



**TOWN OF KILL DEVIL HILLS**  
Land Where Flight Began

**PUBLIC NOTICE**

NOTICE IS HEREBY GIVEN that the Town of Kill Devil Hills Board of Adjustment has scheduled a regular meeting for Tuesday, July 26, 2022 at 5:00 p.m., in the Town Hall Meeting Room, 102 Town Hall Drive, Kill Devil Hills.

**AGENDA**

**Call to Order and Roll Call**

**Approval of the Minutes of June 28, 2022**

**Ongoing Business**

**New Business**

1. Eric R. and Tenia Maurer – 0 Bay Drive, Parcel Number: 029614001, Pin Number: 987520806669 – Variance from Chapter 153, Zoning §153.116(C) Permitted Uses
2. Raymond Pate – 1006 Alexander Lane, Parcel Number: 002294076, Pin Number: 988409077408 – Variance from Chapter 153, Zoning §153.121(C) Setbacks

**Adjournment**

All citizens are cordially invited to attend.

Posted this 11<sup>th</sup> day of July 2022.

James Michael O'Dell  
Town Clerk

Copies to: Board of Adjustment members in their meeting materials; Mayor & Board of Commissioners; Town Manager; all Town bulletin boards; KDH Sunshine List including all local news media; KDH Electronic Distribution List; website, social media; file

**Minutes of the June 28, 2022, Meeting of the Kill Devil Hills Board of Adjustment (BOA) held at 5:00 p.m. in the Meeting Room of the Administration Building, 102 Town Hall Drive, Kill Devil Hills.**

**Members Present:** Chairperson Michael Lowack, Vice Chairperson Ron Seidman II, Kevin Cox, Toni Dorn, and Jason Self

**Members Absent:** Alternates Blake Culpepper, T. Dillon Heikens & Natalie Painter

**Others Present:** Jay Wheless, Attorney for the BOA; Donna Elliott, Zoning Administrator; and James Michael O'Dell, Town Clerk

**Call to Order and Roll Call**

At 5:02 p.m., Chairperson Michael Lowack called this meeting of the Kill Devil Hills Board of Adjustment to order and welcomed all present. The clerk was called upon to conduct the Roll Call:

Kevin Cox	Present	Toni Dorn	Present
Michael Lowack	Present	Ron Seidman	Present
Jason Self	Present		

Five members of the Board of Adjustment were present, constituting a quorum.

**Agenda Approval**

Ron Seidman II moved to approve the agenda as presented. Toni Dorn seconded the motion, which was approved by a unanimous, 5-0, vote.

**Approval of the Minutes of January 25, 2022 and March 29, 2022**

Mr. Seidman moved to approve the minutes for the meeting of January 25, 2022, as presented. Kevin Cox seconded the motion, which was approved by a unanimous, 5-0, roll call vote.

Kevin Cox	Yes	Toni Dorn	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

Ms. Dorn moved to approve the minutes for the meeting of March 29, 2022, as presented. Mr. Cox seconded the motion, which was approved by a unanimous, 5-0, roll call vote.

Kevin Cox	Yes	Toni Dorn	Yes
-----------	-----	-----------	-----

Michael Lowack      Yes  
Jason Self            Yes

Ron Seidman        Yes

**Ongoing Business**

**New Business**

**1. R.M Saunders General Contractor Inc. – 501B South Virginia Dare Trail, Parcel Number: 008121000, Pin Number: 988420900147 – Variance from Chapter 153, Zoning §153.051(D) non-conforming lots of record**

R.M. Saunders General Contractor Inc. has requested a variance from Chapter 153, Zoning §153.051(D) non-conforming lots of record for a property located at 501B South Virginia Dare Trail, Parcel Number: 008121000, Pin Number: 988420900147, Kill Devil Hills, North Carolina.

Mr. Wheless provided an overview of the rules of procedure for the Board and applicant, noting the operational structure for this quasi-judicial proceeding.

Randy Saunders of R.M. Saunders Gen. Contractors Inc., property owner Walter Ulickas, and Zoning Administrator Donna Elliott each undertook a solemn oath.

**Applicant**

Mr. Saunders stated that he was caught off guard by the ordinance requirement. He noted that two historical structures were previously on the property, and had been demolished after waiting a year in accordance with the Town’s historic landmark ordinance. He suggested that §153.051 possibly did not apply, noting the lot is 30 feet at the roadway but 185 feet at the oceanfront, and over an acre in size. Mr. Saunders stated that the ordinance, as written, is condemning the lot and taking away the property owner’s right to build on the parcel where there were originally two houses.

Mr. Cox inquired when the applicant had purchased the property. Walter Ulickas, the property owner, replied that the property was purchased in March 2021. Mr. Cox inquired about the Dare County property data sheet, which noted historic designation. Mr. Ulickas replied that a certificate of appropriateness was previously granted by the Town’s Historic Landmark Commission for the structures on the parcel. He shared that searches were conducted during the year-long demolition deferral for individuals or entities that would be interested in relocating the structures, but were not successful. At the conclusion of the deferral period in April 2022, he applied to the Town for a demolition permit, which was granted, and demolished the structures. Chair Lowack inquired if the structures were razed, did the historic landmark designation end. Ms. Elliott replied that the Town’s historic landmark designation was for the structures, not the land, so the demolition following the granting of a certificate of appropriateness ended the designation.

In reviewing the submitted plat, Mr. Wheless inquired whether the lines on the survey was fencing. Mr. Saunders replied that it might be sand or sedimentation control fencing. Mr. Wheless inquired whether there were any lots nearby on the oceanfront that are similar to this parcel in shape, size, and frontage along the road. Mr. Saunders stated he had not researched it. Mr. Ulickas stated that anything expected to be built on the site would be required to meet the setback requirements, and he would not be requesting any other variances for the site.

### **The Town**

Ms. Elliott stated that because this lot is less than 45 feet wide at the roadway, it is deemed unbuildable by the Town Code. This is a unique situation because the width of the lot is only 29.80 feet. The ordinance states that any lot less than 45 feet shall not be occupied without first obtaining a variance from the Board of Adjustment. By granting the variance, the applicant will be permitted to build a structure on the lot that will meet all local, state, and federal regulations.

Mr. Lowack inquired why the ordinance was enacted, assuming that it was to address future subdivisions and establishing minimum lot widths for future development. Ms. Elliott agreed, and noted that some lot frontages in some older developments are as narrow as 25 feet.

Mr. Self inquired about width requirements for some keystone lots, using the example of the Virginia Dare Shores subdivision. Ms. Elliott replied that setbacks for those lots were at 50 feet. Mr. Cox inquired about cul-de-sac lots. Ms. Elliot replied that the setback requirement begins once the lot is 50 feet in width. She used examples of properties at Third and Fourth Streets, but noted they are much smaller than the property in this instance. In referencing the submitted plat, Mr. Cox inquired whether it would be mostly driveway at the narrow portion of the lot until the lot's width minimum would begin the setback requirements. Ms. Elliott concurred.

Mr. Wheless inquired whether Town Staff had any objections regarding public health, safety, and welfare. Ms. Elliott replied in the negative. Mr. Wheless inquired of Ms. Elliott, whether in her experience as Zoning Administrator, she considered this lot peculiar. She replied that it was a peculiar lot, and could not provide any examples of similarly-shaped lots to the north or south along the oceanfront near the property.

### **Adjoining Property Owner(s) and / Opposition**

Chair Lowack inquired whether any member of the public present believed themselves to have standing to testify. No one present responded.

Chair Lowack accepted and introduced into evidence the applicant's May 31, 2022, application and supporting documentation. No additional physical evidence was submitted during the hearing. He then closed the evidentiary portion of the session.

Mr. Wheless provided an overview of the decision process: There are four questions set out by the N.C. General Assembly, each of which must be approved by a four-fifths vote. A vote of less than four-fifths on any question will deny the variance. The Board will vote on each question, supporting the decision for that choice.

**Board of Adjustment Findings of Fact for V/03/22-06/28/2022**

The Board of Adjustment established the following findings of fact:

1. It is the Board of Adjustment's CONCLUSION that the hardship of which the Applicant complains **DOES** result from a strict application of the ordinance. This conclusion is based on the following FINDINGS OF FACT: Testimony from the Town indicated that because this lot of over an acre is less than 45 feet wide at the roadway, it is deemed unbuildable by the Town Code, which creates a hardship for the applicant.
2. It is the Board of Adjustment's CONCLUSION that the hardship of which the Applicant complains **DOES** result from conditions that are peculiar to the property. This conclusion is based on the following FINDINGS OF FACT: Testimony from the applicant, an experienced builder in the area, noted that conditions of the property are peculiar. The Town concedes this point in its written response to the application and at this hearing: the lot is peculiar in shape, with no similarly-situated lots along the oceanfront.
3. It is the Board of Adjustment's CONCLUSION that the hardship **DOES NOT** result from the Applicant's own actions. This conclusion is based on the following FINDINGS OF FACT: The act of purchasing a property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-made hardship. No testimony has been presented to indicate that a hardship was created by the applicant's actions.
4. It is the Board of Adjustment's CONCLUSION that, if granted, the variance **WILL** be consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based upon all of the above FINDINGS OF FACT listed above, as well as the following: The applicant has testified that without granting this variance, an oceanfront lot of approximately one-acre would be unbuildable. The Town has conceded that granting this variance will not endanger public health, safety, and welfare.

Mr. Self moved to approve the variance request for 501B South Virginia Dare Trail, as submitted and consistent with the application, based on the Findings of Fact. Ms. Dorn seconded the motion, which was approved by a unanimous, 5-0, roll call vote:

Kevin Cox	Yes	Toni Dorn	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

The variance was granted.

### **Adjournment**

There being no further business before the Board of Adjustment at this time, Mr. Cox moved to adjourn. Mr. Self seconded the motion, which was approved by a unanimous, 5-0, roll call vote:

Kevin Cox	Yes	Toni Dorn	Yes
Michael Lowack	Yes	Ron Seidman	Yes
Jason Self	Yes		

The meeting adjourned at 5:45 p.m.

Submitted by:

James Michael O'Dell  
Town Clerk