

Law Offices of John Drew Warlick, P.A.

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

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

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

E-Mail: jps@warlicklaw.com

October 23, 2023

Via Hand Delivery:

Town of Swansboro, Board of Adjustment

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

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

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

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

To Whom It May Concern:

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

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

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

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

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

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

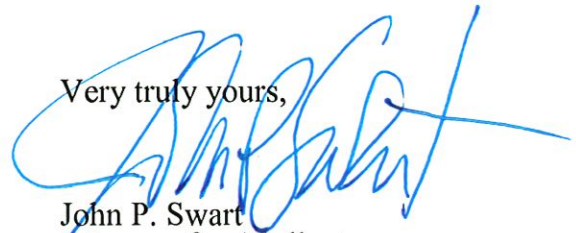
Attached please find a check in the sum of \$400.00 which I understand to be the fee for initiating this appeal.

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

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

With warmest personal regards, I remain

Very truly yours,



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

JPS/sjm
enclosures

TOWN OF SWANSBORO
FRIENDLY CITY BY THE SEA * Established 1783

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

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW
TOWN OF SWANSBORO

APPLICATION # _____

BEFORE THE
BOARD OF ADJUSTMENT

IN THE MATTER OF THE REQUEST FOR:

APPEAL of Notice of Violation
(copy attached hereto)

APPLICANT'S NAME _____

MAILING ADDRESS _____ Phone # _____

OWNER'S NAME Kirby Lee Everette, Jr.

404 S. Water Street
OWNER'S ADDRESS SWANSBORO, NC 28584 Phone # (252) 883-0226

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

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

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

Edgewater Heights LOT 8 BLOCK F MAP BOOK 1 page 122

THE PROPERTY IS ZONED: R U S F

THIS 23rd DAY OF October, 2023.

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

DATE FILED Oct. 23, 2023

RECIPIENT SIGNATURE Alvin Vinder

ZONING ADMINISTRATOR Carla Lumb

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

Exhibit A
Copy



• Friendly City by the Sea •
Established 1783

www.swansboro-nc.org

Board of Commissioners

John Davis
Mayor

Frank Tursi
Mayor Pro Tem

Patricia Turner
Commissioner

Harry Pugliese
Commissioner

Larry Philpott
Commissioner

Jeffrey Conaway
Commissioner

Town Manager

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

Town Clerk

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

September 18, 2023

Notice of Violation

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

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

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

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

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

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

Sincerely,

Andrea Correll, AICP
Town Planner
attachments

Exhibit B

Grounds for Appeal


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

9/17/23

Exhibit C

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

This the 17th day of October, 2023



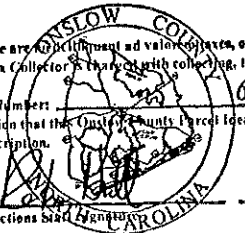
Kirby Lee Everett, Jr.

74

Exhibit D

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

Parcel Identification Number: 023700
This is not a certification that the Onslow County Parcel Identification Number matches this deed description.



Date 2/14/12

Tax Collections Staff



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

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

3

This deed presented to
The Onslow Co. Tax Office
Date 2/14/12 *DM*

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$ 160.00

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

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

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

Brief description for the Index: LOT 8 EDGEWATER BF,

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

GRANTOR

GRANTEE

BEN G. BEST and wife PATRICIA L. BEST
STEPHEN C. SCHNEIDER unmarried
PO BOX 1582
SWANSBORO, NC 28584

KIRBY LEE EVERETTE JR.
974 BELLAMAY LAKE RD
WHITAKERS, NC 27891

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

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

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

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

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

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

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

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

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

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

 (Entity Name)
 By: _____
 Print/Type Name & Title: _____

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

 By: _____
 Print/Type Name & Title: _____

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

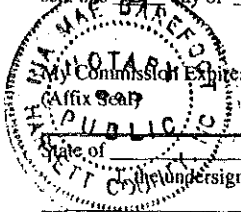
 By: _____
 Print/Type Name & Title: _____

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

 By: _____
 Print/Type Name & Title: _____

 Print/Type Name: _____

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



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

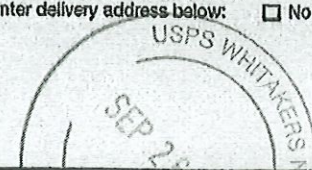
 State of _____ - County or City of _____
 I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____ personally came before me this day and acknowledged that he is the _____ of _____, a North Carolina or _____ corporation/limited liability company/general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

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

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

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

Exhibit
E

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

PS Form 3811, July 2015

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
\$ *4.35*

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

Return Receipt (hardcopy) \$ *3.55*

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage
\$ *0.63*

Total Postage and Fees
\$ *8.53*

Sent To
Everette Kirby Lee Jr.

Street and Apt. No., or PO Box No.
974 Ballamy Lake Rd.

City, State, ZIP+4®
Whitakers, NC 27891

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Return Receipt

7022 0410 0000 4762 6168

SEP 18 2023

WHEATBORO POST OFFICE

Postmark Here