



## TOWN OF KILL DEVIL HILLS

*Land Where Flight Began*

MEMORANDUM

September 13, 2021

TO: Mayor and Board of Commissioners

FROM: Debora P. Diaz, Town Manager

REF: New Business

**5. 2031 South Virginia Dare Trail – non-conformity reconstruction request  
(Attached NB-5)**

On June 20, 2021 the structure located at 2031 South Virginia Dare Trail was substantially damaged by fire. It was an existing non-conforming structure due to changes in the Town Code regarding parking and access aisle requirements; side yard setbacks and fire suppression; and, landscaping requirements for dwellings greater than 6,000 square feet.

The owner, Amit Gupta, SAGA Realty and Construction, is requesting to reconstruct it exactly as shown on the as-built survey, which is included with Assistant Planning Director Cameron Ray's memorandum. This request includes installation of a fire suppression system which complies with Ordinance Amendment #17-19, Section 153.101, Setbacks [in the Ocean Impact Residential Zone], regarding side yard setbacks and fire suppression, and thus reduces the nonconforming status of the structure.

Reconstruction of a non-conforming structure requires approval by the Board of Commissioners in accordance with Section 153.053(D) of the Town Code, which is fully explained in Mr. Ray's memorandum.

During reconstruction, SAGA could comply with landscaping requirements as outlined in Ordinance #17-20, Section 153.073 Landscaping Requirements, which would further reduce the nonconforming status of the structure. This is a reasonable requirement and Staff recommends the Board of Commissioners approve SAGA's request to reconstruct of the structure at 2031 South Virginia Dare Trail, as submitted, subject to including compliance with Ordinance #17-20, Section 153.073 of the Town Code.

**Chapter 153, Zoning  
Ordinance #17-19**

**OCEAN IMPACT RESIDENTIAL ZONE (OIR)**

**§ 153.101 SETBACKS.**

(A) *Side yard.*

(1) The minimum side yard setback requirements on a lot less than 75 feet in width shall be 10 feet from each side.

(2) For all lots 75 feet to 99 feet in width, the minimum side yard widths shall be 12 feet.

(3) For all lots or aggregate of lots combined for single development 100 feet or greater in width, the minimum side yard setback shall be 12 feet.

(4) All multi-family dwellings in excess of a duplex, hotels and motels shall install and maintain a vegetative buffer of evergreen, salt-tolerant species along the side yards of useable property in conjunction with development in this zone and such may be located within the area of the required setback lines.

(5) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area shall have an additional 2 feet of side yard setback.

(6) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area equipped with a fire suppression system reviewed, approved, and inspected annually by the Fire Chief or his/her designee, shall be exempt from 153.101 (A) (5).



**Chapter 153, Zoning  
Ordinance #17-20**

**§ 153.073 LANDSCAPING REQUIREMENTS.**

*(A) Intent and objectives*

(1) The intent of this section is to improve the appearance of parking areas and properties abutting public rights-of-way; to provide buffering between noncompatible land uses; to provide spatial separation of land uses; to protect, preserve and promote the aesthetic and visual character of lands particularly adjacent to major thoroughfares; and to promote public health and safety through the reduction of noise pollution, air pollution, visual pollution, air temperature and artificial light glare within the town.

(2) Landscaping includes not only trees, shrubbery, grass and ground cover but open paving stones, benches, fountains and exterior lighting fixtures as well. Buildings, vehicles, boats, equipment, parking areas or storage areas shall not be included in required landscaped areas. No more than 20% of a required perimeter landscaped area may be utilized for sidewalks, walkways or private roads. Landscaping standards may be satisfied within required setbacks.

(3) Any existing natural landscape shall be preserved whenever possible. Preservation of trees and further landscaping is the goal rather than destruction of existing trees or plant life. The planting of drought-tolerant vegetation common to the immediate natural coastal environment is encouraged to ensure proper plant life development and maturation.

(4) While the above objectives are general in form, proper design and location of trees, shrubbery and other landscape amenities will be subject to the town's plan review procedure.

(5) Landscaped areas may be used for nitrification fields.

(B) *Jurisdiction.* The requirements of this section shall apply to all zones.

(C) *Applicability.* All new development and redevelopment shall comply with the requirements of this section, except single-family detached residences and duplexes with less than 6,000 square feet of lot coverage, which shall meet the requirements of division (M) below.

(D) *Plan review and approval.*

(1) A landscape plan shall be submitted at the time application is made for site plan approval covering new development or redevelopment.

(2) The plan shall include the location and size of all proposed structures or improvements, landscape materials, including botanical and common names, and all existing vegetation by their common names as specified by the following:

(a) A tree survey: show all existing trees which have a diameter of six inches or greater, measured three feet from the base and also all major vegetation with an index of those trees and vegetation;

(b) Total site area;

(c) Parking area;

(d) Landscape area required and provided for in the project;

(e) Number of trees which are provided for the project;

(f) Irrigation plan, if any;

(g) Total amount of interior landscaped area.

(E) *Parking lot landscape requirements.*

(1) If more than 40 parking spaces are provided, landscaping of 10% of the total parking areas, including aisles, shall be required. This landscaping shall be established within the interior of the parking lot.

(2) The interior landscaped areas shall be located in a manner that:

- (a) Assists and helps to control the movement of vehicular and pedestrian traffic;
- (b) Provides visual relief from a large expanse of paving;
- (c) Preserves existing trees, where possible; and
- (d) Screens loading and service areas.

(3) A landscaped aisle shall be provided at the end of each parking row adjacent to the travel lane serving the parking aisle.

(4) In order to encourage the required landscaped areas to be properly dispersed, no required landscape area shall be larger than 350 square feet unless a larger area is necessary to save or protect existing vegetation.

(5) Interior landscaped areas shall contain a minimum of 75 square feet. Within these landscaped areas there shall be a minimum of one small tree per ten parking spaces in addition to other plant materials and ground cover. See division (L) of this section and Appendix A of this chapter.

(6) Required perimeter landscape areas shall not be used in the calculation of required interior landscape areas.

(F) *Perimeter landscaped areas.*



(1) *General.* A perimeter landscaped area, with a minimum depth of five feet, shall be required along property lines. Along property lines abutting any street, the minimum depth shall be ten feet. Driveways, sidewalks and similar facilities may traverse perimeter landscaped areas.

(2) *Screening requirements.*

(a) *Buffer between incompatible uses.* Restaurants, retail sales, shopping centers, automotive sales or repair, taverns, amusement or entertainment establishments, industrial uses, warehouses, wholesale businesses or trucking facilities, business or professional offices, places of worship, schools, daycare centers, parking lots, and townhouse or multi-family developments, and single-family and duplex dwellings with greater than 6,000 square feet of lot coverage must provide screening on their property for certain adjacent uses. Where abutting single-family dwellings or duplexes with less 6,000 square feet of lot coverage to the rear or to the side, such property line shall have a wall constructed of wood, masonry wall, vinyl or composite materials or a vegetative buffer six feet in height along the property line. Along property lines abutting single-family or duplex dwellings with less than 6,000 square feet of lot coverage a fence or dense vegetative screen shall be provided. Fences shall be constructed of wood, masonry, vinyl or composite materials and be a minimum of six feet in height. In addition, ornamental landscaping shall be provided if a fence is utilized as a buffer. Dense vegetative screens shall contain shrubs at least 30 inches high at the time of installation planted two-and-one-half feet on center. The type of shrub used needs to be capable of attaining a height of at least six feet at maturity. A dense vegetative screen utilized as a buffer will also satisfy the ornamental landscaping requirements below. In all cases where a fence is constructed, the required landscaped area shall be located between the fence and property line.

(b) *Ornamental landscaping.* Along property lines not abutting single-family or duplex dwellings with less than 6,000 square feet of lot coverage, the landscape plan shall indicate at least one tree for each 30 linear feet of landscape area and one shrub for each ten feet of landscape area. For new construction or substantial improvements in the Commercial Zone, the landscape plan shall indicate at least one tree and one shrub for each ten linear feet of landscape area along the front property line. Ornamental landscaping need not be evenly spaced, but rather dispersed throughout the landscape area to create a natural appearance. In all cases where a fence is constructed, the required landscaped area shall be located between the fence and property line.

(c) No vehicles, motor or otherwise, shall be parked on landscaped areas. In all cases where a fence is constructed, the required landscaped area shall be located between the fence and property line. No temporary signs or other structures shall be placed on any landscaped area without issuance of a permit by the Building Inspector or Zoning Administrator.

(G) *Grass and ground cover.* Ground cover shall be placed or planted on all disturbed portions of exposed ground or earth not occupied by natural or other landscape material.



Director of  
Planning and Inspections  
MEREDITH GUNS

Building Inspector  
MARTY SHAW  
CHARLES THUMAN

Code Enforcement Officer  
JORDAN BLYTHE



Assistant Director of  
Planning and Inspections  
CAMERON RAY

Senior Planner  
RYAN LANG

Zoning Administrator  
DONNA ELLIOTT

**THE TOWN OF KILL DEVIL HILLS  
NORTH CAROLINA**

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**PLANNING DEPARTMENT**

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September 13, 2021

Memorandum

To: Debbie Diaz, Town Manager

From: Cameron Ray, Assistant Planning Director 

Subject: 2031 S. Virginia Dare Trail – Nonconformity Reconstruction Request

Attached is a request from Amit Gupta, SAGA Realty and Construction to reconstruct the structure that was destroyed by fire at 2031 South Virginia Dare Trail. On June 20, 2021 the structure located at 2031 S. Virginia Dare Trail was substantially damaged by a Fire. The request is to reconstruct the previously approved structure exactly as shown on the as-built survey that is attached.

The previous structure was an existing nonconformity due to Town Code ordinance amendments 17-18 (Increase in parking setbacks/Access Aisle), 17-19 (Increase in side yard setback/Fire Suppression), and 17-20 (Landscaping requirements for dwellings greater than 6,000 SF). The request states the nonconformity will be reduced by installing fire suppression system which will allow the structure to comply with ordinance amendment 17-19.

The Board of Commissioners will need to approve the reconstruction of a non-conforming structure as outlined in Town Code 153.053 (D). This code section states that the nonconformity may be reconstructed to 100% with several conditions, including the reconstructed building may not be more non-conforming and after the Board of Commissioners finds that the work includes all reasonable efforts have been made to reduce the nonconforming items. At this time, the structure as shown on the attached as-built survey does not comply with the Town Code ordinance amendments 17-18 (Increase in parking setbacks/Access Aisle) and 17-20 (Landscaping requirements for dwellings greater than 6,000 SF) but the proposed reconstruction does comply with 17-19 (Increase in side yard setback/Fire Suppression).

Staff recommends the Board of Commissioners review the attached materials and recommend requiring compliance with ordinance 17-20 (Landscaping requirements for dwellings greater than 6,000 SF) as it is a reasonable effort in addition to the added Fire Suppression system prior to approval.





September 3, 2021

Meredith Guns, Planning Director  
Town of Kill Devil Hills  
102 Town Hall Drive  
Kill Devil Hills, NC 27948

RE: Reconstruction of the residential structure destroyed by fire at 2031 South Virginia Dare Trail.

Dear Mrs. Guns,

In the near future we will be applying for a building permit to rebuild the residential structure which was destroyed by fire at 2031 South Virginia Dare Trail. The structure will be re-built to match the original structure it's in size and location completely within the same footprint. Due to ordinance changes adopted after construction we understand the site is non-conforming and will require approval by the Town Board of Commissioners to re-build the structure. Accordingly, In accordance with Town Code 153.053 Zoning Nonconformity (D,) we hereby request to be placed on the September 12, 2021 agenda for Commissioners consideration.

Please note the non-conformity of the site will be reduced by the addition of a 13-D type residential fire protection system.

Attached please find a copy of the as-built survey.

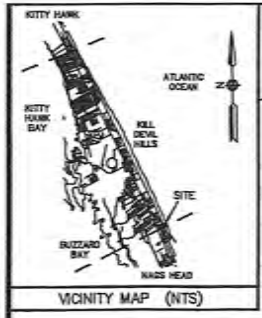
Thanks for your consideration and please let me know if you have any questions or need additional information.

DocuSigned by:

*Amit Gupta*

7167D285619D415...

Amit Gupta, President SAGA Construction



- LEGEND**
- EX. 1" PINCH PIPE
  - EX. REBAR
  - 1/2" REBAR SET FLUSH
  - EX. CONC. WHL.
  - CALCULATED POINT
  - EX. P/K NAIL & WASHER
  - MAGNETIC NAIL SET
  - EX. 3/4" OPEN PIPE
  - WATER METER
  - PHONE PEDESTAL
  - C.A.T.V.
  - UTILITY POLE
  - GUY WIRE
  - FIRE HYDRANT
  - ELECT. TRANS.
  - AC
  - BS
  - M
  - DI
  - PL
  - EX. BOLLARD
  - EX. SANITARY MANHOLE
  - EX. LIQUID PROPANE TANK
  - STAKE SET BY THE TOWN OF KILL DEVIL HILLS

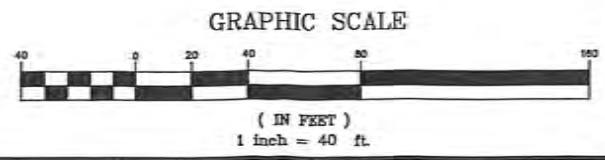
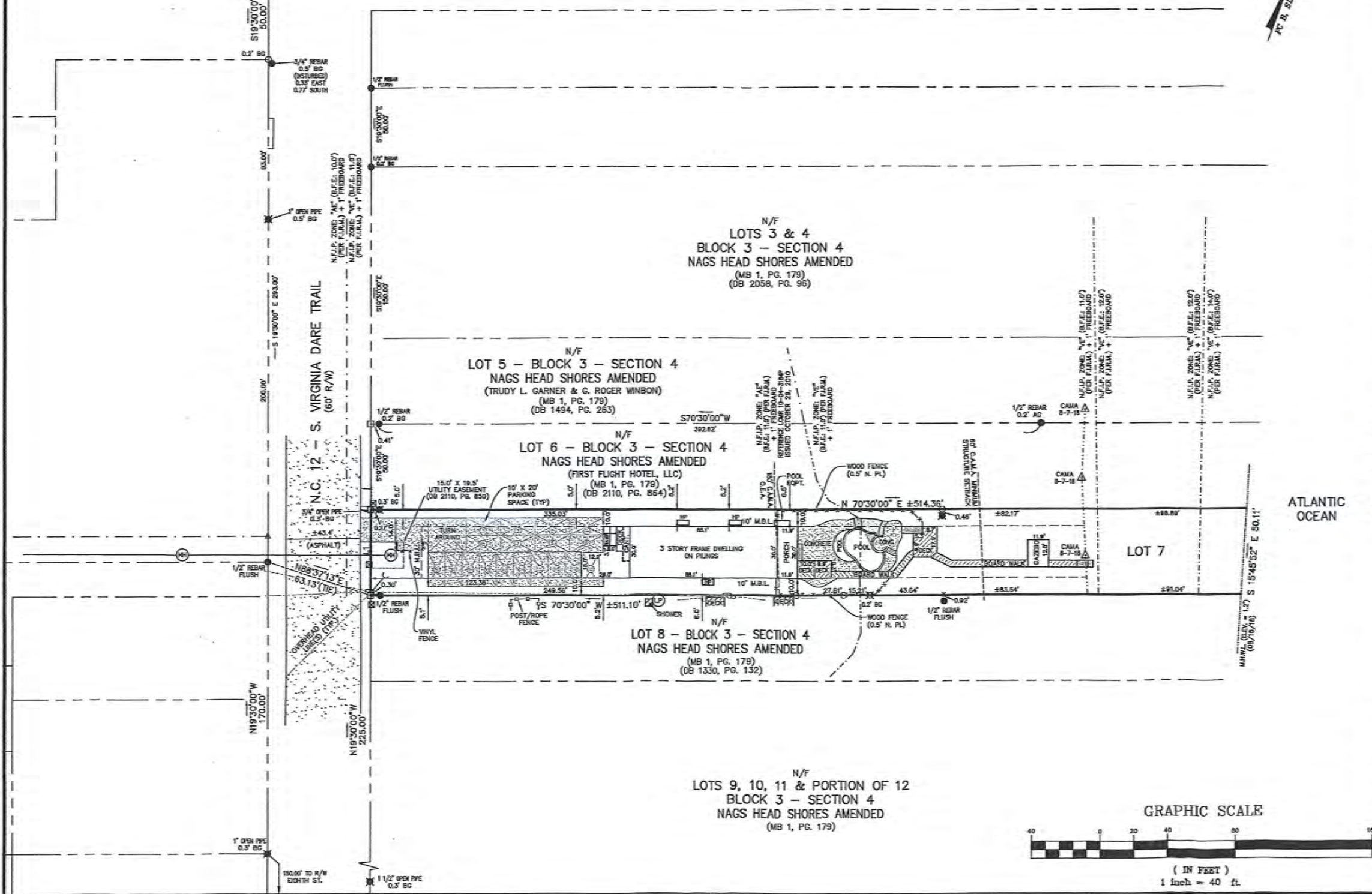
- NOTES:**
1. THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH.
  2. AREA BY COORDINATE COMPUTATION = ±25,637 S.F.
  3. P.L.M. ZONE AS SHOWN
  4. PIN NO.: 07 883313 23 1979
  5. RECORDED REFERENCE: M.B. 1, PG. 179; D.B. 2280, PG. 378
  6. MINIMUM BUILDING LINES (M.B.L.) SHOWN HEREON ARE PER THE CURRENT LOCAL ZONING REGULATIONS. OTHER SETBACKS AND/OR RESTRICTIONS MAY APPLY AND MUST BE VERIFIED PRIOR TO CONSTRUCTION.
  7. ELEVATIONS (NAVD 1988):  
HIGH GROUND @ BUILDING = 11.0'  
LOW GROUND @ BUILDING = 9.5'  
FIRST FLOOR = 13.43'  
UTILITY/STORAGE ROOM = N/A  
LOW BEAM = 12.10'
  8. EXISTING LOT COVERAGE:  
10,869 S.F./20,938 S.F. (AREA W. C.A.M.A. LINE) (52.3%)


I, WILSON RAY MEELING, CERTIFY THAT THIS PLAN WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 2280, PAGE 378) THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM (DEED DESCRIPTION RECORDED IN BOOK \_\_\_\_\_ PAGE \_\_\_\_\_) THAT THE RATIO OF PRECISION AS CALCULATED IS 1/10,000; THAT THIS PLAN MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 N.C.A.C. 58.1600), THIS 28TH DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
SURVEYOR L-2592



LINE TABLE		
LINE	LENGTH	BEARING
L1	50.00	N12°30'00"W





AS-BUILT SURVEY FOR

**2031 SYDT, LLC**

**LOT 7 - BLOCK 3 - SECTION 4 - NAGS HEAD SHORES AMENDED**  
**KILL DEVIL HILLS - ATLANTIC TOWNSHIP - DARE COUNTY - NORTH CAROLINA**

**Seaboard Surveying & Planning, Inc. C-1536**  
 103 W. WOOD HILL DRIVE - UNIT F P.O. BOX 68 NAGS HEAD, N.C. 27958 252-460-9999

NO.	DATE	REVISIONS	BY

FILE NO.: 1808373
SURVEYED: 06/27/19 JC
DRAWN: 06/28/19 MJ
CHECKED: 06/28/19 MRN
SCALE: 1" = 40'
SHEET NO. 1
OF 1 SHEETS