner Sandy Cross notifying the property and business owners about the paint color violation and justification for the decision dated February 17, 2023 (includes related attachments to the email)
3. Public Input List

BOA-2023-001

RECEIVED

MAR - 1 2023



Department of Community Development

PO Box 8369
1200 Duck RoadTown of Duck, North Carolina 27949
(252) 255-1234

TOWN OF DUCK, NC

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~~609781012~~

ZONING APPEAL APPLICATION

Date: 2/21/2023

1242 DUCK Rd. (Parcel #)

Property Owner (if appeal involves a specific property): WRIGHT VENTURES, LLC (a Minnesota LLC)Mailing Address: 1398 WEST MINNEHAHA PARKWAY, MINNEAPOLIS, MN 55419 Jay & Amanda BrooksTelephone #: 612-756-1955 Email: BROOKS@bipl.netRepresentative (if different from property owner): EDWARD J. BROOKS III ("Jay")Mailing Address: SameRepresentative Telephone #: 612-756-1955 Email: same brooks@bipl.net**Property Information (if applicable):**Property Address/Location: 1242 DUCK RD., DUCK, NC 27949Dare County PIN #: 985911-76-2723Zoning District: DUCK Use of Property: GROCERY STORE**Appeal Request:**Applicable Ordinance Section: 156.111(C)Describe the interpretation from which you are appealing: CURRENT PAINT COLOR (SAPPHIRE BLUE) IS INCONSISTENT WITH TOWN OF DUCK'S ORDINANCE (ABOVE).Who rendered the decision or interpretation?: JOE HEARDDate of the decision: NOTICE 2/17/2023 Date that you received the decision: WEEK OF FEBRUARY 6th or 13th (no date given)

Briefly describe how the decision impacts your situation:

PAID TO REPAINT TO ORIGINAL COLOR OF "TOMMY'S BLUE" FOR NEW BUSINESS OWNERS IN DECEMBER WHEN TOLD BY MARC MURRAY & OLIN FINCH THAT NO PERMIT WAS REQUIRED. COLOR WILL NATURALLY SOFTEN WITH HARSH SUMMER SUN. WE WISH NOT TO HAVE TO INCUR SIGNIFICANT COST TO REPEAT, ESPECIALLY WITH A BLUE THAT MATCHES SKY & SEA.

How do you think that the ordinance should be interpreted?: AS NATURAL MATERIAL
BLUE, EXISTING IN THE COMMUNITY ALREADY.
THE BLUE IS THE SAME AS THE EXISTING SIGN COLOR
TO THE SOUND FRONT SHOPS.
WATERFRONT (Brathwaite/Allis holdings adjoining property)

What sections and standards of the ordinance support your interpretation?: NEUTRAL BLUE, LOW
AND RELATES TO NATURAL MATERIAL COLORS REFLECT-
FOUND WITHIN THE TOWN GENERALLY (sign next door) ANCE

Outline any other evidence or information that supports your interpretation: COLOR BLUE
MATCHES COLOR BLUE OF EXISTING SOUND FRONT WATERFRONT
SHOPS ENTRANCE SIGN.

WRIGHT VENTURES, LLC
by: [Signature] (Jay)
Applicant Signature
WRIGHT VENTURES, LLC
by: [Signature] (Jay)
Property Owner Signature (if applicable)

A complete application can be submitted in person to the Town of Duck Community Development Department at Duck Town Hall, 1200 Duck Road or mailed to Town of Duck, P.O. Box 8369, Duck, NC 27949. Checks should be made payable to the Town of Duck. A complete application consists of:

- ☒ Complete, signed zoning appeal application form
- ☒ Zoning appeal application fee (\$500)
- ☒ Exhibits or information in support of the appeal request (neighbor communications, emails, text and/or photos)

FOR OFFICE USE ONLY	
Application Received <u>3/1/2023</u>	Received By <u>[Signature]</u>
Fee Paid <u>\$500 -</u>	Receipt # <u>ck # 1143</u>

From: jim braithwaite <jb@allisholdings.com>
Sent: Monday, February 20, 2023 12:40 PM
To: Edward Brooks
Subject: Fwd: Mail delivery failed: returning message to sender

----- Forwarded message -----

From: Mail Delivery System <mailer-daemon@electric.net>
Date: Mon, Feb 20, 2023 at 12:01 PM
Subject: Mail delivery failed: returning message to sender
To: <jb@allisholdings.com>

This message was created automatically by mail delivery software.

A message that you sent could not be delivered to one or more of its recipients. This is a permanent error. The following address(es) failed:

ebrooks@bipl.net
host bipl-net.mail.protection.outlook.com [104.47.55.110]
SMTP error from remote mail server after RCPT TO:<ebrooks@bipl.net>:
550 5.4.1 Recipient address rejected: Access denied. AS(201806281) [[MW2NAM10FT024.eop-nam10.prod.protection.outlook.com](#) 2023-02-20T17:01:40.965Z 08DB132A9973ACDE]

----- Forwarded message -----

From: jim braithwaite <jb@allisholdings.com>
To: ebrooks@bipl.net, matt price <ghostpusher@gmail.com>
Cc:
Bcc:
Date: Mon, 20 Feb 2023 12:01:22 -0500
Subject: Fwd: Tommy's market

----- Forwarded message -----

From: jim braithwaite <jb@allisholdings.com>
Date: Mon, Feb 20, 2023 at 12:00 PM
Subject: Tommy's market
To: Drew Havens <dhavens@townofduck.com>

Good morning Drew. I hope you're doing well. I understand that Tommy's Market has to change the color of their store. I don't know if the newcomers to the town or the people who always complain about everything realize that the blue color that it's currently painted was the original color used in the 80's when Tommy's was first constructed. I think they were trying to pay homage to the early history of their store. I don't understand why their current color is a problem now, particularly when it was the original color.

I guess I'm not surprised nobody said anything about it until after it was completely painted. They were just trying to beautify their building and get it ready for their new tenant.

Duck is becoming less and less enjoyable to do business . I hear this quite a bit from my friends who own commercial property in Duck . I don't really understand what has happened to the business climate in Duck or how or if it will ever be changed. It's very discouraging. I hope there is a way to help Tommy's Market overcome this hurdle. Thank you Drew for taking the time to review my email.

Sincerely,

Jim Braithwaite

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Jim Braithwaite
cell- 252-202-2107

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Jim Braithwaite
cell- 252-202-2107

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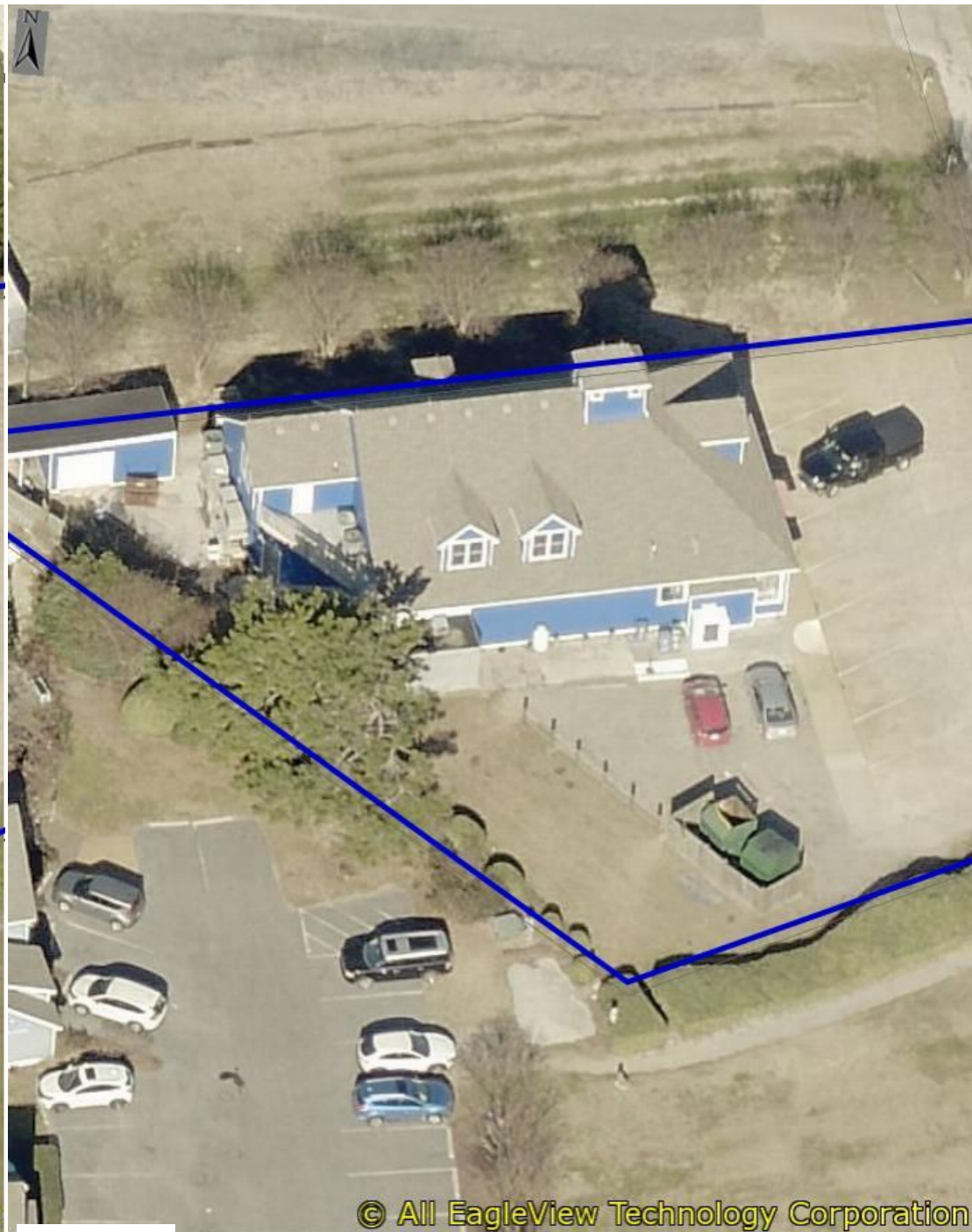
Jim Braithwaite
cell- 252-202-2107



1242 Duck Road Comparison



09/07/2019



12/28/2022

Sandy Cross

From: Sandy Cross
Sent: Friday, February 17, 2023 5:59 PM
To: 'feaganstim@gmail.com'
Cc: Sally Feagans; Edward Brooks; amanda_s_brooks@hotmail.com; Joe Heard; Jim Gould; Drew Havens
Subject: RE: Tommy's Market / Paint Color
Attachments: Code Section 156-111.pdf; Zoning Appeal Application 6.21.pdf; Code Section 156-165 Appeals.pdf; ZoningTextMapAmendmentApplication.pdf

Tracking:	Recipient	Delivery	Read
	'feaganstim@gmail.com'		
	Sally Feagans		
	Edward Brooks		
	amanda_s_brooks@hotmail.com		
	Joe Heard	Delivered: 2/17/2023 5:59 PM	
	Jim Gould	Delivered: 2/17/2023 5:59 PM	Read: 2/21/2023 9:16 AM
	Drew Havens	Delivered: 2/17/2023 5:59 PM	Read: 2/17/2023 7:48 PM

Tim and Sally,

I have brought Jay and Amanda into this conversation since they are the owners of the property.

We had a meeting last week with Joe Heard, our Director Of Community Development. He determined that the current paint color (sapphire blue) is inconsistent with the Town's ordinance, Section 156.111(C). Therefore, it must be repainted. We would encourage you to run any proposed color revision by our office first.

With that being said, you do have some options in regard to this decision.

1. You and/or Mr. Brooks may file an appeal of our decision;
2. You and/or Mr. Brooks may file a request for zoning text amendment;
3. You and/or Mr. Brooks may file a variance request.

I am detailing these options with associated fees and timelines so you can all discuss the best course of action should you decide not to repaint.

Appeal of our decision:

This would require a fee in the amount of \$500.00, and would go before the Board of Adjustment. This process typically takes 30-45 days. I have copied the code section relative to Appeals as well as the applicable application. **You have 30 days from receipt of the notice of our decision in which to file your appeal.**

Zoning Text Amendment:

This process would require a fee in the amount of \$350.00, and would go before the Planning Board and Town Council. This process typically takes about 90 days. Your application should include a proposed revision to the Town Code. That code section is also included as well as the application for same.

Variance request:

This process would require a fee in the amount of \$500.00 and would go before the Board of Adjustment. This process typically takes 30-45 days as well. We can tell you that the criteria for a variance approval is difficult. If this is a direction that you wish to pursue, please let me know and we will plan to walk you through that process.

Please let me know if you have any questions regarding this decision or wish to meet to discuss the process for any of these options.

Sandy Cross
Senior Planner
CAMA LPO/CZO/CFM
Department of Community Development
PO Box 8369
Duck, NC 27949
252-254-5954
252-255-1236 (f)
scross@townofduck.com
www.townofduck.com

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For more information- <http://bit.ly/Ducknews>



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

From: feaganstim@gmail.com <feaganstim@gmail.com>
Sent: Thursday, February 16, 2023 11:07 PM
To: Sandy Cross <SCross@TownofDuck.com>
Cc: Sally Feagans <sdfeagans@aol.com>
Subject: Tommy's Market / Paint Color

Hi Sandy - hope this finds you well. Just following up to hear if a decision was made on our paint color? Thanks!

We will be back in town 2/26....

Best,

Tim
(214) 538-6114

Written Comments Received from the following individuals:

Mari & Alan Dawson
109 Trinitie Drive

Tom Dorsey
1354 Duck Road

**TOWN OF DUCK
BOARD OF ADJUSTMENT MEETING
WEDNESDAY, SEPTEMBER 28, 2022
MINUTES**

The Board of Adjustment for the Town of Duck convened at the Paul F. Keller Meeting Hall at 2:00 p.m. on Wednesday, September 28, 2022.

BOARD OF ADJUSTMENT MEMBERS PRESENT: Chair Olin Finch, Tom O'Brien, Carol Powell, Ed Sadler, Robert Wetzel, Alternate David Flowers, and Alternate John Pucciano. Staff present: Attorney Ben Gallop, Director of Community Development Joe Heard, Board of Adjustment Clerk Sandy Cross, and Deputy Town Clerk Kay Nickens.

MEMBERS ABSENT: None.

OTHERS PRESENT: None.

CALL TO ORDER

Chair Finch called the meeting to order at 2:00 p.m.

ELECTION OF OFFICERS

Chair Finch called for elections for Chair and Vice Chair Member

Chair Finch called for elections for Chair and Vice Chair for another term on one year. Member Tom O'Brien nominated Olin Finch for Chair of the Board. Member Bob Wetzel seconded the motion. Member Wetzel seconded that nomination. Chair Finch moved to close nominations and called for a vote; all members voted in favor. Motion carried 7-0.

Member Powell nominated Member O'Brien for Vice Chair. Member Wetzel seconded the motion. With no other nominations, Chair Finch closed the nomination and called for a vote. All members voted in favor. Motion carried 7-0.

VARNELL LATE

Public hearing for the application submitted by Henry Blaha for an appeal is delayed due to Mr. Varnell not being present and stuck in traffic. In the essence of time, the panel agrees to rearrange the agenda.

TRAINING OPPORTUNITY

Sandy Cross called attention to the information in the packet from the UNC School of Government about two training opportunities coming in October 2022. She noted which members had responded and encouraged the others to take advantage of the opportunity. The packet included respective dates for which they would attend the training. Members of the Board provided guidance as to which training they would like to attend. Member Powell notes that she grateful for the training opportunity given the limited number of times they Board meets.

APPROVAL OF MINUTES

Member Powell moved the minutes from the April 4, 2022 meeting be accepted as presented. Member Wetzel seconded. Motion carried 7-0.

STAFF COMMENTS

Ms. Cross noted the Town Council Vision meeting on the 20th. The meeting will begin on the 19th and open to the public on the 20th, however public comments will not be taken during this meeting. The agenda was distributed to the Board.

BOARD COMMENTS

No members of the board had comments. Continue to wait for Varnell.

PUBLIC HEARING

Appeal BOA-2022-001: An application submitted by Henry Blaha, owner of the property at 121 Ocean Bay Boulevard, appealing the Zoning Administrator's approval of a subdivision of property at 123 Ocean Bay Boulevard.

Mr. Varnell arrives and notes that his expert in the matter, George Wood, submitted by Henry Blaha is unable to attend meeting due to exposure to COVID-19. Mr. Varnell requests a continuance but would like the matter to be heard as soon as possible and are flexible with dates. Robert Hobbs, attorney for Town Staff comments that he nor staff have any objections to a continuance. Attorney Hornik, representing property owner of 123 Ocean Bay Blvd, David Liess, indicates that he and his client have no objection but would like to see this matter concluded as soon as practically possible.

Attorney Gallop, suggests if you set a date and time as of this meeting, you may continue this meeting without further advertising. Member Sadler made a motion to continue. Further discussion ensued as the suggestion of Attorney Hobbs to include the date and time at which the Board would reconvene.

Member Powell made a motion that the Board continue this meeting and reconvene on Thursday, October 12th at 3:00 pm. Member Sadler seconded the Motion. Motion carried 7-0.

ADJOURNMENT

Meeting was adjourned to October 12th at 3:00 p.m. The time was 2:18 p.m.

Approved: _____
Secretary

**TOWN OF DUCK
BOARD OF ADJUSTMENT MEETING
WEDNESDAY, OCTOBER 12, 2022
MINUTES**

The Board of Adjustment for the Town of Duck convened at the Paul F. Keller Meeting Hall at 2:00 p.m. on Wednesday, October 12, 2022.

BOARD OF ADJUSTMENT MEMBERS PRESENT: Chair Olin Finch, Tom O'Brien, Carol Powell, Ed Sadler, Robert Wetzel, Alternate David Flowers, and Alternate John Pucciano. Staff present: Attorney Ben Gallop, Attorney Robert Hobbs, Director of Community Development Joe Heard, Board of Adjustment Clerk Sandy Cross and Deputy Town Clerk Kay Nickens,

MEMBERS ABSENT: None.

OTHERS PRESENT: Attorney Kevin Hornik, Brough Law Firm; Starkey Sharp, Sharp, Baker, Graham & Varnell, LLP; Property Owners Henry and Carol Blaha, Property Owners Lauren and David Liess.

CALL TO ORDER

Chair Finch called the meeting to order at 3:00 p.m.

OPENING COMMENTS

Attorney Ben Gallop outlined functions of Board of Adjustment and its procedures and decision-making process.

Appeal BOA-2022-001: An application submitted by Henry Blaha, owner of the property at 121 Ocean Bay Boulevard, appealing the Zoning Administrator's approval of a subdivision of property at 123 Ocean Bay Boulevard.

Attorney Hornik, representing property owners of the subject of the appeal, Lauren and David Liess, requested to dismiss the appeal based on two arguments.

1. Present appeal is moot and therefore the Board does not have subject matter jurisdiction.
2. Appellant does not have standing to bring this appeal.

Attorney Hobbs stated the Town has no position or motions to present.

Attorney Starkey Sharp, representing appellant Henry Blaha, stated a new survey with static line information had been received over the weekend. Sharp explained that this information should have been provided in the beginning of the subdivision review. He stated the subdivision approval shouldn't have been granted until all information regarding static and stable lines of vegetation were determined.

Member Ed Sadler questioned the square footage of the property on the most recent survey.

Attorney Sharp stated the October 3, 2023 survey shows the first line of natural stable vegetation seaward, adding an an additional 2,912 square feet, which conflicts with Blaha's expectations based on information provided initially.

Chair Finch questioned Sharp if there was a motion for dismissal.

Sharp indicated that based on the information now in his possession it did not make sense to further contest the subdivision.

Attorney Hobbs had no response.

Attorney Hornik motioned for dismissal as the property in question meets or exceeds the Town's minimum requirement criteria to be subdivided and that Town staff by law was required to certify the exempt plat. He stated that despite the appellants' issue with the methodology of how square footage was determined, the original survey provided and the new survey with additional lines drawn, meets local ordinances as it relates to lot area requirements. In addition, Hornik stated that the appellant had no proof of damages.

Chair Finch questioned which line, the lesser or the greater, be used to determine the lot area.

Attorney Hornik explained the definition of lot area as described in the appeal application, noting that the greater of the two measurements is used.

Attorney Gallop clarified the decision is based on whether lots meet the standard of the Town Code, which it does.

Attorney Hornik stated that CAMA regulation's definition of development does not include subdivisions or other divisions of land. He explained that the type of decision being made would not be in the scope of CAMA and would be separate.

Attorney Hobbs stated the Town staff agreed with the reading of the lot area definition. He questioned Sharp as to comments related to the appellants damages.

Sharp described the special damages issue as related to the impacts of building an additional house on Blaha's property value, traffic noise and light. He stated he was prepared to present more supporting evidence but was not required to do so in the application for the appeal. He added the issue is with the Town staff not following the ordinance and the current lot size information not being provided at the beginning.

Gallop questioned Sharp to determine if he can agree with statements that the Board can affirm, reverse, and wholly or partly modify the decision appealed. Gallop also asked if Sharp agreed that the Town and/or CAMA local permitting official Sandy Cross can also make any order requirement decision or determination that ought to be made related to that decision.

Attorney Sharp agreed to Gallop's questions and mootness of the appeal. He argued the Blaha's had the right to make the appeal, which was not frivolous, and that lines to determine the square footage should have been determined at the beginning of the subdivision review process.

Gallop referenced G.S. 160D-1402(j)(3) regarding competent evidence required before a quasi-judicial hearing and stated that evidence dealing with property values and increased traffic cannot be made by opinion testimony or lay witnesses. Gallop questioned Sharp if any expert witnesses are present.

Sharp responded that no expert witnesses were present and he was not going to waste the Board's time.

Gallop recommended dismissal based on mootness and lack of evidence for special damages. He also clarified that under the survey presented, the analyses are the definition of the three different measurements, all of which are greater than the minimum lot area necessary to subdivide the property.

Finch asked Sharp if he wanted to make a motion.

Sharp stated no motion.

Member Powell motioned to grant dismissal for lack of standing and mootness.

Member Wetzell seconded.

Motion carried 5-0

Gallop recommended Finch to direct Hornik to prepare the Board's order.

Finch so directed.

Finch expressed appreciation to Board members and the public.

Sandy Cross thanked members who attended training.

Finch adjourned the meeting at 3:55 p.m.

Approved: _____
Secretary